

ORDINANCE NO. 2015-05-018

AN ORDINANCE AMENDING CHAPTER 10.28 BMC TO AUTHORIZE VOLUNTARY COMPLIANCE AGREEMENTS WITH PROPERTY OWNERS WHERE THE VIOLATION DOES NOT CREATE A RISK OF IMMINENT HARM TO PUBLIC HEALTH OR SAFETY

WHEREAS, BMC 10.28.010 defines "enforcement officers" to include any police officer, the city code enforcement officer, the fire chief, the planning and community development director, the public works director, or their respective delegated representatives; and

WHEREAS, BMC 10.28.010 defines "nuisance" as any act, condition, omission, thing, or use of property which does the following: annoys, injures, or endangers the safety, health, comfort, or repose of the public; offends public decency; unlawfully interferes with, obstructs, or renders dangerous for passage a waterway, public park, street, sidewalk, alley, or highway; or in any way renders the public insecure in life or in the use of property; and

WHEREAS, the municipal code requires enforcement officers to provide written notice to the property owner informing the property owner of the existence of a nuisance, informing the owner that a criminal complaint is contemplated, and providing the owner either twenty-four hours or seven days to remove or abate the nuisance depending on the circumstances; and

WHEREAS, the municipal code permits enforcement officers to enter property following the deadline provided in the notice to remove or abate the nuisance at the property owner's expense; and

WHEREAS, the municipal code also provides that property owners who fail to timely remove or abate the nuisance may be subject to criminal penalties under BMC 10.28.050; and

WHEREAS, BMC 10.28.060 provides that the list of nuisances declared in BMC 10.28.020 is non-exhaustive; and

WHEREAS, the municipal code declares other code violations in addition to those listed BMC 10.28.020 as nuisances subject to abatement; and

WHEREAS, enforcement officers have identified nuisances and other code violations that reasonably require more than seven days to abate; and

WHEREAS, the municipal code does not expressly provide enforcement officers the authority to negotiate agreements with property owners to achieve voluntary compliance; and

WHEREAS, authorizing enforcement officers to negotiate voluntary compliance agreements with property owners, in limited circumstances, will better serve the interests of the city, property owners, and the public than engaging in contested enforcement actions; and

WHEREAS, enforcement officers have the subject matter expertise needed to determine whether entering into a voluntary compliance agreement or issuing a notice to abate best serves the public interests;

WHEREAS, the purpose of the nuisance code, BMC 10.28, is to protect the public as a whole and not a particular and circumscribed class of persons; and

WHEREAS, the existence of a voluntary compliance agreement does not create a special relationship with nor does it make any assurances to any member of the public;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. NEW SECTION. A new section entitled "Voluntary Compliance" is added to Chapter 10.28 BMC to read as follows:

A. General. Enforcement officers may negotiate with a property owner responsible for a nuisance or other code violation to secure the owner's voluntary compliance with the municipal code in lieu of engaging in a contested enforcement action.

B. Limitation. Enforcement officers shall not attempt to secure voluntary compliance where the identified nuisance or code violation creates an imminent risk of harm to public health or safety, where the nuisance or code violation is a repeat violation, or where the property owner has previously violated the terms of a voluntary compliance agreement.

C. Use of written voluntary correction agreement.

1. The city may at its sole discretion enter into a voluntary compliance agreement with the property owner responsible for a nuisance or other code violation.

2. Contents of voluntary compliance agreement. A voluntary compliance agreement is a written contract between the city and the property owner where a property owner agrees to remove or abate a nuisance or other code violation within a specified time. The voluntary compliance agreement shall include the following minimum terms and conditions:

a. The name and address of the property owner responsible for the nuisance or violation; and

b. The street address or legal description of the property upon which the nuisance or code violation has occurred or is occurring; and

c. A concise description of the nuisance or code violation including a reference to the section or sections of the municipal code that are being violated; and

d. An acknowledgement by the property owner that the nuisance or code violation described in the agreement exists; and

e. An express waiver of the property owner's right to a hearing to contest the existence of the nuisance or code violation or to seek any action in any court to contest the existence of the nuisance or code violation; and

f. An express waiver of the property owner's right to a hearing to mitigate the penalties for the nuisance or code violation; and

g. An agreement by the property owner to defend the city, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability arising from the nuisance or code violation; and

h. A description of the corrective action to be taken, the date or time by which the action must be completed, and an acknowledgement by the property owner that he or she will correct the code violation within the time specified in the voluntary correction agreement; and

i. Acknowledgement by the property owner that the city may enter the property and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and

j. Acknowledgement by the property owner that if the nuisance or code violation is not corrected by the deadline in the agreement, then the city may enter the property to abate the nuisance or code violation, post a "Do Not Occupy" notice until the property owner corrects the violation, or take other necessary steps to ensure compliance; and

k. Acknowledgment by the property owner that any costs and expenses of abatement incurred by the city shall constitute a debt recoverable from the property owner; and

l. An acknowledgment by the property owner that the agreement constitutes a covenant running with the land, will be recorded with the Whatcom County Auditor, and shall be enforceable against the property owner and any successors-in-interest; and

m. The signature or official mark of the property owner.

D. The voluntary correction agreement shall be approved as to form and legality by the City Attorney, and executed in the name of the city by the Mayor, and attested by the Finance Director, and when necessary, shall be acknowledged by such officers in accordance with the City Charter.

E. Extension of voluntary correction period or modification of required actions. A property owner may request an extension of the deadline for voluntary correction, or a modification of any required corrective action noted in the agreement. The enforcement officer shall evaluate the request to determine whether the property owner has shown due diligence or made substantial progress in correcting the violations but unforeseen circumstances render correction unattainable within the original deadline. The monetary cost of the corrective action shall not constitute an unforeseen change in circumstances justifying an extension or modification. If an extension is granted, then the parties shall execute a written modification to the original voluntary compliance agreement stating the date or time by which the corrective action must be completed.

F. Revocation of deadline for compliance. The contractual deadline for compliance, or any extension for compliance previously granted, shall not prevent the enforcement officer or other city employee from taking steps necessary to ensure immediate compliance where the circumstances create an imminent risk of injury to persons or property.

G. Failure to comply with voluntary correction agreement.

a. Abatement by the city. In addition to any other remedy provided for in this chapter, the city may abate the violation in accordance with the procedures identified in Chapter 10.28 BMC or other chapter as applicable if the property owner fails to satisfy the terms of the voluntary compliance agreement.

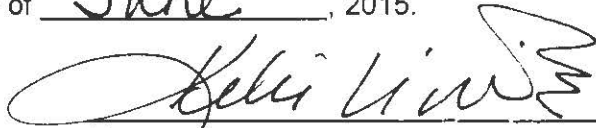
b. Penalties and costs. The city may also assess a monetary penalty in accordance with the applicable provisions of the municipal code, plus all costs and expenses of abatement, or take other corrective action necessary to secure compliance with the municipal code if the property owner fails to satisfy the terms of a voluntary compliance agreement.

PASSED by the Council this 18th day of May, 2015.




Council President

APPROVED by me this 15th day of June, 2015.

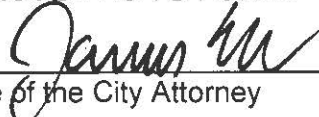


Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

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