

Court of Appeals No. 40134-7-II

**IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

BARBARA K. FORD,

Appellant,

v.

MASON COUNTY,

Respondent.

APPELLANT'S BRIEF

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II. INTRODUCTION

Appellant Barbara K. Ford (hereinafter “Ford”) appeals the decision of the Hearing Examiner dated October 23, 2008, and the decision affirming the decision of the Hearing Examiner filed in Thurston County Superior Court filed on December 10, 2009.

Ford has been charged by Mason County with three civil infractions. Instead of proceeding through the courts of limited jurisdiction, Mason County brought Ford before its hearing examiner, subjecting her to thousands of dollars of fines and enforcement costs, denying her fundamental constitutional protections, and placing a lien on her real property as a result. Given this Court’s recent ruling in *Post v. City of Tacoma, infra*, this Court should hold that Mason County’s actions are subject to RCW 7.80 et. seq., and as provided herein, are invalid.

III. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED

Appellant Barbara K. Ford hereby sets forth the following assignment of error:

1. The hearing examiner erred in finding that Ford committed three civil violations and in assessing fines totaling

\$3,000.00, and in awarding Mason County attorneys fees and costs exceeding \$2,000.00. CP 23-32.

2. The trial court erred in affirming the hearing examiner's decision and dismissing Ford's appeal, upholding Mason County's lien of \$5,049.96 against Ford's real property, which lien was attributable to civil infractions. CP 116-131.

Appellant Barbara K. Ford hereby sets forth the following issues presented:

- A. Is the Notice of Violation issued pursuant to Mason County Code, which code provides for the assessment and collection of civil fines, subject to RCW 7.80, governing civil infractions, as opposed to the Land Use Petition Act? (Assignment of Error 1.)
- B. Does the Mason County Code, which permits civil fines of up to \$1,000.00 per violation, per day, and the imposition of enforcement costs, conflict with RCW 7.80.120, which permits a maximum penalty of \$250.00 for a civil violation? (Assignment of Error 2.)
- C. Is the issuance of a civil infraction to Ford invalid when the requirements of RCW 7.80.050 were not satisfied by

Mason County, because i) the alleged infraction was not committed in the officer's presence, and ii) the officer failed to file a statement of reasonable cause with a court? (Assignment of Error 3.)

- D. Are Mason County's administrative searches of Ford's property subject to constitutional warrant requirements? (Assignment of Error 4.)
- E. Should unlawfully obtained evidence, obtained by Mason County pursuant to administrative searches, be suppressed as fruit of the poisonous tree, because constitutional protections apply equally to civil infractions? (Assignment of Error 5.)
- F. Did the hearing examiner err in concluding that Ford had the burden to overcome a presumption that she did not commit civil violations? (Assignment of Error 6.)
- G. Did the hearing examiner err by concluding that this matter does not involve a civil infraction, requiring notices to be validly issued, enforcement in courts of limited jurisdiction, with fines subject to maximum levels as established by the Washington State legislature? (Assignment of Error 7.)

H. Did the hearing examiner err by concluding that Mason County satisfied its burden to show that Ford committed three civil violations, based upon substantial evidence in the record? (Assignment of Error 8.)

IV. STATEMENT OF THE CASE

Barbara Ford owns a small lakeside cabin in Mason County. AR 33.¹ This action arises out of Mason County's assessment of civil penalties against Ford because of allegations that her cabin was unsafe due to contamination. AR 84. Mason County has never tested the cabin to demonstrate it is, in fact, contaminated. AR 84-85. Nevertheless, Mason County filed a lien against Ford's property, and its hearing examiner imposed fines exceeding \$5,000.00 upon Ford for the civil infractions.

Mason County Code

Mason County regulates contaminated properties through a Sanitary Code (MCC). MCC 6.73.100 provides that the violation of the Sanitary Code "is designated as a Class 1 civil infraction pursuant to Chapter RCW 7.80 RCW."

However, MCC 6.73.090 also provides that violations of the Sanitary Code "shall be enforced pursuant to the penalties prescribed in

¹ AR refers to the original Administrative Record.

Chapter 15.13 Mason County Development Code.” MCC 15.13.050 provides for a significantly greater fine than that authorized by RCW 7.80: “The civil fine assessed shall not exceed one thousand dollars for each violation... Each separate day, event, action or occurrence shall constitute a separate violation.”

MCC 15.13.045 requires a person who receives a notice of civil violation to appear before a hearings examiner. MCC 15.11.040 provides that the only avenue for appeal of a hearing examiner’s decision is by filing an appeal in superior court within 21 days of the decision.

Initial Posting of the Property

Mason County first seized Ford’s property as “contaminated” and “unfit for use” on June 5, 2001. AR 84. At that time, Mason County was acting on the suspicions of the Mason County Sheriff’s Department who briefly observed the property as a result of a 911 call made on June 2, 2001. AR 15-18. A prior tenant’s boyfriend called the police because Ford was in the process of evicting that tenant’s abandoned belongings. AR 15-17.

Notably, during their brief visit, the Sheriff’s Deputies did not observe anyone manufacturing or using methamphetamine, or any other illegal drugs for that matter. AR 17-18. Instead, the Deputies observed a strong acid odor inside the kitchen and upstairs bedroom of the small

cabin. AR 17-18. The Deputies also observed burn marks on the kitchen floor, “glassware with drug residue located in the refrigerator”, several propane tanks, and unspecified waste chemicals. AR 18. Although the Deputies concluded that it was **likely** that the residence had been chemically contaminated, based upon their experience in identifying the components of a methamphetamine lab, and based upon their discussions with Ford and her friend, there was no conclusive evidence at that time to justify a seizure of the property. Instead, the Deputies had reasonable grounds to believe that the property may have been contaminated and the Deputies properly notified the State Department of Ecology so that it could perform a complete inspection of the Property. AR 18.

In this case, there were never any allegations that Ford had *knowledge* that her tenants were engaging in any illegal activities, much less the manufacturing of a controlled substance, to authorize a seizure. AR 19-21. Nevertheless, the seizure was documented to have occurred on June 2, 2001. AR 2. Contrary to the express language contained in its Order, Mason County never executed any warrant. AR 11, 119.²

The very next day, June 3, 2001, the State Department of Ecology responded by removing evidence from the Property. AR 18, 23, 119. The

² The Transcript of Proceedings of September 23, 2008 is referenced as AR 103-134.

evidence consisted of propane tanks, an HCL generator, iodine crystals, solvents, and a container in a freezer. AR 23. The State Department of Ecology immediately disposed of the evidence; it was not preserved. AR 119-120.

On June 4 or 5, 2001, Mason County Public Health designated the property as “Unfit for Use” and posted a sign on the property, pursuant to the process set forth in RCW 64.44.020, which provides:

The local health officer shall post a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination.

AR 2-3; 60; 85. This triggered Mason County’s obligation to have the property inspected by no later than June 18, 2001. RCW 64.44.020.

Mason County then publicly filed and served a document upon Ford on June 6, 2001, titled, “Unfit for Use Order and Letter.” AR 84-87. The contents of the document closely follow the requirements delineated in RCW 64.44.030 and WAC 246-205-560.

Yet, Mason County omitted the requisite conditions that a) an **inspection** must have occurred, and b) the results must confirm the property had been **contaminated**. No further inspection of the posted property was ever scheduled, or occurred, despite the statutory mandate that an inspection occur within 14 days. AR 3, 60. The “Unfit for Use

Order and Letter” stated, “The residence listed above is designated unfit for use by the MCDSH on June 5, 2001. Per: WAC 246-205-540.” AR 81.

Mason County shifted their responsibility onto Ford and required her to have a “written work plan to reduce contamination of the property prepared by the contractor and approved by MCDHS.” AR 82. Ford only had ten days to request a hearing pursuant to WAC 246-205-560. AR 83. According to the Order, Ford would have the burden to show the property had been decontaminated in only 20-30 days. AR 83. Ford was unable to satisfy this short deadline and did not request a hearing.

Several years passed without any further activity. AR 3.

Initial Civil Infraction Issued in Mason County District Court

On or about April 5, 2007 (six years after the Unfit for Use Order), Mason County issued Ford a civil infraction in Mason County District Court, for “Notice Tampering” with a \$250.00 fine. AR 4, 35. Ford did not seek legal counsel and elected to pay a reduced fine of \$150.00, as ordered by the Judge. AR 35.

Notice of Civil Violation Subject to Appeal

On or about July 15, 2008, (seven years after the Unfit for Use Order) Mason County issued a “Notice of Civil Violation” that served as a notice of hearing in accordance with section 15.13.040 of the Mason

County Development Code. AR 88. Defendant Christine Clark (hereinafter “Clark”), Mason County Environmental Health Specialist III, executed the notice of civil violation on July 15, 2008. AR 90. The basis for the issuance of the notice was Clark’s observations inside and outside the cabin on July 2, 2008. AR 116-117. Again, Clark conducted her inspections without first obtaining a search warrant. AR 119. Three charges were asserted against Ford:

- I. Ford unlawfully entered, or authorized someone else to unlawfully enter the cabin on or about July 2, 2008.
- II. Ford removed a posted notice from the cabin.
- III. Ford violated or refused to comply with Mason County’s June 5, 2001 “Unfit for Use Order & Letter”

AR 88-89.

Notably, Clark admitted that Ms. Ford was not physically present at the cabin on July 2, 2008 when Clark made her observations. AR 116. Notably, Clark is unable to provide a precise date when any of the alleged acts or omissions occurred. AR 88-89. Notably, Clark is unable to identify any individual that is alleged to have taken unlawful action under the “authority” of Ford. AR 116. Notably, Clark failed either to witness the alleged violation or to file a complaint in Court, as required by RCW 7.80.050, when the enforcement officer does not personally observe the violation. AR 117-118.

Procedural History

Regardless, the hearing examiner disregarded Ford's constitutional rights, disregarded the obligations imposed on Mason County, disregarded the illegality of the evidence presented, disregarded the laws of the State of Washington, and found that all three counts were committed, assessing fines and costs that were unsupported in law or in fact. AR 23-32.

Although RCW 36.70C.020(2)(c) does not permit enforcement of *civil infractions* under the Land Use Petition Act ("LUPA"), the hearing examiner's decision required an appeal be filed "within twenty-one calendar days, as required by the Land Use Petition Act, Chapter 36.70C RCW" ("LUPA"). AR 31.

Mason County presented the decision to Ford on November 10, 2008. See Appendix A. Ford timely appealed the administrative decision. AR 4. The superior court upheld the hearing examiner's decision. AR 116-122. Ford timely appealed the trial court decision to this Court of Appeals. AR 132-141.

V. ARGUMENT

A. STANDARD OF REVIEW OF RECORD OF ADMINISTRATIVE PROCEEDING

This Court of Appeals reviews the administrative record without regard to the decision issued by the superior court. RCW 34.05.558.

The Administrative Procedure Act, chapter 34.05 RCW, restricts our review to the administrative record before the board. We sit in the same position as the superior court when reviewing this board decision. The findings of fact and conclusions of law entered by the superior court are superfluous because we review the same record.

Willowbrook Farms LLP v. Dept. of Ecology, 116 Wn. App. 392, 396-97, 66 P.3d 664 (2003) (internal citations omitted).

Issues of law and legal conclusions are reviewed *de novo*. *Id.*

Factual issues are judged under the “substantial evidence” test required by RCW 36.70C.130(1)(c). Substantial evidence is “evidence which ‘would convince an unprejudiced thinking mind of the truth of the declared premise.’” *Freeburg v. Seattle*, 71 Wn. App. 367, 371, 859 P.2d 610 (1993) (quoting *Nord v. Shoreline Sav. Ass’n*, 116 Wn.2d 477, 486, 805 P.2d 800 (1991)).

B. LUPA DOES NOT APPLY TO A COUNTY’S DETERMINATION OF VIOLATIONS AND ASSESSMENTS OF PENALTIES

The LUPA statute, RCW 36.70C.020, defines a “Land use decision” as follows:

"Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

...

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property.

However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

(emphasis added). In this case, Mason County initially filed a civil infraction against Ford in 2007, in district court. AR 4, 35. Mason County alleged Ford removed the Notice of Contamination from the outside of her cabin and cited her for “Notice Tampering.” AR 4, 35.

In 2008, Mason County pursued another allegation that Ford removed the posting of a Notice of Contamination from the outside of her cabin. AR 20. On this second occasion, however, Mason County elected to pursue enforcement before its hearing examiner, subject to significantly greater fines (up to \$1,000 for each violation, with each day constituting an additional violation.) AR 20. The hearing examiner’s decision specifically refers to the obligation to file an appeal within 21 days pursuant to LUPA. AR 31.

However, Mason County’s prosecution of Ford using a procedure outside its court of limited jurisdiction, citing LUPA as its basis, is erroneous and in conflict with the express language of Washington statutes. This Court recently held, in *Post v. City of Tacoma*, that a municipality’s ordinance, which ordinance “provides for the issuance of notice of violation letters and the assessment and collection of civil penalties” are actually civil infractions, in “both name and substance”.

Post v. City of Tacoma, 167 Wn.2d 300, 311, 217 P.3d 1179 (2009). Just as in *Post*, this Court should hold that Mason County's ordinance (MCC 15.13) providing for the notice of violation letters, and the assessment and collection of civil fines, are civil infractions that are subject to RCW 7.80.

In the 2007 citation, Mason County proceeded with the issuance of a civil infraction in district court, subjecting her to a maximum fine of \$250.00. AR 4, 35. In 2008, Mason County proceeded with the issuance of a Notice of Violation to bring her before its hearing examiner, subjecting her to a maximum fine of thousands of dollars per day, and to payment of Mason County's attorneys' fees and costs. AR 20-23.

Although the underlying allegations were identical, the penalty varied dramatically. As this Court recognized:

Such interpretation would allow Tacoma to impose unlimited punishment on civil defendants, a result that the legislature did not authorize. Absent its own complete system, Tacoma is required by chapter 7.80 RCW to follow the legislature's default system and enforce its infractions in courts of limited jurisdiction. LUPA does not apply when a local jurisdiction is required by law to enforce the ordinance at issue in a court of limited jurisdiction. Former RCW 36.70C.020(1)(c). Moreover, even when a claim pertains to a "land use decision," if the remedy sought is for money damages or compensation, as is the case here, that claim is "not subject to the procedures and standards, including deadlines" provided in chapter 36.70C RCW for review. RCW 36.70C.030(1)(c).

By proceeding outside the court system, Mason County has enabled itself to obtain a lien on Ford's property, exceeding \$5,000, slandering title, and has positioned itself to foreclose Ford's real property. AR 79-82. If Mason County had proceeded in accordance with RCW 7.80, it would not be entitled to impose such drastic remedies. The legislature did not authorize a municipality to exercise discretion or unlimited punishment on Washington citizens. Consequently, Ford should not have been required to appear before Mason County's hearing examiner, Ford should not have been subject to a fine in excess of \$250.00, nor should Ford have been required to file a LUPA appeal in order to preserve her right to appeal.

Because Mason County bypassed the court system, it was permitted to repeatedly circumvent and disregard Ford's constitutional rights. The hearing examiner held, "The authority of the Examiner is set forth in MCC 15.13.045, and it does not include authority to enforce, interpret, or rule on constitutional challenges." AR 26-27. Despite Ford's objection to repeated violations of her constitutional rights, those rights were set aside, and were not even considered by the hearing examiner.

C. EXCESSIVE FINES AND COSTS IMPOSED

RCW 7.80.120 provides that the maximum penalty for a class 1 civil infraction is \$250.00; class 2 civil infractions, \$125.00; class 3 civil infractions, \$50.00; and class 4 civil infractions, \$25.00. In this case, the

hearing examiner assessed a \$1,000.00 penalty against Ford for each violation. AR 29.

Article XI, §11 requires that county police power regulations “not ... conflict with general laws.” The hearing examiner provided MCC 15.13.050 as the basis for assessing a fine of \$1,000.00. However, the Mason County Code conflicts with the general laws, specifically RCW 7.80.120. An ordinance can “conflict with general laws” in two ways. First, it can intrude into a field that the legislature intends to be occupied exclusively by the state. Second, it can conflict directly with a state statute. *E.g., City of Seattle v. Shin*, 50 Wn. App. 218, 220, 748 P.2d 643, review denied, 110 Wn.2d 1025 (1988). In this case, there is a direct conflict with a state statute that cannot be harmonized with Mason County’s local ordinance. “A local regulation that conflicts with state law fails in its entirety.” *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn.2d 428, 434, 90 P.3d 37 (2004). Based on the foregoing, Ford has sustained her burden of showing that the assessment of \$1,000 for each violation is invalid, is an erroneous interpretation of law, and thus establishes that she is entitled to relief.

The hearing examiner further erred in awarding “costs” against Ford. The hearing examiner imposed a fine of \$350.00 “for the cost of the

Hearing Examiner's involvement." AR 29. The hearing examiner also imposed "enforcement costs to be determined by the County." AR 30. As a result, the enforcement costs of \$1615.96 were automatically imposed without providing Ford the opportunity to review and object to the enforcement costs. AR 53. In awarding costs exceeding \$2000.00, the hearing examiner relied upon MCC 15.13.055, which provides that a person "who fails to comply with a notice of civil violation shall be subject to enforcement, hearings examiner, and abatement costs." AR 29.

In contrast, RCW 7.80.140 provides: "Each party to a civil infraction case is responsible for costs incurred by that party, but the court may assess witness fees against a non-prevailing respondent. Attorney fees may be awarded to either party in a civil infraction case." RCW 7.80.140 does not provide that a Washington citizen may be required to pay for time spent by municipal employees in their pursuit of a civil infraction. Ford has sustained her burden of showing that the assessment of "costs" is an erroneous interpretation of law, and thus establishes that she is entitled to relief.

D. INVALID ISSUANCE OF CIVIL INFRACTION

The only basis for issuance of a civil infraction is for the issuing officer to have personally witnessed the offense, or to have filed a written

statement with the issuing court. RCW 7.80.050. In this case, the officer did neither before issuing the Notice of Civil Infraction. AR 117-118. No written statement of reasonable cause was ever filed with any court. RCW 7.80.050(3). The notice issued on July 2, 2008 was invalidly issued; the officer failed to comply with RCW 7.80.050. *See State v. Duncan*, 146 Wn.2d 166, 178-79, 43 P.3d 513 (2002). This was a blatant violation of Ford's constitutional rights pursuant to Article I, § 3 and Article I, § 7 of the Washington State Constitution.

The hearing examiner erred in concluding that procedural and substantive law governing “civil violations” differs from that governing “civil infractions” and in concluding that compliance with RCW 7.80 is irrelevant and “do[es] not apply to prosecution of civil violations.” AR 26. Mason County's own brief cites RCW 7.80 as applicable law. AR 57. This was an erroneous interpretation of law for which Ford has sustained her burden of establishing she is entitled to relief.

E. UNCONSTITUTIONAL SEARCHES AND SEIZURES

1. *Administrative Searches are Subject to Constitutional Warrant Requirements*

Any entry on to and search of the Property without a warrant and which entry is not subject to the “closely guarded exceptions” to the warrant requirement, violates both the Washington and U.S. Constitution.

See State v. Ladson, 138 Wn.2d 343, 348, 979 P.2d 833, 838 (1999). The protections of the U.S. Constitution Fourth Amendment and article I, section 7 of the Washington Constitution extend to administrative and regulatory searches. *Camara v. Municipal Court*, 387 U.S. 523, 523-32, 87 S. Ct. 1727, 1727-33, 18 L. Ed. 2d 930, 930-38 (1967).

Searches conducted for administrative purposes, whether or not criminal prosecution is anticipated, are governed by the Fourth Amendment. *See, e.g., Michigan v. Clifford*, 464 U.S. 287, 291-93, 104 S. Ct. 641, 646-47, 78 L. Ed. 2d 477, 483-84 (1984) (Fourth Amendment applies to inspection of home that was partially damaged by fire, even when purpose of inspection is to determine fire's origin and no criminal conduct is suspected). Probable cause must exist for warrants issued for health and safety inspections. *Seattle v. McCready*, 123 Wn.2d 260, 280, 868 P.2d 134, 144-45 (1994)(McCready I). Therefore, any searches must either be conducted pursuant to a warrant or fall within one of the narrowly drawn exceptions to the warrant requirement. *Id.*; *Thurston County Rental Owners Ass'n v. Thurston County*, 85 Wn. App. 171, 183, 931 P.2d 208, 215 (1997), review denied, 132 Wn.2d 1010 (1997).

The fact that a search is part of an administrative or regulatory program or has a purpose other than criminal prosecution does not affect an individual's reasonable expectation of privacy in the premises being

searched. *See Camara*, at 528-29 (search of home for housing code violations); *See v. City of Seattle*, 387 U.S. 541, 545-46, 87 S. Ct. 1737, 1740-41, 18 L. Ed. 2d 943, 947-48 (1967) (search of commercial premises for fire code violations). Although a few pervasively regulated industries are not permitted reasonable expectations of privacy, the general rule is that the Fourth Amendment protections apply to civil as well as criminal searches and to commercial as well as residential premises. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313, 98 S. Ct. 1816, 1820-21, 56 L. Ed. 2d 305, 311-12 (1978) (except for particular industries, such as those involving liquor and firearms where no reasonable expectation of privacy exists, the Fourth Amendment protects against unreasonable administrative searches of commercial premises); *see also Michigan v. Tyler*, 436 U.S. 499, 506, 98 S. Ct. 1942, 1948, 56 L. Ed. 2d 486, 496 (1978).

Article XI, § 11 of the Washington State Constitution provides that “[a]ny ... city ... may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Consistent with constitutional protections, Mason County Code 15.13.010(b) and MCC 6.73.050 both mandate that an officer shall first locate the owner of a building to request entry, and if denied, then that

officer shall recourse to lawful remedies to secure entry. However, no search warrant was obtained.

2. *Not One Search Warrant was Obtained by Mason County Between 2001-2008 Despite Repeated Inspections*

In the present case, Mason County failed to obtain any warrant at all. Mason County not only initially and subsequently posted the property without having obtained a warrant, but Mason County also produced staff who testified about their personal observations of the Property and submitted photographic and other evidence against Ford. AR 5, 8-10, 36-46. The cabin is not viewable from any public area. AR 124-125. When confronted about not having presented a warrant, the code enforcement officer claimed she did not need a warrant “because the property is a posted drug lab and we have a responsibility to continue to keep the property posted.” AR 125. Despite language to the contrary, no search warrant was sought or obtained prior to the 2001 inspection. AR 119. Mason County never obtained one warrant to search the Property. AR 119.

3. *Hearing Examiner Erred in Disregarding Constitutional Rights and Admitting Evidence Seized via Illegal Searches*

The hearing examiner erred in disregarding constitutional violations and in impermissibly relying on Mason County’s warrantless

evidence when rendering his Decision. AR 26-27. Ford objected to testimony and evidence presented by the code enforcement officer on the basis that it violated Article I, section 7 of the Washington State Constitution. AR 113. Although the hearing examiner noted the objection, the evidence was admitted, considered, and formed the basis of his Decision. AR 26-27. The hearing examiner erred in failing to suppress the evidence as the “fruit of the poisonous tree.” *State v. Ladson* at 359. (“When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed”).

The hearing examiner also erred in concluding that the Mason County Code did not include authority to enforce, interpret, or rule on constitutional challenges, based upon the *absence* of language granting such authority. AR 27. *Absence* does not equate to either granting or withholding authority. The hearing examiner erred in disregarding Ford’s constitutional rights by concluding that Washington common law provides that hearing examiners do not have *authority* to rule on constitutional challenges. AR 26-27. Such a proposition violates the highest law of the land. “As a general principle, a defendant has standing to assert a constitutional challenge to an element of a charged offense.” *City of Sumner v. Walsh*, 148 Wn.2d 490, 496, 61 P.3d 1111 (2003) *citing State v.*

Goucher, 124 Wn.2d 778, 881 P.2d 210 (1994). In *Walsh*, the Washington Supreme Court could find no legal distinction, from a perspective of whether constitutional protections apply, between charges of a criminal misdemeanor and a civil infraction. *Walsh* at 496. There cannot be such a legal distinction.

4. *Hearing Examiner Erred in Disregarding Requirement of Lawful Entry, Pursuant to Mason County Code*

The hearing examiner erred in citing, but then disregarding, MCC 6.73.050, which requires lawful entry when consent is refused. AR 27. In the absence of consent, a warrant, or exigent circumstances, entry by Mason County onto the Property was not lawful. Here, no consent was ever requested, no warrant was obtained and there were no exigent circumstances to provide Mason County with lawful entry onto Ford's property.

Additionally, the hearing examiner erred when he concluded that entry was lawful because inspections were not "purposefully conducted secret[ly]" or because Ford "never *denied* health officers permission to enter..." AR 27. Neither standard is sustainable pursuant to the express provisions of the Mason County Code, which the hearing examiner cited and relied upon (or state and federal constitutions).

The hearing examiner erred in interpreting Mason County Code 6.04.040 as providing broad authority to the enforcement officer to permit continued warrantless seizures. Mason County Code 6.04.040 provides:

It shall be the duty of the Mason County District Health Officer to enforce the provisions of this code, and, in the performance of this duty is hereby authorized to enter, at any reasonable hour, any premises as may be necessary in the enforcement of this code.

The interpretation of law that Mason County Code 6.04.040 authorizes the enforcement officer to enter private property without consent or a lawfully issued warrant, directly conflicts with other provisions of the Mason County Code, such as MCC 6.73.050, and more significantly, supersedes the protections afforded citizens by the U.S. and Washington State Constitutions.

The hearing examiner erred in interpreting the law that enforcement officers may avoid obtaining consent or having to obtain a search warrant to authorize entry onto private property by simply entering property with a mere “announcement of the purpose of visit.” AR 27. Notably, in this circumstance, there would not be anyone to hear that “announcement” because of the prohibition against occupying the cabin.

This was an erroneous interpretation of law for which the Ford has sustained her burden of establishing she is entitled to relief.

5. *The Decision Is Based Upon Constitutional Violations of the Property Owner and Should Be Reversed*

Because Mason County never had authority to enter the Property (after the initial 911 call on June 2, 2001), all of its photographic evidence, testimony based upon observations, and even its postings of the property violated Ford's constitutional rights. Consequently, Ford has satisfied her burden to show that her constitutional rights have been repeatedly violated and that all of the tainted evidence should be suppressed.

F. WRONGFUL SHIFTING OF BURDEN OF PROOF ONTO FORD

RCW 7.80.100(3) provides, "The burden of proof is upon the state to establish the commission of the civil infraction by a preponderance of the evidence." The hearing examiner erred in concluding that Ford must "overcome the presumption that she, as the owner of the property" did not commit violations. AR 28. Ford cannot prove that someone entered her cabin *without* her knowledge and permission. Ford cannot prove that a trespasser removed a posting on her unoccupied cabin, nor that a storm caused the paper to blow away.

Even Mason County's own code does not place the burden on a defendant: "The county shall have the burden of proof to demonstrate by a preponderance of evidence that a violation has occurred ..." MCC

15.13.045. The hearing examiner erred in finding that “the mere fact that Ms. Clark did not witness [Ford] removing the notice is insufficient to overcome the presumption.” AR 25. No rebuttable presumption *against* the accused is stated in the Mason County Code; the opposite is true. Placing the burden on Ford is an erroneous interpretation of law for which the Ford has sustained her burden of establishing she is entitled to relief.

G. LACK OF EVIDENCE TO CONCLUDE
CIVIL INFRACTION COMMITTED

1. *Count I*

The hearing examiner erred in concluding that Count I (entering or authorizing entry) was committed, based upon a complete lack of evidence that Ford entered (or authorized another person to enter) the property on July 2, 2008. AR 27-28. Mason County testified that its representatives were the only individuals present at the property on July 2, 2008, that Ford was never observed as having been present on July 2, 2008, but that the citation was issued due to her status as the property owner. AR 116-117. Mason County merely presumed that Ford had entered the property sometime after Mason County’s previous inspection date, but had no evidence of this assertion. AR 116. Ford has sustained her burden of showing the record is devoid of evidence that she entered, or authorized others to enter, her property and thus establishes that she is entitled to

relief.

2. Count II

The hearing examiner erred in concluding that Count II (removing a posted notice) was committed, based upon a complete lack of evidence that Ford removed or tampered with a posted notice, but that the citation was issued due to her status as the property owner. AR 116-117. Wind, weather or trespassers are equally probable causes for loss of the paper notice during an 11-month period of time. Ford has sustained her burden of showing the record is devoid of evidence that she removed any posting or notice, and thus establishes that she is entitled to relief, pursuant to RCW 36.70C.130(c).

3. Count III

The hearing examiner erred in concluding that Count III (failure to comply with 2001 order) was committed, based upon a complete lack of evidence that Ford “used and began clearing the cabin” on July 2, 2008. AR 29. There were no observations of Ford’s presence on the property on July 2, 2008. AR 116-117.

The interior of the cabin was torn out and cleaned before the 2001 posting. AR 62. However, the hearing examiner found that the interior of the property as photographed by Mason County on July 2, 2008, differed

from its prior appearance. AR 25. However, no photographs of the *interior* of the property were presented or admitted into evidence, and no testimony was offered about the condition of the *interior* of the property to suggest that it differed from its original state. All photographs were obtained unlawfully without a warrant.

Additionally, the charges in count I and count III are identical. “Courts may not, however, enter multiple convictions for the same offense without offending double jeopardy.” *State v. Freeman*, 153 Wn.2d 765, 770, 108 P.3d 753 (2005).

VI. FORD REQUESTS ATTORNEYS FEES ON APPEAL

Pursuant to RAP 18.1, RCW 7.80.140, and RCW 4.84.350, and upon equitable principles, Ford requests attorneys’ fees on appeal. RAP 18.1 provides: “If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule...” RCW 7.80.140 provides, “Attorney fees may be awarded to either party in a civil infraction case.” RCW 4.84.350 provides, “...a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys’ fees...”

Ford should prevail, and will comply with RAP 18.1. This Court should award fees on appeal to Appellant Barbara Ford.

VI. CONCLUSION

Barbara Ford's constitutional rights have been trampled on for over nine years. None of the evidence presented against Ford was lawfully obtained. Mason County, and the hearing examiner, both shifted responsibility to Ford to show that she has done *nothing* wrong – in direct opposition to the fundamental premise of “innocent until proven guilty.”

Mason County cannot seize property because it *suspects* contamination; it must proceed in accordance with Washington law and the statutory requirements that are designed to protect Washington citizens from overzealous governmental action. Mason County cannot unilaterally decide that it can repeatedly conduct administrative searches because it exercised authority to post real property as potentially being contaminated.

Mason County cannot exercise its discretion to proceed with a civil infraction in district court on one occasion, but to proceed with a hearing examiner proceeding on another occasion, which enables it to place a substantial lien on the property.

Today, Ford has the burden to show that she is entitled to relief from the hearing examiner's decision. Although LUPA does not properly

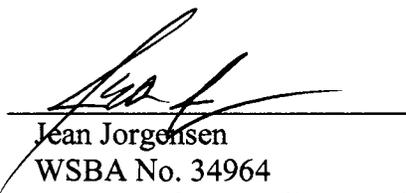
apply, Ford has sustained her burden of showing that she is entitled to relief because the land use decision is an erroneous interpretation of law, not supported by substantial evidence, and because the land use decision violates Ford's constitutional rights.

Ford has satisfied her burden under any standard, the hearing examiner's decision should be reversed, the lien should be vacation, and Ford should be awarded her attorneys fees.

Dated this 29th day of April, 2010.

Respectfully submitted,

SINGLETON & JORGENSEN, INC., PS

By 
Jean Jorgensen
WSBA No. 34964
Attorneys for Appellant Ford

DECLARATION OF SERVICE

I declare that on this date I have caused to be emailed and delivered via messenger service, one true copy of APPELLANT'S BRIEF, to the following counsel:

John E. Justice
Law, Lyman Daniel Kamerrer & Bogdanovich, P.S.
PO Box 11880
Olympia, WA 98508-1880
jjjustice@lldkb.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 29TH day of April, 2010.



Jamie Brazier, Legal Assistant

FILED
COURT OF APPEALS
10 APR 30 PM 1:54
STATE OF WASHINGTON
BY 
DEPUTY

Appendix A

Meredith Klein

From: Christine Clark [ChrissyC@co.mason.wa.us]
Sent: Monday, November 10, 2008 5:25 PM
To: mklein@suesampson.net
Subject: HEX2008-00031, Barbara Ford

Attachments: Decision.pdf; Itemized Time.doc; Nahwatzel Beach, 311 Bill.doc



Decision.pdf (1 MB) Itemized Time.doc (20 KB) Nahwatzel Beach, 311 Bill.doc ...

Ms. Klein,

Can you please make sure the appropriate person gets the decision for this case. I didn't know if it should be sent to Ms. Jorgensen or Ms. Sampson. I have already mailed a copy to the owner, Barbara Ford. Thank you for the help.

Christine Clark, RS
Environmental Health Specialist
Mason County Public Health
(360) 427-9670 xt.546

"Always working for a safer and healthier Mason County"

Information from ESET NOD32 Antivirus, version of virus signature database 3607
(20081112)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

Appendix B

**Title 6
SANITARY CODE**

Chapters:

- 6.04 Definitions and General Provisions
 - 6.08 Food Service Regulations
 - 6.32 Preliminary Platting Standards
 - 6.44 Weed Control Districts
 - 6.48 Public Docks
 - 6.52 Sludge Utilization and Disposal
 - 6.56 Hazard Communication Program
 - 6.64 Group B Water System Regulations
 - 6.68 Water Adequacy Regulations
- 6.72 Solid Waste and Biosolids Handling and Facilities Regulations
 - 6.73 Contaminated Properties
 - 6.76 On-Site Sewage Regulations

**Chapter 6.04
DEFINITIONS AND GENERAL PROVISIONS**

Sections:

- 6.04.010 Title.
- 6.04.020 Definitions.
- 6.04.030 Sanitary code– Jurisdiction and filing.
- 6.04.040 Enforcement.
- 6.04.050 Penalties.
- 6.04.060 Hearings for proposed articles.
- 6.04.070 Interference with notices.
- 6.04.080 Regulations supplemental– Supersede prior rules.

6.04.090 Inspections.

6.04.100 Permits.

6.04.110 Fees.

6.04.120 Right of appeal and hearing by petitioner.

6.04.130 Notices, hearing and orders.

6.04.010 Title.

The rules and regulations contained in this title shall be known as the Sanitary Code of the Mason County District Board of Health.

(Ord. 963 (part), 1979; Art. I § 1, of Res. dated July, 1970 and amended November 5, 1970).

6.04.020 Definitions.

(a) "Board of health" means the Mason County Board of Health pursuant to the provisions of RCW Section 70.46.020 (Districts of two or more Counties– Health Board).

(b) "Health department," "department of health" or "department" means the Mason County health department and includes all the territory embraced within Mason County and all cities and towns therein, as defined in RCW Section 70.46.010 (Definitions).

(c) "Health officer" means the district health officer of the Mason County health department as defined in RCW Section 70.46.070 (District Health Officer, etc.) or his duly authorized representative.

(d) "Person" means any individual, firm, corporation, partnership or association and the agents, employees, servants and legal successors thereof or agency of the federal government which is subject to the jurisdiction of the state.

(e) "Sanitary code" or "code" means and comprises the rules and regulations now formulated, promulgated, adopted and subsequently amended by the Mason County District Board of Health pursuant to the provisions of RCW Section 70.46.060 (District Health Board– Duties and Powers).

(Ord. 963 (part), 1979; Art. I § 2 of Res. dated July, 1970 and amended November 5, 1970).

6.04.030 Sanitary code– Jurisdiction and filing.

(a) Jurisdiction. The provisions of the code shall be in force within the jurisdiction of the Mason County District Board of Health as defined in RCW Section 70.46.020 (Districts of two or more counties– Health Board).

(b) Filing. At least one copy with accompanying chapters of RCW and WAC as indicated in separate articles shall be on file in the office of each municipal clerk or auditor within the jurisdiction of the Mason County health department.

(Ord. 963 (part), 1979; Art. I § 3 of Res. dated July, 1970 and amended November 5, 1970).

6.04.040 Enforcement.

It shall be the duty of the Mason County District Health Officer to enforce the provisions of this code, and, in the performance of this duty is hereby authorized to enter, at any reasonable hour, any premises as may be necessary in the enforcement of this code.

(Ord. 963 (part), 1979; Art. I § 4 of Res. dated July, 1970 and amended November 5, 1970).

6.04.050 Penalties.

Any person who violates or refuses or fails to comply with any of the provisions of this code is guilty and subject to punishment pursuant to the provisions of RCW Section 70.06.070 (Violations– Penalties) as follows: "Any person violating any of the provisions of this act or violating or refusing or neglecting to obey any of the rules and regulations of this code shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment."(Art. I § 5 of Res. dated July, 1970 and amended November 5, 1970).

6.04.060 Hearings for proposed articles.

Pursuant to the provisions of RCW Sections 70.20.020 (Notices of Regulations), 70.46.060 (District Health Board– Powers and Duties), the health officer shall advertise a hearing for the adoption of proposed articles in this code in a newspaper of general circulation in each of the two counties comprising the health department at least ten days prior to the date of a hearing for the adoption of articles. The advertisement of hearing shall include a summary of the articles proposed to be adopted. The health officer shall provide a sufficient number of copies of the proposed articles to meet the reasonable demands of persons interested therein, and the same shall be available for distribution at least ten days prior to a public hearing held for the adoption of articles. All hearings held under this code for the adoption of articles shall be open to the public and a record of the proceedings kept by the health officer. (Art. I § 6 of Res. dated July, 1970 and amended November 5, 1970).

6.04.070 Interference with notices.

No person shall remove, mutilate or conceal any notice or placard of the health department posted in or on any premises or public place except by permission of the health officer. (Art. I § 7 of Res. dated July, 1970 and amended November 5, 1970).

6.04.080 Regulations supplemental– Supersede prior rules.

The regulations of this code shall be supplemental to the rules and regulations of the State Board of Health, Public Health Law, Penal Law and other Washington State Laws relating to public health and shall, as to matters to which it refers, and within the jurisdiction heretofore prescribed, supersede all prior rules, regulations and standards of the board of health and all local ordinances heretofore or hereafter enacted inconsistent herewith. (Art. I § 8 of Res. dated July, 1970 and amended November 5, 1970).

6.04.090 Inspections.

(a) All premises covered by this code shall be subject to the inspection of the health officer and if any violation of the sanitary code exists on the premises, any permit granted by the health officer may be

suspended forthwith.

(b) No person shall refuse to allow the health officer to fully inspect any and all premises entered in the performance of his duty and no person shall molest or resist the health officer in the discharge of his duty. (Art. I § 9 of Res. dated July, 1970 and amended November 5, 1970).

6.04.100 Permits.

(a) All applications for a permit, certificate, inspection or written approval by the health officer as herein required shall be made upon forms prescribed and furnished by the health department and shall be signed by the applicant who shall be the person or authorized agent thereof responsible for conformance to the conditions of the permit, certificate, inspection or written approval by the health officer for which applied. Such application shall contain such data and information and be accompanied by such plans and specifications as may be required by the health officer.

(b) A permit or certificate issued to a particular person or for a designated place, purpose or vehicle shall not be valid for use by any other person or for any other place, purpose or vehicle than that designated therein. Such permit, certificate, inspection or written approval by the health officer may contain general and specific conditions and every person who shall have obtained a permit, certificate, inspection or written approval by the health officer as herein required shall conform to the conditions prescribed in the permit, certificate, inspection or written approval by the health officer and to the provisions of this code. Every such permit or certificate shall expire as stated on the permit or certificate and may be renewed, suspended for cause or revoked by the health officer after due notice and hearing in accordance with Sections 6.04.120 and 6.04.130.

(c) Notice in Writing by Health Officer of Violation. Whenever, upon inspection of any public establishment, sanitary facility or utility, the health officer finds that conditions or practices exist which are in violation of any provision of the sanitary code, the health officer shall give notice in writing in accordance with Section 6.04.130(a) to the person to whom the permit or certificate was issued that unless such conditions or practices are corrected within a reasonable period of time specified in the notice by the health officer, the permit or certificate shall be suspended. At the end of such period, the health officer shall make another inspection and, if such conditions or practices are corrected within a reasonable period of time specified in the notice by the health officer, the permit or certificate shall be suspended. At the end of such period, the health officer shall make another inspection and, if such conditions or practices have not been corrected, he shall suspend the permit or certificate and give notice in writing of such suspension to the person to whom the permit or certificate is issued. Upon receipt of notice of such suspension, such person shall cease operation except as provided in Section 6.04.130 (b). (Art. I § 10 of Res. dated July, 1970 and amended November 5, 1970).

6.04.110 Fees.

All fees collected under the provisions of this code contained herein shall be payable to the Mason County health department and credited to the public health pooling fund to aid in carrying out the provisions of the sanitary code pursuant to provisions of RCW Sections 70.46.050 and 70.46.060 (Local Health Board– Duties and Powers) (Local Health Officer– Power and Duties).

(Ord. 963 (part), 1979; Art. I § 11 of Res. dated July, 1970 and amended November, 1970).

6.04.120 Right of appeal and hearing by petitioner.

Any person whose permit or certificate has been denied, suspended or revoked by the health officer may request and shall be granted a hearing on the matter before the Mason County district board of health pursuant to Section 6.04.130.

(Ord. 963 (part), 1979; Art. I § 12 of Res. dated July, 1970 and amended November 5, 1970).

6.04.130 Notices, hearing and orders.

(a) Notice of Violation. Whenever the health officer determines that there are reasonable grounds to believe that there has been a violation of any provision of the sanitary code, the health officer shall give notice of such alleged violation to the person to whom the permit or certificate was issued, as hereinafter provided. Such notice shall:

- (1) Be in writing;
- (2) Include a statement of the reason for its issuance;
- (3) Allow a reasonable time for the performance of any act it requires;
- (4) Be served upon the owner or his agent as the case may require; provided, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or when he has been served with such notice by any method authorized or required by the laws of this state;
- (5) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of the sanitary code.

(b) Hearing. Any person affected by any notice which has been issued in connection with the enforcement of any provision of the sanitary code, may request and shall be granted a hearing on the matter before the health officer; provided, that such person shall file in the office of the health officer a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten days after the day the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and of the suspension except in the case of an order issued under subsection (e) of this section. Upon receipt of such petition, the health officer shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten days after the day on which the petition was filed; provided, that upon application of the petitioner the health officer may postpone the date of the hearing for a reasonable time beyond such ten-day period when in his judgment the petitioner has submitted good and sufficient reasons for such postponement.

(c) Order in Writing. After such hearing the health officer shall make findings as to compliance with the provisions of this chapter and shall issue an order in writing sustaining, modifying or withdrawing the notice which shall be served as provided in subsection (a) (4) of this section. Upon failure to comply with any order sustaining or modifying a notice, the permit or certificate affected by the order shall be revoked.

(d) Recording of Proceedings. The proceedings at such a hearing, including the findings and decision of the health officer, and together with a copy of every notice and order related thereto shall be entered as a matter of public record in the office of the health officer, but the transcript of the proceedings need not

be transcribed unless judicial review of the decision is sought as provided by this section. Any person aggrieved by the decision of the health officer may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this state.

(e) Emergency Requiring Immediate Action. Whenever the health officer finds that an emergency exists which requires immediate action to protect the public health, he may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as he may deem necessary to meet the emergency including the suspension of the permit or certificate. Notwithstanding any other provisions of this chapter, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the health officer shall be afforded a hearing as soon as possible. The provisions of subsections (c) and (d) of this section shall be applicable to such hearing and the order issued thereafter. (Art. I § 13 of Res. dated July, 1970 and amended November 5, 1970).

Chapter 6.73 CONTAMINATED PROPERTIES

Sections:

6.73.010 Authority.

6.73.020 Applicability.

6.73.030 Request for hearing.

6.73.040 Stay of corrective action.

6.73.050 Inspections and right of entry.

6.73.060 Securing property designated unfit for use.

6.73.070 Other powers reserved– Emergency orders.

6.73.080 Notice to utility purveyors.

6.73.090 Violations.

6.73.100 Penalties.

6.73.110 Severability clause.

6.73.010 Authority.

Mason County adopts this chapter pursuant to its police and sanitary powers, Chapter 70.05 RCW. Mason County adopts the following chapters by reference: Chapter 64.44 RCW and WAC 246-205. This chapter provides the procedures and policies for appeals and enforcement of the Mason County health officer's determinations that property is unfit for use due to contamination from illegal drug manufacturing or storage, and establishes requirements for contamination reduction, abatement and assessment of costs. For the purposes of this chapter, the term "health officer" means the Mason County health officer appointed in accordance with Chapter 70.05 RCW, or his or her designee.

This regulation is promulgated to protect the public health, to prevent land, air, and water pollution, and to conserve Mason County's natural, economic and energy resources by reducing the environmental impacts of contaminated properties.

(Ord. 107-05 Attach. B (part), 2005; Ord. 8-04 Attach. C (part), 2004).

6.73.020 Applicability.

This chapter shall apply to all property as defined in RCW 64.44.010 for which the health officer issues or has issued an order prohibiting use of property pursuant to RCW 64.44.030.

(Ord. 107-05 Attach. B (part), 2005; Ord. 8-04 Attach. C (part), 2004).

6.73.030 Request for hearing.

Any person, company, corporation, trust or other business entity required to be notified of an order issued by the health officer prohibiting use of property pursuant to RCW 64.44.030 and any person, company, corporation, trust or other business entity to whom the health officer issues an order regarding contaminated property may submit a written request for a hearing regarding the health officer's order. The request for a hearing must be made within ten days of serving the order. The request shall state the reason for the request and include a two hundred dollars hearing fee. Upon receipt by the health officer of the request and the required fees, the hearing shall be held by the Mason County hearing examiner. The hearing shall occur within not less than twenty days or more than thirty days.

(Ord. 107-05 Attach. B (part), 2005; Ord. 8-04 Attach. C (part), 2004).

6.73.040 Stay of corrective action.

The filing of a request for hearing pursuant to the section above shall operate as a stay from the requirement to perform corrective action ordered by the health officer while the hearing is pending, except there shall be no stay from the requirement for immediate compliance with an emergency order issued by the health officer or from the requirements of an unfit for use order prohibiting the use, occupancy, or the moving of any property.

(Ord. 107-05 Attach. B (part), 2005; Ord. 8-04 Attach. C (part), 2004).

6.73.050 Inspections and right of entry.

(a) The health officer, fire marshal and building official and/or their designees are authorized to make such inspections and take action as may be required to enforce the provisions of this chapter.

(b) When it is deemed necessary to make an inspection to enforce the provisions of this chapter, or when the health officer, building official or fire marshal or their designees have reasonable cause to believe that there exists within any property a condition which is contrary to or in violation of this chapter, the health officer, building official, fire marshal or their designee may enter the property at reasonable times to inspect or perform the duties authorized by this chapter; provided, that the official shall first make a reasonable effort to notify the owner or other person, company, corporation, trust or other business entity in control of the property and request entry. If entry is refused, the health officer, building official, fire marshal or their designees shall have recourse to the remedies provided by law to obtain entry.

(Ord. 107-05 Attach. B (part), 2005; Ord. 8-04 Attach. C (part), 2004).

6.73.060 Securing property designated unfit for use.

(a) The owner of record shall be responsible for securing the premises against unauthorized entry by closing, boarding up, fencing, barricading, locking or otherwise securing the property.

(b) In the event that the owner does not take necessary action to maintain the property against entry, the health officer, building official and/or their designees are authorized to secure the property against unauthorized entry by closing, boarding up, fencing, barricading, locking or otherwise securing the property to prevent entry. All costs for securing the property will be the responsibility of the owner of record.

(c) The health officer may prohibit the moving or removal of vehicles or any other personal property subject to an unfit for use order without prior written approval. The health officer may secure such property by attachment of a locking device or any other means to prevent the property from being moved.

(d) The health officer may order the Mason County sheriff's office to impound vehicles designated as unfit for use until such time as the vehicle is either released for reuse or destroyed.

(Ord. 107-05 Attach. B (part), 2005: Ord. 8-04 Attach. C (part), 2004).

6.73.070 Other powers reserved– Emergency orders.

Nothing in this chapter shall limit the authority for Mason County or the Mason County health officer to act under any other legal authority. The powers conferred by this chapter shall be in addition to and supplemental to the powers conferred by any other law. If the health officer determines immediate action is necessary to protect public or environmental health and safety, any person, company, corporation, trust or other business entity to whom such an order is directed shall be required to comply with the order immediately.

(Ord. 107-05 Attach. B (part), 2005: Ord. 8-04 Attach. C (part), 2004).

6.73.080 Notice to utility purveyors.

The health officer is authorized to notify purveyors of utility services to any property declared unfit for use that use or occupancy of the premises is prohibited. The health officer may order purveyors of utilities to discontinue the provisions of their services.

(Ord. 107-05 Attach. B (part), 2005: Ord. 8-04 Attach. C (part), 2004).

6.73.090 Violations.

(a) It is unlawful and a violation of this chapter to:

(1) Occupy or permit or authorize the occupation of any structure, premises or property posted as unfit for use or ordered vacated pursuant to this chapter or Chapter 64.44 RCW;

(2) Enter or authorize or allow another person, company, corporation, trust or other business entity to enter any property declared unfit for use or otherwise ordered vacated pursuant to this chapter or Chapter 64.44 RCW without approval of the health officer;

(3) Willfully fail to comply with any order issued pursuant to this chapter or Chapter 64.44 RCW;

(4) Obstruct any officer, employee or agent of Mason County or other governmental unit in the enforcement or carrying out of the duties prescribed in this chapter or Chapter 64.44 RCW;

(5) Remove, deface, obscure or otherwise tamper with any notice posted pursuant to this chapter or Chapter 64.44 RCW;

(6) Maintain any property in violation of an order issued by the health officer pursuant to this chapter;

(7) Fail or refuse to comply with any order or decision of the health officer, hearing officer or appeals commission pursuant to this chapter.

(b) Violations of this chapter are punishable and shall be enforced pursuant to the penalties prescribed in Chapter 15.13 Mason County Development Code. The hearing examiner, law enforcement officers, or the health officer or his or her designee, who shall be enforcement officers as defined by RCW 7.80.040 may enforce this chapter.

(Ord. 107-05 Attach. B (part), 2005: Ord. 8-04 Attach. C (part), 2004).

6.73.100 Penalties.

Each violation of this chapter shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

(1) Every violation of this chapter is unlawful and a public nuisance.

(2) The violation of any provision of this chapter is designated as Class 1 civil infraction pursuant to Chapter 7.80 RCW. Civil infractions shall be heard and determined according to Chapter 7.80 RCW, as amended, and any applicable court rules. The penalty for such violation shall be two hundred and fifty dollars per violation.

(3) Any person, company, corporation, trust or other business entity intentionally, recklessly or negligently violating any provision of this chapter shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment.

(4) The prosecuting attorney is authorized to institute legal action to enforce compliance with the provisions of this chapter and may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute a violation of this chapter.

(5) The health officer and his or her designee are authorized to bring enforcement action as provided in Chapter 15.13 Mason County Development Code.

(Ord. 107-05 Attach. B (part), 2005: Ord. 8-04 Attach. C (part), 2004).

6.73.110 Severability clause.

The provisions, sections and subsections of this chapter, shall be considered to be severable, so that if any provision, section, or subsection, or its application to any person, company, corporation, trust or other business entity or circumstance, is altered, amended, abrogated, repealed, superseded by constitution, state law or otherwise held invalid, the remainder of the particular provision, section, subsection, or chapter, or the application thereof to other persons, companies, corporations, trusts or other business entities or circumstances, shall not be deemed affected.

(Ord. 107-05 Attach. B (part), 2005: Ord. 8-04 Attach. C (part), 2004).

Title 15
DEVELOPMENT CODE

Chapters:

15.01 Introduction

15.03 Administration

15.05 Consolidated Application Process

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Chapter 15.11 APPEALS

Sections:

15.11.010 Appeal of administrative interpretations and decisions.

15.11.020 Appeal to the hearing examiner.

15.11.030 Appeal to state review boards.

15.11.040 Judicial appeal.

15.11.010 Appeal of administrative interpretations and decisions.

(a) Administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, to the following hearing body, based upon the relevant code or ordinance as follows:

Hearing Examiner: Title 6 (Sanitary Code) and other regulations listed in Part 1 of Section 15.03.005, Title 7 (Shoreline Master Program), Title 8 (Environmental Policy and Resource), Title 11 (Forest Practices), Title 14 (Construction), Title 16 (Subdivision), and the development regulations, provided that appeals of the building official's notice and order shall be in accordance with Section 401 of the Uniform Code of Abatement (hereafter Section 401) and, shall be to the hearing examiner as specified in this chapter.

(b) The appeal shall be considered and decided within ninety days of receipt of a date stamped application, provided that the parties to an appeal may agree to extend these time periods, and provided that a shorter time period is not specified in the applicable code or regulation.

(Ord. 31-06, Attach. B (part), 2006; Ord. 45-05 § 2 (part), 2005; Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002; Ord. 88-02, Attach. B (part), 2002; Ord. 116-01, Attach. A (part), 2001; Ord. 129-00, Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.11.020 Appeal to the hearing examiner.

(a) Filing. Every appeal to the hearing examiner shall be filed with the clerk of the board within fourteen days after the date of the decision being appealed. The date of the decision and the date from which appeal periods shall be calculated shall be the date on which the written action was either mailed or transmitted by hand, whichever is done and whichever is earliest, to all parties for which transmittal is required for the action. This appeal period shall replace all other previously adopted appeal periods specified in the applicable ordinances.

(b) Contents. The application of appeal shall contain a concise statement identifying:

- (1) The decision being appealed;
- (2) The name and address of the appellant and his/her interest(s) in the matter;
- (3) The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear

the burden of proving the decision was wrong;

- (4) The desired outcome or changes to the decision;
- (5) The appeals fee as provided for in the applicable ordinance.

(c) Procedure. An appeal before the hearing examiner shall be by procedures established by the hearing examiner consistent with RCW 36.70B.

(Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002; Ord. 88-02, Attach. B (part), 2002; Ord. 116-01, Attach. A (part), 2001; Ord. 129-00, Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.11.030 Appeal to state review boards.

The appeal of the final decision of the hearing examiner may be filed to the appropriate state review board and is subject to the appeal processes of the review board (notification, review, hearing, and decision). The State Environmental Hearings Office processes appeals of shoreline permits, conditional uses, and variances; the State Department of Health processes appeals of public health and air-water quality issues.

(Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002; Ord. 88-02, Attach. B (part), 2002; Ord. 116-01, Attach. A (part), 2001; Ord. 129-00, Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.11.040 Judicial appeal.

(a) Appeals from the final decision of the hearing examiner involving those codes and ordinances to which this title applies, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Mason County superior court within twenty-one days of the date the decision or action became final, unless preempted by state law.

(b) Notice of the appeal and any other pleadings required to be filed with the court shall be served on the clerk of the board of county commissioners and prosecuting attorney within the applicable time period. This requirement is jurisdictional.

(c) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

(Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002; Ord. 88-02, Attach. B (part), 2002; Ord. 116-01, Attach. A (part), 2001; Ord. 129-00, Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

Chapter 15.13 ENFORCEMENT

Sections:

15.13.005 Severability.

15.13.010 Enforcing official– Authority.

15.13.020 Penalty.

15.13.030 Application.

15.13.035 Warning notice.

15.13.040 Notice of civil violation.

15.13.045 Hearing before the hearings examiner.

15.13.050 Civil fines.

15.13.055 Cost recovery.

15.13.060 Abatement.

15.13.070 Review of approved permits.

15.13.075 Revocation or modification of permits and approvals.

15.13.005 Severability.

This title shall be governed by the laws of the state of Washington. In the event that any portion or section of this title be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of the title shall not be affected and shall remain in full force and effect.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.010 Enforcing official– Authority.

(a) The review authority shall be responsible for enforcing those codes and ordinances to which this title applies, and may adopt administrative rules to meet that responsibility. The review authority may delegate enforcement responsibility, as appropriate. An employee of one review authority department may commence an enforcement action of violations of codes and regulations of other departments.

(b) Inspections. The purpose of these inspection procedures are to ensure that a property owner's rights are not violated.

When it is necessary to make an inspection to enforce the provisions of this chapter, or when the director has reasonable cause to believe that a violation has been or is being committed, the director or his duly authorized inspector may enter the premises, or building at reasonable times to inspect or to perform any duties imposed by this chapter, provided that if such premises or building be occupied that credentials be presented to the occupant and entry requested. If such premises or building be unoccupied, the director shall first make reasonable effort to locate the owner or other person having charge or control of the premises or building and request entry. If entry is refused, the director shall have recourse to remedies provided by law to secure entry.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.020 Penalty.

(a) Nonconforming structures and other non-conforming land modifications shall be a continuing violation. Every day of violation shall be a separate violation. It shall be a violation to own, use, control, maintain, or possess a portion of any premises which has been constructed, equipped, maintained, controlled, or used in violation of any of the applicable provisions, MCC Section 15.03.005, in this title. Structures or activities which were made or conducted without a permit, when a permit was required at the time of first action, do not vest and require current permits. Any person, firm, or corporation who violates or who solicits, aids, or attempts a violation are accountable under this chapter and are subject to the penalty provision as well as the hearing examiner process.

(b) Compliance with the requirements of those codes and regulations listed under MCC Section 15.03.005 shall be mandatory, and violations of those codes are within the purview of this chapter.

(c) Any private party who intentionally, recklessly, or negligently violates any of the applicable codes, regulations and ordinances is guilty of a misdemeanor. This includes, but is not limited to, a violation of notice and order, a violation of notice of civil violation, a violation of a warning notice, a violation of a stop work order, violation of a do not occupy order, and failure to comply with orders of the hearings examiner. Any person convicted of a misdemeanor under this section shall be punished by a fine of not more than five hundred dollars, or by imprisonment not to exceed ninety days, or by both, unless otherwise required by state laws. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any of the applicable provisions is committed, continued, permitted, or aided by any such person.

(d) Notwithstanding the provisions of any other code, the review authority is authorized to issue civil infractions for violations of any provision of any code or regulation listed under Section 15.03.005. The enforcement officer may issue a civil infraction ticket of up to two hundred fifty dollars for the first violation and up to five hundred dollars for the second and subsequent violations. Second and subsequent violations refer to any violation of any provision of Section 15.03.005 within two years of the first violation. A violator is: (1) one who owns the property and knows the violation is occurring, and fails to take action to abate it; (2) one who causes the violation to occur or solicits, commissions, requests, or aids the violation; (3) one who has a virtual exclusive right to possess the land, as in a tenant, equitable title owner, or trust beneficiary, and who aids, abets, commissions, solicits, requests, or knowingly allows a violation to occur on the land; or (4) to the maximum extent allowed under Washington law, any company whose employee or employees violates any provision of Title 15. Proof in district court shall be by a preponderance of the evidence. To the extent that there is no conflict with this regulation, all such civil infractions under this regulation shall be governed by the standards and procedures set forth in Revised Code of Washington 7.80 (Civil Infractions). Each day of the violation shall be considered a separate offense.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.030 Application.

(a) Actions under this chapter may be taken in any order deemed necessary or desirable by the review

authority to achieve the purpose of this chapter or of the development code.

(b) Proof of a violation of a development permit shall constitute prima facie evidence that the violation is that of the applicant and/or owner of the property upon which the violation exists. An enforcement action under this chapter against the owner and/or applicant shall not relieve or prevent enforcement under this chapter or other ordinance against any other responsible person, which, to the extent allowed by state law, includes an officer or agent of a business or nonprofit organization who, while violating the applicable provisions, is acting on behalf of, or in representation of, the organization.

(c) Where property has been subjected to an activity in violation of this chapter, the county may bring an action against the owner of such land or the operator who performed the violation. In addition, in the event of intentional or knowing violation of this chapter, the hearing examiner may, upon the county's request, deny authorization of any permit or development approval on said property for a period up to ten years from the date of unauthorized clearing or grading. While a case is pending before the hearing examiner, the county shall not authorize or grant any permit or approval of development on the property.

(d) Nothing in this chapter shall be construed to prevent the application of other procedures, penalties or remedies as provided in the applicable code or ordinance.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.035 Warning notice.

Prior to other enforcement action, and at the option of the review authority, a warning notice may be issued. This notification is to inform parties of practices which constitute or will constitute a violation of the development code or other development regulation as incorporated by reference and may specify corrective action. This warning notice may be sent by certified/registered mail, posted on site or delivered by other means. The parties shall respond to the county within twenty days of the postmark, posting on site, or delivery of the notice.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.040 Notice of civil violation.

(a) Authority. A notice of civil violation may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the applicable codes under Section 15.03.005. A landowner, tenant, or contractor may each be held separately and joint and severally responsible for violations of the applicable codes and regulations.

(b) Notice. A notice of civil violation shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any person at the location and/or mailed first class to the owner or other person having responsibility for the location and not returned.

(c) Content. A notice of civil violation shall set forth:

(1) The name and address of the person to whom it is directed;

- (2) The location and specific description of the violation;
- (3) A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
- (4) An order that the violation immediately cease, or that the potential violation be avoided;
- (5) An order that the person stop work until correction and/or remediation of the violation as specified in the order;
- (6) A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;
- (7) A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties;
- (8) A notice of the date, time and place of appearance before the hearing examiner as provided in Section 15.13.045.

(d) Remedial Action. The review authority may require any action reasonably calculated to correct or abate the violation, including but not limited to replacement, repair, supplementation, revegetation, or restoration.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.045 Hearing before the hearings examiner.

(a) A person to whom a notice of a civil violation is issued will be scheduled to appear before the hearings examiner after the notice of civil violation is issued. Extensions may be granted at the discretion of the appropriate review authority.

(b) Correction of Violation. The hearing will be canceled if the applicable review authority determines that the required corrective action has been completed or is on schedule for completion as set by the review authority at least forty-eight hours prior to the scheduled hearing.

(c) Procedure. The hearings examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearings examiner. The applicable review authority 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 county shall have the burden of proof to demonstrate by a preponderance of evidence that a violation has occurred or imminently may occur and that the required corrective action will correct the violation. A hearing examiner's order may prohibit future action, and violations of that order may lead to penalties under this title. The determination of the applicable review authority shall be accorded substantial weight by the hearings examiner in determining the reasonableness of the required corrective action.

(d) Decisions of the Hearings Examiner.

(1) The hearings examiner shall determine whether the county has established by a preponderance of the

evidence that a violation has occurred and that the required correction will correct the violations and shall affirm, vacate, or modify the county'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 civil fines assessed based on the criteria in subsection (d)(3) of this section;

(E) The date and time by which the correction must be completed.

(3) Civil fines assessed by the hearing examiner shall be in accordance with the civil fine in Section 15.13.050.

(A) The hearing examiner shall have the following options in assessing civil fines:

(i) Assess was issued and thereafter; or

(ii) Assess civil fines beginning on the correction date set by the applicable review authority or alternate correction date set by the hearings examiner and thereafter; or

(iii) Assess less than the established civil fine set forth in Section 15.13.050 based on the criteria of subsection (d)(3)(B) of this section; or

(iv) Assess no civil fines.

(B) In determining the civil fine 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 or if the person has previously violated the applicable codes, regulations, and ordinances;

(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 civil fine schedule if the violation was a repeat violation or

the person has previous violations of the applicable codes, regulations, or ordinances. In determining the amount of the civil fine for repeat violations the hearing examiner shall consider the factors set forth in subsection (d)(3)(B) of this section.

(4) Notice of Decision. Upon receipt of the hearing examiner's decision, the review authority shall send by first class mail and by certified mail return receipt requested a copy of the decision to the person to whom the notice of a civil violation was issued. The decision of the hearing examiner shall be rendered 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 hearing examiner will enter a default order with findings pursuant to subsection (d)(2) of this section and assess the appropriate civil fine pursuant to subsection (d)(3) of this section. The county will enforce the hearing examiner's order and any civil fine from that person.

(f) Appeal to Superior Court. See Section 15.11.040 Judicial Appeal.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.050 Civil fines.

(a) Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit, who fails to comply with the conditions of a permit, or who fails to comply with a notice of civil violation shall be subject to a civil fine.

(b) Amount. The civil fine assessed shall not exceed one thousand dollars for each violation, except where the hearings examiner is authorized under this chapter to double the fine. Each separate day, event, action or occurrence shall constitute a separate violation.

(c) Notice. A civil fine shall be imposed by an order of the hearings examiner, and shall be effective when served or posted as set forth in Section 15.13.040(b).

(d) Collection.

(1) Civil fines shall be immediately due and payable upon issuance and receipt of order of the hearings examiner. The review authority may issue a stop work order until such fine is paid.

(2) If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision.

(3) If a fine remains unpaid thirty days after it becomes due and payable, the review authority may take actions necessary to recover the fine. Civil fines shall be paid into the county's general fund unless otherwise provided by ordinance. The review authority, in its discretion, may determine that assessments in amounts of five hundred dollars or more shall be payable in not to exceed three equal annual installments. The payments shall bear interest equal to that charged on delinquent taxes under RCW 84.56.020. Such an account in good standing shall not be considered as delinquent unpaid fines as provided in subsection (d)(4) of this section.

(4) Unpaid fines shall be assessed against the property and be recorded on the assessment roll, and

thereafter said assessment shall constitute a special assessment against and a lien upon the property, provided that fines in excess of the assessed value shall be a personal obligation of the property owner, and fines assessed against persons who are not the property owner shall be personal obligations of those persons.

(e) Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(f) All such assessments remaining unpaid after thirty days from the date of recording on the assessment roll shall become delinquent and shall bear interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes.

(g) If the county assessor and the county treasurer assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county treasurer. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.

(h) The amount of the assessment lien shall be billed annually by the treasurer's office on the date of the assessment lien until paid and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment. Notwithstanding the previous provisions, the foreclosure process and sale process may be commenced within a year of the creation of a lien when the review authority or the hearing examiner make a written request to the treasurer's office to commence the process.

(Ord. 80-03 Attach. B (part), 2003; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.055 Cost recovery.

(a) Authority. Notwithstanding any other code provision, a person who violates any provision of any code or regulation under MCC Section 15.03.005, or who fails to obtain any necessary permit, or who fails to comply with a notice of civil violation shall be subject to enforcement, hearings examiner, and abatement costs. Costs in year 2002 shall be fifty-two dollars and thirty cents per hour for any employee of Mason County, except that department heads and managers, elected officials, and deputy prosecutor time shall be seventy-five dollars per hour. For every year after 2002, the rate may be adjusted according to the Consumer Price Index.

(b) Amount. The review authority shall keep an itemized account of the time spent by employees of the county in the enforcement or abatement of any code or any regulation under Section 15.03.005. The review authority may request costs be ordered by the hearings examiner. The hearing examiner may order costs.

(c) Notice. Upon completion of the work for which cost recovery is proposed, the review authority shall provide notice by certified mail return receipt requested to the property owner or other person on whose behalf the costs were incurred.

(d) Collection. Costs may be collected as provided in MCC Section 15.13.050(d) through (h) inclusive.

(e) Civil fines and funds collected shall be deposited as provided in the respective county regulation or, if no other provision is made, shall be deposited in the general fund of the county. However, departmental directors may, in their discretion, direct that costs be placed in a special abatement fund. If the director decides to close the fund, the remaining fund balance shall revert back to the general fund.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.060 Abatement.

(a) The review authority may abate the violation if corrective work is not commenced or completed within the time specified in a notice of civil violation.

(b) If any required work is not commenced or completed within the time specified, the review authority 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 any other property owned by the person in violation and as a personal obligation of any person in violation.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.070 Review of approved permits.

(a) Review. Any approval or permit issued under the authority of the development code may be reviewed for compliance with the requirements of the development code, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or permit was obtained by fraud or deception.

(b) Review Authority Investigation. Upon receipt of information indicating the need for, or upon receiving a request for review of permit or approval, the review authority shall investigate the matter and take one or more of the following actions:

- (1) Notify the property owner or permit holder of the investigation;
- (2) Issue a notice of civil violation and/or civil fine and/or recommend revocation or modification of the permit or approval;
- (3) Refer the matter to the county prosecutor;
- (4) Revoke or modify the permit or approval, if so authorized in the applicable code or ordinance; and/or
- (5) Refer the matter to the hearing examiner with a recommendation for action.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.075 Revocation or modification of permits and approvals.

[[Handled by appropriate departments]]

(a) Upon receiving a review authority's recommendation for revocation or modification of a permit or approval, the hearing examiner shall review the matter at a public hearing, subject to the notice of public hearing requirements (Section 15.07.030). Upon a finding that the activity does not comply with the conditions of approval or the provisions of the development code, or creates a nuisance or hazard, the hearing examiner may delete, modify or impose such conditions on the permit or approval it deems sufficient to remedy the deficiencies. If the hearing examiner find no reasonable conditions which would remedy the deficiencies, the permit or approval shall be revoked and the activity allowed by the permit or approval shall cease.

(b) Building Permits. The building official, not the hearing examiner has the authority to revoke or modify building permits.

(c) If a permit is not acted on within three years of authorization, the permit is automatically revoked.

(d) Reapplication. If a permit or approval is revoked for fraud or deception, no similar application shall be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all of the requirements of the development code.

(Ord. 32-04 Attach. B (part), 2004).