

ORDINANCE 1814

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO CODE ENFORCEMENT; AMENDING NORTH BEND MUNICIPAL CODE SECTIONS 1.20.060, 1.20.080, AND 1.20.100; ADOPTING A NEW SECTION 1.20.105, RELATING TO APPEALS IN CODE ENFORCEMENT ACTIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Chapter 1.20 of the North Bend Municipal Code (“NBMC”) establishes the procedures that apply when a code enforcement officer for the City of North Bend (“City”) determines that a violation of the NBMC has occurred or is occurring; and

WHEREAS, NBMC Chapter 1.20 does not explicitly provide a direct right of appeal to a person who has been served with a notice of violation by a city code enforcement officer pursuant to NBMC 1.20.060; and

WHEREAS, where a local jurisdiction assesses civil penalties for noncriminal violations of the law, fundamental due process requires that any person subject to such penalties be provided with an opportunity to appeal before the penalties become final; and

WHEREAS, the City’s hearing examiner is authorized to conduct administrative hearings; and

WHEREAS, the City has previously provided recipients of a notice of violation with the right to appeal the notice to the hearing examiner by agreement, on an ad hoc basis; and

WHEREAS, the City would like to codify the right of an administrative appeal to the City’s hearing examiner in code enforcement actions within NBMC Chapter 1.20;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. NBMC Section 1.20.060 (Notice of Violations), Amended: North Bend Municipal Code Section 1.20.060 (Notice of violation) is hereby amended to read as follows:

1.20.060 Notice of violation.

If the violation is not corrected through mutual agreement after informal contact pursuant to NBMC 1.20.050, the

enforcement officer shall issue a notice of violation to the person responsible for the violation. The following conditions and requirements apply to any notice of violation issued pursuant to this section:

A. Content. A notice of violation shall include the following:

1. The name and address of the person responsible for the violation;
2. The street address or description sufficient for identification of the premises;
3. A description of the violation and reference to the provision(s) of the city regulation(s) which have been violated;
4. The required corrective action and correction date;
5. A statement that, if the violation is not corrected by the correction date, the city may:
 - a. Assess monetary penalties pursuant to NBMC 1.20.100(A);
 - b. Issue a notice of civil infraction pursuant to NBMC 1.20.080; and
 - c. Abate the unlawful condition and assess costs of abatement in accordance with NBMC 1.20.110; ~~and~~
6. A statement that any penalties and costs of abatement incurred by the city pursuant to this chapter may be charged as a lien against the property and as a joint and severable personal obligation of any person responsible for the violation; and
7. A statement that the assessment of a monetary penalty may be appealed to the city hearing examiner within 14 calendar days of the penalty's effective date, pursuant to NBMC 1.20.105, and that if not appealed during this 14-day period, such monetary penalty shall be final and binding.

B. Service of Notice. The code enforcement officer shall serve the notice of violation upon the person responsible

for the violation, either personally or by mailing a copy of the notice of violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within King County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.

C. Optional Recording Procedure. The city may, at its discretion, record a notice of violation against the subject property.

D. Extension. Extensions of the correction date may be granted at the discretion of the code enforcement officer upon request by the person responsible for the violation and good cause shown.

Section 2. NBMC Section 1.20.080 (Notice of Civil Infraction), Amended: North Bend Municipal Code Section 1.20.080 (Notice of civil infraction) is hereby amended to read as follows:

1.20.080 Notice of civil infraction.

A. Issuance.

1. When the enforcement officer is unable to secure voluntary correction or execution of a voluntary correction agreement by the correction date set forth in a notice of violation pursuant to NBMC 1.20.060(A)(4), the enforcement officer may issue a notice of civil infraction in accordance with Chapter 7.80 RCW, which is incorporated herein by this reference, to the person responsible for the violation, and shall file such notice of infraction with the North Bend municipal court within 48 hours of issuance, excluding Saturdays, Sundays and holidays.

2. Notwithstanding the requirements of NBMC 1.20.050 and 1.20.060, the enforcement officer may issue a notice of civil infraction to the responsible person without

having attempted to secure voluntary correction or issuing a notice of violation under the following circumstances:

- a. When an emergency exists; or
- b. When a repeat violation occurs; or
- c. When the violation creates a situation or condition which cannot be corrected; or
- d. The responsible person cannot be contacted or refuses to communicate or cooperate with the city in correcting the violation.

B. Monetary Penalty. Unless otherwise specifically provided in connection with particular sections, chapters or titles of the city code, noncriminal violations of the city code shall be infractions and shall carry a maximum penalty of \$1,000.00. Each day, location, violator and incident shall constitute a separate civil infraction. In addition to this amount, a court of competent jurisdiction may order a person found to have committed a civil infraction to pay restitution, including the city's reasonable enforcement and abatement costs.

1. It is provided, however, that if the same violator has been found, in any court of competent jurisdiction, to have previously committed an infraction violation for the same or similar conduct three or more separate times, with the infraction violations occurring at the same location and involving the same or similar sections of NBMC Titles 5, 6, 8, 10, 12, 13, 14, 15, 17 or 18, or other similar code(s), any further violations shall constitute misdemeanors, punishable as provided in NBMC 1.20.160. For the purposes hereof, it shall be prima facie evidence that the same violator has previously been found to have committed any infraction if a certified copy of the judgment, docket or other court document showing that such violation was found committed is filed with the court.

Section 3. NBMC Section 1.20.100 (Monetary Penalty), Amended: North Bend Municipal Code Section 1.20.100 (Monetary penalty) is hereby amended to read as follows:

1.20.100 Monetary penalty.

A. Penalty Amount. The monetary penalty for each violation shall not exceed \$1,000 per day; provided, that the enforcement officer may double the monetary penalty schedule if the violation is a repeat violation as defined in NBMC 1.20.020(Q). In determining the amount of the monetary penalty for repeat violations, the enforcement officer shall consider the following factors:

1. Whether the person responsible for the violation responded to staff attempts to contact the person, and cooperated to correct the violation;
2. Whether the responsible person showed due diligence and/or substantial progress in correcting the violation;
3. Whether a genuine, factual code interpretation issue exists; and
4. Any other relevant factors.

B. Continued Duty to Correct. Payment of monetary penalties pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct the violation.

C. Collection of Monetary Penalty.

1. The monetary penalty constitutes a joint and severable personal obligation of the person responsible for the violation. Unless appealed pursuant to NBMC 1.20.105, ~~Any~~ monetary penalty assessed must be paid to the city within 10 calendar days from the date of a notice from the city that penalties are due. Any such monetary penalty shall further constitute a lien against the premises, in the manner as set forth in NBMC 1.20.110(E).
2. The city attorney and city staff are authorized to take all actions available at law to collect the monetary penalty.

Section 4. New NBMC Section 1.20.105 (Appeals), Adopted: A new North Bend Municipal Code Section 1.20.105, to be entitled “Appeals,” is hereby adopted to read as follows:

1.20.105 Appeals.

A. An assessed monetary penalty may be appealed to the city hearing examiner within 14 calendar days of the penalty's effective date. After the 14-day period, penalties shall be final and binding. The hearing examiner may grant an extension of time for filing an appeal if the person establishes that they did not receive the notice of penalty due to good cause. The burden of proving such good cause circumstances is on the person making the claim.

B. The appeal shall be processed and the hearing conducted as described in this Section. The person appealing may appeal either the determination that a violation exists or the amount of the monetary penalty imposed, or both. The person appealing may appeal all penalties that are not final and binding. The hearing examiner has the authority to affirm, dismiss, or modify the monetary penalty. The city and the person to whom the notice of civil violation was issued may participate in the hearing and each party, or its legal representatives, may call witnesses and present evidence.

C. The city shall have the burden of proving by a preponderance of the evidence the commission of a violation.

D. The parties are responsible for securing the appearance of any witnesses they may wish to call; neither the city nor the hearing examiner shall have the burden of securing any witnesses on behalf of the person who is contesting the violation(s) or seeking to mitigate the penalties.

E. Formal rules of evidence shall not apply to any such hearing, and the hearing examiner shall allow hearsay testimony by the parties and not require proof of chain of custody for evidence that is presented; provided, the hearing examiner shall determine the weight to be assigned to any evidence presented. Any notes, reports, summaries, photographs, or other materials prepared by the parties shall be admitted into evidence if requested; provided, the parties are free to argue the weight that should be assigned by the hearing examiner to any evidence submitted.

F. The civil penalties for a continuing violation shall not continue to accrue pending determination of the appeal;

however, the hearing examiner may impose an additional daily monetary penalty, to a maximum of \$100.00 per day, from the date of service of the notice of penalty if the hearing examiner finds that the appeal is frivolous or intended solely to delay compliance. An appeal does not lift or stay a notice to correct violation.

G. If the hearing examiner finds that a violation was not committed at the time the notice of penalty was issued, the examiner shall dismiss all penalties before them that were imposed for the alleged violation and the city shall dismiss all additional penalties, whether effective or final, that were imposed for the alleged violation.

H. A person is precluded from appealing a penalty if the hearing examiner finds that it has determined in a prior appeal all the issues of fact and law raised by the person appealing.

I. At their discretion, the hearing examiner may consolidate appeals of penalties imposed on the same property for the same violations.

J. Upon the conclusion of the hearing, the hearing examiner may issue a verbal decision pending issuance of the written decision; if necessary, the hearing examiner may delay issuing the written order for up to ten (10) business days following the hearing. In either event, the verbal decision and written order shall contain findings and conclusions based on the record that includes the following information:

1. For each alleged violation of the city code, a statement indicating whether the violation has been found committed or not committed;

2. For violations found committed, the monetary penalties and costs being assessed pursuant to this chapter;

3. For violations found committed, any required corrective actions;

4. For violations found committed, a finding that abatement of the violations by the city is authorized, at the expense of the person responsible for the violations; and

5. A statement notifying the person responsible for the violation that they are subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated.

K. The hearing examiner may cause a copy of the decision and order to be served upon the parties at the close of the hearing. When the hearing examiner requires more time to prepare a written order, or when a party fails to appear after requesting a contested hearing, the hearing examiner shall cause a copy of the decision and order to be served on the parties by mailing a copy to each party's last known address within ten (10) business days of the hearing.

Section 5. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF SEPTEMBER, 2024.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Mary Miller, Mayor

Kendra Rosenberg, City Attorney

ATTEST/AUTHENTICATED:

Published: September 13, 2024
Effective: September 18, 2024

Susie Oppedal, City Clerk