

**City of Snohomish
ORDINANCE 1928**

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON ADDING A
NEW CHAPTER 1.14 TO THE SNOHOMISH MUNICIPAL CODE
ESTABLISHING A NOTICE AND HEARING PROCEDURE FOR ROUTINE
CIVIL INFRACTIONS.**

WHEREAS, the Snohomish City Council has determined that a Code Enforcement Policy was necessary to protect the health and welfare of its citizens; and

WHEREAS, the Snohomish City Council has determined that a system to address routine violations in the same manner as civil infractions is expeditious and inexpensive while leaving enforcement of other violations under differing civil infraction enforcement or enforcement as misdemeanors; and

WHEREAS, the Snohomish City Council also recognizes that Notice and Hearing procedures are necessary for appeals and the protection of civil rights;

NOW THEREFORE, THE CITY COUNCIL, CITY OF SNOHOMISH, DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter 1.14 is hereby added to the Snohomish Municipal Code, which shall read as follows:

Chapter 1.14

**NOTICE AND HEARING PROCEDURES FOR
CIVIL INFRACTIONS**

- 1.14.010 Routine Violations as Civil Infractions.
- 1.14.020 Notice of Infraction, Issuance, Service and Filing.
- 1.14.030 Person receiving notice – Identification and detention.
- 1.14.040 Notice, failure to sign, nonappearance
- 1.14.050 Effect of Notice, Determination final unless contested.
- 1.14.060 Response to Notice.
- 1.14.070 Contested Notices of Civil Infractions/Hearing Examiner
- 1.14.080 Response/Contested Infractions/Procedure
- 1.14.090 Judicial Appeal.
- 1.14.100 Civil Penalties Assessed.
- 1.14.110 Collection of Civil Penalty.
- 1.14.120 Criminal Penalties.
- 1.14.130 Severability

01.14.010 Routine violations as Civil Infractions. A routine infraction as defined by Snohomish Municipal Code 1.01.080 is a civil infraction for which civil penalties may be assessed for each day or part of day that the violation continues. This chapter contains procedures for notice and hearing of routine infractions. Though this chapter may refer to said Ord1928-add SMC 1.14 violation notice and hearing procedures attorney

infractions as “civil infractions,” it shall pertain to “routine infractions” as defined by Snohomish Municipal Code section 1.01.080 only and not other civil infractions as may be defined elsewhere in the Snohomish Municipal Code.

1.14.020 Notice of Infraction – Issuance, Service, Filing.

A. Notice of Civil Infraction. In addition to other civil remedies, the Enforcement Officer may issue a notice of civil infraction to any person or entity that commits a civil infraction. The notice shall be filed with the City Manager’s Office and served in the manner hereinafter provided. The notice shall state that a civil penalty has been or may be assessed against the person to whom the notice of civil infraction was directed and shall accrue for each and every day or portion thereof during which the violation continues, and shall notify the person of a right to appeal. The amount of the penalty shall be measured daily for each violation as specified in Section 1.01.080, Snohomish Municipal Code. The notice shall be in substantially the following form:

NOTICE OF CIVIL INFRACTION

TO: _____(Name and address of person or entity)

The City of Snohomish has determined that you have committed a civil infraction as follows:

[insert description of act or omission and date and time]

A civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction. A civil penalty of \$_____ per day has been/will be assessed against you for each day the infraction continues from and after _____ [insert date].

You must respond to this notice within fifteen (15) days of the date of this notice. You may respond to this notice in any one of the following ways:

1. If you do not contest the violation, complete the appropriate portion of the notice below and submit it to the City in accordance with the instructions below, along with your payment for the penalty assessed;
2. If you do contest the violation, complete the appropriate portion of the notice below to request a hearing, and submit it to the City in accordance with the instructions below; and
3. If you do not contest the violation, but believe that there are mitigating circumstances surrounding the infraction, complete the appropriate portion of the notice below to request a hearing on mitigating circumstances and submit it to the City in accordance with the instructions below.

If you contest the violation, at any hearing to determine if the violation occurred, the City has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed. You have the right to subpoena witnesses to the hearing, including the enforcement officer who issued the notice of civil infraction.

If you do not contest the violation but believe that there are mitigating circumstances, you will have the burden to prove by a preponderance of the evidence that mitigating circumstances exist. By seeking mitigation, you will be deemed to have committed the offense, and you will not be entitled to subpoena witnesses.

A failure to respond to this notice or to appear at a hearing you have requested will result in a default being entered against you for the amount of the penalty set forth in this notice. You may also be referred to the City's prosecutor for a misdemeanor violation for failure to respond or appear. Such a misdemeanor may be punished by a fine or imprisonment.

You are required to respond to this notice by signing it below and stating your response. Your failure to sign below is a misdemeanor violation which may be punished by a fine or imprisonment.

DATED: _____

ENFORCEMENT OFFICER

I am the party or entity to whom the Notice of Civil Infraction has been issued. My signature appears below. My response to the Notice of Civil Infraction is as follows (check appropriate line):

- ___ 1. I do not contest the violation, and my payment of the assessed penalty of \$_____ accompanies this response.
- ___ 2. I do contest the violation, and I request a hearing before the City's hearing examiner. Notify me of the date and time of the hearing at the following address:_____.
- ___ 3. I do not contest the violation, but there are mitigating circumstances, and I request consideration of those mitigating circumstances. Notify me of the date and time of the hearing at the following address:_____.

DATED: _____

SIGNATURE

Return the duplicate of this Notice of Civil Infraction which you have signed and on which you have stated your response within fifteen (15) days after the date of the notice. You may return your response by mailing it to the City, properly addressed and with proper postage, first class mail to the following address:

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Alternatively, you may deliver your response to the City by delivering it within the fifteen (15) day deadline to:

- B. A civil infraction proceeding is initiated by the issuance, service, and filing of a notice of civil infraction.
- C. A notice of civil infraction may be issued by an Enforcement Officer when the civil infraction occurs in the officer's presence or there is substantial evidence and/or witness that such infraction occurred.
- D. Service of the notice of civil infraction issued under subsection (C) of this section shall be performed by the Enforcement Officer at the direction of the City Manager or his designee pursuant to Chapter 2.39 of the Snohomish Municipal Code.
- E. A notice of civil infraction shall be filed with the City Manager or his designee within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. A notice not filed within the time limits prescribed in this section may be dismissed without prejudice.

1.14.030 Person receiving notice – Identification. A person who is to receive a notice of civil infraction under section 1.14.030 is required to identify himself or herself to the Enforcement Officer by giving his or her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license or indenticard.

1.14.040 Notice, failure to sign, nonappearance.

- A. A person who fails to sign a notice of civil infraction is guilty of a misdemeanor. Such misdemeanor shall be punished by a fine not to exceed \$100.00 and/or imprisonment not to exceed five (5) days.
- B. Any person willfully violating his or her written and signed promise to appear or respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. Such misdemeanor shall be punished by a fine not to exceed \$100.00 and/or imprisonment not to exceed five (5) days.

1.14.050 Effect of notice – Determination final unless contested.

A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in this section.

1.14.060 Response to notice.

- A. Any person who receives a notice of civil infraction shall respond to such notice as provided in this section within fifteen (15) days of the date of the notice.
- B. If the person determined to have committed the civil infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of civil infraction and submitting it, either by mail or in person, to the City Manager or his/her designee as specified on the notice. A check or money order in the amount of the penalty prescribed for the civil infraction must be submitted with the response. The City Manager or his/her designee may accept cash in payment for an infraction. When a response that does not contest the determination is received, an appropriate order shall be entered in the City's records.
- C. If the person determined to have committed the civil infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing and submitting it, either by mail, or in person as specified on the notice. The Hearing Examiner/Official shall notify the person in writing of the time, place and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.
- D. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, as specified on the notice. The Hearing Examiner/Official shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.
- E. The Hearing Examiner/Official shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction and may notify the prosecuting attorney of the failure to

respond to the notice of civil infraction or to appear at a requested hearing if any person issued a notice of civil infraction:

1. Fails to respond to the notice of civil infraction as provided in subsection (B) of this section; or
2. Fails to appear at a hearing requested pursuant to sections (C) and (D) of this section.

1.14.070 Contested notices of civil infraction/Hearing Examiner. If a notice of civil infraction is contested it shall be heard by the Hearing Examiner/Official. The decision of the Hearing Examiner/Official shall be final and conclusive with right of appeal to the Superior Court of Snohomish County.

1.14.080 Response Procedure (contested infractions).

A. A response shall be limited to the following:

1. The infraction did not occur.
2. The infraction did occur, but there were mitigating circumstances.
3. The Enforcement Officer misinterpreted the applicable City regulation, ordinance or other state law or regulation.

C. Within ten days following timely filing of a response regarding a hearing, notice of the date, time and place for the public hearing shall be mailed to the alleged violator, to the Hearing Examiner/Official, and to all other parties of record.

D. Accrual of Penalty Pending Appeal. The civil penalty for a continuing violation does not accrue during the pendency of a timely appeal; however, the Enforcement Officer may impose a daily civil penalty from the date of service of the notice of civil infraction if the Hearing Examiner/Official finds that the appeal is frivolous or is solely intended to delay compliance, or if the appeal is not timely.

E. A hearing shall be held in accordance with the notice for the purpose of contesting the determination that a civil infraction has been committed, or that there are mitigating circumstances.

F. The Hearing Examiner/Official may consider the notice of civil infraction and any other written report made under oath submitted by the Enforcement Officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may request witnesses and the officer who issued the notice to be present at the hearing if the infraction is contested only. The person named in the notice has the right to present evidence and examine witnesses at the time of the Hearing.

G. The burden of proof is upon the City to establish the commission of the civil infraction by a preponderance of evidence. The burden is on the person alleged to have committed a

violation to establish mitigating circumstances.

- H. After consideration of the evidence and argument, the Hearing Examiner/Official shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice shall be entered into the City's records. Where it has been established that the civil infraction was committed, an appropriate order shall be entered into the City's records. If mitigating circumstances exist, the order shall address the mitigating circumstances. Such findings shall be prepared in writing by the Hearing Official and provided to all parties within fourteen (14) working days from the hearing.
- I. All response proceedings shall be limited to those issues expressly raised in a timely written appeal.

1.14.090 Judicial Appeal.

- A. The decision of the Hearing Examiner/Official shall be final and conclusive with right of appeal to the Superior Court of Snohomish County.
- B. Notice of the appeal and any other required pleadings shall be filed with the court as required by law.
- C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

1.14.100 Civil Penalties Assessed. Civil penalties may be assessed for each violation per day or portion of day pursuant to Section 1.01.080 of the Snohomish Municipal Code.

1.14.110 Collection of Civil Penalty.

- A. The civil penalty constitutes a personal obligation of the person to whom the notice of civil infraction is directed. Any civil penalty assessed must be paid to the City Treasurer within fifteen (15) calendar days from the date of service of notice of civil infraction or, if the infraction is contested, within seven (7) calendar days of the decision of the Hearing Examiner/Official.
- B. Payment of a civil penalty pursuant to this chapter does not relieve a person of the duty to conform to the requirements of the code.
- C. The City Attorney, on behalf of the City, is authorized to collect the civil penalty by using appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per them civil penalties as long as the violation continues.
- D. Other Remedies Preserved:
 - 1. The provisions of this chapter are not exclusive of other rights and remedies of the city under other provisions of the Snohomish Municipal Code.

2. In addition to the City's right to assess costs and penalties as provided in its ordinances, the City shall retain all rights of lien and other rights against the property in question for costs that remain unpaid, in the manner and form provided by state law and City ordinances.

E. Continuing Duty to Correct. Payment of a civil penalty pursuant to this chapter does not relieve a person of the duty to abate a nuisance that was ordered by the Code Enforcement Officer.

1.14.120 Criminal Penalties.

A. As an alternative to any other penalty provided in this chapter or by law, any person who knowingly violates any provision of this chapter shall be guilty of a misdemeanor.

B. Any person who knowingly obstructs or hinders or provides false information to any officer or agent of the City of Snohomish or other governmental unit in the enforcement of this chapter is guilty of a gross misdemeanor.

C. Any violation that is required by state law to be prosecuted as a criminal offense shall not be prosecuted as a civil infraction under this code.

D. If the notice is not timely or correctly appealed or if the appeal fails, and if the penalty shall be considered as a personal obligation of the owner to the City, and shall be enforceable by the City in the same manner as other monetary claims.

1.14.130 Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court, that decision shall not affect the validity of the remaining portions. The City Council hereby declares that it would have approved this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional.

PASSED by the City Council and APPROVED by the Mayor this 16th day of November 1999.

CITY OF SNOHOMISH

By _____
Jeff Soth, Mayor

ATTEST:

By _____
Molly Linville, City Clerk

APPROVED AS TO FORM:

By _____
Grant Weed, City Attorney

Date of Publication: _____

Effective Date (5 days after publication): _____