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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 3532

AN ORDINANCE establishing a civil infractions system for violation of development regulations and providing for civil penalties; and adopting a new Chapter 1.18 of the Bellevue City Code, to be entitled "Civil Infractions."

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 1.18 of the Bellevue City Code is hereby adopted, to provide as follows:

Chapter 1.18  
Civil Infractions

Sections:

- 1.18.010 Purpose
- 1.18.020 Definitions
- 1.18.030 Order to Correct Violation
- 1.18.040 Notice of Civil Infraction
- 1.18.050 Appeal to Hearing Examiner
- 1.18.060 Collection of Civil Penalty
- 1.18.070 Additional Enforcement Procedures
- 1.18.080 Misdemeanor Prosecution Prohibited - When
- 1.18.090 Conflicts
- 1.18.100 Severability

1.18.010 Purpose

The purpose of this Chapter is to establish an efficient system to enforce the development regulations of the City of Bellevue; to provide an opportunity for a prompt hearing and decision on alleged violations of these regulations; and to establish civil penalties for violations.

1.18.020 Definitions

In this Chapter unless a different meaning is plainly required:

- A. "Act" means doing or performing something.

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- B. "Applicable Department Director" means the Director of the Department empowered to enforce a City of Bellevue development regulation, or his/her designee.
- C. "Civil Infraction" means a violation of a provision of a City of Bellevue development regulation for which a civil penalty may be imposed under this Chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions pursuant to Bellevue City Code, Title 11 are specifically excluded from the application of this Chapter.
- D. "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a City of Bellevue development regulation
- E. "Development Regulation" means and includes the following as now or hereafter amended:
1. Bellevue City Code Title 20 (Land Use Code), Title 22 (Development Code), Title 23 (Construction Codes) and Title 24 (the Utilities Codes);
  2. Bellevue City Code Chapter 9.11, Anti-Litter Code.
  3. City of Bellevue Department of Public Works Department Standards, as adopted by Resolution No. 3726;
  4. All standards, regulations and procedures adopted pursuant to the above; and
  5. The terms and conditions of any permit or approval issued pursuant to the above.
- F. "Emergency" means a situation which in the opinion of the Applicable Department Director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.
- G. "Hearing Examiner" means the Bellevue Hearing Examiner and the Office thereof constituted pursuant to Bellevue City Code Section 20.40.200 et. seq.
- H. "Omission" means a failure to act.
- I. "Person" includes any natural person, any corporation or any unincorporated association or partnership.

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- J. "Violation" means an act or omission contrary to a City of Bellevue development regulation including an act or omission at the same or different location by the same person.

1.18.030 Order to Correct Violation

- A. Issuance. Whenever the Applicable Department Director determines that a violation has occurred or is occurring, he/she shall pursue reasonable attempts to secure voluntary correction, failing which he/she may issue an Order to Correct Violation to the property owner or to any person causing, allowing or participating in the violation.
- B. Content. The Applicable Department Director shall include the following in the Order to Correct Violation:
1. The name and address of the property owner or other person to whom the Order to Correct Violation is directed; and
  2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring, and
  3. A description of the violation and a reference to that provision of a City of Bellevue development regulation which has been violated; and
  4. A statement of the action required to be taken to correct the violation as determined by the Applicable Department Director and a date or time by which correction is to be completed; and
  5. A statement that a civil penalty in an amount per day for each violation as specified by Paragraph 1.18.040.E shall be assessed against the person to whom the Order to Correct Violation is directed for each and every day, or portion of a day, on which the violation continues following the date set for correction.
- C. Service of Order.

The Applicable Department Director shall serve the Order to Correct Violation upon the person to whom it is directed, either personally or by mailing a copy of the Order to Correct Violation by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting a Copy of the Order to Correct Violation conspicuously

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on the affected property or structure. Proof of service shall be made at the time of service by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service and the manner by which service was made.

D. Extension.

Upon written request received prior to the correction date or time the Applicable Department Director may extend the date set for correction for good cause. The Applicable Department Director may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.

1.18.040 Notice of Civil Infraction.

A. General.

Following the date or time by which the correction must be completed as required by an Order to Correct Violation, the Applicable Department Director shall determine whether such correction has been completed.

B. Issuance.

1. If the required correction has not been completed by the correction date or time as specified in the Order to Correct Violation, the Applicable Department Director may issue a Notice of Civil Infraction to each person to whom an Order to Correct Violation was directed.
2. Notwithstanding the provisions of Section 1.18.030, the Applicable Department Director may issue a Notice of Civil Infraction without having issued an Order to Correct Violation when an emergency exists or when a repeated violation occurs.

C. Content.

The Applicable Department Director shall include the following in the Notice of Civil Infraction:

1. The name and address of the property owner or other person to whom the Notice of Civil Infraction is directed, and
2. The street address or a description sufficient for identification of the building, structure, premises or

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land upon or within which the violation has occurred or is occurring, and

3. A description of the violation and a reference to that provision of a City of Bellevue development regulation which has been violated.
4. A statement that the civil penalty in the amount per day for each violation as specified in Paragraph 1.18.040.E is assessed against the person to whom the Notice of Civil Infraction is directed for each and every day or portion thereof during which the violation continues beyond the date or time established for correction in the Order to Correct Violation, and
5. A statement that the person to whom the Notice of Civil Infraction was directed must complete correction of the violation and may pay the civil penalty imposed to the City Clerk or may appeal the Notice of Civil Infraction as provided in Section 1.18.050.

D. Service of Notice.

The Applicable Department Director shall serve the Notice of Civil Infraction upon the person to whom it is directed, either personally or by mailing a copy of the Notice of Civil Infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the Notice of Civil Infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made .

E. Civil Penalty.

The amount of the civil penalty per day or portion thereof for each violation is as follows:

- |   |           |
|---|-----------|
| 1. First Violation                          | \$ 100.00 |
| 2. Second Violation                         | \$ 200.00 |
| 3. Third Violation                          | \$ 300.00 |
| 4. Additional Violations in excess of three | \$ 500.00 |

F. Continued Duty to Correct.

Payment of a civil penalty pursuant to this Chapter does not relieve

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a person of the duty to correct a violation as ordered by the Applicable Department Director.

1.18.050 Appeal to Hearing Examiner.

A. General.

A person to whom a Notice of Civil Infraction is directed may appeal the Notice of Civil Infraction including the determination that a violation exists or may appeal the amount of any civil penalty imposed to the Hearing Examiner.

B. How to Appeal.

A person may appeal the Notice of Civil Infraction by filing a written Notice of Appeal with the Office of Permit Coordination within seven calendar days from the date of service of the Notice of Civil Infraction.

C. Civil Penalty.

The civil penalty for a continuing violation does not accrue during the pendency of the appeal, however, the Hearing Examiner may impose a daily civil penalty from the date of service of the Notice of Civil Infraction if it finds that the appeal is frivolous or intended solely to delay compliance.

D. Hearing Before the Hearing Examiner.

1. Notice.

The Office of the Hearing Examiner shall give notice of the hearing before the Hearing Examiner to the appellant seventeen calendar days before such hearing.

2. Procedure.

The Hearing Examiner shall conduct a hearing on the appeal pursuant to the Rules of Procedure of the Hearing Examiner. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

3. Action of the Hearing Examiner.

- a. The Hearing Examiner shall determine whether the City has proved by a preponderance of the evidence that a violation

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has occurred and shall affirm, vacate, suspend or modify the amount of any civil penalty imposed by the Notice of Civil Infraction, with or without written conditions.

- b. The Hearing Examiner shall consider the following in making his/her determination:
  - i. Whether the intent of the appeal was to delay compliance, or
  - ii. Whether the appeal is frivolous, or
  - iii. Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the City, or
  - iv. Whether the appellant exercised reasonable and timely effort to comply with applicable development regulation, or
  - v. Any other relevant factors.

#### 4. Notice of Decision.

The Hearing Examiner shall mail a copy of his decision to the appellant.

#### E. Appeal to Superior Court.

An appeal of the decision of the Hearing Examiner must be filed with Superior Court within 10 calendar days of the date of mailing of the decision of the Examiner to the appellant or is thereafter barred.

#### 1.18.060 Collection of Civil Penalty

- A. The civil penalty constitutes a personal obligation of the person to whom the Notice of Civil Infraction is directed. Any civil penalty assessed must be paid to the City Clerk within seven calendar days from the date of service of Notice of Civil Infraction or if an appeal is filed pursuant to Section 1.18.050, within seven calendar days of the Hearing Examiner's decision.
- B. The City Attorney, on behalf of the City, is authorized to collect the civil penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem civil penalties so long as the violation continues.

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#### 1.18.070 Additional Enforcement Procedures

The provisions of this Chapter may be used in addition to other enforcement provisions authorized by the Bellevue City Code except as precluded by law.

#### 1.18.080 Misdemeanor Prosecution Prohibited - When

No violation of a development regulation which constitutes a civil infraction hereunder may be prosecuted as a misdemeanor notwithstanding any provision of the Bellevue City Code or City ordinance providing that such violation is a misdemeanor; provided if state law provides that violation of any such development regulation is a misdemeanor such violation shall be prosecuted as such and not as a civil infraction.

#### 1.18.090 Conflicts

In the event of a conflict between this Chapter and any other provision of the Bellevue City Code or city ordinance providing for a civil penalty, this Chapter shall control.

#### 1.18.100 Severability

If any one or more sections, subsections or sentences of the chapter are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Chapter and the same shall remain in full force and effect.

Section 2. This ordinance shall take effect and be in force thirty

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days after final passage by the City Council.

PASSED by the City Council this 12<sup>th</sup> day of August, 1985, and signed in authentication of its passage this 12<sup>th</sup> day of August, 1985.

(SEAL)

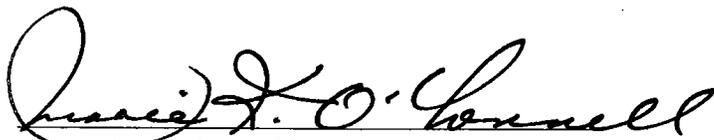
  
Cary E. Bozeman, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

  
Richard L. Andrews, City Attorney

Attest:

  
Marie K. O'Connell, City Clerk

Published August 16, 1985