

Ordinance _____

An ordinance creating a new title, Code Compliance, and the chapters comprising it as related to the laws and regulations of Clallam County

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Section 1. A new title is created to be known as Code Compliance and contain the following chapters.

Section 2. A new chapter titled Name and Purpose is created to read as follows:

.010 Name and purpose.

(1) The purpose of this title is to identify processes and methods to achieve compliance with laws and regulations adopted by Clallam County pursuant to Article XI, Section 11 of the Washington Constitution and other state laws that promote and protect the general public health, safety, and environment of Clallam County residents. According to the provisions of RCW 36.32.120(7), this title declares certain acts to be civil violations and establishes civil enforcement procedures and penalties, and also declares certain acts to be misdemeanors, punishable by a fine of not more than one thousand dollars and/or imprisonment in a county jail for not more than 90-days.

(2) It is the intent of Clallam County to pursue code compliance actively and vigorously in order to protect the health, safety, and environment of the general public.

(3) While this title authorizes Clallam County to take action to enforce laws and regulations, it shall not be construed as placing responsibility for code compliance or enforcement upon Clallam County in any particular case, or as creating any duty on the part of Clallam County to any particular person(s).

.020 Statement of goals.

It is the policy of Clallam County to emphasize code compliance by education and prevention as a first step. While warnings and voluntary compliance are desirable as a first step, enforcement through civil and criminal remedies should be used as needed to assure and effect code compliance. Abatement should be pursued only when appropriate and feasible.

Section 3. A new chapter titled General Provisions is created to read as follows:

.010 Definitions.

The words and phrases designated in this section shall be defined for the purposes of this title as follows:

(1) "Abate" means to take whatever steps are deemed necessary by Clallam County to remove, stop, rehabilitate, demolish, or repair a condition which constitutes a public nuisance.

(2) "Appellant" means the party appealing a citation, Notice and Order, order to stop work, or Director's decision on a request for certificate of correction.

(3) "Civil code violation" means and includes one or more of the following:
(a) An act or omission contrary to an ordinance of Clallam County that regulates or protects the public health, safety, environment, or use and development of land or water, whether or not the ordinance is codified; and

(b) An act or omission contrary to the conditions of any permit issued pursuant to any such ordinance, or a Notice and Order or stop work order issued pursuant to this title.

- (4) "Department" means
- (a) The Clallam County Department of Community Development; or
 - (b) Such other department as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title.
- (5) "Director" means, depending on the code violated:
- (a) The Director of the Department of Community Development, and authorized representatives of the Director, including but not limited to, enforcement officers and inspectors whose responsibility includes the detection and reporting of civil code violations;
 - (b) The Director and authorized representatives of such other department as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title; or
 - (c) Such other person as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title.
- (6) "Hearing examiner" means the Clallam County hearing examiner, as provided in Chapter 26.04 CCC, Hearing Examiner Code.
- (7) "Mitigate" means to take measures, subject to Clallam County approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome.
- (8) "Permit" means any form of written certificate, approval, registration, license, or any other written permission issued by Clallam County.
- (9) "Permit conditions" means the conditions of permit approval including but not limited to:
- (a) the provisions of any mitigation plans, habitat management plans, and other special reports submitted and approved as part of the permit approval process;
 - (b) the easement and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public.
- (10) "Person" means any individual, association, partnership, corporation, or legal entity, public or private, and the agents and assigns of the individual, association, partnership, corporation, or legal entity.
- (11) "Person responsible for code compliance" means either the person who caused the violation, if that can be determined, or the owner, lessor, lessee, tenant, or other person entitled to control, use or occupy, or any combination of control, use or occupy, of the subject property, or both.
- (12) "Remediate" means to restore a site to a condition that complies with regulatory requirements as they existed when the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition that does not pose a threat to public health, safety, or environment.
- (13) "Subject property" means the real property where the civil code violation has occurred or is occurring.

.020 Declaration of public nuisance, misdemeanor.

- (1) All civil code violations are hereby determined to be detrimental to the public health, safety, and environment and are hereby declared public nuisances, which may be subject to abatement and recovery of abatement costs pursuant to RCW 36.32.120(10), as now enacted or hereafter amended.
- (2) Any person who knowingly causes, aids, or abets a civil code violation by any act of commission or omission is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars and/or imprisonment in a county jail for not more than 90-days. Each calendar week (7-days) such violation continues shall be considered a separate misdemeanor offense.

(3) The Prosecuting Attorney may at any time bring such additional injunctive, declaratory, criminal, or other actions as are necessary to enforce the provisions of the Clallam County Code.

(4) Nothing in this title shall be interpreted to mean that civil and criminal remedies for the same violations may not be brought simultaneously.

.030 Enforcement authority and administration.

(1) All conditions determined to be civil code violations may be enforced pursuant to the provisions of this title except to the extent preempted by state or federal law, and except to the extent preempted by any contrary enforcement and penalty provisions contained in the ordinance being enforced.

(2) The procedures set forth in this title shall not in any manner limit or restrict the Director or the Prosecuting Attorney from remedying civil code violations or abating public nuisances in any other manner authorized by law.

(3) If the Director establishes, based on the provisions of section .060 of this chapter, that a civil code violation exists, the Director may:

(a) Enter into voluntary compliance agreements with persons responsible for code compliance as authorized in this title, and waive a portion of unpaid penalties and associated interest according to the provisions of this title;

(b) Issue citations and assess civil penalties (“penalties”) as authorized by this title.

(c) Issue Notice and Orders and order remediation or mitigation of the civil code violation, assess penalties and costs of code compliance (“costs”), and/or suspend or revoke any permit previously issued by the Director, as authorized by this title; and/or

(d) Issue stop work orders to order work stopped at a site, as authorized by this title.

(4) The Director shall send out regular bills for penalties and costs owing under this title. If penalties and/or costs remain unpaid 90-calendar days after they have been imposed (or, if appealed, 90-calendar days after final resolution of the appeal), the Director is authorized to:

(a) Impose interest at 6 percent per annum;

(b) Record a lien against the subject property if owned by the person responsible for code compliance;

(c) Use the services of a collection agency according to the provisions of RCW 19.60.500.

(5) In administering the provisions for code enforcement, the Director is authorized to waive any one or more such provisions so as to avoid substantial injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a code violation and any necessary remediation is being promptly provided. For purposes of this provision, substantial injustice cannot be based on economic hardship.

(6) The provisions of this title detailing departmental administration of code compliance procedures are intended only for the purpose of providing guidance to Clallam County employees and are not to be construed as creating a basis for appeal or a defense of any kind to an alleged violation.

(7) The provisions of this title authorizing the enforcement of non-codified ordinances are intended to assure compliance with conditions of approval on permits or approvals which may have been granted pursuant to ordinances which have not been codified, and to enforce new regulatory ordinances which are not yet codified. Departments should be sensitive to the possibility that citizens may not be aware of these ordinances, and should give warnings prior to enforcing such

ordinances, except that a stop work order may be issued any time when a civil code violation is found to be in progress.

.040 Conference.

An informal conference may be conducted at any time by the Director at his discretion and subject to available resources for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

.050 Guidelines regarding responses to potential violations.

It is the County's policy to investigate and to attempt to resolve all potential code violations. At the discretion of the Director, potential violations may be processed in any order that maximizes the efficiency of enforcement. However, at times when not all potential code violations can be investigated due to lack of resources or otherwise, the most serious potential violations should be addressed before less serious potential violations. The following guidelines should be applied by the Director in prioritizing responses to potential violations:

- (1) Violations that present an imminent threat to public health or safety.
- (2) Violations that present a high risk of damage to public resources and/or facilities.
- (3) Violations involving a regulated use or activity under Chapter 27.12 CCC, Clallam County Critical Areas Code, or CCC Title 32, Floodplain Management, or involving shorelines or shorelands under Chapter 35.01 CCC, Shoreline Management.
- (4) Violations that may result in damage to real or personal property.
- (5) Violations that do not fit within any of the previous categories, and have only minor public impacts. These potential violations should be processed in the order in which they are received, and as resources allow.

As a guideline and if resources allow, all potential violations should be investigated within 60-calendar days and enforcement actions should be initiated within 120-calendar days of coming to the Department's attention. Failure to meet these guideline response dates does not in any way prevent the Director from investigating and enforcing potential violations outside of these response dates.

.060. Investigating potential violations.

The Director shall determine, based on information derived from such sources as field observations, the statements of witnesses, relevant documents, and available data systems, if the following elements have been established. All elements must be established to determine that a civil code violation has occurred or is occurring.

- (1) The Director shall identify the person responsible for code compliance as defined in this title.
- (2) The Director shall identify the specific provision of the relevant ordinance, permit condition, Notice and Order, or stop work order that has been or is being violated.
- (3) The Director shall determine whether there are reasonable grounds to believe that the acts or omissions that constitute the violation did occur or are occurring. Such grounds may be established either by personal observation or by reliable evidence from witnesses.

.070. Enforcing civil code violations.

When a civil code violation has been established according to the provisions of the previous

section, the Director may use the following guidelines in enforcing the violation. Failure to meet the following guidelines does not in any way prevent the Director from enforcing the violation.

(1) Stop work orders should be issued promptly upon discovering a violation in progress.

(2) Except as provided in subsection (1) and (3) of this section, the Director may issue a written warning to the person determined to be responsible for code compliance. Warnings may be mailed by regular mail, hand-delivered in person, or posted on the subject property. The warning shall inform the person determined to be responsible for code compliance of the violation and allow the person an opportunity to correct it or enter into a voluntary compliance agreement as provided for by this title. The site shall be reinspected as identified in the warning.

(3) No warning need be issued in emergencies, repeat violation cases, cases that are already subject to a voluntary compliance agreement, cases in which the violation creates a situation or condition that is not likely to be corrected within a short period of time, cases in which a stop work order is necessary, or if the person responsible for code compliance knows or reasonably should have known that the action was a civil code violation.

(4) Notice and orders may be issued in cases where corrective action, such as remediation and/or mitigation, is necessary to bring about compliance.

(5) Citations may be issued in cases where corrective action is not necessary or already ordered in a previous enforcement action.

Any complainant who provides a mailing address and requests to be kept advised of enforcement efforts shall be mailed copies of all written warnings, voluntary compliance agreements, citations, Notice and Orders, stop work orders, decisions on requests for certificate of correction, Notices of Hearings, and Orders of Hearing Examiner with regard to the alleged violation. Unless otherwise served as a person responsible for code compliance, the landowner of the subject property, and the applicant of the underlying permit shall also be mailed copies of all written warnings, voluntary compliance agreements, citations, Notice and Orders, stop work orders, decisions on requests for certificate of correction, Notices of Hearings, and Orders of Hearing Examiner with regard to the alleged violation.

.080 Service of citation, notice and order, and stop work order.

(1) Service shall be made on a person responsible for code compliance by one or more of the following methods:

(a) Service in person may be made by leaving a copy of the citation or Notice and Order with the person, or at the person's house of usual abode with a person of suitable age and discretion who resides there.

(b) Service directed to the landowner and/or occupant of the subject property may be made by posting the citation or Notice and Order in a conspicuous place on the subject property and concurrently mailing a copy of the same as provided for below, if a mailing address is available.

(c) Service by mail may be made by mailing two copies of the citation or Notice and Order, postage prepaid, one by ordinary first class mail and the other by certified mail, to the person's last known address. The taxpayer's address as shown on the tax records of Clallam County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the subject property. Service by mail shall be deemed effective upon the third business day following the day of mailing.

(d) For Notice and Orders only, when the address of the person responsible for code compliance cannot reasonably be determined, service may be made by publication once in a local

newspaper with general circulation and, in addition, the Notice and Order should be posted in a conspicuous place on the subject property.

(e) Service of a stop work order may be made by posting the stop work order in a conspicuous place on the subject property or by serving the stop work order in any other manner permitted by this section.

(2) The person effecting the service shall make proof of service by a written declaration stating the date and time of service and the manner by which service was made.

(3) The failure of the Director to make or attempt service on any person named in the citation, Notice and Order, or stop work order shall not invalidate any proceedings as to any other person duly served.

.090 Right of entry and warrants.

(1) Any entry made to private property for the purpose of inspection for code violations shall be accomplished in strict conformity with Constitutional and statutory constraints on entry. The Director (or his designee) is authorized to enter upon any property for the purpose of administering this title provided the Director shall make entry only if such entry is consistent with the Constitutions and laws of the United States and the State of Washington.

(2) The Director is authorized to enter upon property or premises to determine whether Clallam County codes are being obeyed, and to make any examinations, surveys, and studies as may be necessary in the performance of his or her duties. These may include but are not limited to the taking of photographs, digital images, videotapes, video images, audio recordings, samples, or other physical evidence. All inspections, entries, examinations, studies, and surveys shall be done in a reasonable manner. If the property is occupied, the Director shall ask permission of the occupants before entering the property. If an owner, occupant, or agent refuses permission to enter or inspect, the Director may seek an administrative or criminal search warrant.

(3) The Prosecuting Attorney may request that a District Court or Superior Court of competent jurisdiction issue an administrative search warrant. The request shall be supported by an affidavit of a person having knowledge of the facts sworn to before the judge and establishing the grounds for issuing the warrant.

(a) If the judge finds that the affidavit given upon proper oath or affirmation shows probable cause to believe that a Clallam County code has been violated, the judge may issue an administrative warrant for the purpose of conducting administrative inspections or gathering of evidence. The warrant shall:

(i) State the grounds for its issuance and the name of each person whose affidavit has been taken in support of the warrant;

(ii) Be directed to the Director (or his designee) or a person authorized by the relevant code to execute it;

(iii) Command the person to whom it is directed to inspect the area, premises, or building identified for the purpose specified and the evidence that may be gathered;

(iv) Direct that it be served during normal business hours.

(b) When executed, a copy of the warrant shall be left on the property or the premises searched.

(c) A warrant issued under this section shall be executed and returned, accompanied by a written inventory of any evidence taken, within 10-calendar days of its date unless, upon a showing of a need for additional time, the court orders otherwise.

(d) If evidence is seized pursuant to a warrant, a copy of the written inventory of any evidence taken shall be provided to the person from whom or from whose premises the evidence was taken, together with a receipt for the evidence taken.

(e) The judge who has issued a warrant shall attach thereto a copy of the return (the endorsement made by the person executing the warrant, stating what (s)he has done under it, the time and mode of service, etc.) and all papers returnable in connection therewith and file them with the clerk of the court in which the inspection was made.

(4) Any search warrant obtained pursuant to criminal sections authorized under this ordinance shall be governed by appropriate Washington State Statutes and Court Rules.

.100 Certificate of correction.

(1) It shall be the responsibility of any person identified as a person responsible for code compliance to bring the subject property in compliance with Clallam County code. Payment of penalties and costs, applications for permits, acknowledgment of stop-work orders, and compliance with other remedies does not substitute for performing the corrective work required to bring the subject property into compliance with Clallam County code.

(2) A violation shall be considered ongoing and daily penalties continue to accrue up to the date that the subject property has been brought into compliance with Clallam County code, as determined by the Director, and as evidenced by a written certificate of correction in the form of a letter issued by the Director.

(3) A request for a certificate of correction shall be in writing on a form made available by the Director and shall be submitted to the Director. This request shall include the following:

(a) The address, legal description, and/or Clallam County tax parcel number of the subject property;

(b) An declaration of corrective actions performed;

(c) Authorization for the Director or his designee to enter and remain upon the subject property, during normal Clallam County business hours, to verify whether the subject property has been brought into compliance, in the form of written permission of the occupant or, if not occupied, the landowner; and

(d) Name, mailing address, and phone number of the person requesting the certificate of correction.

(4) The Director shall issue a decision on a request for a certificate of correction in writing within 10-calendar days of receipt of the written request and shall serve the same on the person responsible for code compliance, the party requesting the certificate of correction, the landowner of the subject property, the complainant, and the applicant of the underlying permit, if any, by mailing a copy of the same to the last known address of each party. The person effecting the mailing shall declare in writing the date and address the mailing was made. Service by mail shall be deemed effective upon the third business day following the day of mailing. The decision of the Director on a request for a certificate of correction may be appealed pursuant to the appeal provisions of this title.

(5) The certificate shall include a legal description of the subject property, shall indicate the date on which daily penalties ceased to accrue (the date the request for a certificate of correction was received), and shall state if any unpaid penalties and costs for which liens have been recorded are still outstanding and continue as liens on the subject property.

(6) A certificate of correction shall not constitute nor be considered a warranty, guarantee, or certification of any kind, express or implied, by Clallam County as to the physical condition of the subject property.

.110 Limitation of liability.

Any person determined to be responsible for code compliance pursuant to a citation or Notice and Order shall be liable, jointly and severally with all persons responsible for code compliance, for the payment of any and all penalties and costs. However, if the landowner of the subject property affirmatively demonstrates that the action which resulted in the violation was taken without the landowner's knowledge, that landowner shall be liable, jointly and severally with the person responsible for code compliance, only for the costs of bringing the subject property into compliance with Clallam County code.

.120 Denial of permits.

The Director shall not issue any permit or other development approval on a property subject to a stop work order, Notice and Order, citation, or voluntary compliance agreement, as long as the civil code violation that is the subject of the stop work order, Notice and Order, citation, or voluntary compliance agreement, remains uncorrected, except that the Director may issue such permits necessary to correct the violation.

Section 4. A new chapter titled Voluntary compliance agreements is created to read as follows:

.010 Authority and effect.

(1) Whenever the Director determines that a code violation has occurred or is occurring, the Director may enter into a voluntary compliance agreement with a person responsible for code compliance as provided for in this section.

(2) A voluntary compliance agreement may be entered into at any time after issuance of a warning, citation, Notice and Order, or stop work order and before an administrative appeal is decided pursuant to the provisions of this title.

(3) A landowner's submission of a request to be considered for assistance under a voluntary compliance agreement does not in any way toll, suspend, or otherwise affect any deadlines, periods of appeal, accrual of daily penalties, and the like.

(4) The voluntary compliance agreement is a commitment by the person responsible for code compliance to perform specific corrective actions, which may consist of a combination of remediation of the site and mitigating the impacts of the violation.

(5) By entering into a voluntary compliance agreement, the person responsible for code compliance admits that the conditions described in the voluntary compliance agreement exist and constitute a civil code violation, and acknowledges that, if the Director determines that the terms of the voluntary compliance agreement have not been met, (s)he may be liable for any remedy authorized by this title.

(6) The Director may record a copy of the executed voluntary compliance agreement with the Clallam County Auditor's Office. In that case, the Director shall record a certificate of correction with the Clallam County Auditor's Office when all violations specified in the voluntary compliance agreement have been corrected as required by the voluntary compliance agreement.

(7) The Director may grant in writing an extension of the time limit for compliance or agree to a modification of the required corrective action if the person responsible for code compliance makes a request therefore in writing, which describes in detail the circumstances that render full or timely

compliance under the original conditions unattainable, and shows due diligence or substantial progress in correcting the violation.

(8) The voluntary compliance agreement is not a settlement agreement.

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In addition to identifying the name and address of the person entering into the voluntary compliance agreement (“responsible person”), a voluntary compliance agreement shall contain the following:

(1) The address, legal description, and/or Clallam County tax parcel number of the subject property;

(2) A summary of the information that forms the basis of the determination that a violation has occurred or is occurring on the subject property;

(3) A reference to the specific provisions of the ordinance, permit condition, Notice and Order provision, or stop work order that was or is being violated;

(4) An acknowledgement by the responsible person that the conditions described in the voluntary compliance agreement exist and constitute a civil code violation, and that (s)he is the person responsible for code compliance as to that violation;

(5) A description of the corrective actions to be taken by the responsible person, including any permits and associated mitigation plans and/or special reports that must be obtained, the due date by which the corrective action must be completed, and an acknowledgement by the responsible party that these actions are necessary to correct the violation;

(6) Authorization for the Director to enter and remain upon the subject property, during normal Clallam County business hours, to determine whether the terms of the voluntary compliance agreement are being met, in the form of written permission of the occupant or, if not occupied, the landowner;

(7) An acknowledgement by the responsible person that (s)he is responsible for notifying the Director in writing of the corrective actions taken to meet the terms of the voluntary compliance agreement;

(8) An acknowledgment by the responsible person that the violation is not considered corrected unless and until the Director issues a written certificate of correction;

(9) Acknowledgement by the responsible person that (s)he is responsible for the stated amount of penalties and costs being assessed and accruing pursuant to the provisions of this title, and that any waiver of penalties according to the schedule provided for in this title shall only apply if the responsible person meets all the terms of the voluntary compliance agreement;

(10) Acknowledgement by the responsible party that penalties and costs are due 30-calendar days after they are imposed, and that if any penalties or costs remain unpaid 90-calendar days after they are imposed, interest will begin to accrue at 6 percent per annum, a lien will be recorded against the subject property (if owned by the responsible person), and/or the amounts due will be forwarded to a collection agency for collection;

(11) An acknowledgment that failure to meet the terms of the voluntary compliance agreement may subject the responsible person to any remedy authorized by this title, including but not limited to assessment of additional penalties, costs, suspension, revocation, or denial of a development permit, and/or abatement;

(12) An acknowledgment by the responsible party that (s)he knowingly, voluntarily, and intelligently waives the right to appeal the existence of the violation, the determination of responsibility, the agreed upon corrective action, and the imposed penalties and costs;

(13) An acknowledgement that the voluntary compliance agreement will be recorded against the subject property in the Clallam County Auditor's office.

Section 5. A new chapter titled Citations is created to read as follows:

.010 Authority and effect.

(1) Whenever the Director has reason to believe that a civil code violation has occurred or is occurring, or that the terms of a voluntary compliance agreement have not been met, the Director may issue a citation to any person responsible for code compliance. Issuance of a warning, stop work order, or Notice and Order is not required before issuing a citation.

(2) A citation represents a determination that a civil code violation has occurred and that the person named therein is responsible for code compliance.

(3) Failure to appeal the citation according to the procedures set forth in this title shall render the citation a final determination that the conditions described in the citation exist and constitute a civil code violation, that the person named therein is liable, and that the stated penalties are properly imposed.

(4) Penalties will be imposed according to the provisions of the penalties schedule contained in this title.

(5) The payment of penalties does not relieve a person responsible for code compliance of any obligation to stop and correct a violation and does not waive any of the penalties and costs accrued and accruing under previously or subsequently issued citations, stop work orders, Notice and Orders, or any other legal action.

(6) Issuance of a citation in no way limits the Director's authority to issue a stop work order, Notice and Order, or subsequent citations, or pursue any other legal action.

(7) The Director may revoke or modify in writing a citation issued under this title if the original citation was issued in error or if a party to a citation was incorrectly named. A modified citation shall identify the reasons and underlying facts for modification and shall be governed by the same procedures as citations contained in this title.

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In addition to identifying the name and address of the person to whom the citation is issued, the citation shall contain the following:

(1) The address, legal description, and/or Clallam County tax parcel number of the subject property;

(2) A summary of the information that forms the basis of the determination that a violation has occurred or is occurring on the subject property;

(3) A reference to the specific provisions of the ordinance, permit condition, Notice and Order provision, or stop work order that was or is being violated;

(4) Notification of the amount of civil penalty per violation being assessed and accruing pursuant to the provisions of this title, and notification that penalties are due and payable within 30-calendar days of service of the citation;

(5) Notification that if any penalties remain unpaid 90-calendar days after they are imposed, interest will begin to accrue at 6 percent per annum, a lien will be recorded against the subject property (if owned by the responsible person), and/or the amounts due will be forwarded to a collection agency for collection;

(6) Notification that the citation may be appealed to the hearing examiner within 14-calendar days of the date of service of the citation;

(7) Notification that collection of the penalties assessed in the citation shall be stayed as to the appealing party while any administrative appeal under this title is pending;

(8) Notification that a failure to appeal the citation within the appeal time limit renders the citation a final determination that the conditions described in the citation exist and constitute a civil code violation, that the named party is liable as a person responsible for code compliance, and that the stated penalties are properly imposed;

(9) Notification that failure to correct the violation potentially subjects the named person to further remedies, including but not limited to assessment of additional penalties, costs, orders to correct the violations, suspension, revocation, or denial of a development permit, and/or abatement;

(10) Notification that it is the duty of the person responsible for code compliance to notify the Director in writing of any actions taken to achieve compliance;

(11) Notification that the violation is not considered corrected unless and until the Director issues a written certificate of correction.

Section 6. A new chapter titled Notice and Orders is created to read as follows:

.010 Authority and effect.

(1) Whenever the Director has reason to believe that a civil code violation has occurred or is occurring, or that the terms of a voluntary compliance agreement have not been met, the Director may issue a Notice and Order to any person responsible for code compliance. Issuance of a warning, stop work order, or citation is not required before issuing a Notice and Order.

(2) A Notice and Order represents a determination that a civil code violation has occurred and that the person named therein is responsible for correcting the violation, as well as the other penalties and remedies specified in the Notice and Order.

(3) Failure to appeal the Notice and Order according to the procedures set forth in this title shall render the Notice and Order a final determination that the conditions described in the Notice and Order exist and constitute a civil code violation, that the person named therein is liable, and that the stated sanctions are properly imposed.

(4) Issuance of a Notice and Order in no way limits the Director's authority to issue a citation, stop work order, or a subsequent Notice and Order, or pursue any other legal action. Payment of the penalties and costs assessed under the Notice and Order does not relieve the person named therein of the duty to correct the violation and does not waive any of the penalties and costs accrued and accruing under previously or subsequently issued citations, stop work orders, Notice and Orders, or any other legal action.

(5) The Director may record a copy of the Notice and Order with the Clallam County Auditor's Office. In that case, the Director shall record a certificate of correction with the Clallam County Auditor's Office when all violations specified in the Notice and Order have been corrected as required by the Notice and Order.

(6) The Director may grant in writing an extension of the time limit for compliance or agree to a modification of the required corrective action if the person responsible for code compliance makes a request therefore in writing, which describes in detail the circumstances that render full or timely compliance under the original conditions unattainable, and shows due diligence or substantial progress in correcting the violation.

(7) Whenever there is new information or a change in circumstances, the Director may add to, rescind in whole or part or otherwise modify a Notice and Order by issuing a supplemental Notice and Order. A supplemental Notice and Order shall be governed by the same procedures as Notice and Orders contained in this title.

(8) The Director may revoke or modify a Notice and Order issued under this title if the original Notice and Order was issued in error or if a party to an order was incorrectly named. A modified Notice and Order shall identify the reasons and underlying facts for modification and shall be subject to the same procedures as Notice and Orders contained in this title. If the underlying Notice and Order was recorded, the modified Notice and Order shall also be recorded with the Clallam County Auditor's Office.

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In addition to identifying the name and address of the person to whom the Notice and Order is directed, the Notice and Order shall contain the following:

- (1) The address, legal description, and/or Clallam County tax parcel number of the subject property;
- (2) A summary of the information that forms the basis of the determination that a violation has occurred or is occurring on the subject property;
- (3) A reference to the specific provisions of the ordinance, permit condition, Notice and Order provision, or stop work order that was or is being violated;
- (4) Notification of the corrective actions required to be taken, including any permits and associated mitigation plans and/or special reports that must be obtained and the due date by which the corrective actions must be completed;
- (5) Notification that the Notice and Order may be recorded against the subject property in the Clallam County Auditor's office subsequent to service;
- (6) Notification of the amount of civil penalty per violation being assessed and accruing pursuant to the provisions of this title, and notification that penalties are due 30-calendar days after they are imposed;
- (7) Notification of any costs being assessed, and notification that costs are due 30-calendar days after they are imposed;
- (8) Notification that if any penalties or costs remain unpaid 90-calendar days after they are imposed, interest will begin to accrue at 6 percent per annum, a lien will be recorded against the subject property (if owned by the responsible person), and/or the amounts due will be forwarded to a collection agency for collection;
- (9) Notification of the suspension or revocation of any permit previously issued by the Director relating to the subject property;
- (10) Notification that, if the corrective work ordered to be commenced or completed by the date specified in the Notice and Order, the Director may seek further remedies including but not limited to assessment of additional penalties, costs, suspension, revocation, or denial of development permits, and/or abatement, or may forward the case to the Prosecuting Attorney for consideration of additional injunctive, declaratory, criminal, or other actions as may be necessary to enforce the provisions of the Clallam County Code;
- (11) Notification that any person named in the Notice and Order or having any legal or equitable title in the subject property may appeal the Notice and Order to the hearing examiner within 14-calendar days of the date of service of the Notice and Order;
- (12) Notification that enforcement of the Notice and Order shall be stayed as to the appealing party while any administrative appeal under this title is pending, except when the Director determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in the Notice and Order is sued;

(13) Notification that a failure to appeal the Notice and Order within the appeal time limit renders the Notice and Order a final determination that the conditions described in the Notice and Order exist and constitute a civil code violation, that the named party is liable as a person responsible for code compliance, and that the stated sanctions are properly imposed;

(14) Notification that it is the duty of the person responsible for code compliance to notify the Director in writing of any actions taken to achieve compliance with the Notice and Order;

(15) Notification that the violation is not considered corrected unless and until the Director issues a written certificate of correction.

.030 Assessment of penalties.

(1) Penalties will be imposed according to the provisions of the penalties schedule contained in this title.

(2) The payment of penalties does not relieve a person responsible for code compliance of any obligation to stop and correct a violation and does not waive any of the penalties and costs accrued and accruing under previously or subsequently issued citations, stop work orders, Notice and Orders, or any other legal action.

.040 Assessment of costs of code compliance (“costs”).

(1) Independent of other remedies available under this title, the Director may charge to the person responsible for code compliance the direct and indirect costs incurred by Clallam County to pursue code compliance, including staff time at the hourly rate specified for technical assistance in Chapter 5.100 CCC, Consolidated Fee Schedule, at Planning Division services, as well as actual expenses incurred in investigating the violation and pursuing citations, Notices and Orders, and stop work orders, and monitoring compliance under voluntary compliance agreements.

(2) Costs charged create a joint and several obligation in all persons responsible for code compliance. Such costs are due and payable 30-calendar days from assessment. The Director may collect the costs by any appropriate legal means, including forwarding the same to a collection agency for collection. A lien for unpaid costs may be recorded according to the lien provisions of this title. A lien for costs shall run with the subject land (if owned by the person responsible for code compliance), and shall accrue interest at 6 percent per annum from the date of recording the lien until paid in full.

.050 Suspension or revocation of permit.

(1) The Director may suspend or revoke any permit issued by that Director whenever:

(a) The permit holder has committed a code violation in the course of performing activities subject to that permit;

(b) The permit holder has failed to comply with the provisions of a Notice and Order, stop work order, or voluntary compliance agreement;

(c) For a permit or approval that is subject to critical areas review, the permit holder has failed to disclose a change of circumstances on the development proposal site which materially affects an permit holder’s ability to meet the permit or approval conditions or which makes inaccurate the critical areas study that was the basis for establishing permit or approval conditions;
or

(2) A suspension or revocation authorized by subsection (1) of this section shall be carried out through the Notice and Order provisions of this chapter and shall be effective upon the compliance date established by the Notice and Order. The revocation or suspension may be appealed to the

hearing examiner within 14-calendar days of the date of service of the Notice and Order, using the appeal provisions of this title.

(3) Notwithstanding any other provision of this title, the Director may immediately suspend operations under any permit by issuing a stop work order pursuant to the provisions of this title.

Section 7. A new chapter titled Stop Work Orders is created to read as follows:

.010 Authority and effect.

(1) Whenever the Director has reason to believe that a civil code violation is occurring, or that the terms of a voluntary compliance agreement are not being met, the Director may issue a stop work order. Issuance of a warning, citation, or a Notice and Order is not required before issuing a stop work order.

(2) A stop work order represents a determination that a civil code violation has occurred or is occurring and that any work or activity that is causing or contributing to the violation on the subject property must cease.

(3) Failure to appeal the stop work order according to the procedures set forth in this title shall render the stop work order a final determination that the civil code violation occurred and that work was properly ordered to cease.

(4) Issuance of a stop work order in no way limits the Director's authority to issue a citation or Notice and Order, or pursue any other legal action.

.020 Contents.

In addition to identifying the name and address of the person to whom the stop work order is directed, if known, the stop work order shall contain the following:

- (1) The address or location of the civil code violation;
- (2) The legal description or the Chllam County tax parcel number of the subject property;
- (3) A summary of the information that forms the basis of the determination that a violation has occurred or is occurring on the subject property;
- (4) Notification of the specific provisions of the ordinance, permit condition, or Notice and Order provision that was or is being violated;
- (5) Notification that the stop work order requires the immediate cessation of the specified work or activity on the subject property and that work or activity may not resume unless authorized in writing by the Director in the form of a Certificate of Correction;
- (6) Notification that a stop work order may be appealed to the hearing examiner within 14-calendar days of the date of service of the stop work order but that any stop work order remains in full force and effect until resolution of the appeal;
- (7) Notification that failure to appeal the stop work order within the applicable time limits renders the stop work order a final determination that the civil code violation occurred and that work was properly ordered to cease;
- (8) Notification that a violation of a stop work order shall be a separate civil code violation, subject to assessment of additional penalties and costs.

Section 8. A new chapter titled Penalties Schedule is created to read as follows:

.010 Penalties schedule.

- (1) Penalties will be assessed in accordance with the following schedule:
 - (a) Penalties for noncommercial violations shall be assessed at the rate of \$100 per day per violation. Any person engaged in the development, management, sale, rental, or use of property

solely for the purpose of residential occupancy by the person or his or her immediate family is engaged in a noncommercial action for purposes of this chapter.

(b) Penalties for commercial violations shall be assessed at the rate of \$250 per day per violation. Any violation other than a noncommercial violation is a commercial violation.

(2) Each and every day or portion thereof during which any violation is committed, continued, not permitted, or not corrected shall be a violation for purposes of this chapter. Penalties for failure to obtain any required permit shall begin to accrue on the first day activity subject to the permit requirement is commenced and shall cease to accrue on the day the permit is obtained. Penalties for the violation of any stop work order shall begin to accrue on the first day the stop work order is violated and shall cease on the day the work is actually stopped. Penalties for failure to correct the violation by the date set forth in a Notice and Order or a voluntary compliance agreement shall begin to accrue on the first day after said date.

(3) Second, third, or repeated, but separate violations of a like nature by the same person may be described as a repeat violation. Penalties for repeat violations shall be double the rates identified in subsection (1). For the purposes of this section, the term “of a like nature” means a violation of the same Clallam County Code title or chapter.

(4) The Director may waive accrued but unpaid penalties in accordance with the provisions of this title only.

(5) Penalties assessed create a joint and several obligations in all persons responsible for code compliance. Such penalties are due and payable 30-calendar days from assessment. The Director may collect assessed penalties by any appropriate legal means, including forwarding the same to a collection agency for collection. A lien for penalties may be recorded if penalties remain unpaid, according to the provisions of this title. A lien for penalties shall run with the subject land (if owned by the person responsible for code compliance), and shall accrue interest at 6 percent per annum from the date of recording the lien until paid in full.

.020 Penalties schedule for sensitive areas.

(1) The code compliance provisions as applied to sensitive areas are intended to encourage compliance with Chapter 27.12 CCC, Clallam County Critical Areas Code, CCC Title 32, Floodplain Management, and Chapter 35.01 CCC, Shoreline Management, to protect sensitive areas and the general public from harm, and to further the remedial purposes of this title. To achieve this, persons responsible for code compliance will not only be required to restore damaged sensitive areas, insofar as that is possible and beneficial, but will also be required to pay a civil penalty for the redress of ecological, recreation, and economic values lost or damaged due to their unlawful action.

(2) The penalty provisions of this section are in addition to, and not in lieu of, the penalty provisions of the previous section.

(3) For the purposes of this section, a sensitive area is any area that is subject to the provisions of Chapter 27.12 CCC, Clallam County Critical Areas Code, CCC Title 32, Floodplain Management, and/or Chapter 35.01 CCC, Shoreline Management;

(4) For the purposes of this section, violation of a sensitive area ordinance means:

(a) the violation of any provision of Chapter 27.12 CCC, Clallam County Critical Areas Code, CCC Title 32, Floodplain Management, or Chapter 35.01 CCC, Shoreline Management;

(b) the failure to obtain a permit required for work in a sensitive area;

(c) the failure to comply with the conditions of any permit, Notice and Order, stop work order, voluntary compliance agreement, mitigation plan, or any other written approval issued pursuant to the above-mentioned provisions;

(d) the failure to disclose a change of circumstances which makes inaccurate any sensitive area study that was the basis for establishing permit or approval conditions.

(5) Any person in violation of a sensitive areas ordinance is subject to a sensitive area penalty, which is in addition to the penalty imposed under the previous section, in an amount that is the higher of either (a) the amount of penalties imposed pursuant to the previous section or (b) the amount of economic benefit that such person derives from the violation, if such amount can be objectively documented. Such economic benefit shall be calculated as the total of any or all of the following:

- (i) the resulting increase in market value of the subject property and/or
- (ii) the value received by the person responsible for code compliance and/or
- (iii) the savings of construction costs realized by the person responsible for code

compliance as a result of performing any act in violation of the chapter.

(6) All sensitive area penalties assessed under this section shall be payable to Clallam County and placed in a special revenue fund for the enhancement of shorelines and critical areas.

.030 Penalty waivers.

(1) Penalties may be waived by the Director under the following circumstances and to the following extent only:

(a) If a citation, Notice and Order, or stop work order was issued in error, or if penalties were assessed in error, the Director may adjust the penalties to the correct amount. The Director shall document the circumstances under which a decision was made to adjust penalties and such a statement shall become part of the public record unless privileged.

(b) If the code violation has been fully corrected according to the terms of a duly executed voluntary compliance agreement under this title, then the Director shall waive a portion of the accrued but unpaid penalties, and associated interest, according to the table set forth herein, which amount shall be specifically memorialized in said voluntary compliance agreement:

If the date of the Voluntary Compliance Agreement is as follows:	Portion of accrued but unpaid penalties to be waived
Within 90-calendar days of imposition of penalties	75%
After 90-calendar days of imposition of penalties	50%
Within 90-calendar days of recording lien for penalties	50%
After 90-calendar days of recording lien for penalties	25%
Within 45-calendar days of the acquisition date of the subject property by new owners (including inheritance)	75%
After 45-calendar days of the acquisition date of the subject property by new owners (including inheritance)	25%

This partial waiver of penalties shall only apply to unpaid penalties and associated interest. Under no circumstances shall anything in this section be construed to mean that the Department or Clallam County shall owe reimbursement of penalties and/or interest already paid.

(c) In partially waiving penalties and interest, the Director must follow the above table and may not deviate from the same. This objective waiver of penalties serves to further the overriding public purpose of bringing properties into code compliance, and recognizes the environmental and public health benefits to the County of bringing properties into code compliance.

(d) The Director shall not waive any assessed costs of code compliance or actual abatement costs incurred by the County, including associated interest thereon. Actual abatement costs are funds spent by the County to achieve physical abatement of the violation.

(e) Upon a determination that the violation has been corrected according to the terms of the voluntary compliance agreement, the Director shall record a certificate of correction together with an amended lien that reflects the partial waiver of penalties and associated interest pursuant to the provisions of this title.

(f) Within 30-calendar days of full payment of any remaining penalties, costs, and associated interest, the Director shall record a lien satisfaction.

Section 9. A new chapter titled Appeals is created to read as follows:

.010 Administrative appeal.

(1) Within 14-calendar days from the date of service of a citation, Notice and Order, stop work order, or Director's written decision on request for certificate of correction, any person so served or any person with legal or equitable title in the subject property, may appeal the Director's decision by filing a Notice of Appeal with the Director.

(2) The Notice of Appeal must be in writing and must be received no later than 4:30 p.m. on the last day of the appeal period at Clallam County Department of Community Development, 223 E. 4th Street, Suite 5, Port Angeles, WA 98362. If the last day of an appeal period falls on a weekend or legal holiday, the appeal period shall be extended until 4:30 p.m. the next business day. A form Notice of Appeal is available at the office of Clallam County Department of Community Development and must include the following:

- (a) The phrase "Notice of Appeal;"
- (b) The decision being appealed;
- (c) A brief statement as to how the Appellant is significantly affected by or interested in the matter appealed;
- (d) A brief statement of the Appellant's issues on appeal, noting Appellant's specific exceptions and objections to the decision or action being appealed;
- (e) The specific relief requested, such as reversal or modification;
- (f) The appeal fee which is the same as required under CCC 5.100.300 for Type I, II, III appeals;
- (g) Any additional requirements set forth in the underlying Clallam County code;
- (h) Any additional attachments provided by the appellant;
- (i) The verification, by declaration under penalty of perjury, by at least one appellant as to the truth of the matters stated in the appeal.

(3) A Notice and Order shall be stayed as to the appealing party while any administrative appeal under this title is pending, except when the Director determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in the Notice and Order issued. Any stop work order issued pursuant to this title shall not be stayed while any administrative appeal under this title is pending and shall remain in full force and effect until the appeal is final.

(4) When multiple citations, stop work orders, or Notices and Orders have been issued simultaneously for any set of facts constituting a violation, the appellant shall consolidate the citations and/or orders and submit one appeal.

.020 Notice of hearing.

(1) If the Director receives one or more Notices of Appeal, the Director shall issue and serve a Notice of Hearing to the appellants at least 15-calendar days prior to the date of the hearing on appeal. Requests from multiple parties concerning the same violation shall be consolidated.

(2) The Notice of Hearing shall contain the date, time, and location of the hearing; the legal authority and jurisdiction for the hearing; the file number, address, and other identifying information for the underlying decision or action being appealed; a brief statement as to the issue(s) to be considered; reference to the applicable Clallam County code section(s), and the name and telephone number of the Director.

(3) The Notice of Hearing shall be served on the party who filed the Notice of Appeal, the person responsible for code compliance, the landowner of the subject property, the complainant, and the applicant of the underlying permit, if any, by personal service or by mailing a copy of the same to the last known address of each party. The person effecting the service shall declare in writing the date and address the personal service or mailing was made. Service by mail shall be deemed effective upon the third business day following the day of mailing.

(4) In addition to the preceding and at the cost of appellant, the Director shall provide notice of the hearing on appeal by mailing a copy of the Notice of Hearing to the following persons:

(a) All owners of adjacent properties that abut the subject property. Documents of record within the Clallam County Assessor's office shall be controlling as to the status of legal ownership. For the purposes of this section, properties separated by public right-of-way are considered to be adjacent properties.

(b) If the underlying permit is a Type III permit, to all parties of record established for the underlying permit, which include any person or persons who submitted written or oral testimony during the review of the underlying permit and or any person who requested in writing to receive notification of any decisions relating to the underlying permit.

.030 Hearing.

Appeals of administrative decisions made under this title shall be heard by the Clallam County Hearing Examiner as an open record appeal hearing pursuant to the provisions of CCC 26.10.620 and Clallam County Administrative Policies.

.040 Order of the Hearing Examiner.

The order of the Hearing Examiner shall be served on the person responsible for code compliance, the party who filed the Notice of Appeal, the landowner of the subject property, the complainant, and the applicant of the underlying permit, if any, by mailing a copy of the same to the last known address of each party. The person effecting the mailing shall declare in writing the date and address the mailing was made. Service by mail shall be deemed effective upon the third business day following the day of mailing.

.050 Reconsideration of Hearing Examiner's Order.

Appeal decisions of the Hearing Examiner may be reconsidered upon a motion of reconsideration pursuant to Clallam County Administrative Procedures.

.060 Appeal of Hearing Examiner's Order.

The appeal decisions of the Hearing Examiner as set forth in the Order of the Hearing Examiner shall be final and conclusive unless proceedings for review are properly and timely commenced in Superior Court.

Section 10. A new chapter titled Liens is created to read as follows:

.010 Lien for penalties and costs.

The Director may record a lien against the subject property after assessed penalties and/or costs have remained unpaid for 90-calendar after they became due.

(1) The lien for penalties and/or costs shall run with the land, and shall accrue interest at 6 percent per annum from the date of recording the lien until paid in full;

(2) The lien for penalties and/or costs shall contain a reference to the citation and/or Notice and Order, a description of the property to be charged with the lien, the owner of record, and the total amount of the lien. The Director may cause such lien to be modified to add additional accrued penalties if they remain unpaid 90-calendar days after they have become due;

(3) The Director may cause a lien for penalties to be adjusted only pursuant to the provisions of this title.

(4) No lien for penalties and/or costs shall be recorded against the subject property if the landowner of the subject property has affirmatively demonstrated that the action which resulted in the violation was taken without the landowner's knowledge.

.020 Lien satisfaction.

Within 30 days of full payment of all penalties and/or costs, the Director shall record a satisfaction of lien with the Clallam County Auditor's Office. The satisfaction shall include a legal description of the subject property.

Section 11. A new chapter titled Miscellaneous Provisions is created to read as follows:

.010 Grammatical construction.

Unless the context clearly indicates otherwise, words in any tense shall include the present, past and future tense.

.020 Severability.

Should any section, subsection, paragraph, sentence, clause, or phrase of this title be declared unconstitutional or invalid or unenforceable for any reason, such decision shall not affect the validity of the remaining portions of this title which will remain in full force and effect.

ADOPTED this _____ day of _____ 2007

BOARD OF CLALLAM COUNTY COMMISSIONERS

Stephen P. Tharinger, Chair

Michael C. Chapman

ATTEST:

Trish Holden, CMC, Clerk of the Board

Howard V. Doherty, Jr.