

ORDINANCE NO. 2013-02-006

AN ORDINANCE RELATING TO FINES FOR MISDEMEANORS; AMENDING BMC 1.28.010, BMC 4.60.030, BMC 4.70.030, BMC 6.10.110, BMC 13.40.150, BMC 15.42.110, BMC 16.60.090, BMC 16.70.140, BMC 18.52.010, BMC 20.52.010, BMC 20.52.020; AND THE MAXIMUM TERM OF INCARCERATION FOR GROSS MISDEMEANORS; AMENDING BMC 6.05.220, BMC 7.08.170, BMC 10.04.060, BMC 16.55.040, BMC 16.80.150, BMC 17.10.020, BMC 17.20.020

WHEREAS, the City of Bellingham has contracted with Code Publishing of Seattle, Washington to recodify and republish the Bellingham Municipal Code (Code);

WHEREAS, the on-going review of the Code has revealed inconsistencies between permissible penalties under the Code and state law which should be addressed prior to recodification;

WHEREAS, the Revised Code of Washington provides for a maximum fine of "not more than a thousand dollars" for a misdemeanor however the Code includes several references to misdemeanors with fines of \$1,500;

WHEREAS, the Revised Code of Washington provides for a maximum term of incarceration of up to "three hundred sixty-four days" for a gross misdemeanor however the Code provides for a maximum term of imprisonment of "one year" for a gross misdemeanor; and

WHEREAS, inconsistencies between the Code and state law should be remedied prior to recodification,

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. BMC 1.28.010 is amended to read as follows:

A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ordinances of the City of Bellingham shall be guilty of a misdemeanor. Except in cases where a different punishment is prescribed by any ordinance of the City of Bellingham, any person convicted of a misdemeanor under the ordinances of the City shall be punished by a fine of not more than \$1,000, or imprisonment not to exceed 90 days, or both such fine and imprisonment.

B. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the city is committed, continued or permitted by any such person, and he shall be punished accordingly.

Section 2. BMC 4.60.030 is amended to read as follows:

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It is unlawful for any person to fail or refuse to make the returns when required or to pay the tax when due. Any person convicted of a violation of any of the terms of this chapter may be imprisoned for 90 days, or fined any sum not to exceed \$1,000, or both fined and imprisoned.

Section 3. BMC 4.70.030 is amended to read as follows:

It is unlawful for any person to fail or refuse to make the returns when required or to pay the tax when due. Any person convicted of a violation of any of the terms of this chapter may be imprisoned for 90 days, or fined any sum not to exceed \$1,000, or both fined and imprisoned.

Section 4. BMC 6.10.110 is amended to read as follows:

A. In the event of a violation of any provision of this chapter, the Fire Department shall promptly notify the licensee thereof and, if the situation warrants it, give licensee a reasonable opportunity to take corrective action.

B. Any licensee or employee of a licensee who violates any provision of this chapter shall subject licensee to revocation of license pursuant to BMC 6.08.080. Any person violating a provision of this chapter shall be guilty of a misdemeanor and upon conviction may be imprisoned for 90 days, fined a sum not to exceed \$1,000, or both imprisoned and fined.

Section 5. BMC 13.40.150 is amended to read as follows:

A-C. Unchanged

D. Violation - Criminal Penalties: Any person violating any provision of this chapter or any terms or conditions of any permit issued hereunder shall be guilty of a misdemeanor and upon conviction may be imprisoned for 90 days, fined a sum not to exceed \$1,000, or both imprisoned and fined. In addition to the fine, any person found in violation of this chapter shall be required to pay the replacement value of trees and shrubs as determined in accordance with the latest revision of "Valuation of Landscape Trees, Shrubs and Other Plants", as published by the International Society of Arboriculture.

Section 6. BMC 15.42.110 is amended to read as follows:

Any violation of this chapter which results in damage to public or private property, other than the property of the violator, in an amount greater than \$250, or which results in any physical injury to a person shall be a misdemeanor. For purposes of this section "damage" shall include cost to restore as well as loss of value.

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Each second or subsequent violation of this chapter by any person within a period of three years shall be a misdemeanor.

Each misdemeanor shall be punishable by a fine not to exceed \$1,000. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.

The court may order, in addition to any fine imposed, that a person found to have committed a misdemeanor shall make restitution to any person damaged by the violation.

Section 7. BMC 16.60.090 is amended to read as follows:

The City, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may take or cause to be made such examinations, surveys, or sampling as the City deems necessary.

The Director shall have authority to enforce this chapter and clearing activities regulated thereunder. All costs, fees, and expenses in connection with such enforcement actions may be recovered as damages against the violator.

Law enforcement officials or other enforcement officials having police powers shall have concurrent authority to enforce this chapter and clearing activities regulated thereunder.

Any person who commits, takes part in, or assists in any violation of any provision of this chapter is guilty of a misdemeanor and may be fined not more than \$1,000 for each offense. Each violation of this act shall be a separate offense, and in the case of a continuing violation each day's continuance shall be deemed to be a separate and distinct offense.

Should a regulated activity occur and it is later discovered that the activity is occurring in violation of this chapter, the Director shall have the authority to issue a stop work order and all activity shall cease until such time as the applicant or violator can meet the requirements of this chapter.

In the event of a violation, the Director shall have the authority to order restoration measures for the damaged or destroyed area by the person or agent responsible for the violation. If the responsible person or agent does not complete such measures within a reasonable time specified by the director following the order, the City of Bellingham may restore the affected area to its prior condition. The person or agent responsible for the original violation shall be liable to the City of Bellingham for the cost of such actions.

Section 8. BMC 16.70.140 is amended to read as follows:

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The City, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may take or cause to be made such examinations, surveys, or sampling as the City deems necessary.

The Director has the authority to enforce this chapter and grading regulations regulated thereunder. All costs, fees, and expenses in connection with such enforcement actions may be recovered as damages against the violator.

Law enforcement officials or other enforcement officials having police powers shall have concurrent authority to enforce this chapter and grading activities regulated hereunder.

Any person who commits, takes part in, or assists in any violation of any provision of this chapter is guilty of a misdemeanor and may be fined not more than \$1,000 for each offense. Each violation of this act shall be a separate offense, and in the case of a continuing violation each day's continuance shall be deemed to be a separate and distinct offense.

Should an activity occur and it is later discovered that the activity is occurring in violation of this chapter, the Director shall have the authority to issue a stop work order and all activity shall cease until such time as the applicant or violator can meet the requirements of this chapter.

In the event of a violation, the Director shall have the authority to order restoration measures for the damaged or destroyed area by the person or agent responsible for the violation. If the responsible person or agent does not complete such measures within a reasonable time specified by the Director following the order, the City of Bellingham may restore the affected area to its prior condition. The person or agent responsible for the original violation shall be liable to the City of Bellingham for the cost of such actions.

Section 9. BMC 18.52.010 is amended to read as follows:

Unless another penalty is prescribed by State Law, any person, firm, corporation, or association violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof may be imprisoned for 90 days, fined a sum not to exceed \$1,000, or both imprisoned and fined, and each person, as principal, agent, or otherwise, shall be deemed guilty of a separate offense for each day during any portion of which the violation of, or failure, neglect or refusal to comply with any provision of this ordinance is committed, continued, or permitted by such person.

Section 10. BMC 20.52.010 is amended to read as follows:

Any person violating any provision of this title shall be guilty of a misdemeanor and upon conviction may be imprisoned for 90 days, fined a sum not to exceed \$1,000, or both imprisoned and fined.

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Section 11. BMC 20.52.020 is amended to read as follows:

Any person violating any provision of this title shall be guilty of a misdemeanor and upon conviction may be imprisoned for 90 days, fined a sum not to exceed \$1,000, or both imprisoned and fined.

Section 12. BMC 6.05.220 is amended to read as follows:

A. No change.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed three hundred sixty-four days, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

Section 13. BMC 7.08.170 is amended to read as follows:

A - D. Unchanged.

E. The violation of any of the provisions of this section shall be a gross misdemeanor punishable by a maximum fine of \$5,000 and/or imprisonment not to exceed three hundred sixty-four days in the County Jail in accordance with RCW 16.08.100(1).

Section 14. BMC 10.04.060 is amended to read as follows:

Every person convicted of a gross misdemeanor shall be punished by imprisonment for a maximum term fixed by the Court of not more than three hundred sixty-four days, or by a fine in an amount fixed by the Court of not more than \$5,000, or by both such imprisonment and fine.

Section 15. BMC 16.55.040 is amended to read as follows:

A-B. Unchanged.

C. Criminal Violations and Penalties

1. Any person who intentionally, knowingly, recklessly, or criminally negligently violates any provision of this chapter shall be guilty of a gross misdemeanor.

2. Any person convicted of a crime under section 1. above shall be punished by a fine of not more than \$5,000 and/or imprisonment of not more than three hundred sixty-four days. In no case shall such a violation be punished by a fine of less than \$250.

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D. Stop Work Orders

1. Whenever any work or development is being done or use is being conducted contrary to the provisions of this chapter, the Director's designee may issue a stop work order requiring that all work on the project be stopped or that the use be discontinued.
2. Issuance of a stop work order shall not bar the imposition of a civil or criminal penalty under this chapter or the use of any other provision of this chapter.
3. It is unlawful for any person with actual or constructive knowledge of the issuance of a stop work order pursuant to this chapter to do work or an activity prohibited by the order until the Director's designee has removed or lifted the order and issued written authorization for the work or activity to be continued. Violation of a stop work order shall be a gross misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 and/or imprisonment for not more than three hundred and sixty-four days. Each day or part thereof during which any violation is committed shall constitute a separate offense.
4. The designee may immediately seek issuance of a criminal citation through the Bellingham Police Department where there is a violation of a stop work order. Any violator of a stop work order may be subject to arrest if the violation is committed in the presence of an officer per RCW 10.31.100.

F. Unchanged.

Section 16. BMC 16.80.150 is amended to read as follows:

A-B. Unchanged.

C. Stop Work Orders

1. Whenever any work or development is being done or use is being conducted contrary to the provisions of this Chapter, the Director's designee may issue a stop work order requiring that all work on the project be stopped or that the use be discontinued.
2. Issuance of a stop work order shall not bar the imposition of a civil or criminal penalty under this chapter or the use of any other provision of this Chapter.
3. It is unlawful for any person with actual or constructive knowledge of the issuance of a stop work order pursuant to this Chapter to do work or an activity prohibited by the order until the Director's designee has removed or lifted the order

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and issued written authorization for the work or activity to be continued. Violation of a stop work order shall be a gross misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 and/or imprisonment for not more than three hundred sixty-four days. Each day or part thereof during which any violation is committed shall constitute a separate offense.

4. The Director's designee may immediately seek issuance of a criminal citation through the Bellingham Police Department where there is a violation of a stop work order. Any violator of a stop work order may be subject to arrest if the violation is committed in the presence of an officer per RCW 10.31.100.

D-E. Unchanged.

Section 17. BMC 17.10.020 is amended to read as follows:

101-112. Unchanged.

113.4.2.b Any person convicted of a crime under subsection a. above shall be punished by a fine of not more than \$5,000 and/or imprisonment of not more than three hundred sixty-four days. In no case shall such a violation be punished by a fine of less than \$250.

113.4.3.b It is unlawful for any person with actual or constructive knowledge of the issuance of a stop work order pursuant to this code to do work or an activity prohibited by the order until the Building Official has removed or lifted the order and issued written authorization for the work or activity to be continued. Violation of a stop work order shall be a gross misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 and/or imprisonment for not more than three hundred sixty-four days. Each day or part thereof during which any violation is committed shall constitute a separate offense.

114-118. Unchanged.

Section 18. BMC 17.20.020 is amended to read as follows:

101.1-109.3.1. Unchanged.

109.3.2. Criminal penalties. The criminal act shall be classified as a gross misdemeanor and shall be punished by a fine of not more than \$5,000 and/or imprisonment of not more than three hundred sixty-four days. In no case shall such a violation be punished by a fine of less than \$250.


109.3.3. Unchanged.

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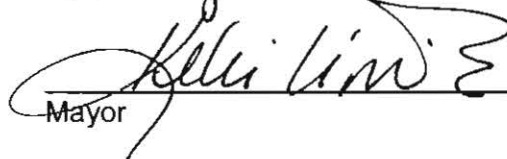
111.4. Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be charged with a gross misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 and/or imprisonment of not more than three hundred sixty-four days. In no case shall such a violation be punished by a fine of less than \$250. Any violator of a stop work order may be subject to arrest if the violation is committed in the presence of an officer per RCW 10.31.100.

113.2-115.5.2. Unchanged.

PASSED by the Council this 11th day of February, 2013.

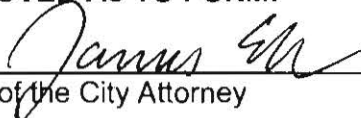

Council President

APPROVED by me this 15th day of February, 2013.


Mayor

ATTEST: 
Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

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