

ORDINANCE NO. 922

AN ORDINANCE OF THE CITY OF BENTON CITY, WASHINGTON, AMENDING CHAPTER 9.50 "NUISANCE PROCEDURES" CLARIFYING THE AUTHORITY OF THE CODE ENFORCEMENT OFFICER'S PROCEDURES FOR NUISANCE ABATEMENT

WHEREAS, the City Council has adopted Chapter 9.50 "Nuisance Procedures" to abate nuisance conditions within the City; and

WHEREAS, changes in the law have occurred since the City's adoption of Chapter 9.50 as well as changes in the procedure for the enforcement of this Chapter, and changes to the Ordinance are necessary to accommodate these changes to comply with the law, provide for more efficient procedures for nuisance abatement, and to clarify the authority of the Code Enforcement Officer. NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. That Chapter 9.50 entitled "Nuisance Procedures" of the Benton City Municipal Code shall be and hereby is amended, and shall read as follows:

9.50.010 **Authority.** This Chapter is enacted pursuant to RCW 35.22.280(30), RCW 35A.11.020, RCW 35A.21.160 and other laws of the State of Washington and establishes the authority of the City of Benton City to declare what shall be deemed nuisances including violations of Title 20, Zoning Code of the City of Benton City; to impose fines upon parties who may create, continue, or suffer nuisances to exist; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same; and to levy a special assessment provide for a lien to be filed as a matter of record on the land or premises whereon a nuisance is situated to defray the cost or to reimburse the City for the cost of abating the same.

9.50.020 **Purpose.** The purpose of this chapter is to establish an efficient system to enforce certain provisions of this Code and regulations of the City, to provide a framework for voluntary corrections of problems, to provide an opportunity for a prompt hearing and decision on alleged monetary penalty and abatement for found violations, and to provide financial penalty and abatement for proven violations an appeals procedure.

9.50.030 **Definitions.** As used in this chapter, unless a different meaning is plainly required.

- A. "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent necessary in the interest of the general health, safety and welfare of the community.
- B. "Act" means doing or performing something.

- C. "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions pursuant to Title 10 of this Code are specifically excluded from the application of the chapter.
- ~~D.~~ ~~"Code Enforcement Hearing Examiner" means the hearing examiner of the City of Benton City as provided in Chapter 2.44 of this Code.~~
- ED. "Code Enforcement Officer (CEO)" means any designated alternate(s), empowered by this Code or Ordinance or by the Mayor to enforce a City Ordinance or regulation.
- FE. "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at, or below ground or water level, and all acts authorized by a City regulation.
- GF. "Emergency" means a situation which in the opinion of the Mayor requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.
- G. "Found in violation" means that:
1. A notice and order of violation has been issued and not timely appealed;
 2. A voluntary compliance agreement has been entered into; or
 3. The hearing examiner has determined that a violation has occurred and such determination has not been stayed or reversed on appeal.
- H. "Hearing examiner" means the hearing examiner of the City of Benton City as provided in Chapter 2.44 of this Code.
- ~~HJ.~~ "Omissions" means a failure to act.
- IJ. "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.
- JK. "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.
- KL. "Regulation" means and includes the following, as now or hereafter amended:
1. Title 6 Animals; Chapters 8.04 Garbage; 8.05 Noise Regulations; 9.48 Nuisances; 12.04.060 Nuisance declared Cost of engineering; 13A.12.010 Maintenance; 13A.12.030 Unsanitary deposits unlawful; 13A.12.040 Prohibited discharges; 13A.12.050 Discharge To natural outlet unlawful; 13A.12.060 Privies and

~~septic tanks restricted; 13A.20.030 Sanitary Operation; and Title 20 Zoning Title 20 Zoning; Chapter 8.04 Garbage; Chapter 8.05 Noise Regulations; Chapter 9.48 Nuisances; Section 12.04.060 Nuisance declared - Cost of engineering; Section 13A.12.010 Maintenance; Section 13A.12.030 Unsanitary deposits unlawful; Section 13A.12.040 Prohibited discharges; Section 13A.12.050 Discharge - To natural outlet unlawful; Section 13A.12.060 Privies and septic tanks restricted; and Section 13A.20.030 Sanitary Operation.~~

2. The terms and conditions of any development authorization, permit or approval issued by the City, or any concomitant agreement with the City.

LM. "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two (2) years or a notice of civil violation has been issued within two (2) years.

MN. "Violation" means an act or omission contrary to a regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission. (Ord. 775, March 2004; Ord 757, March 2003.)

9.50.040 **Nuisance Declared.** Any violation of a regulation is declared to be a nuisance.

9.50.050 **Voluntary Corrections Powers of Code Enforcement Officer.** The position of Code Enforcement Officer (the "CEO") is established. The CEO shall be appointed by the Mayor, who shall define the CEO's duties in a manner consistent with this Chapter. The CEO shall be authorized and commissioned to investigate compliance with the Benton City Municipal Code regulations, and to take reasonable action to bring about compliance with such regulations, including but not limited to the issuance of a warning pursuant to BCMC 9.50.060(B) and a notice and order of violation pursuant to BCMC 9.50.080 in appropriate cases as provided in this Chapter. The CEO shall be provided with appropriate identification.

The CEO shall further be authorized to request that a person who is to receive a warning or notice and order of violation under this Chapter to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth. Upon the request of the CEO, the person shall produce reasonable identification, including a driver's license or identocard. If identification is refused, the matter should be referred to an authorized police officer.

The CEO is further authorized to enter businesses and premises as is set forth in BCMC 9.50.110.

9.50.060 **Procedures When Probable Violation is Identified.**

A. Identification. The CEO shall determine, based upon information derived from such sources as field observations, the statements of witnesses, relevant documents, and applicable City codes and regulations, whether

or not a violation has occurred. As soon as the CEO has reasonable cause to determine that a violation has occurred, the violation shall be documented and the person responsible for the violation promptly provided a warning as set forth in BCMC 9.50.060(B) below.

B. Warnings. Except as provided in BCMC 9.50.070, a warning shall be issued verbally or in writing promptly when a field inspection reveals a violation, or as soon as the CEO otherwise determines a violation has occurred. The warning shall inform the person determined to be responsible for a Code violation of the violation, the specific Code provision violated, the corrective action necessary and the specific period of time within which, either the violation is corrected, or a voluntary compliance agreement is entered into as provided for by this Chapter. Verbal warnings shall be logged and followed up with a written warning within five (5) days. Written warnings shall be served in the manner set forth in BCMC 9.50.080(C).

~~A. Applicability. This section applies whenever the CEO determines that a violation of a regulation has occurred or is occurring.~~

~~B. General. The CEO shall pursue a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation where possible, explaining the violation and requesting correction.~~

~~C. Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the City, acting through the CEO.~~

9.50.070 Voluntary Corrections. A voluntary correction agreement may be entered into between the person responsible for the violation and the City, acting through the CEO, at any time.

4A. Content. The voluntary correction agreement is a contract between the City and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

- a₁. The name and address of the person responsible for the violation;
- b₂. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
- e₃. A description of the violation and a reference to the provision(s) of the City Ordinance or regulation which has been violated;
- d₄. The necessary corrective action to be taken, and a date or time by which correction must be completed;
- e₅. An agreement by the person responsible for the violation that the City may abate the violation and recover its costs and expenses

and a monetary penalty pursuant to this chapter from the person responsible for the violation in terms of the voluntary correction agreement are not met; and

- ~~f6.~~ An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to an administrative appeal of the violation and/or the required corrective action.
- 2B. Right to a Hearing Waiver. The person responsible for the violation waives the right to an administrative appeal of the violation and the required corrective action upon entering into a voluntary correction agreement.
- 3C. Extension-Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the CEO if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.
- 4D. Abatement by the City. The City may abate the violation in accordance with ~~Section 9.50.080~~BCMC 9.50.100 if the terms of the voluntary correction agreement are not met.
- 5E. Collection of Costs. If the terms of the voluntary correction agreement are not met, the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with ~~Section 9.50.060(E)~~BCMC 9.50.080(E), plus all costs and expenses of abatement, as set ~~forth~~forth in ~~Section 9.50.080(D)~~BCMC 9.50.090(D).

9.50.06080 Notice and Order of Civil Violations.

A. Issuance.

- 1. ~~When the Code Enforcement Officer determines that~~ If a violation has occurred or is occurring, and is not corrected in the time specified in the written warning issued pursuant to BCMC 9.50.060 and the CEO is unable to secure voluntary correction, pursuant to Section 9.50.050BCMC 9.50.070, the ~~Code Enforcement Officer~~ CEO may for good cause extend the time necessary for compliance in writing or issue a notice and order of civil violation to the person responsible for the violation.
- 2. The ~~Code Enforcement Officer~~CEO may issue a notice and order of civil violation without ~~having attempted to secure voluntary correction as provided in 9.50.050~~issuing a warning under the following circumstances:

 - a. When an emergency exists;
 - b. When a repeat violation occurs;

- c. When the violation creates a situation or condition which cannot be corrected; or
 - d. When the person knows or reasonably should have known that the action is in violation of a City regulation.
- B. Content. The notice and order of civil violation shall include the following:
1. The name and address of the person responsible for that violation;
 2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
 3. A description of the violation and a reference to the provision(s) of the City regulation which has been violated;
 4. The required corrective action and a date and time ~~by which the correction must be completed~~ after which the City may abate the unlawful condition in accordance with ~~Section 9.50.080 and the hearing examiner~~BCMC 9.50.100;
 5. ~~The date, period of time and location of~~within which an appeal hearing before to the hearing examiner must be filed and the method of filing that appeal~~which will be at least ten (10) days from the date the notice of civil violation is issued~~;
 6. ~~A statement indicating that the hearing will be cancelled and no monetary penalty will be assessed if the Code Enforcement Officer approves the completed, required corrective action at least 48 hours prior to the hearing; except, that this statement need not be included where the violation constitutes a repeat violation, the violation creates a situation or condition which cannot be corrected of the monetary penalty for each violation as specified in BCMC 9.50.070 and, if applicable, the costs and expenses of abatement incurred by the City pursuant to BCMC 9.50.100;~~
 7. ~~A statement that the costs and expenses of abatement incurred by the City pursuant to Section 9.50.080 and a monetary penalty for each violation as specified in Section 9.50.060 may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner~~The date and time after which a continuing violation shall be considered a repeat violation pursuant to BCMC 9.50.100(D).
- C. Service of Notice and Order of Civil Violation. The ~~Code Enforcement Officer~~CEO shall serve the notice and order of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence, be personally served within Benton County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property

or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, at the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

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

E. Assessment of Monetary Penalty as a Civil Infraction.

1. ~~The hearing examiner shall, uUpon finding that a violation of a regulation has occurred, assess a monetary penalty as a civil infraction in the amount not to exceed Five Hundred Dollars and 00/100 (\$500.00) shall be assessed for each violation. In addition, the hearing examiner may assess costs incurred by the City related to the enforcement of this Chapter.~~

2. Repeat Violations. Repeat violations shall be assessed a penalty of up to One Thousand Dollars (\$1,000.00). Any violation not abated by the date and time designated in the notice and order of violation shall constitute a repeat violation.

In addition, the hearing examiner may assess costs incurred by the City related to the enforcement of this Chapter.

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

GF. Collection of Monetary Penalty.

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the City at the office of City Hall within thirty (30) calendar days from the date of mailing of the ~~hearing examiner's decision or a notice from the City that penalties are due~~notice and order of civil violation.

2. The City Attorney or his/her assigns are authorized to take appropriate action to collect the monetary penalty.

HG. Notice as Determination. The notice and order of civil violation represents a determination that a violation infraction has occurred or is occurring. The determination will be final unless contested as provided in this chapter. (Ord. 834, May 2008; Ord. 775, March 2004.)

9.50.07090 Hearing Before Appeal to the Hearing Examiner.

A. ~~Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten (10) calendar days after the notice of civil violation is issued.~~Any person served with a notice and order of civil violation by the City may appeal the same

to the hearing examiner by filing an appeal with the City Clerk during working business hours, containing the information set forth below, within fourteen (14) days from the date the notice and order of civil violation is served. The appeal shall include:

1. The case number designed by the City or CEO;
 2. The name of each appellant and their contact address for the purpose of notice, or the appellant's authorized representative with the representative's address. If multiple parties file a single appeal, the appeal shall designate one party as the contact representative providing an address for that person for the purpose of notice;
 3. The specific decision and specific portions of the decision or determination being appealed, and the specific reasons why each aspect is in error as a matter of fact or law;
 4. The appeal fee shall be as identified in the Benton City adopted fee schedule. The fee shall be refunded within forty-five (45) days if the appellant requests withdrawal of the appeal in writing at least fourteen (14) calendar days prior to the scheduled appeal hearing date or if the appellant prevails before the hearing examiner.
 5. The appeal shall be signed by the appellant and shall contain a statement showing that each appellant has standing to file the appeal under this Chapter.
- B. ~~Prior Correction of Violation or Payment of Monetary Penalty.~~ Except in the case of a repeat violation, the hearing will be cancelled and no monetary penalty will be assessed if the Code Enforcement Officer approves the completed required corrective action at least 48 hours prior to the scheduled hearing. Appeal Review Process.
1. All complete appeals submitted and allowed pursuant to these rules shall be scheduled by the City Clerk for review at a public hearing before the hearing examiner within ninety (90) calendar days from the date of submission. Further extensions are permitted upon mutual agreement of the parties to the appeal.
 2. Notice of the appeal hearing shall be mailed to the parties to the appeal.
- C. Procedure. The hearing examiner shall conduct a hearing on the notice and order of civil violation pursuant to the rules of procedures of Section ~~9.50.060~~ adopted by the hearing examiner and the provisions of Chapters 2.44, 9.48 and 9.50. The ~~Code Enforcement Officer~~ CEO and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the ~~Code Enforcement Officer~~ CEO as to the need for required corrective action shall be accorded substantial

weight by the hearing examiner in determining the reasonableness of the required corrective action.

D. Decision of the Hearing Examiner.

1. The hearing examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's determination(s) 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~~charged 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, if any;
 - c. The date and time by which the correction, if ordered, must be completed;
 - d. The monetary penalties assessed as a civil infraction; and
 - e. ~~The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.~~The hearing examiner shall have the discretion to modify any monetary fines imposed upon consideration of the following:
- ~~3. Assessment of Civil Infraction and Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the civil infraction monetary penalty schedule in Section 9.50.060.E.~~
 - ~~a. Violations.~~
 - ~~i. The hearing examiner shall assess the monetary penalties effective as of the date of the hearing.~~
 - ~~ii. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:~~
 - ~~(a)i Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;~~
 - ~~(b)ii Whether the person failed to appear at the hearing;~~
 - ~~(c)iii Whether the violation was a repeat violation;~~
 - ~~(d)iv Whether the person showed due diligence and/or substantial progress in correcting the violation;~~

(e)v Whether a genuine code interpretation issue exists; and

(f)vi Any other relevant factor.

b. ~~Effect of Repeat Violations.~~

i. ~~In determining the amount of the monetary penalty for repeat violations, the hearing examiner may assess a penalty up to one thousand dollars (\$1,000.00).~~

ii. ~~Any violation not abated by the date and time designated in the hearing examiner's order that correction must be completed, shall constitute and repeat violation.~~

43. Notice of Decision. The hearing examiner shall mail a copy of the decision to appellant and to the Mayor within ten (10) working days of the hearing.

~~E. Failure to Appear. If the person to whom the notice of civil violations was issued fails to appear at the scheduled hearing, the hearing examiner will enter an order finding that the hearing examiner's order and recover all related expenses, plus the cost of the hearing and the monetary penalty from that person.~~

~~FE. Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with Superior Court within twenty-one (21) calendar days from the date the hearing examiner's decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred. (Ord. 834, May 2008; Ord. 775, March 2004.)~~

9.50.080100 Abatement by the City.

A. The City may abate a condition which was caused by or continues to be a civil violation when:

1. The terms of voluntary correction agreement pursuant to Section ~~9.50.050~~ BCMC 9.50.070 have not been met;

2. A notice and order of civil violation has been issued pursuant to Section ~~9.50.050~~BCMC 9.5.080, and a hearing has been held pursuant to Section ~~9.50.070~~, and the required correction has not been completed timely appealed to the hearing examiner, or the notice and order has been affirmed by the date specified in the hearing examiner's order hearing examiner and the determination has not been stayed or reversed on appeal; or

3. The condition is subject to summary abatement as provided for in Section ~~9.50.080~~BCMC 9.50.100(B).

B. Summary Abatement. Whenever any violation of a regulation causes a condition, the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the

condition. A notice of civil violation, together with notice of such summary abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

- C. Authorized Action by the City. Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject to abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition.
- D. Recovery of Costs and Expenses. The costs, including incidental expenses, or correction of the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control use and/or occupy the property and shall become due and payable to the City within ten (10) calendar days after the bill is mailed by the City. The term "incidental expenses" includes but shall not be limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses, and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contract in and inspecting the work; and the costs of any required printing and mailing.
- E. Interference. No person shall obstruct, impede, or interfere with the City or its agents, or with any person who owns, or holds any interest or estate in any property, in performing any tasks necessary to correct the violation.
- F. Levy of Special Assessment Lien for Costs and Expenses. In addition to any other method of collection authorized by law, all costs and expenses incurred by the City to abate a condition shall ~~may~~ be levied ~~filed~~ as a ~~special assessment on~~ lien upon the land or premises whereon the violation was situated ~~upon the filing of a statement of costs and expenses with the City Clerk which may be enforced in the manner provided by law.~~ (Ord. 775, March 2004.)

9.50.090110 Entry to Businesses and Premises. Whenever necessary to make an inspection to determine whether a civil violation has occurred or is occurring, or to enforce any provision of the Benton City Municipal Code, or regulation issued thereunder, violation under this chapter, the CEO, or his designee, may enter any building or premises at any reasonable time, provided if such building or premises is occupied he shall first present credentials and demand entry; and if such building or premises is not occupied, he shall first make a reasonable effort to locate the owner or other person having charge of the building or premises and demand entry. If such entry is refused, or the owner or other person having charge of the building or premises cannot be located, the CEO, or his designee, shall have recourse to every remedy provided by law to secure entry, including recourse to the District or Superior Court for issuance of a warrant authorizing such entry and inspection.

9.50.100120 Additional Enforcement Procedures. The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by this Code or other applicable law.

9.50.110130 Conflicts. In the event of a conflict between this chapter and any other provision of the City of Benton City Municipal Code or City Ordinance providing for a civil penalty, this chapter shall control.

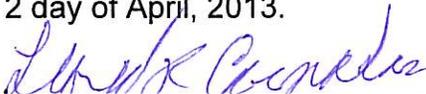
9.50.120140 Meaning of Terms. For the purposes of the Code, whenever "civil infraction" and "civil penalty" are used in any code, ordinance or regulation of the City, these terms shall be deemed to have the same meaning as the terms civil violation and monetary penalty, respectively, as used herein.

9.50.130150 Rules and Regulations. The Mayor may adopt and promulgate rules and regulations for administration and enforcement of this chapter which are not inconsistent herewith or with superior law. The purpose of such rules and regulations is to carry out the provisions of this chapter.

9.50.140160 Civil Suit Authorized. In addition to whatever other penalties may be available to enforce this chapter, civil suit may be commenced in the name of the City to collect any penalty, cost or expenses due to the City.

Section 2. This Ordinance shall take full force and effect five (5) days after its approval, passage and publication as required by law.

PASSED by the City Council of the City of Benton City, Washington, and approved as provided by law this 2 day of April, 2013.



Lloyd R. Carnahan
Mayor

Attest:



Stephanie Haug, CMC
City Clerk-Treasurer

Approved as to Form:



Kerr Law Group
City Attorney