ORIGINAL

WP0398C-ORD
03/03/95

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4743

AN ORDINANCE amending Bellevue City Code 1.18, regarding the City's civil violation procedure.

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

Section 1. Bellevue City Code 1.18 regarding the City's civil violation procedures, is amended as follows:

1.18.040 Notice of civil violation.

A. Issuance.
   1. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to Section 1.18.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.
   2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 1.18.030 under the following circumstances:
      a. When an emergency exists; or
      b. When a repeat violation occurs;
      c. When the violation creates a situation or condition which cannot be corrected; or
      d. When the person knows or reasonably should have known that the action is in violation of a city regulation.

B. Content. The notice of civil violation shall include the following:
   1. The name and address of the person responsible for that violation; 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 the provision(s) of the city regulation which has been violated; and
   4. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with Section 1.18.060 and the hearing examiner's order; and
   5. The date, time and location of an appeal hearing before the hearing examiner which will be at least ten days from the date the notice of civil violation is issued; and
   6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department

ORIGINAL

director approves the completed, required corrective action at least forty-eight hours prior to the hearing, except that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and

7. A statement that the costs and expenses of abatement incurred by the city pursuant to Section 1.18.060(D) and a monetary penalty in an amount per day for each violation as specified in Section 1.18.040(E) may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

C. Service of Notice. The applicable department director shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

D. Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner.

E. Monetary Penalty. The monetary penalty for each violation per day or portion thereof shall be as follows:

1. First day of each violation, one hundred dollars;
2. Second day of each violation, two hundred dollars;
3. Third day of each violation, three hundred dollars;
4. Fourth day of each violation, four hundred dollars;
5. Each additional day of each violation beyond four days, five hundred dollars per day.

F. Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

G. Collection of monetary penalty.

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city at the permit center within ten calendar days from the date of mailing

ORIGINAL

of the hearing examiner's decision or a notice from the city that penalties are due.

2. The city attorney or his/her signee is authorized to take appropriate action to collect the monetary penalty.

(Ord. 4212 § 2 (part), 1991.)

1.18.050 Hearing before the hearing examiner.

A. Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than 10 calendar days after the notice of civil violation is issued.

B. Prior Correction of Violation. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight hours prior to the scheduled hearing.

C. Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

D. Decision of the Hearing Examiner.

1. The hearing examiner shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:

a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

b. The required corrective action;

c. The date and time by which the correction must be completed;

d. The monetary penalties assessed based on the criteria in Section 1.18.050 (D)(3);

e. The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

3. Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section 1.18.040 (E).
   a. The Hearing Examiner shall have the following options in assessing monetary penalties:
      i. Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or
      ii. Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or
      iii. Assess no monetary penalties.
   b. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:
      i. Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
      ii. Whether the person failed to appear at the hearing;
      iii. Whether the violation was a repeat violation;
      iv. Whether the person showed due diligence and/or substantial progress in correcting the violation;
      v. Whether a genuine code interpretation issue exists; and
      vi. Any other relevant factors.
   c. The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations the Hearing Examiner shall consider the factors set forth in Section 1.18.050(D)(3)(b).
4. Notice of Decision. The hearing examiner shall mail a copy of the decision to the appellant and to the applicable department director within ten working days of the hearing.

E. Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the violation appeared and assessing the appropriate monetary penalty. The city will carry out the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

F. Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with Superior Court within twenty calendar days from the date the hearing examiner's decision was mailed to

the person to whom the notice of civil violation was directed, or is thereafter barred.

(Ord. 4212 § 2 (part), 1991.)

Section 2. This ordinance shall take effect and be in force thirty (30) days after final passage by the City Council.

PASSED by the City Council this 6th day of March, 1995, and signed in authentication of its passage this 6th day of March, 1995.

(SEAL)

Donald S. Davidson, DDS, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Richard Gidley, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published March 10, 1995