

Chapter 17.92

Violations, Enforcement and Penalties

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17.92.010 Purpose. The purpose of this chapter is to ensure compliance, abate noncompliance and punish violations of applicable titles of this code, including without limitation Title 12, Streets, Sidewalks and Public Places, Title 13, Public Services, Title 15 Building and Construction, and Title 17, Zoning. The provisions of this chapter may also be used to supplement enforcement actions described within this code and other laws, ordinances, regulations and plans having a direct impact on the development of land. These include, but are not limited to; the City of Zillah Comprehensive Land Use Plan; the Zillah Shoreline Master Program; the City's Wastewater Facilities Plan and Comprehensive Water System Plan; the Six Year Transportation Improvement Program; the International Building Code; and laws, ordinances, regulations of Federal, State and local agencies, as required by law. The provisions contained in this chapter shall be applied and interpreted to accomplish these purposes.

17.92.020 Compliance required.

- A. No person, corporation, partnership, association or other legal entity shall fail or refuse to comply with, interfere with or resist the enforcement of, the provisions of this Code, Titles 12, 13, 15 and 17, other laws, ordinances, regulation and plans as outlined in Section 17.92.010, and/or any condition of approval imposed by the Zillah City Council, Planning Commission, Building Official or Planning Official, or a land use order, directive or decision of any other City official. Any such act or failure to act shall constitute a violation under this chapter.
- B. Actions under this chapter may be taken in any order deemed necessary or desirable by the City to achieve the purpose of this chapter and the applicable development standards.
- C. Proof of a violation of a development permit or approval shall constitute prima facie evidence that the violation is that of the applicant and/or owner of the property upon which the violation exists. An enforcement action under this chapter shall not relieve or prevent enforcement against any other responsible person.

17.92.030 Enforcing official. The Planning Official shall be responsible for enforcing Titles 12, 13, 15 and 17, and other pertinent laws, ordinances, and regulations as outlined in Section 17.92.010, and may adopt administrative rules to meet that responsibility. The Planning Official may delegate enforcement responsibility, as appropriate.

17.92.040 Enforcing official liability. The Planning Official or designee charged with the enforcement of this chapter, acting in good faith and without malice in the discharge of the duties required by this Title or other applicable laws, shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the Planning Official or designee because of such act or omission performed by the Planning Official or designee in the enforcement of any provision of such codes or other pertinent laws or regulations implemented through the enforcement of this chapter shall be defended by the City until final termination of such proceedings. Any judgment resulting there from shall be assumed by the City.

17.92.050 Right of entry. When it is necessary to make an inspection to enforce the provisions of this chapter, or when the Planning Official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this Code which makes the building or premises unsafe, dangerous or hazardous, the Planning Official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this chapter. Provided that, if such building or premises are occupied, credentials be presented to the occupant and entry requested. If such building or premises are unoccupied, the Planning Official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the Planning Official shall have recourse to the remedies provided by law to secure entry.

17.92.060 Responsibilities defined. The owners are liable for violations of duties imposed by this Code and other pertinent laws and regulations as outlined in Section 17.92.010, even though an obligation is also imposed on the occupants of the building and/or premises. In addition, the owners are also liable when the owner has, by agreement; imposed on the occupant the duty of complying with all or portions of this Code and other pertinent laws and regulations as outlined in Section 17.92.010.

17.92.070 Voluntary correction agreements.

- A. The Planning Official, prior to filing any Notice of Violation and Stop Work Order, may enter into a voluntary correction agreement with a person responsible for correcting the violation(s), which may be the owner, agent or occupant.
- B. Any such voluntary correction agreement shall be a contract between the City and the person responsible, and shall follow a form to be approved by the City Attorney. The agreement shall be entirely voluntary and no one shall be required to enter into such an agreement.
- C. In the contract, the person responsible shall agree to the following:
 - 1. Acknowledge a violation(s) exists as shall be briefly there described;
 - 2. Acknowledge it is his/her responsibility to abate the violation(s);
 - 3. Agree to abate the violation(s) by a certain date or within a specified time; and

4. Agree that if he/she does not accomplish the terms of such agreement, the City may proceed without further notice to enforce the applicable provisions of this Code and other pertinent laws and regulations as described within this chapter, including entering the premises, rectifying the violation(s), and recovering the expenses and monetary penalties provided for herein.
- D. The agreement shall provide that if the person does accomplish the terms of the agreement, as determined by the City, and within the time frame specified therein, the City shall so acknowledge and shall take no further enforcement action or attempt to recover public costs already incurred.
 - E. The Planning Official may agree to extend the time limit for correction set forth in such agreement or may agree to modify the required corrective action. However, the Planning Official shall not agree to extend or modify the agreement unless the person responsible has shown due diligence and/or substantial progress in correcting the violation, and can show unforeseen circumstances which would require such extension or modification.

17.92.080 Notice of Violation and Order. Upon the enforcing official's determination that one or more violations have been committed, except as provided for in Section 17.92.070, the enforcing official shall issue a Notice of Violation and Order.

- A. The Notice of Violation and Order shall, at a minimum, contain the following:
 1. The name and address of each property owner of record, that is the subject of the violation(s) and, when applicable, the contractor(s);
 2. The street address or a legal description sufficient for identification of the property;
 3. The assessor tax parcel number(s) of the property;
 4. A description of each violation, including applicable sections of this code, other pertinent laws and regulations, and/or conditions of approval;
 5. An order that the use, acts or omissions which constitute violations(s) must cease;
 6. A statement of the corrective action required for each violation, with a date by which such action must be completed;
 7. A warning: "the failure or refusal to complete corrective action by the date required may result in enforcement action, civil penalties and/or criminal penalties as provided in ZMC Chapter 17.92."; and
 8. A statement of the right to appeal to the Planning Commission.
- B. The notice of violation and stop work order shall be served upon each owner of record, when applicable, the contractor(s). Service of the Notice of Violation and Order shall be by personal service or by both regular first class mail and certified mail, return receipt requested, addressed to each person's last known address. Service by mail shall be deemed completed three days after mailing.
- C. The appeal of a Notice of Violation and Order shall be filed with the Planning Commission within ten calendar days after service.

17.92.090 Violation - Civil enforcement and penalties. The failure or refusal to complete corrective action by the date set forth in a notice of violation and order shall subject the person(s) to whom the Notice of Violation and Order was directed to the following enforcement actions

and penalties:

- A. The enforcing official may revoke, modify or suspend any permit, variance, subdivision or other land use approval issued for the subject property;
- B. A civil penalty of two hundred fifty dollars (\$250.00) per day, or portion thereof, per violation until corrective action is completed. Each separate day, event, and action or occurrence shall constitute a separate violation;
- C. The City, through its authorized agents, may, in addition to any other remedy provided herein, initiate abatement or injunction proceedings or other appropriate action in the municipal court, or the courts of this State, to prevent, enjoin, abate or terminate violations of this chapter. The City may obtain temporary, preliminary, and permanent injunctive relief from the Yakima County Superior Court;
- D. The City may enter the subject property and complete all corrective action. The actual costs of labor, materials and equipment, together with all direct and indirect administrative costs, incurred by the City to complete the corrective action shall be paid by property owner(s) of record, and shall constitute a lien against the subject property until paid. A notice of claim of lien shall be recorded with the Yakima County Auditor. Interest shall accrue on the amount due at the rate of twelve percent per annum. In any action to foreclose the lien against the subject property, all filing fees, title search fees, service fees, other court costs and reasonable attorneys' fees incurred by the City shall be awarded as a judgment against the property owner(s) of record, and shall be foreclosed upon the subject property together with the principal and accrued interest;
- E. The remedies provided in subsections A through D of this section are cumulative remedies and not alternative remedies and are in addition to any other remedy to which the City may be entitled by law;
- F. In any action brought by the City to enforce this chapter or in any action brought by any other person in which the City is joined as a party challenging this chapter, in the event the City is a prevailing party, then the non-prevailing party challenging the provisions of this chapter, or the party against whom this chapter is enforced in such action shall pay, in addition to the City's costs, a reasonable attorney fee at trial and in any appeal thereof.

17.92.100 Violation--Criminal penalties. Any person, officer, agent or partner of a corporation, partnership, association or other legal entity who willfully fails or refuses to complete corrective action to correct a violation by the date set forth in a notice of violation and order shall be guilty of a gross misdemeanor and shall be punished by not more than ninety days in jail or a one thousand dollars fine (\$1,000.00), or both. Failure or refusal to complete corrective action shall be a separate offense as to each violation in the Notice of Violation and Order.

17.92.110 Approval revocation, suspension and modification.

- A. A permit, variance, subdivision or other land use approval may be revoked, suspended or modified on one or more of the following grounds:

1. Failure to complete corrective action as required pursuant to a Notice of Violation and Order;
 2. The approval was obtained through fraud;
 3. The approval was obtained through inadequate or inaccurate information;
 4. The approval was issued contrary to law;
 5. The approval was issued under a procedural error that prevented consideration of the interests of persons directly affected by the approval;
 6. The approval is being exercised or implemented contrary to the terms or conditions of the approval or contrary to law;
 7. The use for which the approval was issued is being exercised in a manner that is detrimental to public health, safety or welfare;
 8. Interference with the performance of Federal, State, County or City official duties.
- B. Action to revoke, suspend or modify a permit, sub-division, or other land use approval shall be taken by the enforcing official through issuance of a Notice of Violation and Order as described in Section 17.92.080.
- C. If a permit or approval is revoked for fraud or deception, no similar application shall be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all applicable requirements contained in this Code and other pertinent laws, ordinances, and regulations