

An Ordinance Amending Skagit County Code Chapter 14.44 Enforcement/Penalties

Whereas the residents of Skagit County want the County to actively, vigorously, and uniformly pursue timely compliance with the County's land use, building, and construction codes in a manner consistent with state and federal constitutional protection for the right of privacy;

Whereas the residents of Skagit County want the County to use education as a first step toward achieving compliance with those codes and to offer property owners the opportunity to correct violations before imposing fines;

Whereas existing Skagit County Code Chapter 14.44 contains provisions regarding enforcement of the land use, building, and construction codes;

Whereas existing SCC 14.44.020 provides that any violation of SCC Title 14 or 15 is a misdemeanor but does not clearly establish that such a violation continues until it is remedied;

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 several other provisions of SCC Chapter 14.44 require clarification, and the chapter requires revision and reorganization for clarity and ease of reading and administration;

Whereas, on March 13, 2014, the Board of County Commissioners published notice of a proposed ordinance to make limited revisions to SCC Chapter 14.44;

Whereas, on April 7, 2014, the Board of County Commissioners held a public hearing and took public testimony;

Whereas, on April 22, 2014, the Board of County Commissioners discussed and deliberated on the proposed ordinance and the public comments;

Whereas, on May 27, 2014, the Board decided that further revisions and reorganization of the chapter are necessary and appropriate and asked staff to generate a new draft of the entire chapter;

Whereas, on July 8, 2014, the Board further deliberated on the matter;

Whereas, on _____, 2014, the Board decided to propose the new draft for public comment;

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

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

Whereas _____;

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

- Section 1. Skagit County Code Chapter 14.44 is amended to read as shown in Attachment 1.
- Section 2. SCC 14.44.085, Critical areas and ongoing agriculture, is recodified as SCC 14.44.285.
- Section 3. SCC 14.06.050(1)(a)(xv) is amended to read “Administrative orders and civil penalties issued pursuant to SCC Chapter 14.44.”
- Section 4. SCC 15.04.050 is amended to read “SCC Title 15 is enforced per SCC Chapter 14.44.”
- Section 5. SCC 15.04.060 is deleted.

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

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

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Sharon D. Dillon, Commissioner

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Ryan Walters, Civil Deputy
Skagit County Prosecutor's Office

APPROVED AS TO CONTENT:

Dale Pernula, Director
Planning & Development Services

Attachment 1
SCC Chapter 14.44 Enforcement/Penalties

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Part I: Violations

14.44.110 Policy.

- (1) The policy of Skagit County is to:
 - (a) fairly, actively, **and uniformly** enforce the land use and building and construction codes to preserve the health, safety, and welfare of the public and the environment and not for the benefit of any particular class of persons;
 - (b) conduct all investigations into alleged violations of SCC Title 14 and 15 consistent with statutory and constitutional protections of the right of privacy;
 - (c) **use education as a first step toward achieving compliance with those codes and offer property owners the opportunity to correct violations before imposing fines;**
 - (d) **use administrative orders and other measures when necessary to ensure violations are corrected.**
- (2) To achieve this policy, this chapter provides authority and procedures for:
 - (a) efficient and effective notice and opportunities to correct violations;
 - (b) progressive monetary penalties proportionate to the violations;
 - (c) appeal of administrative orders regarding violations;
 - (d) collection of civil penalties; and
 - (e) abatement and remediation of violations.

14.44.120 Violations defined—Joint and several liability.

- (1) A “violation” is a failure to comply with SCC Title 14 or 15, including failure to comply with a permit or an administrative order issued pursuant to SCC Title 14 or 15.
- (2) A violation includes any act or omission that procures, aids, or abets a violation.
- (3) A violation is detrimental to the public health, safety, and welfare and is a public nuisance. A public nuisance is a continuing offense against the order and economy of Skagit County and is subject to abatement both under this chapter and RCW Chapter 7.48.
- (4) In addition to any other person who may be liable for violations, the property owner is jointly and severally liable for the violation, payment of any civil penalties, and restoration of the site.
- (5) Each day a violation continues is a separate civil violation.

14.44.130 Criminal offenses defined.

- (1) A person who commits or maintains a public nuisance, for which no special punishment is prescribed; or who willfully 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 \$1000, or imprisonment not to exceed 90 days, or both. Each day or part thereof is a separate offense.

- (2) Per RCW 7.48.260, any court or magistrate before whom any proceeding for violation of SCC 14.44.010(1) is pending may 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.
- (3) Failure to comply with a stop work order is a gross misdemeanor punishable upon conviction by a minimum fine of \$500 up to a maximum fine of \$1,000 or one year in jail, or both. Each day or part thereof of noncompliance with a stop work order is a separate offense.

14.44.140 Enforcement and abatement authorized.

The Administrative Official may initiate enforcement consistent with this chapter to correct any violation of SCC Title 14 or 15, and abate any condition in violation of SCC Title 14 or 15.

Part II: Procedures

14.44.200 Overview

- (1) ~~The County generally uses a graduated enforcement procedure to correct violations of the land use, building, and construction codes.~~
- (2) ~~The Administrative Official has the discretion to issue a **civil infraction** (a ticket), which it may do for simple violations or violations that are not ongoing (such as a single discharge of pollution).~~
- (3) ~~After identifying an ongoing violation, the Administrative Official will typically send a **letter** notifying the landowner of the problem and identifying a solution.~~
- (4) ~~The Administrative Official may offer to enter into a **voluntary compliance agreement** to correct the violation on a specified timeline without imposing fines if the timeline is met.~~
- (5) ~~The Administrative Official might also issue a **stop work order** to immediately stop the violation or prevent a dangerous condition.~~
- (6) ~~If the violation is not corrected voluntarily, or in certain other circumstances, the Administrative Official might issue an **administrative order** to correct the violation by a set deadline. Orders can carry **civil penalties**, usually \$100 per day per violation, but sometimes much more.~~
- (7) ~~Any administrative order may be **appealed** to the Hearing Examiner within 14 days. After that, the order is final and cannot be appealed.~~

- (8) If the violation is still not corrected and the civil penalties paid, the County will typically record a **certificate of non-compliance** against the property, which may affect the landowner's ability to sell or mortgage the property. The County may also refer the debt to a **collection agency**.
- (9) At any time, but usually only in serious cases, the County may try to resolve the violation by asking a court for an **injunction** or other order. A person that doesn't comply with a court's order may be held in **contempt**, which can be punished by jail time.
- (10) Any violation is also a **misdemeanor**, and the County has the option of filing criminal charges against a violator.

14.44.210 Investigation—Right of Entry.

- (1) Requests for Investigation.
- (a) Any person who believes a violation of SCC Title 14 or 15 has occurred may file a written Request for Investigation ("RFI") on forms provided by the Department.
 - (b) If requested, the Administrative Official must notify the person who files an RFI of the results of the Department's investigation after it is complete.
 - (c) The RFI is a public record and may be subject to disclosure per RCW Chapter 42.56, the Public Records Act.
- (2) Investigation and Follow-up.
- (a) The Administrative Official must investigate a violation alleged by an RFI and confirm it has occurred before proceeding to correct a violation.
 - (b) The Administrative Official may utilize any combination of the remedies described in Part III of this chapter to correct the violation, or may ask the Prosecuting Attorney to charge the violation as a misdemeanor.
 - (c) Generally, the Administrative Official should use a graduated enforcement process that uses notification and education as a first step and should offer property owners the opportunity to correct violations before imposing fines.
 - (d) The Administrative Official may decide not to take action to correct a violation, especially for *de minimus* violations or violations that require interpretations or discretionary judgments of the applicability of the land use code.
- (3) Right of Entry.
- (a) Whenever necessary to make an inspection to enforce the provisions of SCC Titles 14 or 15, 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 or 15, 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.

- (b) If the building, structure, property, or portion thereof is unoccupied, the Administrative Official must 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.
- (c) 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.

14.44.220 Administrative orders—Stop work order—Service.

- (1) Authority.
 - (a) The Administrative Official may issue administrative orders to compel correction of a violation, abatement of a nuisance, or payment of civil penalties.
 - (b) The Administrative Official may issue a stop work order whenever any work or activity is causing a violation or public nuisance.
- (2) Contents. An order must contain the following:
 - (a) The name and address of the property owner, the person in possession of the property, and any other person responsible for the violation or condition.
 - (b) The street address or description of the property sufficient for identification of the location where the violation occurred or condition is located.
 - (c) For stop work orders:
 - (i) A directive to immediately cease the work or activity until the Administrative Official rescinds the order.
 - (ii) A description of the basis for the order, including specific code sections violated, if any.
 - (iii) A statement of the penalties for failure to comply.
 - (d) For other orders:
 - (i) A statement that the Administrative Official has found the person to be in violation of specific code sections, permit condition, stop work order, or other administrative order that was or is being violated.
 - (ii) A statement of the corrective action required to be taken. If the Administrative Official has determined that corrective work is required, the order must require that all necessary permits be secured and the corrective work physically commence within a reasonable time, as determined by the Administrative Official, and a reasonable date by which the work must be completed.
 - (iii) A statement specifying the amount of any civil penalty assessed as a result of the violation and, if applicable, the conditions on which assessment of such civil penalty are contingent.

- (iv) A statement that if the corrective action is not commenced or completed within the time specified, the Administrative Official may proceed to abate the violation, cause the corrective work to be done, and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation.
 - (v) A statement of the procedural steps the County may take to ensure compliance if the violation is not corrected consistent with the order.
 - (e) A statement that the order is effective upon service or, for stop work orders, when the Administrative Official posts it on the subject property or serves it on the persons engaged in the work.
 - (f) A statement of the right to appeal an order and the method and deadline for doing so, and that failure to file a timely and complete appeal may constitute a waiver of all rights to appeal the order.
- (3) Method of Service.
- (a) All persons identified in the order must be served either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested.
 - (b) If the address of a person cannot reasonably be ascertained, then a copy of the order must be mailed to such person at the address of the location of the violation and a copy must be posted in a conspicuous location on the premises. The failure of any such person to receive such notice does not affect the validity of any proceedings taken under this chapter.
 - (c) Service by certified mail is effective on the date of mailing.
- (4) Supplemental order.
- (a) The Administrative Official may at any time add to, rescind in part, or otherwise modify an order by issuing a supplemental order.
 - (b) A supplemental order is governed by the same procedures applicable to other orders in this chapter.
- (5) Final Orders.
- (a) An administrative order becomes final if it is not timely appealed, or if it is timely appealed and not stayed or reversed.
 - (b) An administrative order other than a stop work order is stayed during an appeal to the Hearing Examiner except when the Administrative Official determines that the violation will cause immediate and irreparable harm and so states in the order.
- (6) Enforcement of Final Orders. If the person to whom an order is directed does not obey the order or does not pay the civil penalty assessed by the order, the Administrative Official may do any combination of the following:
- (a) Institute any appropriate action to collect the civil penalties;

- (b) Record a certificate of non-compliance against the property with the County Auditor describing the violation and the amount of unpaid civil penalties;
- (c) Abate the land use violation per SCC 14.44.340;
- (d) Refer such person for prosecution under this code or state law;
- (e) Pursue any other appropriate remedy at law or equity.

14.44.275 Special use 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.
- (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 may be required as evidence of compliance. The Department should review and verify the following documentation when required, but not 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 must submit an IRS Form 943, filed in the current or previous year, indicating that at least 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 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 may be deemed a violation.

14.44.285 Critical areas and ongoing agriculture

[Recodify from existing SCC 14.44.085, replacing references to prior SCC 14.44.110 with new SCC 14.44.220, and references to “Notice of Violation” with “Administrative Order.”]

14.44.290 Appeals

Any person subject to an administrative order issued pursuant to this chapter may appeal it in writing to the Hearing Examiner within 14 calendar days of service on forms provided by the Department. Appeals are processed per SCC Chapter 14.06. See, especially, SCC 14.06.110(7)-(9).

Part III: Remedies

14.44.310 Voluntary compliance agreement

- (1) The County and the violator may enter into a voluntary compliance agreement at any time. The Administrative Official is authorized on behalf of the County to enter into a

voluntary compliance agreement, as provided for in this section, at any time before the County becomes involved in any lawsuit related to the enforcement action.

- (2) Contents. A voluntary compliance agreement must contain the following:
 - (a) The name and address of the property owner, the person in possession of the property, and any other person responsible for the violation or condition.
 - (b) The street address or description of the property sufficient for identification of the location where the violation occurred or is located.
 - (c) A description of the violation and a reference to the specific code provisions that were allegedly violated.
 - (d) A detailed description of the agreed corrective action and the date by which it must be completed.
 - (e) The amount of the civil penalty that will be imposed, if any, pursuant to SCC 14.44.330 if the terms of the voluntary compliance agreement are not met.
 - (f) A statement that if the Administrative Official determines that the terms of the voluntary compliance agreement are not met, the Administrative Official may proceed with enforcement consistent with SCC Chapter 14.44.
 - (g) A statement that by entering into the voluntary compliance agreement the violator admits that the conditions described in the voluntary compliance agreement exist and constitute a civil violation.
 - (h) A statement that the violator knowingly, voluntarily, and intelligently waives the right to appeal any current or future administrative order arising from the same conditions or violations, including current or future civil penalties associated with the same conditions or violations.
- (3) The Administrative Official may grant an extension of the time limit for compliance or a modification of the required corrective action if the violator has shown due diligence or substantial progress in correcting the violation and the circumstances support such an extension.

14.44.320 Civil infraction

- (1) In addition to or as an alternative to any other judicial or administrative remedy, a person who violates SCC Titles 14 or 15, or any order issued pursuant to SCC Titles 14 or 15, or by any act of commission or omission procures, aids, or abets such a violation, is subject to a class 1 civil infraction in accordance with RCW Chapter 7.80.
- (2) The maximum penalty and the default amount for a class 1 civil infraction is \$250, not including statutory assessments.

14.44.330 Civil penalty

- (1) In addition to or as an alternative to any other judicial or administrative remedy, a person who violates SCC Titles 14 or 15, or any order issued pursuant to SCC Titles 14 or 15, or

by any act of commission or omission procures, aids, or abets such a violation, may be subject to a civil penalty.

(2) Amount of civil penalty.

- (a) The amount of civil penalty is \$100 per day per violation unless otherwise provided.
- (b) For a violation of SCC Chapter 14.24 or of any of the terms or conditions of any critical area buffer or setback, easement, or other plat restriction or binding assurance, or of any mitigation plan, or contract or agreement concluded pursuant to SCC Chapter 14.24 or of the “do not harm” standard of SCC 14.24.120(3), or of SCC 14.32.090, the Administrative Official may impose an additional civil penalty up to:
 - (i) An amount, not to exceed \$25,000, that is reasonable based upon the nature and extent of the violation and the costs to the County of enforcing this chapter against the violator; or
 - (ii) An amount equal to twice the economic benefit that the violator derived from the violation as measured by the greater of:
 - (A) The resulting increase in the market value of the property or the value received by the violator; or
 - (B) The savings of construction costs realized by the violator derived from the act that constituted the violation.
- (c) For a violation of SCC Chapter 14.34 or WAC Chapter 173-158, the Administrative Official may impose a civil penalty up to \$1,000 per day per violation.
- (d) A person found in violation of a new and separate violation under the provisions of SCC Titles 14 or 15 within one year of the resolution of a prior violation of SCC Titles 14 or 15 may be subject to double the civil penalties normally imposed for such a violation.
- (e) The Administrative Official may reduce a civil penalty based on 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.

(3) Collection of civil penalties.

- (a) An order to pay civil penalties is only valid for the penalties accrued as of the date of the order.
- (b) The Administrative Official may issue a supplemental order for additional civil penalties. That order is appealable like any other order, but only for the additional civil penalties imposed by the supplemental order.

- (c) Per RCW 19.16.500, the Administrative Official may refer orders to pay civil penalties to collection agencies 30 days after service, and may add a reasonable fee to cover the costs of collection.
- (4) Payment of a civil penalty pursuant to this chapter does not relieve the violator of the duty to correct the violation.

14.44.340 Abatement.

- (1) In addition to or as an alternative to any other judicial or administrative remedy, the Administrative Official may order any person who creates or maintains a violation of SCC Title 14 or 15 to correct the violation.
- (2) For violations of SCC 14.32.090, Water Quality, the Administrative Official may also:
 - (a) require implementation of BMPs described in the Stormwater Design Manual and, when necessary, AKART BMPs as described in RCW 90.48.010 and 90.48.520.
 - (b) require the violator to sample and analyze any discharge, surface and stormwater, groundwater, or sediment, in accordance with the sampling and analytical procedures and requirements determined by the Administrative Official, and provide that analysis to the Administrative Official.
 - (c) make inspections as required to determine compliance, including observation of BMPs or sampling surface and stormwater or groundwater as often as may be necessary.
- (3) 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.
- (4) Consistent with RCW 36.32.120(10), the County may abate the violation itself and charge the costs of abating the violation as a public nuisance lien against the property.

14.44.350 Permit suspension or revocation

- (1) The Administrative Official may issue an administrative order to suspend or revoke a permit issued pursuant to the Administrative Official's review, only upon:
 - (a) discovery that the permit was issued in error based on incorrect information supplied by the applicant;
 - (b) applicant's failure to disclose a change of circumstances on the development proposal site if those circumstances render the critical area study inaccurate.
- (2) The suspension or revocation is effective upon service of the order.
- (3) The suspension or revocation may be appealed like any other administrative order, but the permit may be suspended pending the decision on appeal.

14.44.360 Denial of permit application

- (1) The County may deny a permit application when the site for which the application is submitted is the site of a violation.

- (2) Such a denial may continue until the violation is corrected and payment of any civil penalties is complete, except that the County must approve appropriate permit applications necessary to correct the violation.

14.44.370 Remedies for land division violations

- (1) Injunctive Remedy. Whenever any parcel of land is divided in violation of SCC Chapter 14.18, and any person or any agent sells or transfers, or offers or advertises for sale or transfer any such lot, tract or parcel in violation of SCC Chapter 14.18, the Prosecuting Attorney 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. The costs of such action may be assessed against the person or agent selling or transferring the property. When property is in compliance with RCW 58.17.205, this section does not apply.
- (a) In enforcement of SCC Chapter 14.18, the Prosecuting Attorney may accept an assurance of discontinuance of any act or practice deemed in violation of SCC Chapter 14.18, from any person engaging in or who has engaged in such act or practice. Any such assurance must be in writing and must be filed with and subject to the approval of the Superior Court of Skagit County. The violation of such assurance constitutes prima facie evidence of a violation of SCC Chapter 14.18.
- (b) Any person who violates any court order or injunction issued pursuant to this section is subject to a civil penalty not more than \$5,000.
- (2) Criminal Penalty. Any person or agent who violates any provision of SCC Chapter 14.18 or RCW Chapter 58.17 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 is guilty of a gross misdemeanor. Each sale, offer for sale, lease or transfer of each separate lot, tract or parcel of land in violation is 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 must be deposited in an escrow or other regulated trust account, and no disbursement to sellers may be permitted until the final plat is recorded.

14.44.380 Settlement

The Administrative Official may, with the advice and consent of the Prosecuting Attorney, enter into negotiations with parties in an enforcement action or named in a lawsuit under this Chapter or their legal representatives, for the purposes of negotiating a settlement to such action or lawsuit. The settlement may include a compromise regarding the collection of civil penalties but must consider the interests of the public and be in the best interests of the County. Except as authorized by SCC 14.44.310, such a settlement requires the approval of the Board of County Commissioners.

14.44.390 Alternative Remedies

In addition to any other penalty or method of enforcement, the Prosecuting Attorney may bring actions for injunctive or other relief to enforce this Title.