

CHAPTER 2

VIOLATION/PENALTIES AND ENFORCEMENT

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2.1.0 INTERPRETATION.

1. In interpreting and applying the provisions of this Ordinance, the provisions and standards contained shall be deemed to be the minimum standards or requirements with which compliance is essential to the permitted uses, and shall not be construed as limiting the legislative authority of Franklin County to further restrict permissive uses or to withhold or revoke permits for uses where, notwithstanding the existence of the minimum standards set forth in this Ordinance, the promotion or protection of the public health, morals, safety and welfare bears a substantial relation to such withholding, denial or revocation of permits or uses.

2.2.0 CONFLICTING PROVISIONS.

1. Where this Ordinance imposes a greater restriction upon land, buildings, or structures than is imposed or required by other rules, regulations, standards, policies, ordinances, contracts, covenants public or private, deeds, or statutes lawfully adopted by Franklin County, the provisions of this Ordinance shall govern and take precedent. In the case of conflicts between the text, maps and tables of the Ordinance, the text shall govern unless otherwise stated.

2.3.0 INTENT.

1. The primary intent of all enforcement actions described in this Chapter is to educate the public and to encourage the voluntary correction of violations to protect the public health, safety and welfare. If voluntary compliance fails or is inapplicable in a given case civil and criminal penalties will be used when necessary to ensure compliance with the provisions of this Ordinance. Criminal

charges will be brought only when civil remedies have failed to ensure compliance and all lesser enforcement tools have proved futile.

2. Nothing in this section shall be construed to prevent the building official, fire marshal, or local fire chief from following the enforcement process and provisions of the Uniform Building Code, the Uniform Fire Code, or any other standardized code adopted by the county.

2.4.0 VIOLATIONS.

1. It is a violation of this Ordinance for any person to initiate or maintain, or to cause to be initiated or maintained, any use, alteration, construction, location, or demolition of any structure, land, or property within Franklin County without first obtaining permits or authorizations required by this Ordinance.
2. It is a violation of this Ordinance to remove or deface any sign, notice, complaint, or order required by or posted in accordance with this Ordinance.
3. it is a violation of this Ordinance to misrepresent any material fact in any application, plans, or other information submitted to obtain any land use authorization.
4. It is a violation for any person to fail to comply with provisions of this Code, to fail to comply with the terms or conditions of a permit issued pursuant to this Ordinance, or to fail to comply with any or all Notices or Orders issued pursuant to this Chapter.

2.5.0 ENFORCEMENT AND DUTY TO ENFORCE.

1. Provisions of this Ordinance will be enforced for the benefit of the health, safety, and welfare of the general public and the environment and, not for the benefit of any particular person or class of persons.
2. The Planning and Building Director or authorized representative is authorized to use the provisions of this section to remove, prevent and stop violations of this Ordinance. The Planning and Building Director or authorized representative may call upon law enforcement, fire, health, or other appropriate County departments to assist in enforcement.
3. The owner of any real or personal property subject to enforcement action and/or any person responsible for a violation at a particular site or real property shall be individually and jointly liable for failure to comply with this Ordinance or to comply with any and all notices or orders issued pursuant to this Ordinance.
4. No provision or term used in this Chapter is intended to impose any duty upon the County or any of its officers or employees, which would subject them or the County to damages in a civil action.

2.6.0 SITE INVESTIGATION AND RIGHT OF ENTRY.

1. Any person submitting an application for any land use permit or any other land use activities shall also be requested to give written consent to on-site inspection of their property solely for the purpose of assessing compliance with any or all county development regulations applicable to the land use permit or proposal submitted by that applicant.

2. The Planning and Building Director or authorized representative may, with the written consent of the owner, enter any building, structure, property or portion thereof at reasonable times to inspect the same in order to determine whether the applicant and/or owner are in compliance with any and all development regulations applicable to the land use permit or proposal submitted by that applicant.
3. If written consent of the applicant or owner to enter private property exists and if the Planning and Building Director or authorized representative should find such building, structure, property or portion thereof to be occupied, then the Planning and Building Director or authorized representative shall present identification credentials, state the reasons for the inspection, and request entry.
4. If written consent of the applicant or owner to enter private property exists and if the Planning and Building Director or authorized representative should find such building, structure, property or portion thereof to be unoccupied, then the Planning and Building Director or authorized representative shall first make a reasonable effort to locate the owner or other persons having charge or control of the building, structure, property or portion thereof and request entry. If the Planning and Building Director or authorized representative is unable to locate the owner or such other persons, and has reason to believe that conditions therein create an immediate and irreparable land use of safety hazard, the Planning and Building Director or authorized representative may enter to investigate land use violations or safety hazards.
5. Should the Planning and Building Director or authorized representative be denied written consent to access such private property in order to carry out the purpose and provision of this Chapter, then the Planning and Building Director or authorized representative shall, if entry upon private property is deemed necessary, be required to obtain a lawful search warrant executed by a neutral magistrate or judge based upon sufficient sworn proof of probable cause prior to entry upon private property.
6. At such time as the County, through its Planning and Building Director or authorized representative, concludes that the applicant has complied with all development regulations applicable to the applicant's proposal or application for one or more land use permits the written consent to enter the premises of the applicant for inspection and observation as permitted by this Chapter shall immediately expire.
7. Because there will be circumstances, a complaint or facts where an investigation of real property will be required that does NOT arise from an existing application or request for one or more land use permits, the Planning and Building Director or authorized representative is permitted to take all lawful steps to investigate those circumstances or facts, including, but not limited to, obtaining a lawful search warrant executed by a neutral magistrate or judge based upon sufficient sworn proof of probable cause prior to entry upon private property.

2.7.0 NOTICE OF VOLUNTARY CORRECTION.

1. If after investigation, the Planning and Building Director or authorized representative determines that any provision of this Ordinance has been violated,

a notice of voluntary correction letter should be the first attempt at obtaining compliance. If voluntary compliance is not obtained, the Planning and Building Director or authorized representative shall serve a Notice and Order, as set forth in this Chapter, upon the owner and person(s) responsible for the violation. The Notice of Voluntary Correction shall state the following:

- a. the street address, when available, and/or a legal description of real property sufficient to identify where the violation occurred or is located;
 - b. description of the activity that is causing a violation;
 - c. each provision violated under county regulations;
 - d. the corrective action necessary to comply with said provisions;
 - e. a reasonable time and date by which the corrective action is to be completed, however, in no event shall the time given for voluntary correction be greater than 60 calendar days, except as provided in this Chapter; and
 - f. that continued or subsequent violation may result in civil enforcement actions, as provided in this Chapter, to include monetary civil penalties, and/or abatement proceedings enforceable as a lien against property or as a personal obligation.
2. Following a Notice of Voluntary Correction, the Planning and Building Director or authorized representative and person in violation may meet to develop a compliance plan. The compliance plan shall establish a reasonable and specific time frame for compliance. No further action will be taken if the terms of the compliance plan are met. If no compliance plan is established, a notice and order will proceed.
 3. Upon written request received prior to the correction date, the Planning and Building Director or authorized representative may, for good cause shown, grant an extension of the date set for correction for an amount of time as deemed reasonable by the Planning and Building Director or authorized representative. The Planning and Building Director or authorized representative may only consider as good cause (1) substantial completion of necessary correction; (2) unforeseeable circumstances not caused by the person so as to make completion impossible by the date established; or (3) procedural requirements for obtaining a permit to carry out the corrective action.
 4. The voluntary correction process is optional as deemed by the Planning and Building Director or authorized representative. If the Planning and Building Director or authorized representative believes that the requirements of this section are not being met, the Planning and Building Director or authorized representative shall, in addition to the Notice and Order, issue applicable Stop Work or Emergency Orders.

2.8.0 NOTICE AND ORDER.

1. Issuance.

- a. When the Planning and Building Director or authorized representative determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, the Planning and Building Director or

- authorized representative may issue a notice and order to the person responsible for the violation.
- b. The Planning and Building Director or authorized representative may issue a notice and order without having attempted to secure voluntary correction as provided under the following circumstances:
 - i. When an emergency exists; or
 - ii. When a repeat violation occurs; or
 - iii. When the violation creates a situation or condition which cannot be corrected; or
 - iv. When the person knows or reasonably should have known that the action is in violation of a County regulation; or
 - v. The person cannot be contacted or refuses to communicate or cooperate with the County in correcting the violation.
2. *Content.* The notice and order shall include the following:
 - a. The name and address of the person responsible for that violation; and
 - b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
 - c. A description of the violation and a reference to the provision(s) of the County regulation(s) which has been violated; and
 - d. The required corrective action and a date and time by which the correction must be completed after which the County may abate the unlawful condition in accordance with the provisions of this Chapter; and
 - e. The date, time and location of an appeal hearing before the hearing examiner which will be at least ten (10) days but no more than forty-five (45) days from the date the notice and order is issued; and
 - f. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the Planning and Building Director or authorized representative approves the completed, required corrective action at least forty-eight (48) hours prior to the hearing; and
 - g. A statement that the costs and expenses of abatement (including hauling and storage costs) incurred by the County and a monetary penalty in an amount per day for each violation as specified in this Chapter may be assessed against the person to whom the notice and order is directed as specified and ordered by the hearing examiner.
3. *Service of notice.* The Planning and Building Director or authorized representative shall serve the notice and order upon the person responsible for the violation, either personally or by mailing a certified copy of the notice and order to such person at their last known address. If the person responsible for the violation cannot be personally served within Franklin County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice and order 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 that

due diligence was used in attempting to serve the person personally or by certified mail.

4. *Extension.* Extensions of the time specified in the notice and order for correction of the violation may be granted at the discretion of the Planning and Building Director or authorized representative or by order of the hearing examiner.
5. *Monetary penalty.* The monetary penalty for each violation per day or portion thereof shall be three hundred dollars (\$300).
6. *Continued duty to correct.* Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice and order was issued of the duty to correct the violation.
7. *Collection of monetary penalty.*
 - a. The monetary penalty constitutes a personal obligation of the person to whom the notice and order is directed. Any monetary penalty assessed must be paid to the County within thirty (30) calendar days from the date of mailing of the hearing examiner's decision or a notice from the County that penalties are due.
 - b. The County Prosecuting Attorney or his/her signee is authorized to take appropriate legal action to collect the monetary penalty.

2.9.0 STOP WORK ORDER AND EMERGENCY ORDER.

1. **Stop Work Order.** Whenever a continuing violation of any regulations within this Ordinance will 1) materially impair the Planning and Building Director or authorized representative's ability to secure compliance with this Ordinance, or 2) threaten the health or safety of the public, or 3) threaten or harms the environment, then the Planning and Building Director or authorized representative may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. The order may be posted on the subject property or may be served on persons engaged in any work in violation of this Ordinance and any other Ordinance of Franklin County. No further work or activity shall proceed, unless and until authorized by the Planning and Building Director or authorized representative in writing. In the event the Planning and Building Director or authorized representative issues a stop work order, the voluntary correction procedures of this Chapter and the notice and order provisions of this Chapter shall not apply. Failure to comply with a stop work order shall constitute a violation of this Ordinance.
2. **Emergency Order.** Whenever any use or activity in violation of this Ordinance threatens the health or safety of occupants of the premises or property, any member of the public or the environment, the Planning and Building Director or authorized representative may issue an Emergency Order directing that the use or activity be discontinued and the condition causing threat to health and safety or threat and harm to the environment be corrected. The Emergency Order shall be served on the person(s) responsible pursuant to this Chapter, which shall specify the time for compliance, and should be posted in a conspicuous place on the premises, if posting is physically possible. Failure to comply with an Emergency Order shall constitute a violation of this Ordinance. In the event the Planning and Building Director or authorized representative issues a emergency order, the

voluntary correction procedures of this Chapter and the notice and order provisions of this Chapter shall not apply. Failure to comply with an emergency order shall constitute a violation of this Ordinance.

2.10.0 HEARING BEFORE THE HEARING EXAMINER.

1. *Notice.* A person to whom a notice and order is issued will be scheduled to appear before the hearing examiner not less than ten (10) calendar days but no more than forty-five (45) days after the notice and order is issued. Extensions may be granted at the discretion of the Planning and Building Director or authorized representative.
2. *Prior correction of violation.* The hearing will be canceled and no monetary penalty will be assessed if the Planning and Building Director or authorized representative approves the completed required corrective action at least forty-eight (48) hours prior to the scheduled hearing.
3. *Procedure.* The hearing examiner shall conduct a hearing on the civil violation (notice and order) pursuant to the rules of procedure of the hearing examiner. The Planning and Building Director or authorized representative and the person to whom the notice and order was directed may participate as parties in the hearing and each party may call witnesses. The County shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action will correct the violation. The determination of the Planning and Building Director or authorized representative as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.
4. *Decision of the hearing examiner.*
 - a. The hearing examiner shall determine whether the County has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violation and shall affirm, vacate, or modify the County's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.
 - b. The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:
 - i. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
 - ii. The required corrective action;
 - iii. The date and time by which the correction must be completed;
 - iv. The monetary penalties assessed based on the criteria pursuant to this Chapter;
 - v. The date and time after which the County may proceed with abatement of the unlawful condition if the required correction is not completed.
 - c. Assessment of monetary penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty in this Chapter.
 - i. The hearing examiner shall have the following options in assessing monetary penalties:

- (1) Assess monetary penalties beginning on the date the notice and order was issued and thereafter; or
- (2) Assess monetary penalties beginning on the correction date set by the Planning and Building Director or authorized representative or an alternate correction date set by the hearing examiner and thereafter;
- (3) Assess less than the established monetary penalty as set forth in this Chapter.
- (4) Assess no monetary penalties.
- ii. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:
 - (1) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
 - (2) Whether the person failed to appear at the hearing;
 - (3) Whether the violation was a repeat violation;
 - (4) Whether the person showed due diligence and/or substantial progress in correcting the violation;
 - (5) Whether a genuine code interpretation issue exists; and
 - (6) Any other relevant factors.
- iii. The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in this Chapter.
- d. *Notice of decision.* The hearing examiner shall mail a copy of the decision to the person to whom the notice and order was issued and to the Planning and Building Director or authorized representative within ten (10) working days of the hearing.
5. *Failure to appear.* If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the examiner will enter an order with findings pursuant to this Chapter and assess the appropriate monetary penalty pursuant to this Chapter. The County will enforce the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.
6. *Appeal to Superior Court.* An appeal of the decision of the hearing examiner must be filed with the Superior Court within thirty (30) calendar days of the issuance of the decision.

2.11.0 ABATEMENT BY THE COUNTY.

1. The County may abate a condition which was caused by or continues to be a violation when:
 - a. The terms of voluntary correction agreement pursuant to this Chapter have not been met; or
 - b. A notice and order has been issued pursuant to this Chapter and a hearing has been held pursuant to this Chapter and the required correction has not been completed by the date specified in the hearing examiner's order; or

- c. The condition is subject to summary abatement as provided for in this Chapter.
2. *Summary abatement.* Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the County may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.
3. *Authorized action by the County.* Using any lawful means, the County may enter upon the subject property and may remove or correct the condition which is subject to abatement. The County may seek such judicial process as it deems necessary to effect the removal or correction of such condition.
4. *Recovery of costs and expenses.* The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the County within thirty (30) calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the County in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.
5. *Interference.* Any person who knowingly obstructs, impedes, or interferes with the County or its agents, or with the person responsible for the violation in the performance of duties imposed by this chapter, or a decision and order issued by the hearing examiner or an agreement between the County and the person responsible for the violation, is guilty of a misdemeanor.

2.12.0 ALTERNATIVE ABATEMENT PROCEDURE.

1. Any property on which violations of this chapter remain uncorrected after issuance of a notice and order may, in addition to the procedures outlined above, be abated in accordance with the following additional procedures:
 - a. When requested by the Planning and Building Director or authorized representative and approved by the hearing examiner, the matter of a pending violation may be submitted to the County Commissioners for consideration whenever the violation consists of debris upon property constituting a fire hazard or a menace to public health, safety or welfare. In such instance, the procedures set forth in Section 2.7.0 through 2.11.0 of this Chapter shall be complied with to the extent not in conflict herein except that the decision of the hearing examiner pursuant to this Chapter shall be in the form of a recommendation to the County Commissioners. This alternate procedure may be requested by the Planning and Building Director or authorized representative at any time prior to the hearing before the hearing examiner. Only if the hearing examiner makes a finding that the violation constitutes a fire hazard or a menace to public health, safety or welfare requiring removal or destruction of the debris

constituting the violation shall the examiner make a recommendation to the County Commissioners pursuant to this alternate abatement procedure. After consideration, the County Commissioners may, by resolution, either accept, reject or modify the hearing examiner's recommendation and require the property owner to abate the violation by removal or destruction, at his or her cost and expense, within a time specified in the resolution.

- b. The resolution shall not be passed until the property owner is given at least five (5) days' notice of the pendency of the proposed resolution. Such notice shall be served by the Planning and Building Director or authorized representative in accordance with the Section 2.8.0 of this Chapter. The notice, either accompanied with or incorporated into the hearing examiner's recommendation, shall describe the property involved, the nature of the hazardous condition, the corrective action required, and the date of the County Commissioners meeting during which the matter will be considered.
- c. If the nuisance is not abated by the property owner within the time fixed in the resolution, the Planning and Building Director or authorized representative may abate the same and mail a bill to the property owner covering the cost to the County of such abatement, including the Planning and Building Director or authorized representative's expense. If the property owner fails or refuses to pay the bill immediately, the Planning and Building Director or authorized representative shall file a lien there for against the property, which lien shall be in the same form, filed with the same officer and within the same time and manner and enforced and foreclosed as is provided by law for liens for labor and material.

2.13.0 SUSPENSION AND REVOCATION OF PERMITS.

- 1. **Suspension-Cause.** The Planning and Building Director or authorized representative may temporarily suspend any permit issued under this Ordinance for:
 - a. Failure of the holder to comply with the requirements of any development regulations, or rules promulgated thereunder; or
 - b. Failure of the holder to comply with any order issued pursuant to this Chapter; or
 - c. Interference with the Planning and Building Director or authorized representative in the performance of his/her duties; or
 - d. Discovery by the Planning and Building Director or authorized representative that a permit was issued in error or on the basis of incorrect information supplied to the county.
 - e. Failure to comply with the conditions and/or mitigation measures of any land use permit.

Whenever the Planning and Building Director or authorized representative finds just cause, permit suspension shall be carried out through the notice and order provisions of this Chapter and shall be effective upon service of the notice and order.

2. **Revocation-Cause.** The Planning and Building Director or authorized representative may permanently revoke any permit issued under this Ordinance for just cause under Section 2.12.0 a-e of this Chapter.

2.14.0 STORAGE OF ABATED ITEMS.

1. Items of personal property that are abated in accordance with this Chapter will be stored/handled and disposed of in the following manner:
 - a. Vehicles, boats, RV's, campers, mobile homes, trailers and any other items that are listed as personal and not real property according to the Franklin County Treasurer, if found to be in violation of this Ordinance or any other Ordinance of Franklin County will be abated and stored in accordance with the provisions of State approved impound/tow yards.
 - b. Any item(s) that are in violation and that meet the definition under this ordinance or any other ordinance of Franklin County as a nuisance, or as junk, litter, debris, or garbage will be disposed of immediately in a land fill or any other approved waste handling facility.

2.15.0 RECOVERY OF CIVIL PENALTY AND COST OF ABATEMENT.

1. **Lien – Authorized.** Franklin County shall have an unperfected lien for any civil penalty imposed or for the cost of any abatement work done pursuant to this Chapter, or both, against the real property on which the civil penalty was imposed or any of the abatement work performed.
2. **Personal Obligation – Authorized.** The civil penalty and the cost of abatement are also joint and separate personal obligations of any person or entity in violation. The Prosecuting Attorney and/or Planning and Building Director on behalf of the County may collect the civil penalty and abatement work costs by use of all appropriate legal remedies including the use of collection agencies.
3. **Lien – Foreclosure.** The Planning and Building Director or authorized representative shall cause a claim for lien to be filed for record in the Franklin County Auditor's Office within 90 days of the date when the lien was perfected. The claim of lien shall contain the following:
 - a. The authority for imposing a civil penalty or proceeding to abate the violation, or both;
 - b. Proof, which may come from the document itself, of the legal perfection of the lien;
 - c. A brief description of the civil penalty imposed or the abatement work done, or both, including the violations charged and the duration thereof, including the time the work is commenced and completed and the name of the persons or organizations performing the work;
 - d. A legal description of the property to be charged with the lien;
 - e. The name of the known or reputed owner, and, if not known, the fact shall be alleged; and
 - f. The amount, including lawful and reasonable costs for which the lien is claimed.

4. **Verification.** The Planning and Building Director or authorized representative shall sign and verify the claim by oath to the effect that the Planning and Building Director or authorized representative believes the claim is just.
5. **Amendment.** The claim of lien may be amended in case of action brought to foreclose same, by order of the court, insofar as the interests of third parties shall not be detrimentally affected by amendment. Nothing shall prevent the Planning and Building Director or authorized representative from removing or reducing the civil assessment or lien upon satisfactory evidence that the violation of this development code has been abated, resolved, or removed.
6. **Foreclosure.** The lien provided by this section, once perfected and recorded as a lien against any real property owned in Washington by the debtor, may be foreclosed and enforced by a civil action in a court having jurisdiction. All persons who have legally filed claims of liens against the same property prior to commencement of the action shall be joined as parties, either plaintiff or defendant.