

ORDINANCE 2011-985

AN ORDINANCE OF THE CITY OF WAITSBURG, WASHINGTON, AMENDING TITLE 7 CHAPTER 1 REGARDING UPDATES TO THE MUNICIPAL CODE FOR VIOLATION NOTICE AND ABATEMENT

WHEREAS, updates are needed to portions of the City's Municipal Code in order to update standards regarding the notice and abatement of municipal code violations; and

WHEREAS, it is necessary to amend certain portions of the Code to provide for certain procedural changes as set forth above:

NOW THEREFORE, the City Council of the City of Waitsburg does ordain as follows:

7.01.050. Enforcement. The following procedures shall be available in the event of any violation of this or any other Chapter of the Waitsburg Municipal Code:

- A. Summary abatement pursuant to 7.01.060;
- B. Notice and abatement by a responsible person pursuant to 7.01.070; and
- C. Municipal Code infraction penalty pursuant to 7.01.080.

These enforcement procedures shall not be mutually exclusive. Exercise of one procedure shall not constitute an election which prevents use of another procedure. The enforcement officer shall have the right and authority to determine which enforcement procedure(s) to employ and to combine enforcement procedures to effect the purposes of this Chapter.

7.01.060. Summary Abatement. Whenever any condition as defined in this Chapter or other chapter of the Waitsburg Municipal Code causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health, safety or well being of the public or a significant portion thereof an enforcement officer shall have the authority to summarily and without notice abate the same. In addition, whenever any violation of this or any other Chapter exists in such circumstances and conditions where it reasonably appears that the notice procedure provided herein would be ineffective to accomplish the provisions of this or any other Chapter, an enforcement officer shall have the authority to summarily and without notice abate the same. The expenses of such abatement shall become a debt against the owner or other responsible person and shall be collected as provided in this Chapter.

7.01.070. Notice and Abatement by Responsible Person.

A. An enforcement officer having knowledge of a violation may cause the owner or other responsible person to be notified of the existence of a public violation and shall direct the owner or other responsible person to abate the condition within ten calendar days after such notice. The notice shall be in substantially the following form:

Notice to abate unsafe or unlawful conditions.

TO:

Name:

Address:

As owner or other person responsible for those premises at

you are hereby notified that there exists upon or adjoining said premises the following conditions contrary to the provisions of subsection(s) _____ of Chapter _____ of Title _____ of the Waitsburg Municipal Code: ____

These conditions include the following:

You are hereby notified to abate said conditions within ten days of the date of this notice. If you fail to abate such conditions as ordered by the City within ten days, the City will proceed with disconnection of your utilities until such time as the conditions are abated to the satisfaction of the City, unless you provide information in writing to the City showing that such disconnection of utilities will present a serious risk of harm or injury to persons currently residing on the premises served by such utilities. In addition, you will continue to accrue a utility bill as provided by Chapter 1 of Title 9 of the Waitsburg Municipal Code.

Abatement is to be accomplished in the following manner:

B. The notice provided for above may be served upon a responsible person either by personal service or by depositing a copy of the notice to the responsible person by United States mail, certified mail, return receipt requested, postage prepaid. A copy of the notice shall also be posted at a conspicuous place on the premises only in the event that the notice is undeliverable via personal service or United States mail. If the notice is served by mail, three days shall be added to the time allotted to the owner or responsible person to abate the violation. The failure of the owner or responsible person to accept or receive said notice shall not be a defense against abatement under this Chapter.

C. Any responsible person notified of the existence of a condition specified in this or any other Chapter shall have the right to contest a determination that a violation exists. Any person electing to contest such determination must do so by filing with the Waitsburg City Clerk a statement denying the existence of a violation and requesting a hearing before the Planning Commission within five days of receiving the abatement notice. Upon such statement and request being filed, the matter shall then proceed as set forth below. Further action on the abatement as specified in the original notice shall be stayed pending the decision of the Planning Commission.

(1) Opportunity to Provide Testimony. All parties in interest shall be given a reasonable opportunity to address the issue of whether a violation exists, to give oral or written testimony upon the facts at issue, and to appear in person or through an authorized representative at the

time of hearing. An authorized representative may be an attorney at law, anyone possessing power of attorney, or any individual given authorization through a written and signed instrument.

(2) **Transcription of Hearings.** All hearings before the Planning Commission shall be recorded or transcribed, either manually or electronically. Such transcripts or recordings shall be retained in the City records.

(3) **Rules of Order and Evidence.** The Planning Commission may, in its discretion, determine and prescribe the rules of order and procedure to be used at such hearing to maintain order and efficiency. The Washington Rules of Evidence shall not be used to determine admissibility of evidence at the hearing. The Planning Commission shall admit any reasonable evidence presented which is probative of the facts at issue.

(4) **Record.** Any testimony, written documents, or physical evidence presented to the Planning Commission shall be taken into consideration by the Commission, and copies kept in the record of the hearing for a period of at least one year.

(5) **Decision.** Following a hearing on the matter, the Planning Commission shall issue a written decision as to whether or not a violation exists. The decision shall be made by a simple majority of the Planning Commission. The decision shall state with specificity the factors used to determine that a violation exists and upon what evidence the Planning Commission bases its opinion.

(6) **Order to Abate.** If the final decision of the Planning Commission is that a violation exists within the definitions set forth in this or any other chapter of the Waitsburg Municipal Code, the Planning Commission shall order the parties in interest to abate the violation, if possible, stating with as much specificity as practicable any repairs or extent of demolition necessary to abate the violation. The parties in interest shall be given an adequate and reasonable time to abate the violation. The time period provided shall take into account such things as the extent of danger, imminence of danger, residence of the parties, costs of repair or demolition, and extent of repair or demolition.

(7) **Order to Vacate.** If, in the opinion of the Planning Commission, a Building is unfit for habitation, the Planning Commission may order that the Building or premises be vacated until such condition is corrected.

(8) **Service of Final Decision.** Service of the final decision shall be either personal, or by certified mail, postage pre-paid with return receipt requested, mailed to the address of the party provided to the County Auditor. If, through the use of due diligence, the addresses of all parties in interest may not be discovered, the final decision may be served personally or by both regular and certified mail with postage pre-paid and return receipt requested, upon the inhabitants of the property at issue, and by first-class mail to the last known address of any parties in interest. The final order shall also be posted in a conspicuous place on the Building, or on the real property to which it is appurtenant.

(9) **Filing of Final Decision.** If no appeal of the final order has been filed within the time provided in this Chapter or if the appeal is denied by the Waitsburg City Council, a true and correct copy of the final decision shall be filed with the office of the Walla Walla County Auditor.

(10) **Appeal of Final Decision.** An aggrieved party in interest may appeal a final decision of the Planning Commission to the Waitsburg City Council. An appeal must be requested, in writing, within 30 days of the final decision of the Planning Commission. The City Council must issue and serve a decision on the appeal within 60 days of the City's receipt of the request. An appeal must be requested in writing by sending a letter or other document requesting the appeal to the City Council at City Hall. The City Council shall hold a hearing on the appeal. The record of the hearing on appeal of final decision of the Planning Commission shall consist of all evidence and

testimony given at the original hearing. Parties shall not be entitled to provide additional evidence, and shall be given an opportunity to present only argument as to why the decision of the Planning Commission should be overturned. The City Council, in its discretion, may make such rules of procedure of appeal hearings as necessary to ensure orderly and fair hearings. The decision on appeal shall be in writing, and shall be served upon the parties in interest in the same manner as the final decision of the Board.

(11) Judicial Review. An aggrieved party whose appeal has been denied may seek judicial review of the final order as provided in RCW 35.80.030(2). (Ord. 963, Aug. 4, 2010)

D. If, within ten days after giving a proper notice for the abatement of any violation as herein above defined, the responsible person fails to abate the violation or appeal the City's decision within five days, the City will proceed with disconnection of utilities until such time as the condition is abated to the satisfaction of the City, unless the responsible person has provided information in writing to the City showing that such disconnection of utilities will present a serious risk of harm or injury to persons currently residing on the premises served by such utilities. In addition, the property owner will continue to accrue a utility bill as provided by Chapter 1 of Title 9 of the Waitsburg Municipal Code.

(1) In the event that the property in violation is not served by City utilities or is a rental property, and the property owner resides in the City, the City will proceed with disconnection of the utilities at the property owner's main address in order to satisfy the abatement request of the City.

(2) In the event that the property owner does not reside in the City and the property is not served by City utilities, the City will proceed with abatement of any violation at the owner's expense whereby the officers, employees and agents of the City of Waitsburg are hereby authorized to enter upon any real property where such violations exist as necessary to abate such violations, and entry upon property pursuant to such authority shall be deemed lawful for all purposes.

(3) For the purposes of this chapter, the term "utilities" means City water, wastewater and solid waste.

E. Upon the abatement of the condition or any portion thereof by the City, all the expenses thereof shall constitute a debt owing to the City jointly and severally by such persons who have been given notice as herein provided. All such expenses and debts shall be in addition to any fine which may be imposed as a penalty for the violation of this or any other Chapter. Such debts may be collected in the same manner as any other debt owing to the City. In addition, the debts shall constitute a lien against the real property upon which such violation was allowed to exist and may be collected by foreclosure. In the event any action is necessary to abate the violation or to collect damages, the City shall also be entitled to recover attorneys' fees incurred in the prosecution of such actions.

(1) Any expense incurred by the City will be passed on to the property owner via invoice with payment due upon receipt.

(2) Failure to pay the City as requested will force the City to affix a lien upon the property as provided above in section E.

F. If a responsible person undertakes to abate any public violation, the responsible person shall do all things legally required in order to perform such abatement. Nothing in this Chapter shall relieve any responsible person from the obligations of obtaining any permits required to do any

work incidental to the abatement or from complying with all applicable codes, statutes, regulations and ordinances which may relate to or affect the work to be performed.

7.01.080. Infraction Penalty.

A. Every person who allows or maintains a public violation or who willfully omits or refuses to remove or abate such violation and every person who allows or permits to be used any building or portion for maintaining any violation shall be guilty of a municipal code infraction. Each day the violation is allowed to continue after the responsible person has received notice as provided shall be deemed to be a separate and independent violation of this Chapter.

B. Any person violating any portion of this or any other Chapter shall be subject to penalty of utility disconnection for each day the violation is allowed to continue, plus statutory costs, the costs of any abatement, and attorneys' fees to the extent allowed by law should the City be required to abate the condition at the owner's expense.

C. Violations of this Chapter will be considered as municipal code infractions by the City. Such violations shall be initiated and processed in accordance with the provisions and rules of this chapter of the Waitsburg Municipal Code.

D. The Waitsburg Planning Commission before whom is responsible for any proceeding relating to violations of this or any other Chapter may, in addition to any fine or other punishment which it may impose for such violation, order that the violation be abated at the expense of the owner or other responsible person.

7.01.090. Severability. The provisions of this Chapter are declared to be severable, and if any section, sentence, clause or phrase of this Chapter shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this Chapter; and they shall remain in effect, it being the legislative intent that this Chapter shall remain valid notwithstanding the invalidity of any part

A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect immediately upon passage by the Council and publication as required by law.

Passed by the Waitsburg City Council this ___ day of _____, 2011.

Approved:

Attest:

Walt Gobel, Mayor

Randy Hinchliffe, City Clerk

Approved as to form:

Kristian E. Hedine, City Attorney