

**An Ordinance Amending Skagit County Code Chapter 14.44
Enforcement/Penalties**

Whereas Skagit County Code Chapter 14.44, Enforcement/Penalties, requires clarification of the elements of misdemeanor, a provision for an order of abatement, and establishment of the continuing nature of a misdemeanor land use violation;

Whereas some of the permit revocation provisions of SCC 14.44.150, and the liens envisioned by SCC 14.44.160, are not authorized by statute;

Whereas revisions to SCC Chapter 14.44 are necessary to address these issues and improve the plain language and clarity of the chapter;

Whereas, on March 13, 2014, the Board of County Commissioners published notice of the proposed ordinance and of a public hearing;

Whereas, on April 7, 2014, the Board of County Commissioners held a public hearing on the proposed revisions to Skagit County Code;

Whereas, on _____, 2014, the Board of County Commissioners discussed and deliberated on the proposed ordinance and the public comments;

Now Therefore, Be It Ordained by the Board of County Commissioners that:

Section 1. Skagit County Code Chapter 14.44 is hereby amended as shown in Attachment 1.

Witness Our Hands and the Official Seal of Our Office this __ day of _____, 2014.

**Board of County Commissioners
Skagit County, Washington**

ATTEST:

Clerk of the Board

Ron Wesen, Chair

APPROVED AS TO FORM:

Kenneth A. Dahlstedt, Commissioner

Ryan Walters, Civil Deputy
Skagit County Prosecutor's Office

Sharon D. Dillon, Commissioner

APPROVED AS TO CONTENT:

Dale Pernula, Director
Planning & Development Services

Attachment 1

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SCC Chapter 14.44 Enforcement/Penalties

14.44.010 Violations.

(1) All violations of SCC Titles 14 and 15, and land use statutes and regulations are hereby declared to be detrimental to the public health, safety, and welfare and are hereby declared to be public nuisances. [A public nuisance is a continuing crime against the order and economy of Skagit County and all](#) All-conditions ~~which that~~ are determined by the Administrative Official to be in violation of SCC Titles 14 ~~and/or~~ 15, ~~and or~~ land use statutes or regulations ~~shall beare~~ subject to the provisions of this Chapter and ~~shall may~~ be abated by any reasonable and lawful means as provided herein.

(2) Whenever the Administrative Official has reason to believe that a use or condition exists in violation of SCC Titles 14 ~~and/or~~ 15, ~~and/or~~ land use statutes or regulations, the Administrative Official ~~shall may~~ initiate enforcement action as herein provided and, at the option of the Administrative Official, may commence an administrative notice and order process to cause the enforcement and correction of each violation. Upon request, the complainant ~~shall must~~ be notified of all official actions taken by the Administrative Official.

(3) Whenever a person believes a violation of SCC Titles 14 or 15 ~~and/or~~ a land use statute or regulation has occurred, he or she may file a written Request for Investigation (RFI). The RFI ~~shall~~ should state fully the causes and basis for the complaint and ~~shall~~ must be filed with the Administrative Official. The Administrative Official ~~shall record such complaint,~~ should investigate the complaint in a timely manner and take action thereon as provided by this Code.

(4) Each day a violation continues ~~shall be considered~~ is a separate civil violation, as adopted in SCC 14.44.030.

14.44.020 ~~Misdemeanor~~ Maintaining or permitting a public nuisance is a misdemeanor.

~~Notwithstanding any other judicial or administrative remedy provided herein and unless otherwise specified, any person who knowingly or intentionally violates SCC Titles 14 and/or 15, and/or any land use statute, regulation, or any order issued pursuant to this Code, or by any act of commission or omission procures, aids or abets such violation, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not to exceed \$250.00 and/or imprisonment in the County jail for a term not to exceed 90 days. The defendant shall also be required to pay restitution.~~

(1) A person who commits or maintains a public nuisance, for which no special punishment is prescribed; or who wilfully omits or refuses to perform any legal duty relating to the removal of a public nuisance; or who lets, or permits to be used, any land, building, or structure or portion thereof, knowing that it is intended to be or is being used for committing or maintaining any such public nuisance; is guilty of a misdemeanor, and upon conviction, may be punished by a fine not to exceed \$250, or imprisonment not to exceed 90 days, or both.

~~(1)(2) Any court or magistrate before whom any proceeding for violation of SCC 14.44.010(1) is pending must order such nuisance abated, in addition to any fine or other punishment that it may impose for such violation, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant, except that if the conviction was in a district court, the district court judge may not issue the order and warrant of abatement, but on application must transfer the cause to the superior court to try the issue of abatement in the same manner as if the action had been originally commenced therein.~~

14.44.030 Civil infractions and penalties.

(1) -(4) [No change]

(5) Payment of a civil penalty pursuant to this Chapter does not relieve the violator of the duty to correct the violation.

14.44.040 ~~Settlement of suits~~ for collection of civil penalties.

The Administrative Official may, with the advice and consent of the Prosecuting Attorney, enter into negotiations with parties in a code enforcement action or named in a lawsuit under this Chapter ~~and/or~~ their legal representatives, for the purposes of negotiating a settlement to such action or lawsuit. This negotiation ~~shall~~ must be in the best interests of the County and may include a compromise regarding the collection of civil penalties. This negotiation ~~shall~~ must consider the interests of the general public.

14.44.050 Investigation.

Whenever necessary to make an inspection to enforce the provisions of SCC Titles 14 ~~and/or~~ 15, ~~or~~ land use statutes, or regulations, or whenever the Administrative Official has reasonable cause to believe that any building, structure, property or portion thereof is being used in violation of SCC Titles 14 ~~and/or~~ 15, or a land use statute or regulation, the Administrative Official may, upon presentation of proper credentials and consent of the property owner or other person having charge or control of the building, structure or property, enter such building, structure, property or portion thereof at all reasonable times to inspect the same. If such building, structure, property or portion thereof is unoccupied, the Administrative Official shall make a reasonable effort to locate the owner or other persons having charge or control of the building, structure, property or portion thereof and request entry. If entry is refused or a responsible party cannot be located, the Administrative Official may ask the Prosecuting Attorney's office to assist in obtaining a warrant.

14.44.060 Land division.

(1) Injunctive Remedy. Whenever any parcel of land is divided in violation of SCC Chapter 14.18 ~~SCC~~, and any person, firm or corporation, or any agent of any of them sells or transfers, or offers or advertises for sale or transfer any such lot, tract or parcel in violation of SCC Chapter 14.18 ~~SCC~~, the Prosecuting Attorney ~~shall~~ may commence an action to restrain and enjoin further subdivision or sales or transfers or offers of sale or transfer of the illegally subdivided property and compel compliance with all provisions of SCC Chapter 14.18 ~~SCC~~. The costs of such action ~~shall~~ may be assessed against the person, firm, corporation, ~~and/or~~ agent selling or transferring the property. When property is in compliance with RCW 58.17.205, this Section ~~shall~~ does not apply.

(a) In enforcement of SCC Chapter 14.18 ~~SCC~~, the Prosecuting Attorney may accept an assurance of discontinuance of any act or practice deemed in violation of SCC Chapter 14.18 ~~SCC~~, from any person engaging in or who has engaged in such act or practice. Any such assurance ~~shall~~ must be in writing and ~~shall~~ must be filed with and subject to the approval of the Superior Court of Skagit County. The violation of such assurance ~~shall~~ constitutes prima facie ~~proof~~ evidence of a violation of SCC Chapter 14.18 ~~SCC~~.

(b) Any person who violates any court order or injunction issued pursuant to this Section ~~shall~~ be ~~is~~ subject to a civil penalty not more than \$5,000.

(2) Criminal Penalty. Any person, firm, corporation, or association or any agent of any person, firm, corporation, or association who violates any provision of SCC Chapter 14.18 ~~SCC~~ ~~and/or~~ RCW Chapter 58.17 ~~RCW~~ relating to the sale, offer for sale, lease or transfer of any lot, tract or parcel of land within a subdivision, short subdivision, binding site plan, or condominium ~~shall~~ be ~~is~~ guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract or parcel of land in violation shall be deemed a separate offense. If an offer to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of a final plat containing the lot, tract, or parcel under this Chapter, the offer or agreement is not subject to penalty and does not violate any provision of this Chapter. All payments on account of an offer or agreement conditioned as provided by this Section ~~shall~~ must be deposited in an escrow or other regulated trust account, and no disbursement to sellers ~~shall~~ may be permitted until the final plat is recorded.

14.44.065 Enforcement provisions for water quality.

(1) – (3) [No change]

(4) Civil Penalties

(a) [No change]

(b) Any person who, through an act ~~of commission~~ or omission, knowingly aids or abets ~~in~~ a violation ~~shall be~~ is considered to have committed the violation for the purposes of the civil penalty. Each violator is jointly and severally liable for a violation of SCC 14.32.090. The Administrative Official may take enforcement action, in whole or in part, against any violator after consideration of the following factors:

~~(i) Each violator is jointly and severally liable for a violation of SCC 14.32.090. The Administrative Official may take enforcement action, in whole or in part, against any violator. The Administrative Official may consider the following factors:~~

~~(ii)~~ (i) Awareness of the violation;

~~(iii)~~ (ii) Ability to correct the violation;

~~(iv)~~ (iii) Ability to pay damages, costs, and expenses;

~~(v)~~ (iv) Cooperation with government agencies;

~~(vi)~~ (v) Degree of impact or potential threat to water or sediment quality, human health, or the environment.

(c) The Administrative Official may reduce a civil penalty based upon ~~1~~ one or more of the following mitigating factors:

(i) The violator responded to the County's attempts to contact the violator and cooperated with efforts to correct the violation;

(ii) The violator showed due diligence or substantial progress, or both, in correcting the violation; or

(iii) The violator was not the primary cause of the violation.

~~(d) Payment of a monetary penalty pursuant to this Chapter does not relieve the violator of the duty to correct the violation.~~

~~(e)~~ (d) All civil penalties recovered during the enforcement of SCC 14.32.090 may be deposited into a water quality mitigation fund and shall be used for the protection of surface and stormwater, through education or enhanced implementation. The County must deposit any civil penalties received as a result of enforcement of SCC 14.32.090 into a water quality mitigation fund to be used to protect surface and stormwater through education, enhanced implementation, or enforcement.

~~(5) In addition to any other penalty or method of enforcement, the Prosecuting Attorney may bring actions for injunctive or other relief to enforce this Chapter.~~

14.44.070 Flood damage prevention enforcement.

[No change]

14.44.075 Special use ~~permit annual self-certification~~ permits in Ag—NRL.

(1) As certain uses in the Agricultural—Natural Resource Lands zone are allowed only in conjunction with or accessory to an agricultural use/operation, specific documentation may be required to evidence an existing agricultural use/operation.

~~(1)~~(2) Whenever the Administrative Official has reason to believe, or an RFI is filed alleging, that there is a violation of a special use permit on a parcel in the Agricultural—Natural Resource Lands zone with no obvious indication of an agricultural use/operation, the following documentation ~~shall~~ may be required as evidence of compliance. ~~It is the intent of the~~The Department ~~to~~ should review and verify the following documentation when required, but not ~~to~~ copy or retain either item for permanent record.

(a) Temporary Manufactured Home—Accessory to Farm Dwelling Unit. If requested by the Department, the farm owner/operator ~~shall~~ must submit an IRS Form 943, filed in the current or previous year, indicating that at least ~~1~~ one farm worker was employed in farm work.

(b) Special Uses Allowed as Accessory to an Agricultural Use/Operation. If requested by the Department, the farm owner/operator ~~shall~~ must submit an IRS Form 1040 Schedule F, filed in the current or previous year, indicating income from agricultural activities.

(3) If documentation meeting the above stated requirements is requested but not submitted, the activity ~~shall~~ may be deemed a violation.

14.44.080 Enforcement provisions for critical areas.

[No change]

14.44.085 Critical areas and ongoing agriculture.

[No change]

14.44.090 Abatement.

In addition to, or as an alternative to, any other judicial or administrative remedy provided herein or by law, the Administrative Official may order a land use violation to be abated. The Administrative Official may order any person who creates or maintains a violation of SCC Titles 14 ~~and/or~~ 15, ~~and/or~~ land use statutes or regulations, to commence corrective work and to complete the work within such time as the Administrative Official deems reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, the Administrative Official may ask the Prosecuting Attorney's office to assist in abating the public nuisance, ~~proceed to abate the violation and cause the work to be done. The costs thereof will be charged as a lien against the property and as both a joint and separate personal obligation of any person who is in violation.~~

14.44.100 Alternative remedies.

Notwithstanding the existence or use of any other remedy, the Administrative Official [and the Prosecuting Attorney](#) may seek legal or equitable relief to enjoin any acts or practices, or abate any conditions, ~~which that~~ constitute a violation of SCC Titles 14 ~~and/or~~ 15 or rules and regulations adopted thereunder.

14.44.110 Written notices and orders.

[No change]

14.44.120 Appeal.

[No change]

14.44.130 Supplemental notice and order.

[No change]

14.44.140 Enforcement of the final order.

[No change]

14.44.150 Permit suspension or revocation.

~~(1) The Director may suspend or permanently revoke any permit issued by the County for:~~

~~(a) Failure of the holder to comply with the requirements of SCC Titles 14 and/or 15, and/or any land use statute or regulation; or~~

~~(b) Failure of the holder to comply with any notice and order issued pursuant to this Chapter; or~~

~~(c) Discovery by the Administrative Official that a permit was issued in error or on the basis of incorrect information supplied to the County.~~

[\(1\) The Administrative Official may suspend or revoke any permit issued by the County upon discovery that the permit was issued in error on the basis of incorrect information supplied by the applicant.](#)

(2) Such permit suspension or revocation ~~shall~~ [must](#) be carried out through the notice and order provisions of this Chapter, and the suspension or revocation ~~shall be~~ [is](#) effective upon service of the notice and order upon the holder or operator.

(3) The holder or operator may appeal such revocation, as provided by this Chapter, however, the permit may be suspended pending the revocation hearing ~~relative thereto~~.

(4) Notwithstanding any other provision of this Code, whenever the Administrative Official finds that a violation of any land use or public health ordinance, statute or regulation has created or is creating an unsanitary, dangerous or other condition which, in his judgment, constitutes an immediate and irreparable hazard, he may, without service of a written notice and order, suspend and terminate operations under the permit immediately.

14.44.160 Liens

[Section deleted in its entirety]