

Section 13A Code Compliance

ARTICLE I. CODE ENFORCEMENT TASK FORCE

Section 13A-1 Code Enforcement Task Force

- (a) There shall be in the City of Everett a Code Enforcement Task Force (CETF).
- (b)
- (c) It shall be the responsibility of the Task Force to coordinate the enforcement of the City ordinances pursuant to this chapter in order to combat blight, reduce nuisances, discourage criminal activity and ensure a higher quality of life for the residents of the City.
- (d) The Task Force shall consist of the following:
 - (1) Chairman – to be appointed to a coterminous term by His Honor the Mayor and who will serve as the supervisor of other appointed inspectors and staff,
 - (2) Chief of Police or his designee,
 - (3) Fire Chief or his designee
 - (4) City Clerk or his designee,
 - (5) City Solicitor or his designee,
 - (6) Building Inspector or his designee,
 - (7) Director of the Board of Health or his designee,
 - (8) Chairman of the Licensing Board or his designee,
 - (9) Director of City Services or his designee,
 - (10) President of the Board of Aldermen or his designee,
 - (11) President of the Common Council or his designee.
- (e) In order to create the “Code Enforcement Ordinance”, the City Council hereby adopts the following codes and incorporates them in the “Code Enforcement Ordinance”:
 - (1) The Massachusetts Building Code, 780 CMR Code of Massachusetts, as amended;
 - (2) The Massachusetts State Sanitary Code, 105 CMR, Sections 400 and 410, as amended; and
 - (3) The Massachusetts Fire Prevention Code, 527 CMR, Section 10.
- (f) Violations of the said “Code Enforcement Ordinance” will be enforced in accordance with the provisions of the Everett Non-Criminal Disposition Ordinance.
- (g) Any person violating any provision of this chapter shall be deemed guilty of a violation shall be subject to a fine in accordance with Section 1-8 of these Revised Ordinances of the City of Everett.
(Ord. of 3-11-2004; Ord. of 4-8-2004) (A0416-06)
Editor’s note 13A-1 sections (d)-(e)) moved from 13-17.

Section 13A-2 Name and Purpose

- (a) This chapter shall be known as "Code Compliance". The purpose of this section is to identify processes and methods to encourage compliance with the ordinances of the City of Everett and the Building and Safety Codes of the City and the Commonwealth of Massachusetts and other state laws to promote and protect the general public health, safety and environment of city residents. This chapter declares certain acts to be civil violations and establishes non-penal enforcement procedures and civil penalties. This chapter also declares certain acts to be misdemeanors.
- (b) It is the intention of the City to pursue code compliance actively and vigorously in order to protect the health, safety and welfare of the general public. This City intention is to be pursued in a way that is consistent with adherence to, and respectful of, fundamental constitutional principles.
- (c) While this chapter does authorize the City to take action to enforce City laws and regulations, it shall not be construed as placing responsibility for code compliance or enforcement upon the City in any particular case, or as creating any duty on the part of the City to any particular person or class of persons.

(A0416-06)

Section 13A-3 Statement of goals.

- (a) It is the policy of the City to emphasize code compliance by education and prevention as a first step. This policy is designed to ensure code compliance and timely action that is available to all persons and uniform in its implementation. While warnings and voluntary compliance are desirable as a first step, enforcement and civil penalties should be used for remedial purposes as needed to assure and effect code compliance. Abatement or remediation should be pursued when appropriate and feasible. Uniform and efficient procedures, with consistent application tailored by regulation to each department's mission, should be used to accomplish these goals. *(A0416-06)*

Section 13A-4 Definitions

The words and phrases designated in this chapter shall be defined for the purposes of this chapter as follows:

- (a) "Abate" means to take whatever steps are deemed necessary by the director to return a property to the condition in which it existed before a civil code violation occurred or to assure that the property complies with applicable code requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.
- (b) "Chairman" means, Chairman of the Code Enforcement Task Force.
- (c) "Civil code violation" means and includes one or more of the following:
 - (1) Any act or omission contrary to any ordinance, resolution, regulation or public rule of the City that regulates or protects the public health or the use and development of land or water, whether or not the ordinance, resolution or regulation is codified; and
 - (2) Any act or omission contrary to the conditions of any permit, notice and order to correct or cease and desist order issued pursuant to any such an ordinance, resolution, regulation or public rule.

- (d) "Director" means, depending on the code violated:
 - (1) The director of any City department authorized to enforce civil code compliance;
 - (2) Authorized representatives of a director, including but not limited to, the compliance officers and inspectors whose responsibility includes the detection and reporting of civil code violations; or
 - (3) Such other person as the City Council by ordinance authorizes to utilize this chapter.
- (e) "Hearing examiner" means the City Solicitor or his designee
- (f) "Mitigate" means to take measures, subject to City approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome.
- (g) "Permit" means any form of certificate, approval, registration, license or any other written permission issued by the City. All conditions of approval, and all easements and use limitations shown on the face of an approved final plot map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners and their tenants and agents as permit requirements enforceable under this chapter.
- (h) "Person" means any individual, association, partnership, corporation or legal entity, public or private, and the agents and assigns of the individual, association, partnership, corporation or legal entity.
- (i) H. "Person responsible for code compliance" means either the person who caused the violation, if that can be determined, or the owner, lessor, tenant or other person entitled to control, use or occupy, or any combination of control, use or occupy, property where a civil code violation occurs, or both.
- (j) "Remediate" means to restore a site to a condition that complies with sensitive area or other regulatory requirements as they existed when the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition that does not pose a probable threat to the environment or to the public health, safety or welfare.
- (k) "Ordinance" means any law enacted by ordinance by the City Council.
- (l) "Public rule" means any rule properly promulgated to implement code provisions.
(A0416-06)

Section 13A-5 Declaration of public nuisance

- (a) All civil code violations are hereby determined to be detrimental to the public health, safety and environment and are hereby declared public nuisances. All conditions determined to be ordinance or code violations shall be subject to and enforced pursuant to the provisions of this chapter except where specifically excluded by law or regulation.
- (b) Any person who willfully or knowingly causes, aids or abets an ordinance or code violation pursuant to this chapter by any act of commission or omission shall be punished by a fine pursuant to Section 1-8 of the Revised Ordinances of the City of Everett, unless otherwise stated. Each day such violation continues shall be considered a separate offense. As an alternative, or in addition to any other judicial or administrative remedy provided in this section or by law or other regulation, a director may request that the City Solicitor consider filing a

misdemeanor complaint against the persons responsible for code compliance when the director has documentation or evidence that the violation was willful and knowing. (A0416-06)

Editor's note: the phrase "unless otherwise stated" was added to provide for stated fines appearing elsewhere in Chapter.

Section 13A- 6 Enforcement authority and administration.

- (a) In order to discourage public nuisances and otherwise promote compliance with applicable code provisions, a director may, in response to field observations or reliable complaints, determine that violations have occurred or are occurring and may:
 - 1. Enter into voluntary compliance agreements with persons responsible for code compliance;
 - 2. Issue citations,
 - 3. Issue cease and desist orders authorized by
 - 4. Order abatement by means of a notice and order to correct, and if such abatement is not timely completed by the person responsible for code compliance, undertake the abatement and charge the reasonable costs of such work.
 - 5. Allow a person responsible for code compliance to perform community service in lieu of paying penalties as authorized by
 - 6. Suspend, revoke or modify any permit previously issued by a director or deny a permit application as authorized by when other efforts to achieve compliance have failed.
- (b) Should violations occur involving multiple agencies, a lead agency shall be designated by the Chairman to coordinate the City's response. Unless otherwise determined by the directors of the affected departments, the Code Enforcement Task Force staff shall serve as the lead agency.
- (c) The procedures set forth in this section are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying violations or abating violations in any other manner authorized by law. This ordinance shall not be construed to affect the authority of any City board in enforcement of their codes or regulations.
- (d) In addition or as an alternative to utilizing the procedures set forth in this section, a director may seek legal or equitable relief to abate any conditions or enjoin any acts or practices that constitute a violation.
- (e) In addition or as an alternative to utilizing the procedures set forth in this ordinance, a director may assess or recover penalties accruing under this section by legal action filed in Superior court by the City Solicitor on behalf of the City.
- (f) The provisions of this section shall in no way adversely affect the rights of the owner, lessee or occupant of any property to recover all costs and expenses incurred and required by this section from any person causing such violation.
- (g) The City may use liens, withholding issuance of permits or licenses or the services of a collection agency in order to collect any fines, penalties, fees or costs owing under this section.
- (h) In administering the provisions for code enforcement, the director shall have the authority to waive any one or more such provisions so as to avoid substantial

injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a violation and any necessary remediation is being promptly provided. For purposes of this clause, substantial injustice cannot be based on economic hardship.

- (i) The provisions of this section detailing City department administration of code compliance procedures are intended only for the purpose of providing guidance to City employees and are not to be construed as creating a basis for appeal or a defense of any kind to an alleged violation.
- (j) The provisions of this ordinance authorizing the enforcement of non-codified ordinances are intended to assure compliance with unclassified use permits, zone reclassifications and other similar permits or approvals which may have been granted by ordinances which have not been codified, and to enforce new regulatory ordinances which are not yet codified. Departments should be sensitive to the possibility that citizens may not be aware of these ordinances, and should give warnings prior to enforcing such ordinances, except in high-risk cases.

(A0416-06)

ARTICLE II. GUIDELINES

Section 13A-7 Guidelines for departmental responses to complaints.

The following guidelines should be applied by the departments, subject to departmental resource limitations, when responding to code compliance complaints. The timelines identified below may be modified by departmental rule, subject to council review and approval.

- (a) High risk investigations needing an urgent response (within twenty-four hours to one week) include any cases in which:
 - (1) There is an imminent likelihood of or actual bodily harm, damage to public resources or facilities, damage to real or personal property, public health exposure, or environmental damage or contamination; or
 - (2) The sites and/or persons responsible for code compliance have a history of prior high or moderate risk violations.
- (b) Moderate risk investigations needing a prompt response (within seventy-two hours to ten days) include cases where:
 - (1) There is risk of bodily harm, damage to public resources and/or facilities, damage to real or personal property, or environmental damage or contamination; or
 - (2) The subject sites and/or persons responsible for code compliance have a history of prior low risk violations; or
 - (3) There are ongoing moderate or low risk violations; or
 - (4) More than five wrecked, dismantled or inoperative vehicles are found.
- (c) Low risk investigations needing response as time permits (within two to four weeks of violation being identified by code compliance staff) include cases where:

- (1) The violation is non-emergent, does not fit within the high risk or moderate risk categories and has only minor public impacts; and
 - (2) The violation is an isolated incident.
- (d) The response times set out in this section are not jurisdictional, and failure to meet them in any particular case shall not affect the City's authority to enforce City code provisions with regard to that case.
- (A0416-06)

Section 13A-8 Initial Investigation

This section sets forth guidelines for more specific procedures to be used by each department in implementing this ordinance. The guidelines set forth in this section are not jurisdictional, and failure to meet them in any particular case shall not affect the City's authority to enforce City code provisions with regard to that case.

- (a) Field verification.

Except in emergencies and for low risk case complaints, field verification should be made if possible prior to, concurrent with or shortly after notifying the owner, occupant, and/or other person responsible for code compliance of the potential or alleged violation. Low risk case complaints should be acknowledged by sending an informal letter to the person(s) responsible for code compliance. The letter should state that a violation may have occurred, but has not been verified, and should ask the recipient to contact the department issuing the letter.
 - (b) Advising interested parties of receipt of complaint and/or field investigation.
 - (1) The owner, occupant and person responsible for code compliance (if not an owner or occupant) should be advised of any complaint by personal contact, phone, posting and/or mail.
 - (2) The complainant should be contacted by phone and, if possible, in person during the field visit.
 - (c) All departments with compliance requirement authority should record land-based violations in the database system, which should be accessible to all other departments.
 - (d) To the extent possible, the department shall check its own records and the records of other agencies for previous violations on the site of the alleged violation or by the owner or occupant of the site or such other person as may be responsible for code compliance.
 - (e) Staff undertaking the field investigations shall comply with the provisions of this section regarding right of entry.
- (A0416-06)

Section 13A-9 Procedures when probable violation identified.

- (a) The department shall determine, based on information derived from sources such as field observations, the statements of witnesses, relevant documents and data systems for tracking the violations and applicable City codes, whether or not a violation has occurred. As soon as a department has reasonable cause to determine that a violation has occurred, it shall document the violation and promptly notify the owner, occupant or other person responsible for code compliance.

- (b) Except as provided in subsection (d) of this section, a warning shall be issued verbally or in writing promptly when a field inspection reveals a violation, or as soon as the department otherwise determines that a violation has occurred. The warning shall inform the person determined to be responsible for code compliance of the violation and allow the person an opportunity to correct it or enter into a voluntary compliance agreement as provided for by this section. Verbal warnings shall be logged and followed up with a written warning within two weeks, and the site shall be re-inspected within thirty days.
- (c) The guidelines in this section for warnings, notifications and re-inspections are not jurisdictional, and failure to meet them in any particular case shall not affect the City's authority to enforce City code provisions with regard to that case.
- (d) No warning need be issued in high-risk cases, emergencies, repeat violation cases, cases that are already subject to a voluntary compliance agreement, cases in which the violation creates a situation or condition that is not likely to be corrected within a short period of time, cases in which a cease and desist order is necessary, or if the person responsible for code compliance knows or reasonably should have known that the action was a code violation.
- (e) Citations may be issued in moderate- and low-risk cases, if the department determines it is probable that violation can likely be fully corrected in a short period of time.
- (f) Notice and orders to correct should be issued in all high-risk cases in which a voluntary compliance agreement has not been entered into. Notice and orders to correct may be issued in moderate- and low-risk cases where the department determines that the violation is unlikely to be fully corrected in a short period of time.
- (g) The department shall use all reasonable means to determine and cite the person or persons actually responsible for the violation occurring when the owner has not directly or indirectly caused the violation.
- (h) If the violation is not corrected or a voluntary compliance agreement is not achieved within a reasonable time period, a citation, notice and order to correct or cease and desist order should be issued. As a guideline, citations should be issued within thirty days from receipt of a complaint, and notice and orders to correct should be issued within 7 days from receipt of a complaint. Cease and desist orders should be issued promptly upon discovery of a violation in progress.
- (i) Any complainant who provides a mailing address and requests to be kept advised of enforcement efforts should be mailed a copy of all written warnings, voluntary compliance agreements, citations, notice and order to corrects, cease and desist orders and notices of settlement conferences issued by a department with regard to the alleged violation. Any complainant who is an aggrieved person may appeal a citation, notice and order to correct, cease and desist order, a determination to enter into a voluntary compliance agreement or a determination not to issue a citation or order pursuant to the provisions of this chapter.

(A0416-06)

Section 13A-10 Service - citation, notice and order to correct, and cease and desist order.

- (a) Service of a citation or notice and order to correct shall be made on a person responsible for code compliance by one or more of the following methods:
 - (1) Personal service of a citation or notice and order to correct may be made on the person identified by the department as being responsible for code compliance, or by leaving a copy of the citation or notice and order to correct at that person's house of usual abode with a person of suitable age and discretion who resides there.
 - (2) Service directed to the landowner and/or occupant of the property may be made by posting the citation or notice and order to correct in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below, if a mailing address is available.
 - (3) Service by mail may be made for a citation or a notice and order to correct by mailing two copies, postage prepaid, one by ordinary first class mail and the other by certified mail, to the person responsible for code compliance at his last known address, at the address of the violation, or at the address of the place of business of the person responsible for code compliance. The taxpayer's address as shown on the tax records of the City shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the citation or notice and order to correct was placed in the mail.
 - (b) For notice and orders to correct only, when the address of the person responsible for code compliance cannot reasonably be determined, service may be made by publication once in a local newspaper with general circulation.
 - (c) Service of a cease and desist order on a person responsible for code compliance may be made by posting the cease and desist order in a conspicuous place on the property where the violation occurred or by serving the cease and desist order in any other manner permitted by this chapter.
 - (d) The failure of the director to make or attempt service on any person named in the citation, notice and order to correct or cease and desist order shall not invalidate any proceedings as to any other person duly served.
- (A0416-06)

Section 13A-11 Voluntary compliance agreement - authority.

- (a) Whenever the applicable department determines that a code violation has occurred or is occurring, the department shall make reasonable efforts to secure voluntary compliance from the person responsible for code compliance. Upon contacting the person responsible for code compliance, the department may enter into a voluntary compliance agreement as provided for in this section.
- (b) A voluntary compliance agreement may be entered into at any time after issuance of a verbal or written warning, a citation, a notice and order to correct or a cease and desist order and before an appeal is decided pursuant to this section.

- (c) The voluntary compliance agreement is a commitment by the person responsible for code compliance under which the person agrees to do any combination of abating the violation, remediating the site or mitigating the impacts of the violation. The voluntary compliance agreement shall include the following:
- (1) The name and address of the person responsible for code compliance;
 - (2) The address or other identification of the location of the violation;
 - (3) A description of the violation and a reference to the provision or provisions of the ordinance, resolution or regulation that has been violated;
 - (4) A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed. For the purpose of this subsection (c)(4), the department may either require that compliance be achieved by a specific date or that compliance be achieved by a date to be determined based on the occurrence of some future event;
 - (5) The amount of the civil penalty that will be imposed pursuant to Section 1-8 of the Revised Ordinance of the City of Everett if the voluntary compliance agreement is not satisfied; unless superceded by state or federal law;
 - (6) An acknowledgment that the voluntary compliance agreement will be recorded against the property in the office of the Assessor, the recording to be accomplished as provided for in notice and order to correct cases;
 - (7) An acknowledgment that if the department determines that the terms of the voluntary compliance agreement are not met, the City may, without issuing a citation, notice and order to correct or cease and desist order, impose any remedy authorized by this section, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the City to pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development permit;
 - (8) An acknowledgment that if any assessed penalty, fee or cost is not paid, a director may charge the unpaid amount as a lien against the property where the civil code violation occurred if owned by the person responsible for code compliance, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for code compliance;
 - (9) An acknowledgment that by entering into the voluntary compliance agreement the person responsible for code compliance waives the right to administratively appeal, and thereby admits, that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and that if the department determines the terms of the voluntary compliance agreement are not met, the person is subject to and liable for any remedy authorized by this section, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the City to

pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development permit; and

- (10) An acknowledgment that the person responsible for code compliance understands that he or she has the right to be served with a citation, notice and order to correct or cease and desist order for any violation identified in the voluntary compliance agreement, has the right to administratively appeal any such a citation, notice and order to correct or cease and desist order, and that he or she is knowingly, voluntarily and intelligently waiving those rights.
- (d) Upon entering into a voluntary compliance agreement, a person responsible for code compliance waives the right to administratively appeal, and thereby admits, that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and agrees that if the department determines the terms of the voluntary compliance agreement are not met, he or she is liable for the civil penalty identified in the voluntary compliance agreement, is liable for the costs incurred by the City to pursue code compliance and to abate the violation, including legal and incidental expenses and is subject to all other remedies provided for in this section.
- (e) An extension of the time limit for compliance or a modification of the required corrective action may be granted by the department if the person responsible for code compliance has shown due diligence or substantial progress in correcting the violation, but circumstances render full and timely compliance under the original conditions unattainable.
- (f) The voluntary compliance agreement is not a settlement agreement.
(A0416-06)

Section 13A-12 Failure to meet terms of voluntary compliance agreement

If the terms of the voluntary compliance agreement are not completely met, the department may abate the violation in accordance with this section, and the person responsible for code compliance may, without being issued a citation, notice and order to correct or cease and desist order, be assessed a civil fine or penalty, in accordance with the penalty provisions of this chapter, plus all costs incurred by the City to pursue code compliance and to abate the violation, including legal and incidental expenses as provided for in this section, and may be subject to other remedies authorized by this section. Penalties imposed when a voluntary compliance agreement is not met accrue from the date that the terms of the voluntary compliance agreement were violated.

(A0416-06)

Section 13A-13 Right of entry

It is the intention of the council that any entry made to private property for the purpose of inspection for code violations be accomplished in strict conformity with constitutional and statutory constraints on entry, and the holdings of relevant court cases regarding entry. The right-of-entry granted by this section shall not supersede those legal constraints. The director is authorized to enter upon any property for the purpose of administering this ordinance provided that the director shall make entry only if such entry is consistent with the constitutions and laws of the United States and the Commonwealth

of Massachusetts. If so required by the constitutions and laws of the United States or the Commonwealth of Massachusetts, the director shall apply to a court of competent jurisdiction for a search warrant authorizing access to such property for such purpose. The court may upon such application issue the search warrant for the purpose requested.
(A0416-06)

Section 13A-14 Training and rulemaking.

- (a) In order to ensure strict conformity with the constraints on entry imposed by state and federal law and to assure that City employees deal with the public in a manner which respects the rights of private property owners, the Task Force, as needed, shall develop and adopt internal procedures, protocols and training programs governing the conduct of searches by code compliance officers which shall be issued within two months of the adoption of this ordinance.
- (b) The Task Force shall adopt procedures to implement the provisions of this ordinance, and specifically the guidelines set out in this chapter describing reasonable and appropriate protocols for investigating code violations.
(A0416-06)

Section 13A-15 Obligations of persons responsible for code compliance.

- (a) It shall be the responsibility of any person identified as responsible for code compliance to bring the property into a safe and reasonable condition to achieve code compliance. Payment of fines, applications for permits, acknowledgment of stop-work orders and compliance with other remedies does not substitute for performing the corrective work required and having the property brought into compliance to the extent reasonably possible under the circumstances.
- (b) Persons determined to be responsible for code compliance pursuant to a citation or notice and order to correct shall be liable for the payment of any civil fines, penalties and abatement costs, provided, however, that if a property owner affirmatively demonstrates that the action which resulted in the violation was taken without the owner's knowledge or consent by someone other than the owner or someone acting on the owner's behalf, that owner shall be responsible only for bringing the property into compliance to the extent reasonably feasible under the circumstances. Should the owner not correct the violation, only those abatement costs necessary to bring the property into a safe and reasonable condition, as determined by the director, shall be assessed by the City. No civil fines or penalties shall be assessed against such an owner or his property interest.
(A0416-06)

Section 16-22 Reserved

ARTICLE III. CITATIONS

Section 13A-23 Authority

Whenever a director has determined, based on investigation of documents and/or physical evidence, that a civil code violation has occurred, the director may issue a citation to any person responsible for code compliance. The director shall make a determination whether or not to issue a citation within thirty days of receiving a complaint alleging a violation or

otherwise discovering that a violation may potentially exist. Subsequent complaints shall be treated as new complaints for purposes of this section. (A0416-06)

Section 13A-24 Effect

- (a) Subject to the appeal provisions of this section, a citation represents a determination that a civil code violation has occurred and that the cited party is a person responsible for code compliance.
- (b) Subject to the provisions of this section, a citation subjects the person responsible for code compliance to the civil fine prescribed by this chapter.
- (c) Subject to the provisions of this section, the person responsible for code compliance shall either pay the civil fine assessed within twenty-one days of the date of issuance of the citation or appeal the citation according to the procedures described in this chapter.
- (d) Failure to appeal the citation within twenty-one days shall render the citation a final determination that the conditions described in the citation existed and constituted a civil code violation and that the cited party is liable as a person responsible for code compliance.
- (e) Imposition of a civil fine creates a joint and several personal obligation in all persons responsible for code compliance who are served with notice of the violation. The prosecuting attorney on behalf of The City may collect the civil fines assessed by any appropriate legal means.
- (f) Issuance of a citation in no way limits a director's authority to issue a notice and order to correct or stop work order to the same person responsible for code compliance pursuant to this chapter. Payment of the civil fine assessed under the citation does not relieve a person responsible for code compliance of his duty to correct the violation and/or to pay any and all civil penalties accruing under a notice and order to correct or cease and desist order issued pursuant to this chapter.

(A0416-06)

Section 13A-25 Contents

The citation shall include all of the following information:

- (a) Identification of the location of the violation;
- (b) A brief description of the violation or violations found;
- (c) A statement of the specific ordinance, resolution, regulation, public rule, permit condition, notice and order to correct provision, or cease and desist order provision that was violated;
- (d) A statement that the citation represents a determination that a civil code violation has occurred and that the cited party is subject to civil fines;
- (e) A statement of the amount of the civil fine assessed and that the fine must be paid within twenty-one days;
- (f) A statement of the options provided in this chapter for responding to the citation and the procedures necessary to exercise these options;
- (g) A statement that failure to appeal the citation within twenty-one days renders the citation a final determination that the conditions described in the citation existed and constituted a civil code violation and that the cited party is liable as a person responsible for code compliance; and

- (h) A statement advising that a failure to respond or appeal may be referred to the prosecuting attorney for prosecution.
(A0416-06)

Section 13A-26 Revocation

A director may revoke or modify a citation issued under this chapter if the original citation was issued in error or if a party to a citation was incorrectly named. Such revocation or modification shall identify the reasons and underlying facts for revocation.
(A0416-06)

Section 13A-27 Remedy - civil fines

A citation shall carry a civil fine to be determined with reference to the schedule contained in Section 1-8. The payment of civil fines does not relieve a person responsible for code compliance of any obligation to cure, abate or stop a violation. (A0416-06)

ARTICLE IV. NOTICE AND ORDERS TO CORRECT

Section 13A-28 Authority.

Whenever a director has reason to believe, based on investigation of documents and/or physical evidence, that a civil code violation exists or has occurred, or that the civil code violations cited in a citation have not been corrected, or that the terms of a voluntary compliance agreement have not been met, the director is authorized to issue a notice and order to correct to any person responsible for code compliance. The director shall make a determination whether or not to issue a notice and order to correct within one hundred twenty days of receiving a complaint alleging a violation or otherwise discovering that a violation may potentially exist, or within thirty days of the end of a voluntary compliance agreement time period which has not been met. Subsequent complaints shall be treated as new complaints for purposes of this section. Issuance of a citation is not a condition precedent to the issuance of a notice and order to correct. (A0416-06)

Section 13A-29 Effect.

- (a) Subject to the appeal provisions of this chapter, a notice and order to correct represents a determination that a civil code violation has occurred, that the cited party is a person responsible for code compliance, and that the violations set out in the notice and order to correct require the assessment of penalties and costs and other remedies specified in the notice and order to correct.
- (b) Failure to correct the civil code violation in the manner prescribed by the notice and order to correct subjects the person to whom the notice and order to correct is directed to the use of any of the compliance remedies provided by this chapter, including:
 - (1) Additional civil penalties and costs;
 - (2) A requirement that abatement, remediation and/or mitigation be performed;
 - (3) An agreement to perform community service as prescribed by this chapter;
 - (4) Permit suspension, revocation, modification and/or denial as prescribed by this chapter; and/or

- (5) Abatement by a director and recovery of the costs of abatement according to the procedures described in this chapter.
- (c) Any person identified in the notice and order to correct as responsible for code compliance may appeal the notice and order to correct within twenty-one days according to the procedures described in this chapter.
- (d) Failure to appeal the notice and order to correct within the applicable time limits shall render the notice and order to correct a final determination that the conditions described in the notice and order to correct existed and constituted a civil code violation, and that the named party is liable as a person responsible for code compliance.
- (e) Issuance of a notice and order to correct in no way limits a director's authority to issue a citation or stop work order to a person previously cited through the notice and order to correct process pursuant to this chapter. Payment of the civil penalties assessed under the notice and order to correct does not relieve a person found to be responsible for code compliance of his duty to correct the violation and/or to pay any and all civil fines or penalties accruing under citations or cease and desist orders issued pursuant to this chapter.

(A0416-06)

Section 13A-30 Contents

The notice and order to correct shall contain the following information:

- (a) The address, when available, or location of the civil code violation;
- (b) A legal description of the real property or the City tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators;
- (c) A statement that the director has found the named person to have committed a civil code violation and a brief description of the violation or violations found;
- (d) A statement of the specific provisions of the ordinance, resolution, regulation, public rule, permit condition, notice and order to correct provision or cease and desist order that was or is being violated;
- (e) The dollar amount of the civil penalty per separate violation;
- (f) A statement advising that any costs of enforcement that exceed the amount of the penalty may also be assessed against the person to whom the notice and order to correct is directed;
- (g) A statement advising that the notice and order to correct will be recorded against the property in the City Clerk's office subsequent to service;
- (h) A statement of the corrective or abatement action required to be taken and that all required permits to perform the corrective action must be obtained from the proper issuing agency;
- (i) A statement advising that, if any required work is not commenced or completed within the time specified by the notice and order to correct, a director may proceed to abate the violation and cause the work to be done and charge the costs thereof as a lien against the property and as a joint and several personal obligation of any persons responsible for code compliance;
- (j) A statement advising that, if any assessed penalty, fee or cost is not paid on or before the due date, a director may charge the unpaid amount as a lien against the property where the civil code violation occurred if owned by a person responsible

- for code compliance and as a joint and several personal obligation of all persons responsible for code compliance;
- (k) A statement advising that any person named in the notice and order to correct or having any record or equitable section in the property against which the notice and order to correct is recorded may appeal from the notice and order to correct to the hearing examiner within fourteen days of the date of service of the notice and order to correct;
 - (l) A statement advising that a failure to correct the violations cited in the notice and order to correct could lead to the denial of subsequent City permit applications on the subject property;
 - (m) A statement advising that a failure to appeal the notice and order to correct within the applicable time limits renders the notice and order to correct a final determination that the conditions described in the notice and order to correct existed and constituted a civil code violation, and that the named party is liable as a person responsible for code compliance; and
 - (n) A statement advising the person responsible for code compliance of his duty to notify the director of any actions taken to achieve compliance with the notice and order to correct.
- (A0416-06)

Section 13A-31 Recording.

- (a) Whenever a notice and order to correct is served on a person responsible for code compliance, the director shall record a copy of the notice and order to correct with the City Clerk.
 - (b) When all violations specified in the notice and order to correct have been corrected or abated, the director shall record a certificate of compliance with the City Clerk. The certificate shall include a legal description of the property where the violation occurred and shall state that any unpaid civil penalties for which liens have been recorded are still outstanding and continue as liens on the property.
- (A0416-06)

Section 13A-32 Supplementation, revocation, modification.

- (a) Whenever there is new information or a change in circumstances, a director may add to, rescind in whole or part or otherwise modify a notice and order to correct by issuing a supplemental notice and order to correct. The supplemental notice and order to correct shall be governed by the same procedures applicable to all notice and orders to correct contained in this chapter.
 - (b) A director may revoke or modify a notice and order to correct issued under this chapter if the original notice and order to correct was issued in error or if a party to an order was incorrectly named. The revocation or modification shall identify the reasons and underlying facts for revocation and shall be recorded with the City Clerk.
- (A0416-06)

Section 13A-33 Administrative Conference

An informal administrative conference may be conducted by a director at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences. (A0416-06)

Section 13A-34 Remedies - civil penalties - authority and general provisions.

- (a) Failure to correct a civil code violation in the manner and within the time frame specified by the notice and order to correct subjects the person responsible for code compliance to civil penalties calculated with reference to the schedule contained in Section 1-8.
- (b) Civil penalties assessed create a joint and several personal obligation in all persons responsible for code compliance. The prosecuting attorney on behalf of The City may collect the civil penalties assessed by any appropriate legal means.
- (c) Civil penalties assessed also authorize The City to take a lien for the value of civil penalties imposed against the real property of the person responsible for code compliance.
- (d) The payment of penalties does not relieve a person responsible for code compliance of any obligation to cure, abate or stop a violation.
(A0416-06)

Section 13A-35 Remedies - community service

A director is authorized to allow a person responsible for code compliance who accumulates civil penalties as the result of a notice and order to correct to voluntarily participate in community service projects in lieu of paying all or a portion of the assessed civil penalties. Community service may include, but is not limited to, abatement, restoration or education programs. The amount of community service will reasonably relate to the comparable value of penalties assessed against the violator. The director shall take into consideration the severity of the violation, any history of previous violations and practical and legal impediments in considering whether to allow community service in lieu of paying penalties. (A0416-06)

Section 13A-36 Remedies - cost recovery.

- (a) In addition to the other remedies available under this chapter, a director may charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for code compliance, including legal and incidental expenses to the extent these costs exceed the amount of the penalty paid. Such costs are due and payable thirty days from mailing of the invoice.
- (b) For purposes of this section, "legal and incidental expenses" shall include but are not limited to:
 - (1) Personnel costs, both direct and indirect, including attorney's fees and costs incurred to document the violation as soon as the violation occurs;
 - (2) Hauling, storage and disposal expenses;
 - (3) Actual expenses and costs of the City in preparing notices, specifications and contracts and in accomplishing or contracting and inspecting the work and the costs of any required printing or mailing; and
 - (4) Interest on the costs of abatement incurred by the City.

- (c) All costs assessed by the City in pursuing code compliance and/or abatement creates a joint and several personal obligation in all persons responsible for code compliance. The prosecuting attorney on behalf of The City may collect the costs of code compliance efforts by any appropriate legal means.
- (d) The City may take a lien for the value of the costs of pursuing code compliance against the real property of the person responsible for code compliance.
(A0416-06)

Section 13A-37 Remedies - suspension, revocation or limitation of permit.

- (a) A director may suspend, revoke or limit any permit issued by that director whenever:
 - (1) The permit holder has committed a code violation in the course of performing activities subject to that permit;
 - (2) The permit holder has interfered with a director in the performance of his duties relating to that permit;
 - (3) The permit was issued in error or on the basis of materially incorrect information supplied to the City;
 - (4) Permit fees or costs were paid to the City by check and returned from a financial institution marked non-sufficient funds (NSF) or canceled;
 - (5) For a permit or approval that is subject to critical areas review, the applicant has failed to disclose a change of circumstances on the development proposal site which materially affects an applicant's ability to meet the permit or approval conditions or which makes inaccurate the critical areas study that was the basis for establishing permit or approval conditions; or
 - (6) For a permit or approval for which fees that have been billed are sixty days or more past due.
- (b) A suspension, revocation or modification authorized by subsection (a) of this section shall be carried out through the notice and order to correct provisions of this chapter and shall be effective upon the compliance date established by the notice and order to correct. The revocation, suspension or cancellation may be appealed to the hearing examiner using the appeal provisions of this chapter.
- (c) Notwithstanding any other provision of this section, a director may immediately suspend operations under any permit by issuing a cease and desist order as provided for in this chapter.
(A0416-06)

Section 13A-38 Remedies - denial of permit.

- (a) The City may deny a development proposal permit, when, with regard to the site or project for which the permit application is submitted:
 - (1) Any person has been found in violation and remains in violation of any ordinance, resolution, regulation or public rule of the City that regulates or protects the public health or the use and development of land or water, whether or not such ordinance, resolution, regulation or public rule is codified;

- (2) Any person has been found in violation and remains in violation of the conditions of any permit, notice and order to correct or cease and desist order issued pursuant to any such ordinance, resolution, regulation or public rule; and/or
 - (3) For any property which has been found in violation and remains in violation of any rule, permit, approval, order, easement, plan or agreement.
- (b) In order to further the remedial purposes of this chapter, such denial may continue until the violation is cured by restoration accepted as complete by the City and by payment of any civil penalty imposed for the violation, except that permits or approvals shall be granted to the extent necessary to accomplish any required restoration or cure.
- (c) For the purposes of this chapter, "found in violation" means:
- (1) That a citation, notice and order to correct or cease and desist order has been issued and not timely appealed; or
 - (2) That a voluntary compliance agreement has been entered into; or
 - (3) That the hearing examiner has determined that the violation has occurred and such determination has not been stayed or reversed on appeal. (A0416-06)

Section 13A-39 Remedies - abatement – authorized

In addition to or as an alternative to any other judicial or administrative remedy, a director may use the notice and order to correct provisions of this chapter to order any person responsible for code compliance to abate the violation and to complete the work at such time and under such conditions as a director determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, a director may proceed to abate the violation. (A0416-06)

Section 13A-40 Remedies - abatement cost recovery.

- (a) Abatement costs may be recovered pursuant to this chapter.
- (b) The director shall keep an itemized account of costs incurred by the City in the abatement of any violation under this chapter. Upon completion of any abatement work, the director shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, including legal and incidental expenses, and interest accrued.
(A0416-06)

ARTICLE V. CEASE AND DESIST ORDERS

Section 13A-41 Authorized

A director, the building inspector, board of health, and code enforcement officers, or their designees, the board of aldermen or the city clerk as their agent, or other official designated as an enforcement authority by ordinance of the City Council is authorized to issue a cease and desist order to a person responsible for code compliance. Issuance of a citation or a notice and order to correct is not a condition precedent to the issuance of the cease and desist order. (A0416-06)(A0400-06)

Editor's note: Section 13A-41 combines authorized agents included in (A0416-06) and (A0400-06)

Section 13A-42 Effect.

- (a) Cease and desist order represents a determination that a civil code violation has occurred and that any work or activity that is causing or contributing to the violation on the property where the violation has occurred or is occurring must cease.
- (b) A cease and desist order requires the immediate cessation of the specified work or activity on the named property. Work or activity may not resume unless specifically authorized by the director issuing the cease and desist order.
- (c) A cease and desist order shall be issued and may be appealed according to the procedures prescribed under the Revised Ordinances of the City of Everett.
- (d) Failure to appeal the cease and desist order within the applicable time limits renders the cease and desist order a final determination that the civil code violation occurred and that work was properly ordered to cease.
- (e) Failure to comply with the terms of a cease and desist order subjects the person responsible for code compliance to civil penalties and costs.
(A0416-06)

Section 13A-43 Remedy - civil penalties.

- (a) In addition to any other judicial or administrative remedy, a director may assess civil penalties for the violation of any cease and desist order according to the civil penalty schedule established in Section 1-8 of the Revised Ordinances of the City of Everett.
- (b) Civil penalties for the violation of any cease and desist order shall begin to accrue on the first day the cease and desist order is violated and shall cease on the day the work is actually stopped.
- (c) Violation of a cease and desist order shall be a separate violation from any other civil code violation.
- (d) Civil penalties assessed create a joint and several personal obligation in all persons responsible for code compliance. The prosecuting attorney on behalf of The City may collect the civil penalties assessed by any appropriate legal means.

- (e) Civil penalties assessed also authorize The City to take a lien for the value of civil penalties imposed against the real property of the person responsible for code compliance.
- (f) The building inspector, board of health, code enforcement officer, board of aldermen or the city clerk as their agent, or other official designated as an enforcement authority by ordinance of the City Council may issue a cease and desist order against any violation of any local ordinance for which they are the designated licensing authority or enforcement authority.
- (g) The order shall state, in writing:
 - (1) The precise regulation, provision, specification or condition which is being violated.
 - (2) The facts constituting the violation, including the date of any inspection from which these facts were ascertained.
 - (3) The corrective action required, including a reasonable time within which such action shall be taken.
 - (4) A statement that a motion for summary enforcement of the order shall be made to the court of the district in which the property is situated unless such corrective action is taken within the time provided, or unless an answer is filed within 20 days, as provided in Article VII.
 - (5) A statement that failure to either take the corrective action, or to file an answer, may result in corrective action being taken by the municipality, and that if this occurs the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property if not paid.
 - (6) The order shall be served upon the record owner of the property or the record owner's agent, and upon the person to whom taxes are assessed for the property, if other than the owner, and upon any occupying tenant of the property, and upon any other person known by the enforcing officer to exercise control over the premises in violation, and upon all persons holding mortgages upon such property as recorded in the office of the register of deeds, in the same manner provided for service of a summons in a civil action in district court. Personal service may be made by a sheriff, deputy sheriff, local police officer, or constable. If the owner is unknown or cannot be found, the order shall be served by posting it upon the property and by 4 weeks' publication in a newspaper in general circulation in the municipality.
- (h) Upon service of the order, the owner or the owner's agent, occupying tenant or the tenant's agent, or any other person who is engaged in development, construction, excavation, or other changes of the land or buildings on the land or engaged in the operation of a prohibited enterprise shall cease immediately such activities, if so provided in the order, until such time as judgment is rendered under paragraphs (g) or (h). Failure to cease such activity shall constitute a separate violation of this title in addition to the violation cited in the order, unless such order is annulled as provided in paragraph (h).

- (i) A copy of the order with proof of service shall be filed with clerk of the district court of the district in which the property is located not fewer than 5 days prior to the filing of a motion to enforce under paragraph (g).
- (j) Within 20 days after the date of service, any person upon whom the order is served may serve an answer in the manner provided for the service of an answer in a civil action, specifically denying such facts in the order as are in dispute.
- (k) If no answer is served, the enforcement official may move the court for the enforcement of the order. If such a motion is made the court may, upon the presentation of such evidence as it may require, affirm or modify the order and enter judgment accordingly, fixing a time after which the governing body may proceed with the enforcement of the order. The clerk of the court shall mail a copy of the judgment to all persons upon whom the original order was served.
- (l) If an answer is filed and served as provided in paragraph Article VII, further proceedings in the action shall be governed by the rules of the district court. If the order is sustained following trial, the court shall enter judgment and shall fix a time within which the corrective action shall be taken, in compliance with the order as originally filed, or as modified by the court. If the order is not sustained, it shall be annulled and set aside. If it appears to the court that the order was frivolous, was commenced in bad faith, or was not based upon information and belief formed after reasonable inquiry or was not well-grounded in fact, then the court shall order the defendant's costs and reasonable attorneys fees to be paid by the municipality. The clerk of the court shall mail a copy of the judgment to the persons upon whom the original order was served.
- (m) If a judgment is not complied with in the time prescribed, the local governing body may cause the corrective action to be taken as set forth in the judgment. The cost to the municipality of taking such corrective action together with its other expenses as provided in paragraph (j), shall be a lien against the real estate on which the violation occurred.
- (n) The municipality shall keep an accurate account of the expenses incurred in carrying out the order and of all other expenses in connection with its enforcement, including but not limited to filing fees, service fees, publication fees, the expense of searching the registry of deeds to identify mortgages, witness and expert fees, attorneys fees and traveling expenses. The court shall examine, correct if necessary, and allow the expense account. The City Council, by majority vote, may commit the expense account to the collector of taxes, in which case the mayor shall direct the expense account, together with a warrant under the mayor's hand and seal, to the city tax collector, requiring the tax collector to collect the same from the person to whom real estate taxes are assessed for the premises upon which such corrective action was taken, and to pay the amount so collected to the city treasurer. Within 30 days after the receipt of such warrant, the collector shall send a bill. Allowable interest shall be charged on any amount not paid within 30 days after the bill is mailed. The collector shall have the same rights and remedies as in the collection of taxes.
- (o) A party aggrieved by the judgment of the district court may appeal, within 15 days after the rendering of such judgment, to the superior court.

- (p) The remedy provided in this section is supplementary to other enforcement remedies provided by this chapter or local ordinance.

(A0416-06)

Editor's note: The provisions of this section duplicate the provisions of the former 1-24 (A0400-06)

ARTICLE VI. CIVIL FINES AND CIVIL PENALTIES

Section 13A-44 Assessment schedule.

- (a) Civil fines and civil penalties for civil code violations shall be imposed for remedial purposes and shall be assessed for each violation identified in a citation, notice and order to correct, voluntary compliance agreement or cease and desist order pursuant to provisions of Section 1-8 of the Revised Ordinances of the City of Everett; unless otherwise stated or superceded by state or federal law.
Editor's note: the phrase "unless otherwise stated" was added to provide for stated fines appearing elsewhere in Chapter.
- (b) For the purposes of this section, previous similar code violations that can serve as a basis for a higher level of civil penalties include violations of the same chapter of the City Ordinances. Any stop work order or notice and order to correct previously issued by the department shall not constitute a previous code violation for the purposes of this section if that cease and desist order or notice and order to correct was appealed and subsequently reversed.
- (c) The penalties assessed pursuant to this chapter for any failure to comply with a notice and order to correct or voluntary compliance agreement shall be assessed daily for the first thirty days following the date the notice and order to correct or voluntary compliance agreement required the code violations to have been cured. If after thirty days the person responsible for code compliance has failed to satisfy the notice and order to correct or voluntary compliance agreement, penalties shall be assessed daily at a rate of double the rate for the first thirty days. Penalties may be assessed daily until the person responsible for code compliance has fully complied with the notice and order to correct.
- (d) Penalties based on violation of a cease and desist order shall be assessed for each day the department determines that work or activity was done in violation of the cease and desist order.
- (e) Citations shall be subject to a one-time penalty only.
- (f) The director may suspend the imposition of additional civil penalties if the person responsible for code compliance has entered into a voluntary compliance agreement. If the person responsible for code compliance enters into a voluntary compliance agreement and cures the code violations, the director may also waive all or part of the accrued civil penalties. Penalties shall begin to accrue again pursuant to the terms of the voluntary compliance agreement if any necessary permits applied for are denied, canceled or not pursued, or if corrective action identified in the voluntary compliance agreement is not completed as specified.

(A0416-06)

Section 13A-45 Civil Penalty - definitions

- (a) For the purposes of assessing civil fines and penalties, "found in violation" means that:
- (1) Citation, notice and order to correct or cease and desist order has been issued and not timely appealed; or
 - (2) A voluntary compliance agreement has been entered into; or
 - (3) The hearing examiner has determined that the violation has occurred and such determination has not been stayed or reversed on appeal.
- (A0416-06)

Section 13A-46 Duty to comply

- (a) Persons responsible for code compliance have a duty to notify the director of any actions taken to achieve compliance with the notice and order to correct.
- (b) For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for code compliance has come into compliance with the notice and order to correct, voluntary compliance agreement, or cease and desist order and has notified the director of this compliance.
- (A0416-06)

Section 13A-47 Waivers

- (a) Fines and penalties, in whole or in part, may be waived or reimbursed to the payer by the director, with the concurrence of the City Treasurer and City Auditor under the following circumstances:
- (1) The citation, notice and order to correct or cease and desist order was issued in error;
 - (2) The civil fines or civil penalties were assessed in error; or
 - (3) Notice failed to reach the property owner due to unusual circumstances.
- (b) Fines and penalties, in whole or in part, may be waived by the director, with the concurrence of the City Treasurer and City Auditor under the following circumstances:
- (1) The code violations have been cured under a voluntary compliance agreement;
 - (2) The code violations which formed the basis for the civil penalties have been cured, and the director finds that compelling reasons justify waiver of all or part of the outstanding civil penalties; or
 - (3) Other information warranting waiver has been presented to the director since the citation, notice and order to correct or cease and desist order was issued.
- (c) The director shall document the circumstances under which a decision was made to waive penalties and such a statement shall become part of the public record unless privileged.
- (A0416-06)

ARTICLE VII APPEALS AND JUDICIAL ENFORCEMENT

Section 13A-48 Administrative Appeal - filing requirements

- (a) Any person issued a citation or named in a notice and order to correct or cease and desist order and any owner of the land where the violation for which a

citation, notice and order to correct or cease and desist order is issued occurred and any complainant who is an aggrieved person and requests to be kept advised may file a notice of appeal of a citation, notice and order to correct, cease and desist order, determination to enter into a voluntary compliance agreement or a determination not to issue a citation or order within fourteen days of the service of the citation, notice and order to correct or cease and desist order with the issuing department.

- (b) If a notice of appeal has been filed within the time period provided herein, the appellant shall file a statement of appeal within twenty-one days of the service of the citation, notice and order to correct or cease and desist order with the issuing department.
- (c) Any person named in a citation may appeal the citation by signing the citation, indicating on the citation that a hearing is requested, and returning the citation to the issuing agency or department within fourteen days of its service.

(A0416-06)

Section 13A-49 Administrative appeal - procedures

- (a) The appeal hearing shall be conducted as provided for by rules promulgated under this section, except that where specific provisions in this chapter conflict with those rules, the provisions of this chapter shall govern.
- (b) Enforcement of any notice and order to correct of a director issued pursuant to this chapter shall be stayed as to the appealing party during the pending of any administrative appeal under this chapter, except when a director determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order to correct issued.
- (c) Enforcement of any cease and desist order of a director issued pursuant to this chapter shall not be stayed during the pending of any administrative appeal under this chapter.
- (d) When multiple citations, cease and desist orders, or notices and orders have been issued simultaneously for any set of facts constituting a violation, only one appeal of all the enforcement actions shall be allowed.

(A0416-06)

Section 13A-50 Administrative Appeal - final order

- (a) Following review of the evidence submitted, the hearing examiner shall make written findings and conclusions and shall affirm or modify the citation, notice and order to correct or cease and desist order previously issued if the examiner finds that a violation has occurred. The examiner shall uphold the appeal and reverse the citation or order if the examiner finds that no violation has occurred.
- (b) If an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, such property owner shall be responsible only for abatement of the violation. Strict compliance with permit requirements may be waived regarding the performance of such an abatement in order to avoid doing substantial injustice to a non-culpable property owner.

- (c) The hearing examiner's final order shall be final and conclusive unless proceedings for review of the decision are properly commenced in superior court within the time period specified by state law.
- (d) A final order by the hearing examiner affirming or reinstating a citation, notice and order to correct or cease and desist order renders such citation, notice and order to correct or cease and desist order a final agency order.
(A0416-06)

Section 13A-51 Judicial Enforcement - petition for enforcement

- (a) In addition to any other judicial or administrative remedy, the prosecuting attorney on behalf of the City may seek enforcement of a director's order by filing a petition for enforcement in superior court.
- (b) The petition must name as respondent each alleged person against whom the director seeks to obtain civil enforcement.
- (c) A petition for civil enforcement may request monetary relief, declaratory relief, temporary or permanent injunctive relief and other civil remedy provided by law, or any combination of the foregoing.
(A0416-06)

Section 13A-52 Judicial Enforcement - limitation on defenses

A respondent in a proceeding by petition for enforcement may not assert as a defense any fact or issue that the respondent had an opportunity to assert before the hearing examiner and did not, or upon which the final determination of the hearing examiner was adverse to the respondent. (A0416-06)

ARTICLE VIII LIENS

Section 13A-53 Filing and Contents

- (a) Within ninety days from the date any civil penalty, civil fine, abatement cost, or enforcement cost is due pursuant to this chapter, a the City may record a lien against the property of a person responsible for code compliance for the amount owing with the Registry of Deeds.
- (b) The lien shall contain the following information:
 - (1) The City Ordinance provision;
 - (2) A brief description of the violation and its duration at the date of recording;
 - (3) A brief description of the abatement work done, if any, and who performed the abatement work;
 - (4) The owner of the property, if known, or a statement that the owner is not known;
 - (5) A legal description of the property;
 - (6) The amount of penalties, fines or costs that are owing; and
 - (7) A sworn statement signed by a director that the director believes the claim is just.
(A0416-06)

Section 13A-54 Lien – supplemental

The City may record supplemental liens with the Registry of Deeds to update information regarding penalties, fines, costs or fees contained in any existing lien. (A0416-06)

Section 13A-55 Lien - duration

When all penalties or abatement costs, or both, assessed against the property owner have been paid, the director shall expeditiously record a satisfaction of lien with the Registry of Deeds. The satisfaction shall include a legal description of the property where the violation occurred. (A0416-06)

Section 56-60 Reserved

ARTICLE IX REGULATING PUBLIC NUISANCES

Section 13A-61.0 Public Nuisance Prohibited

No person shall erect, cause, continue, maintain or permit to exist any public nuisance within the City. (A0606-06)

Section 13A-62.0 Public Nuisance Defined

The following acts, omissions, places, conditions and things are hereby declared to be public nuisances:

- (a) **Common Law** – Any public nuisance known as common law or in equity jurisprudence.
- (b) **In General** – Any act, occupation, condition, or use of property (real or personal) which shall continue for such length of time as to:
 - (1) Substantially annoy, injure or endanger the comfort, health, repose, safety or expectation of quiet enjoyment of the public;
 - (2) In any way render the public insecure in life or in use of property;
 - (3) Greatly offend the public morals or decency;
 - (4) Unlawfully and substantially interfere with, or obstruct, or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.
- (c) **Code Violation** – The open, continuous, repeated or intentional violation of the City ordinances or state and federal laws relating to the public health, safety, peace, morals or welfare.
- (d) **Blighted Premises** – Any structure, building, improvement or premises which is a menace to public health, safety, moral or welfare in the present condition, or which endangers life or property by threat of fire or other hazard, due to any of the following reasons:
 - (1) Faulty design or construction;
 - (2) Failure to maintain the premises; or
 - (3) The accumulation thereon of junk, garbage or rubbish.
- (e) **Attractive Nuisance** – Any artificial condition existing on land which presents an unreasonable risk of harm to children, who, because of their youth, may not discover the condition or realize the risk of intermeddling or coming with the area of danger, and the utility to the possessor of maintaining the condition and the

burden of eliminating the danger are slight as compared to the risk to children.

Attractive nuisances shall include, but are not limited to, the following:

- (1) Vacant buildings or structures which possess unsecured doors or windows;
- (2) Abandoned wells or shafts which are not securely sealed or covered;
- (3) Basements and excavations which are unprotected or unfenced;
- (4) Abandoned refrigerators or freezers which do not have the doors removed;
- (5) Structurally unsound fences and structures;
- (6) Abandoned, untitled or unlicensed motor vehicles that possess unsecured doors, windows, or trunks.
- (7) Abandoned shopping carts.

(f) **Public Health** – The following acts omissions, places, conditions and things are hereby specifically declared to be public nuisances affecting public health, but such enumeration shall not be construed to exclude other health nuisances:

- (1) Adulterated Food - all decayed, harmfully adulterated or unwholesome food sold or offered to the public for human consumption;
- (2) Unburied Carcasses – Carcasses of animals, birds, fowl not intended for human consumption or food which are not buried or otherwise disposed of in an appropriate sanitary manner within 24 hours after death;
- (3) Breeding Places for Vermin, Etc. – Accumulation of decayed animal or vegetable matter, garbage, refuse, rubbish, rotting lumber, packing materials, scrap metal or any materials whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed;
- (4) Stagnant Water – All stagnant water or other liquids in which mosquitoes, flies or other insects can breed;
- (5) Improper Use of Garbage Cans – Garbage containers that are not fly-tight or that are placed on the public way at such time or in such a manner as to violate or cause a violation of Article III of Chapter 16 of the City Ordinances.
- (6) Improper Use of Dumpsters – The use or maintenance of a commercial garbage container commonly known as a dumpster in a manner that violates Division 2 of 16-71 of the City Ordinances.
- (7) Noxious Weeds – any living stage, such as seeds and reproductive parts, of any parasitic or other plant of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation, or the fish or wildlife resources of the United States or the public health.
- (8) Air Pollution – The emission or escape into the open air of such quantities of smoke, ash, dust, soot, cinders, acid or other fumes, dirt or other material of noxious gases in such place or manner that causes or is likely to cause injury, detriment or nuisance to any appreciable number of persons within the City;
- (9) Water Pollution: The pollution of any public well or cistern, stream, dam, river or other body of water; the discharge directly or indirectly into any catch basin, storm drain or sanitary sewer of gasoline or other explosive or inflammable substance or any other matter or thing which may tend to

cause an obstruction thereof or deposit therein, or any injury thereto in violation of sections 15-16, 15-17 of the City Ordinances or State or Federal Law.

- (10) Noxious Odors, Etc. – The continuous use of property, substances or things within the City emitting or causing any foul offensive, poisonous, nauseous, noxious or disagreeable odors, gases, effluvia or stenches repulsive to *persons of ordinary sensibilities*, or which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City. Nothing in this section shall be construed to prohibit odors of a temporary nature or those emitted by cooking or fertilizing a garden.
- (11) Highway Pollution – Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, highway, gutter, alley, sidewalk or public place within the City;
- (12) Animals at Large – All animals running at large. An animal is considered to be running at large if it is off the premises of its owner and not under the control of the owner or some other person;
- (13) Accumulation of Waste – Accumulations of garbage, refuse, rubbish or recyclable waste which exist for more than ten (10) consecutive days and which are not stored completely in an enclosed structure *designed and approved for said use*.

(g) **Public Peace and Safety** – The following acts, omissions, places, conditions, and things are hereby declared to be public nuisances affecting peace and/or safety, but such enumeration shall not be construed to exclude other nuisances:

- (1) Signs, Billboards, Etc. - All signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds, or places frequented by the public, which are so situated or which because of its color, location, brilliance or manner of operation can be presumed as to endanger the public safety, to subtract from the aesthetic value of the building or area or in violation of Section 71.0 of this Chapter or Chapter 15A of the City Ordinances;
- (2) Graffiti – The existence of graffiti on public or private property in violation of the City Ordinances is expressly declared to be a public nuisance and, therefore, is subject to removal and abatement provisions specified in Section 13-2.5 of the City Ordinances.
- (3) Unauthorized Traffic Signs – All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purports to be or may be mistaken as an official traffic control device, railroad sign or signal, or which because of its color, location, brilliance or manner of operation interfere with the effectiveness of any such official device, sign or signal;
- (4) Improper Structure or House Numbering - Every dwelling house and other structure without proper street numbers affixed thereto in violation of section 17-5 of the City Ordinances.

- (5) Obstructions of Streets and Excavations – All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in violation of any appropriate sections of Chapters 17 and 18 of the Revised Ordinances of the City of Everett, or which, although made in accordance with the Ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or do not conform to the permit issued;
- (6) Litter - Any quantity of uncontainerized paper, metal, glass, plastic or miscellaneous solid waste which may be classified as trash, debris, rubbish, refuse, garbage or junk in violation of Article II and/or Article III of Chapter 16 of the City Ordinances.
- (7) Open Cisterns, Wells, Basements or Other Dangerous Excavations – Any open cisterns, cesspools, wells, unused basements, excavations, swimming pools as provided for in 4-2 of the City Ordinances, or other dangerous openings unless such places are filled, securely covered or fenced in such a manner as to prevent injury, provided any cover shall be of a design, size and weight that the same cannot be easily removed, especially by children;
- (8) Abandoned Refrigerators – Any abandoned, unattended or discarded ice box, refrigerator, or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside;
- (9) Tree Limbs – All limbs of trees which project over a public sidewalk less than ten (10) feet above the surface thereof and all limbs which project over a public street less than fourteen (14) feet above the surface thereof.
- (10) Dead Trees – All dead or dying trees and tree limbs, which are so situated that the tree or limb could fall on a public or private street, alley, sidewalk, parking lot, house, garage, playground equipment or other structure. A tree limb shall be presumed to be dead or dying if 50% or more of the tree or limb does not have leaves or other growth consistent with the one on it during the growing season;
- (11) Fireworks – All use or display of fireworks, except as provided by the laws of the Commonwealth of Massachusetts,
- (12) Wires Over Streets – All *unauthorized* wires over streets, highways, alleys or public grounds which are strung less than fifteen (15) feet above the surface thereof;
- (13) Noisy Animals or Fowl – The keeping or harboring of any animal or fowl which, by frequent or habitual howling, yelping, barking, crowing, or other noise which greatly annoys or disturbs a person of ordinary sensibilities or any number of persons within the City;
- (14) Loud and Unnecessary Noises
 - a. General Prohibition – No person shall make, continue or cause to be made or continued, any loud and unnecessary sound or noise tending to annoy, disturb or deny expectation of quiet enjoyment to a person of ordinary sensibilities in or about any public street, highway, alley, park or private residence.
 - b. Specific Acts Prohibited – The following acts are declared to constitute loud and unnecessary noise in violation of this section,

but the following list should not be deemed to be exhaustive or inclusive:

1. Horns, Signaling Devices – The sounding of any horn or signaling device on any motor vehicle in the City for longer than three seconds in any period of one minute, except as a danger warning.
2. Radios, Stereos – The use, operation or playing of any radio, stereo, phonograph, musical instrument or other machine or device for producing or reproducing sound or music between the hours of 10:00 PM and 7:00 AM in such a manner so as to permit the sound emanating therefore to be plainly audible at the property line of the building, structure, apartment in which such device is located.
3. Loudspeakers, Amplifiers for Advertising – The use or operation of any radio, stereo, phonograph, musical instrument or other machine or device for producing or reproducing sound which is cast upon any public street, alley or highway for the purpose of commercial advertising or attracting attention of the public to the building, business or enterprise from which the sound is cast.
4. Animals, Birds – The keeping of one or more animals or birds which individually or in combination, bark or chirp frequently or for long periods of time, and which thereby create a noise plainly audible at the property line of the building, structure or apartment in which they are located.
5. Exhaust – The ownership or operation of any motor vehicle or other combustible engine that does not have an adequate muffler in constant operation and properly maintained to prevent excessive or unusual noise. The equipping of any muffler or exhaust system with a cutout, bypass or similar device, or the modifying of any muffler or exhaust system in a manner which will amplify or increase the noise emitted by the engine above that emitted by the muffler or exhaust system originally installed shall constitute a violation of this section.
6. Construction Work – The erection, excavation, demolition, alteration or repair of any building, including but not limited to the operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, backhoe, caterpillar, or other similar equipment attended by loud or unusual noise, between the hours of 9:00 PM and 7:00 AM.
7. Alarms – Any vehicle alarm or any alarm system in violation of 14-57 of the City Ordinances by emitting a continuous and uninterrupted signal for more than thirty (30) minutes which cannot be shut off or otherwise

curtailed due to the absence or unavailability of the alarm user or those persons designated by him, and which disturbs the peace, comfort or repose of a community, a neighborhood or a considerable number of inhabitants of the area where the alarm system is located, shall constitute a public nuisance.

(h) Public Morals and Decency – The following acts, omissions, conditions and things are hereby specifically declared to be nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances, which may offend public morals and decency:

- (1) Disorderly Houses – All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purposes of prostitution, promiscuous sexual activities or gambling.
- (2) Gambling Devices – All gambling machines and gambling places as defined in the Massachusetts General Laws.
- (3) Unlicensed Sale of Liquor or Beer – All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as required by Massachusetts General Laws.
- (4) Illegal Drinking or Drugs – Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages, or for the purpose of consuming drugs or other illegal substances in violation of State Law.

(i) Buildings, Structures and Premises – The following acts, omissions, conditions and things are hereby specifically declared to be nuisances affecting buildings, structures and premises, but such enumeration shall not be construed to exclude other nuisances regarding buildings and structures:

- (1) Illegal Buildings – All buildings erected, repaired, altered or used in violation of the provisions of the Revised Ordinances of the City of Everett or the Laws of the Commonwealth.
- (2) Illegal Lodgings – Any domicile erected, repaired, altered or used for the purpose of letting rooms or subletting space to persons for the use as living quarters as to be dangerous, unsafe, unsanitary, in violation of the provisions of the Revised Ordinances of the City of Everett or the Laws of the Commonwealth or otherwise unfit for human use or occupancy.
- (3) Illegal Lodging House - Any house erected, repaired, altered or used for the purpose of letting to four or more persons not within the second degree of kindred to the person conducting it that is not duly licensed as a Lodging House by the City of Everett, but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under MGL Ch. 111 §71 or

rest homes so licensed, or group residences licensed or regulated by agencies of the commonwealth.

- (4) Dilapidated Structures – All buildings or structures so old, dilapidated, abandoned or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use or occupancy.
- (5) Unoccupied Buildings – All unoccupied buildings not in conformance with 8-2 of the City Ordinances which required automatic fire or smoke detection systems in said buildings.
- (6) Rodents – Every foundation, exterior wall, roof, window, exterior door, basement hatchway and every other entrance to a structure which is not maintained to prevent the entrance and harborage of rats, mice or other vermin.
- (7) Fences – Every fence that is not kept in a reasonably good state of repair and resulting in a dangerous condition.
- (8) Motor Vehicles – Abandoned, untitled or unlicensed motor vehicles that are not stored in a completely enclosed structure.
(A0606-06)

ARTICLE X SPECIFIC NUISANCES

Section 13A-63 Abandoned, Wrecked, Dismantled, or Inoperative Vehicles

- (a) **Purpose.** The purpose of this chapter is to establish procedures for the abatement and removal as public nuisances of abandoned, wrecked, dismantled or inoperative vehicles.
- (b) Any enforcement officer of the Police Department, Fire Department or Code Enforcement may inspect and certify that a vehicle is a "wrecked, dismantled or inoperative vehicle or an abandoned vehicle" as those terms are defined in Section 18-10. The certification shall be made in writing.
(A0416-06)

Section 13A-63.1 Wrecked, dismantled or inoperative vehicles -- prohibited activity

- (a) No person may park, store or abandon a wrecked, dismantled or inoperative vehicle, or part thereof, on private property or public property in violation of Section 18-10 of the City Ordinances, except where the following conditions apply:
 - (1) A vehicle or vehicle part is completely enclosed within a building on private property in a lawful manner where it is not visible from the street or from other public or private property; or
 - (2) A vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced as required by state law.
(A0416-06)

Section 13A-63.2 Notice required

- (a) Whenever a vehicle has been determined to be a wrecked, dismantled or inoperative vehicle or as an abandoned vehicle, the last registered vehicle owner of record and the land owner of record where the vehicle is located shall each be given notice by certified mail that a public hearing may be requested before the hearing examiner. If no hearing is requested within ten days from the certified date of receipt of the notice, the vehicle shall be removed by the City.
- (b) If a request for hearing is received within ten days, a notice giving the time, location and date of the hearing on the question of abatement and removal of the vehicle or vehicles shall be mailed by certified or registered mail, with five-day return receipt requested, to the land owner as shown on the last equalized assessment roll and to the last registered and legal owner of record of each vehicle unless the vehicle identification numbers are not available to determine ownership.

(A0416-06)

Editor's Note: See 18-170 for applicability

Section 13A-63.3 Determination of responsibility

- (a) The owner of the land on which the vehicle is located may appear in person at the hearing or present a written sworn statement in time for consideration at the hearing. The owner may deny responsibility for the presence of the vehicle on the land stating the reason for such denial. If it is determined by the hearing officer that the vehicle was placed on the land without consent of the land owner and that the land owner has not subsequently acquiesced in its presence, then costs of administration or removal of the vehicle shall not be assessed against the property upon which the vehicle is located nor otherwise be collected from the land owner.
- (b) Nothing in this chapter shall relieve the landowner of any civil penalties which may accrue from any zoning code violation related to the improper placement, parking or storage of vehicles or parts thereof to which the landowner has consented or acquiesced.
- (c) In addition to determination of responsibility as provided for in paragraph (a), the hearing examiner shall receive and examine evidence on other relevant matters, including whether a public nuisance as defined in this chapter exists. The decision of the hearing examiner shall be final. Any further approval shall be as prescribed in this ordinance.

(A0416-06)

Section 13A-63.4 Abatement and removal authorized

The City may remove any abandoned, wrecked, dismantled or inoperative vehicle, automobile hulk or part thereof, after complying with the notice requirements of this chapter. The proceeds of any such a disposition shall be used to defray the costs of abatement and removal of any such a vehicle, including costs of administration and enforcement. *(A0416-06)*

Section 13A-63.5 Costs of abatement and removal

- (a) The costs of abatement and removal of any such vehicle or remnant part, including costs of administration and enforcement, shall be collected from the last

registered vehicle owner if the identity of such owner can be determined, unless such owner in the transfer of ownership thereof has complied with State Law. If the vehicle owner cannot be established, the costs of abatement and enforcement shall be collected from the land owner on which the vehicle or remnant part is located, unless the landowner has shown in a hearing that the vehicle or remnant part was placed on such property without the landowner's consent or acquiescence.

- (b) Costs of administration for the removal and disposal of vehicles or remnant parts may be recovered according to the lien and personal obligation provisions of this chapter.

(A0416-06)

Section 13A-63.6 Photographic record

The City shall maintain a photographic record of all abated vehicles for a period of two years following adoption of this ordinance. At the conclusion of the two-year period, a written report along with copies of the photographs shall be transmitted to the council on the implementation of this ordinance. (A0416-06)

Section 64-69 Reserved

Section 13A-70.0 Animals as Nuisances

No owner shall fail to exercise proper care and control of an animal to prevent it from becoming a public nuisance. Excessive or untimely barking, molesting passersby, chasing vehicles, habitually attacking people or other domestic animals, trespassing upon school grounds, trespassing upon private property in such manner as to damage property, or violating the provision of this Chapter or Chapter 3 of the revised Ordinances of the City of Everett shall be deemed a nuisance. (Ord. of 10-11-77, § 5(8)) State law reference(s)-- Barking dogs, M.G.L.A. c. 140, § 157.

Section 71-74 Reserved

Section 13A-75.0 Bill posting as Nuisance

- (a) It is unlawful to paint, print, post, paste, attach or in any way affix a bill, poster, dodger, card or other advertising matter upon any tree, post, hydrant, curb, sidewalk or other public improvement on any public ground or street, or upon any bridge or part of the same, or upon any public building, structure of any kind belonging to the city, or upon any mast or pole in a street, avenue or alley erected or used for supporting or carrying any wire or cable or incidental thereto, or upon any lamppost in the city.
- (b) It is unlawful to post, paste, attach or in any way affix a bill, poster, dodger, card or other advertising matter upon any private building, structure of any kind without the permission of the owner and in such a manner as to increase the possibility that said article will become litter.
- (c) The posting of any material in violation to this ordinance shall be considered a public nuisance.
- (d) Each occurrence of the aforementioned shall be deemed a separate violation.

- (e) Whoever is found guilty of violating this section shall be subject to a fine in accordance with Section 1-8 of these Revised Ordinances of the City of Everett. (A606-06)

Section 76.0 – 87.0 Reserved

13A- 88 Illegal Lodgings and Illegal Lodging Houses in Dwelling Prosecutions for illegal residential occupancies and illegal over-occupancy in dwellings

(a) In all civil and criminal prosecutions brought for the enforcement of this Ordinance's provisions with respect to the illegal use of any building for residential purposes or the illegal residential occupancy of any dwelling or dwelling unit by more families than the number of families permitted for such dwelling or dwelling unit under this Ordinance, the following rebuttable presumptions shall apply:

- (1) That any detached dwelling or dwelling unit which maintains more than one mailbox or mail receptacle, more than one gas meter, more than one electric meter, and/or more than one water meter is being used as the residence of two or more families.
- (2) That any detached dwelling or dwelling unit which maintains more than two mailboxes or mail receptacles, more than two gas meters, more than two electric meters and/or more than two water meters is being used as the residence of three or more families.
- (3) That any detached dwelling or dwelling unit which maintains any entrance or entrances thereto, which entrance or entrances have not been set forth on any plans approved by and on file with the Building Department, is being used as the residence of two or more families.
- (4) That any detached dwelling or dwelling unit which maintains any third or additional entrances thereto, which entrance or entrances have not been set forth on any plans approved by and on file with the Building Department, is being used as the residence of three or more families.
- (5) That any building which has been advertised in any newspapers, magazines, or advertising publications as being available for sale or rent for residential purposes, in whole or in part, which advertisement expressly or implicitly provides that such building or the dwellings or dwelling units therein contain rooms for rent, contain more than one separate dwelling living unit, or may be occupied by more than one separate family, is being used as a dwelling containing the number of rooms for rent, dwelling units, or families stated or implied in such advertisement.
- (6) That any dwelling or dwelling unit which maintains two or more doorbells is being used as a dwelling for the same number of families as there are doorbells.
- (7) There shall be a rebuttable presumption that any room, which shall have a door-locking device commonly called a "Yale lock"

or similar device including a padlock added in or on the door, is intended as a "rooming unit" and the burden of disproving the same rests with the owner, operator or occupant.

- (8) That any single-family dwelling or dwelling unit at which there are the following is being used for two or more families:
 - a. Permanent partitions or internal doors which have not been set forth on any plans approved by and on file with the Building Department, which may serve to bar access between segregated portions of the dwelling, including but not limited to bedrooms, or the inability of any occupant or person in possession thereof to have unimpeded and/or lawful access to all parts of the dwelling unit; and/or
 - b. Two or more kitchens which have not been set forth on any plans approved by and on file with the Building Department, each containing one or more of the following: a range, oven, microwave, or other similar device customarily used for cooking or preparation of foods; and/or
- (9) That any two-family dwelling unit at which there are the following is being used for three or more families:
 - a. Permanent partitions or internal doors which have not been set forth on any plans approved by and on file with the Building Department, which may serve to bar access between three or more segregated portions of the dwelling, including but not limited to bedrooms; and/or
 - b. Three or more kitchens which have not been set forth on any plans approved by and on file with the Building Department, each containing one or more of the following: a range, oven, microwave, or other similar device customarily used for cooking or preparation of foods.
- (b) The rebuttal of the aforesaid presumptions shall be an affirmative defense by the defendant that, notwithstanding the existence of such conditions, once such conditions have proven to the court or City, the subject building is not being used as a dwelling or the subject dwelling is not being used for more families than permitted under this Ordinance or the Revised Ordinances of the City of Everett or the Laws of the Commonwealth of Massachusetts.
- (c) A person charged with a violation of this Ordinance as described herein may demand an inspection by the Building Department of the subject building or dwelling to rebut such presumption. Such demand shall be in writing addressed to the Building Department. The Building Department inspector shall prepare a report of the findings of the inspection together with photographs, if appropriate.
- (d) **Cellars/Basements**
Cellars shall be used only for incidental storage for the dwelling units above. Use of cellars for sleeping purposes or as a dwelling unit, rooming

unit or independent rooming unit is prohibited. Partitions, walls and/or showers and/or bathtubs and/or kitchens, except kitchens used in conjunction with the dwelling unit above, are prohibited in cellars.

- (1) Use of a cellar for purposes other than incidental storage may be permitted, provided that all permits and all other applicable municipal approvals are obtained prior to such use.
- (c) Any residential attic used for other than incidental storage must meet the following criteria:
- (1) Under no circumstances shall the attic be offered as a separate dwelling unit, rooming unit or independent rooming unit.
 - (2) The attic must be an integral part of the dwelling unit below and shall not be leased to any party. Attic occupant(s) shall have full use of the floor below.
 - (3) Access to the attic shall be through the dwelling unit immediately below the attic. If fire exits are required, only egress shall be allowed. Entrance to the attic through fire exits shall be prohibited, and proper door hardware shall be installed to prevent entry.
 - (4) The attic shall be limited to having only a stall shower, toilet and vanity.
 - (5) There shall be no kitchen or food cooking/preparing facilities (hotplates, refrigerator, food cabinets or sink) permitted in the attic.
 - (6) One door leading to the stairwell between the attic and the unit immediately below will be allowed. The door will be at the lower level of the stairwell and will have no locks on the door. The door will be a thirty-minute-fire-resistant-rated door.
 - (7) Egress windows must be installed in every attic bedroom prior to occupancy.
 - (8) Fire stopping must be installed throughout the attic at the floor level in all walls which communicate with a lower floor or level; must obtain certificate of occupancy for attic part and parcel.
 - (9) Preexisting thirty-six-inch width stairways may remain. Any existing stairway less than thirty-six-inch width shall be enlarged to 44 inches in width and no variations of the State Building Code.
 - (10) All walls and ceilings in an attic unit must have a minimum one-hour fire rating.
 - (11) All floors of the building, including any basements, subbasements, cellars, etc., shall have interconnected, hardwired smoke detectors with battery backup. Plans for placement of detectors must be approved by the Fire Department prior to occupancy of the attic dwelling unit.
 - (12) An exterior flashing strobe light connected to the smoke detector system shall be installed on the street address side of the

building at the peak of the roofline in such a manner as to be visible from the curblineline of the building to indicate attic occupancy.

- (13) Only family members of the dwelling unit immediately below the attic shall be permitted to occupy the attic. Family members shall include parents, children, grandparents, brothers, sisters, aunts, uncles, nieces and nephews.
- (14) The number of occupants permitted in the attic area shall be based on the number of square feet of living space in the attic. This is to avoid overcrowding conditions. Ceiling height must be seven feet for at least 70 square feet of the room or space. Not to be counted is any portion of the room less than five feet in height.
- (15) The attic dwelling unit must be inspected and approved by all applicable city agencies before occupancy and may be subject to annual inspections.
- (16) Existing legal attic dwelling units are exempt from compliance with this section except for the requirements under Subsections 11 and 12 above. Existing attic units will have a period of 90 days after the adoption of this section to come into compliance with Subsections 11 and 12. All existing requirements for the occupancy shall be adhered to. Should renovations of the building exceed 25% of the value of the building or should the attic be damaged due to a fire, that unit must be brought into compliance with this revised section before being reoccupied.
- (17) In addition to the above requirements, the following codes and regulations pertaining to attic use shall be enforced, along with all applicable codes enforced by the City of Everett.
 - a. Plans are to be submitted for existing rooms; building officials are to determine if they need to be signed and sealed by an architect.
 - b. Signed and sealed plans are required for the construction of any room.
 - c. All work performed is to conform to the most recent editions of the following codes:
 1. State Building Code
 2. BOCA Code.
 3. National Electrical Code.
 4. National Standard Plumbing Code.
 - d. Observance of the regulations presently in effect is mandatory.
 - e. Useable floor area of the attic shall not exceed 1/3 of the floor area below.
 - f. Each room shall have adequate outlets.

- g. Each bathroom outlet must be a ground fault interrupter (GFI) outlet.
- h. Rooms used for sleeping must have an operable window with the minimum clear opening of 5.7 square feet.
- i. Necessary permits are to be obtained before any work begins.
- j. Rooms are not to be occupied until a certificate of occupancy is issued.
- k. The entrance to the attic must be through the second floor apartment.
- l. Smoke detectors shall be installed within each bedroom, and a second hardwired battery backup interconnected smoke detector shall be installed in the immediate vicinity of the bedrooms, including the floor below. In addition to the above, smoke detectors are to be installed at every floor level, hardwired battery backup.
- m. No portable heating appliances shall be used in the attic.
- n. Privacy locks only will be permitted on bedroom doors.

(d) Penalties for offenses.

- (1) Notwithstanding any provision of this Ordinance inconsistent herewith, for each code violation involving an illegal residential occupancy or an illegal over-occupancy of a dwelling or dwelling unit, the owner and any person who is in charge of the subject building, dwelling, or dwelling unit at the time of the violation shall be liable to a fine of not more than \$300.
- (2) Each day that a violation continues to exist shall constitute a separate and distinct violation. Each occupancy exceeding the allowed occupancy under the Zoning Ordinances of the City of Everett or MGL 140 s.22.

(A0607-06)

Section 13A-89 *Graffiti.*

(a) PURPOSE

The purpose of this Ordinance is to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The City of Everett considers graffiti a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless graffiti is removed from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City.

(b) GRAFFITI as NUISANCE

- (1) The existence of graffiti on public or private property in violation of the Ordinance is expressly declared to be a public nuisance and, therefore, is subject to removal and abatement provisions specified in this Ordinance.

- (2) It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all time keep the property clear of graffiti.

(c) DEFINITIONS

- (1) **Graffiti** means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by a graffiti implement, to the extent that the graffiti was not authorized in advance by the owner of the property.
- (2) **Graffiti Implement** means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

(d) PROHIBITED ACTS

- (2) **Defacement.** It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any city owned property or, without the permission of the owner, on any privately owned property.
- (3) **Possession of Graffiti Implements.** It shall be unlawful for any person, with the intent to deface public property, to possess any graffiti implement while upon school property, any public facility, park, playground, swimming pool, recreational facility, or other public building or within fifty (50) feet of an underpass, bridge abutment, storm drain, or other similar types of infrastructure unless authorized by the City.
The provisions of this section shall not apply to the possession of broad tipped markers by a minor attending or traveling to or from school at which the minor is enrolled.
- (4) **Furnishing to minors.** It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any aerosol paint container, or paint stick to any person under the age of eighteen (18) years without the expressed written consent of the parents or guardian of the person.

(e) REMOVAL OF GRAFFITI

- (1) **Removal by the Perpetrator.** Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the Code Enforcement Task Force of the City of Everett. Such removal shall be done in a manner prescribed by the Code Enforcement Task Force. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Where graffiti is applied by an un-emancipated minor, the parents or legal guardian shall also be responsible for such removal or payment for the removal.

(2) **Property Owner Responsibility.** If Graffiti is not removed by the perpetrator according to the previous paragraph, graffiti shall be removed pursuant to the following provisions:

- a. It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the City, to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:
 1. The street address and legal description of the property sufficient for identification of the property.
 2. A statement that the property constitutes a potential graffiti nuisance property with a concise description leading to the finding.
 3. A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the City, as prescribed by law, will declare the property to be a public nuisance.
 4. An information sheet identifying any graffiti assistance programs available through the City and private graffiti removal contractors.

(3) **Exceptions to Property Owner Responsibility.** The removal requirements above shall not apply if the property owner or responsible party can demonstrate that:

- a. The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or
- b. The property owner or responsible party has an active program for the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of fifteen (15) days after service by first class mail of notice of the defacement.

(5) **Right of City to Remove.**

- a. **Use of Public Funds.** Whenever the City becomes aware or is notified and determines that the graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds for the removal of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the property owner or responsible party agrees to pay the costs of repainting or repairing.

- b. **Right of Entry on Private Property.** Prior to entering upon private property owned by a public entity other than the City for the purpose of graffiti removal the City shall attempt to secure the consent of the property owner or responsible party and a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Ordinance, or if the City has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this section, the property owner or responsible party shall be fined according to the provisions specified below.

(6) Abatement and Cost Recovery Proceedings.

- a. **Notice of Due Process Hearing.** The Chairman of the Code Enforcement Task Force, serving as the Hearing Officer, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different from the owner, not less than forty-eight (48) hours notice of the City's intention to hold a due process hearing at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. Notice shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in newspaper of general circulation published in the area in which the property is located.
- b. **Determination of Hearing Officer.** The determination of the Hearing Officer after the due process hearing shall be final and not appealable. If, after the due process hearing, regardless of attendance of the owner or the responsible party or their respective agents, the Hearing Officer determines that the property contains graffiti viewable from public or quasi-public place, the Hearing Officer shall give written notice in an eradication order that, unless the graffiti is removed within ten (10) days, the City shall enter upon the property, cause the removal, painting over, or such other eradication thereof as the Hearing Officer determines appropriate, and shall provide the Owner and the responsible party thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis.
- c. **Eradication Effort.** Not sooner than the time specified in the order of the Hearing Officer, the Director of City Services, shall implement the eradication order and shall provide an accounting to the Hearing Officer.
- d. **Cost Hearing.** The Owner or responsible party may request a cost hearing before the Hearing Officer on the eradication accounting, and

appropriate due process must be extended to the Owner or responsible party. If following the cost hearing or, if no hearing is requested, after the implementation of the eradication order, the Hearing Officer determines that all or a portion of the costs are appropriately chargeable to the eradication effort, the total amount thereof determined as appropriate by the Hearing Officer, shall be due and payable within thirty (30) days. Any amount of eradication charges assessed by the Hearing Officer that are less than the total amount set forth in the eradication accounting shall be explained by written letter from the Hearing Officer to the Mayor.

- e. **Lien.** As to such property where the responsible party is the property owner, if all or any portion of the assessed eradication charges remains unpaid after thirty (30) days, the portion thereof that remains unpaid shall constitute a lien on the property that was subject of the eradication effort.

(f) **PENALTIES**

Any person violating this ordinance shall be fined according to Section 1-8 of the Revised Ordinances of the City of Everett and/or punished in accordance with Massachusetts General Law, Chapter 266; Section 126A.

(g) **SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.
(Ord of 09-30-2004)

Section 90.0 – 94.0 Reserved

Article XI MISCELLANEOUS PROVISIONS

Section 13A-95.0 Repeat Nuisance Call Service Fees

- (a) **Purpose.** The purpose of this section is to protect the public safety, health, and welfare and to prevent and abate repeat service response calls by the City to the same property or location for nuisance service calls, as defined herein, which prevent police or public safety services to other residents of the City. It is the intent of the City by the adoption of this section to impose and collect service call fees from the owner or occupant, or both, of property to which City officials must repeatedly respond for any repeat nuisance event or activity that generates extraordinary costs to the City. The repeat nuisance service call fee is intended to cover that cost over and above the cost of providing normal law or code enforcement services and police protection City wide.

- (b) Scope and Application. This section shall apply to all owners and occupants of private property that is the subject or location of the repeat nuisance service call by the City. This section shall apply to any repeat nuisance service calls as set forth herein made by an Everett police officer or any designee of the Chief of Police, and shall include but not be limited to animal control officers, parking enforcement officers and code enforcement officers.
- (c) Definition of Nuisance Call or Similar Conduct. The term nuisance service call shall mean any activity, conduct, or condition occurring upon private property within the City which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any member of the public; or will, or will intend to, alarm, anger or disturb others or provoke breach of the peace, to which the City is required to respond, including but not limited to the following:
- (1) Any activity, conduct, or condition deemed as a public nuisance under any provision of the Revised Ordinances.
 - (2) Any activity, conduct or condition in violation of any provision of Chapter 13 of the Revised Ordinances.
 - (3) Any conduct, activity or condition constituting a violation of Massachusetts state laws prohibiting or regulating prostitution, gambling, controlled substances, use of firearms; and
 - (4) Any conduct, activity, or condition constituting disorderly conduct under Massachusetts or Federal Statutes.
- (d) Repeat Nuisance Service Call Fee; Amount. The City may impose a repeat nuisance service call fee upon the owner or occupant of private property if the City has rendered services or responded to the property on three (3) or more occasions within a period of 365 days in response to or for the abatement of nuisance conduct, activity, or condition of the same or similar kind.
- (1) Violations of the said “Repeat Nuisance Call Service Fees Ordinance” will be enforced in accordance with the provisions of the Everett Non-Criminal Disposition Ordinance.
 - (2) Any person violating any provision of this chapter shall be deemed guilty of a violation shall be subject to a fine established by the City Government under Section 1-8 of the Revised Ordinances.
 - (3) All repeat nuisance service call fees imposed and charged against the owner or occupant under this section shall be deemed delinquent 30 days after the City’s mailing a billing statement therefor. Delinquent payments are subject to a fourteen percent (14%) annual penalty of the amount due.

(4) Non-payment of fee imposed on a property owner may result in a lien being placed on said property.

(e) Notice. No repeat nuisance service call fee may be imposed against an owner or occupant of property without the City Solicitor or his designee, hereafter referred to as the hearing officer, first providing the owner or occupant with written notice of the previous nuisance service calls prior to the latest nuisance service call rendered by the City upon which the fee is imposed. The written notice shall:

- (1) State the nuisance conduct, activity or condition that is or has occurred or is maintained or permitted on the property, the dates of the nuisance conduct, activity or condition;
- (2) State the owner or occupant may be subject to a repeat nuisance call service fee if a third nuisance service call is rendered to the property for the same nuisance, in addition to the City's right to seek other legal remedies or actions for abatement of the nuisance or compliance with the law, and
- (3) Be served personally by the hearing officer or by U.S. mail upon the owner or occupant at the last known address.

(f) Right to Appeal Repeat Nuisance Service Call Fee. Upon the imposition of a repeat nuisance service call fee, the City shall provide the owner or occupant notice as required in Section 13-18(e). The City shall also inform the owner or occupant of his/her right to a hearing on the alleged repeat nuisance service calls.

- (1) The owner or occupant upon whom the fee is imposed may request a hearing by serving upon the City Clerk within fourteen (14) business days of the mailing of the fee invoice, inclusive of the day the invoice is mailed, a written request for hearing.
- (2) The hearing shall be heard by the City Government or its appointed hearing officer within fourteen (14) days of the date of the owner's or occupant's request for hearing.
- (3) The hearing shall be conducted in an informal manner and the Massachusetts Rules of Civil Procedure and Rules of Evidence shall not be strictly applied.
- (4) The hearing need not be transcribed, but may be recorded by any means at the sole expense of the party who requests the transcription.
- (5) After considering all evidence submitted, the hearing officer shall make written findings of fact and conclusions of the issue of whether the City responded to or rendered services for repeat nuisance service calls of the same or similar kind on three (3) or more occasions within a 365 day period.

- (6) The findings and conclusions shall be served upon the owner or occupant by U.S. mail within fourteen (14) days of the notice of hearing.
 - (7) An owner or occupant's right to a hearing shall be deemed waived if the owner or occupant fails to serve a written request for hearing as required herein or fails to appear at the scheduled hearing date.
 - (8) Upon waiver of the right to a hearing, or upon the hearing officer's written findings of fact and conclusions that the repeat nuisance call service fee is warranted hereunder, the fee imposed is due immediately.
- (g) Legal Remedies Nonexclusive. Nothing in this section shall be construed to limit the City's other available legal remedies for any violation of the law that may constitute a nuisance service call hereunder, including criminal, civil, injunctive or others.
(Ord. of 5-5-05)
- (h) Police and Inspectional Services Responses to Problem Properties.
- (1) After (five) 5 valid complaint incidents in a twelve (12) month period relating to the occupants of a dwelling unit, a particular property or a specific location, the Chief of Police (Chief) or the Director of Inspectional Services (Director) shall determine whether the cost of response should be assessed to the property owner and shall notify and submit said determination to the City Solicitor and the Code Enforcement Task Force.
 - (a.) Following each valid complain incident as determined by the Chief or Director, notice shall be delivered, in writing, via certified mail, to the property owner's residence that is on record at the assessor's office.
 - (2) The Chief or the Director shall keep an accurate record of the cost of response to a dwelling unit, to a particular porperty or to a specific location, and such record shall include the number of officers who are part of the response;
 - (3) The Chief or Director shall forward such record to the City Solicitor, the Collector-Treasurer, and the Code Enforcement Task Force;
 - (4) The Code Enforcement Task Force shall notify in writing the property owner of the Chief's or Director's decision to assess the cost of officer's response. The notification shall:
 - (a.) Be delivered by certified mail to the property owner's residence that is on record at the assessor's office;
 - (b.) Identify the number of complaint incidents that have occurred in the last 12 months;
 - (c.) Inform the property owner that he or she shall be subject to the costs of this and all future costs of police and inspectional services response to valid complaint incidents;

- (d.) Indicate that the property owner has the right to appeal to the hearing officer;
- (e.) Inform the property owner that he has seven (7) days to appeal;
- (5) The Treasurer-Collector shall bill the property owner for the costs of the City incurred for its police or inspectional services response in addition to any incidental costs during the period of the officer's response to the location. The property owner is responsible for paying the bill in full within thirty (30) days.
- (6) Any unpaid bill for response shall be added to the real estate tax on the property and collected as part of that tax. Failure to pay real estate taxes will render the property owner delinquent and the Treasurer-Collector shall commence municipal liens and foreclosure proceedings.
- (7) In the event that the property owner has in good faith begun eviction proceedings against the tenant responsible for the incidents at the property, then the application of this ordinance shall be stayed until the eviction process is concluded.
- (8) The provisions of this ordinance are severable, and if any section, phrase, sentence or provision shall be ruled invalid by any decision of a court of competent jurisdiction, such decision shall not impair or otherwise affect any other remaining provision of this ordinance.
(C0187-11)

Section 13A-96 Grammatical Construction

Unless the context clearly indicates otherwise, words in any tense shall include the present, past and future tense.

(A0416-06)

Section 13A-97 Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this chapter be declared unconstitutional or invalid or unenforceable for any reason, such decision shall not affect the validity of the remaining portions of this chapter, which will remain in full force and effect.

(A0416-06)

Section 13A-98 Penalties

All fines and penalties not expressly assigned to the provisions of this chapter 13A shall be assessed according to Section 1-8 of these Revised Ordinances of the City of Everett. No provision of this chapter shall be construed as prohibiting the City of Everett from seeking legal remedies.

(A0416-06)