Ordinance No. 2988

An Ordinance Amending AMC Title 2, Title 9, and Title 18, and Creating a New Title 20 To Provide for a Fair and Efficient System of Civil Code Enforcement

Whereas the Anacortes Municipal Code currently includes code enforcement rules and procedures in multiple titles;

Whereas the City Council desires to consolidate and clarify code enforcement procedures and remedies to provide effective and efficient rules for the public and city staff;

Whereas the City Council desires to establish a hearing examiner to hear appeals of code enforcement actions;

Whereas RCW 35A.11.020 and RCW 35A.21.160 provide that the City has all the power of any class of cities, and RCW 35.22.280 provides that first-class cities have the ability to declare and abate public nuisances;

Whereas RCW 35A.11.020 and RCW 35A.21.160 provide that the City has all the power of any class of cities, and RCW 35.22.280 provides that first-class cities have the ability to declare and abate public nuisances;

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

Section 1. The Anacortes Municipal Code is amended as shown in Attachment A.

Section 2. Consistent with RCW 35A.12.130, this ordinance takes effect five days after passage and publication.
PASSED and APPROVED this 12th day of December, 2016.

CITY OF ANACORTES:

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney
Attachment A
Amendments to the Anacortes Municipal Code

Title 2 Personnel and Administration

The following chapters in Title 2 are created or amended:

New Chapter 2.30 Hearing Examiner

2.30.010 Purpose.
A. To provide an efficient and effective administrative adjudicatory system for acting upon quasi-judicial matters and for review of contested administrative determinations;
B. To ensure, to the extent possible, that quasi-judicial administrative decisions are made in a fair and impartial manner; and
C. To ensure that the principles of due process and appearance of fairness are adhered to in regard to quasi-judicial matters.

2.30.020 Creation.
A. The office of the Hearing Examiner is hereby created to be independent of city departments, boards, and commissions.
B. The term “Hearing Examiner” includes any pro tem Hearing Examiner.

2.30.030 Appointment.
A. The Hearing Examiner may be appointed by the mayor, with the concurrence of not less than four members of the city council, for a term of two years.
B. One or more Hearing Examiners pro tem may be appointed by the mayor, for such terms as may be specified at the time of appointment, to serve in the case of a conflict or absence of the hearing examiner.
C. The Hearing Examiner and any Hearing Examiner pro tem must be appointed solely with regard to qualifications of the office.

2.30.030 Qualifications
A. The Hearing Examiner must:
1. be an attorney;
2. have at least five years’ experience in land use planning and land use law;
3. have other training and experience necessary to qualify the Hearing Examiner to conduct administrative quasi-judicial proceedings.

B. For matters involving interpretations of the International Building Code or International Residential Code, the Hearing Examiner must be qualified by experience and training to pass on matters pertaining to building construction. For matters involving interpretations of the International Fire Code, the Hearing Examiner must be qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protection systems.

2.30.040 Duties.

A. The Hearing Examiner must impartially administer hearings and review, interpret, and implement regulations as provided by this Chapter.

B. Any person who holds the office of Hearing Examiner, including Hearing Examiner pro tem, must conduct all of his or her activities consistent with the Washington State Code of Judicial Conduct.

2.30.050 Powers and Jurisdiction.

A. The Hearing Examiner has jurisdiction only over those matters prescribed by the Anacortes Municipal Code.

B. The Hearing Examiner has the authority to conduct public hearings and decide matters as prescribed by the Anacortes Municipal Code.

C. The Hearing Examiner pro tem, in the event of absence or the inability of the Hearing Examiner to act, has all the duties and powers of the Hearing Examiner.

D. In the performance of his or her duties, the Hearing Examiner may:

1. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive relevant evidence, and conduct discovery procedures pursuant to Washington State Court Rules; except that no person may be compelled to divulge information which he or she could not be compelled to divulge in a court of law;

2. Upon the request of any party, or upon the Hearing Examiner's own volition, issue and cause to be served subpoenas for the attendance of witnesses and for the production for examination of any books, records, or other information in the possession or under the control of any witness. A subpoena must state the name and address of the witness sought, and if for the production of books, documents or things, must specifically identify the same and the relevance thereof to the issues involved.

3. Regulate the course of the hearing in accordance with this chapter and other applicable ordinances;

4. Hold conferences for the settlement or simplification of the issues by consent of the parties;
5. Decide any procedural requests or similar matters;

2.30.060 Procedures.
A. The Hearing Examiner may adopt rules as necessary to carry out the duties and responsibilities of the office.
B. Rules may not take effect until they have been reviewed and approved by the City Council.
C. Rules may not conflict with the Anacortes Municipal Code.

2.30.070 Conflict of Interest and Freedom from Improper Influence.
A. The Hearing Examiner may not conduct or participate in any hearing or decision in which the Hearing Examiner has a direct or indirect personal interest that might exert such influence upon the Hearing Examiner that might improperly interfere with the decision-making process.
B. Any actual or potential conflict of interest must be disclosed to the parties immediately upon discovery of such conflict. The Hearing Examiner must abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that Hearing Examiner.
C. No City official or any other person may attempt to interfere with or improperly influence the Hearing Examiner in the performance of his or her duties. Violation of this subsection is a misdemeanor, punishable by up to 90 days in jail, or a fine of up to $1,000, or both.

2.30.080 Removal.
After a public hearing, the Hearing Examiner may be removed from office during a term either:
A. for just cause by the mayor with the concurrence of at least four members of the city council; or
B. by the vote of at least five members of the City Council, without the concurrence of the mayor.

2.30.090 Annual Report to City Council.
The Hearing Examiner must report in writing and meet with the city council at least annually for the purpose of reviewing any amendments to city ordinances or other policies or procedures that would improve the performance of the Hearing Examiner process. Such report must include a summary of the Hearing Examiner’s decisions since the last report. If requested by the city council or the mayor, the Hearing Examiner must provide additional written reports as deemed appropriate by the city council or mayor.
Title 9 Public Peace, Morals, and Welfare

The following chapters in Title 9 are created or amended:

New Chapter 9.06 Nuisances

9.06.020 Criminal penalty
A person who commits or maintains a public nuisance, for which no special punishment is prescribed; or who willfully omits or refuses to perform any legal duty relating to the removal of a public nuisance; or who lets, or permits to be used, any land, building, or structure or portion thereof, knowing that it is intended to be or is being used for committing or maintaining any such public nuisance; is guilty of a misdemeanor, and upon conviction, may be punished by a fine not to exceed $1,000, or imprisonment not to exceed 90 days, or both. Each day or part thereof is a separate offense.

Title 16 Subdivisions

AMC 16.04.105.B, Violation—Penalty is repealed.

Title 17 Zoning

AMC Chapter 17.66, Penalties for Violation, is repealed.

Title 18 Environment

8.08 Littering
AMC 8.08 Article IV, Enforcement (AMC 8.08.210-250) is repealed.

18.14 Nuisances
AMC 18.14.180, Public nuisance defined, is recodified as new section AMC 9.06.040.
The remainder of AMC Chapter 18.14, Nuisances, is repealed.
New Title 20
Civil Enforcement and Penalties

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Chapter 20.10 General Provisions

20.10.010 Policy.

A. The policy of the City of Anacortes is to:

1. Fairly, actively, and uniformly enforce the municipal code to preserve the health, safety, and welfare of the public and the environment and not for the benefit of any particular class of persons;
2. Conduct all investigations into alleged violations consistent with statutory and constitutional protections of the right of privacy;
3. Use education as a first step toward achieving compliance with those codes and offer property owners the opportunity to correct violations before imposing fines;
4. Use administrative orders and other measures when necessary to ensure violations are corrected.

B. To achieve this policy, this Chapter provides authority and procedures for:

1. Efficient and effective notice and opportunities to correct violations;
2. Progressive monetary penalties proportionate to the violations;
3. Appeal of administrative orders regarding violations;
4. Collection of civil penalties; and
5. Abatement and remediation of violations

C. Discretion.

1. Generally, the Director should use a graduated enforcement process that uses notification and education as a first step and should offer violators the opportunity to correct violations before imposing fines.
2. The Director may decide not to take action to correct a violation, especially for de minimus violations or violations that require interpretations or discretionary judgments of the applicability of the land use code.

D. Supremacy. In the event of a conflict between provisions of this title and other provisions in the AMC, the provisions of this title control.

20.10.020 Definitions

The following definitions apply to this Title:

“Civil violation” means a failure to comply with any mandatory provision of the Anacortes Municipal Code, including failure to comply with a permit condition or an administrative order issued pursuant to AMC Title 20.
"Director" means the director of the Planning, Community, and Economic Development Department. "Violator" means a person who violates any mandatory provision of the Anacortes Municipal Code, including failure to comply with a permit or an administrative order issued pursuant to AMC Title 20.

20.10.040 Civil violations.

A. A civil violation includes any act or omission that procures, aids, or abets a civil violation.

B. Each day a civil violation continues is a separate civil violation.

C. A civil violation is a public nuisance and is subject to abatement under this Title, RCW Chapter 7.48, and RCW Chapter 9.66.

D. Per RCW 7.48.260, any court or magistrate before whom any proceeding for a civil violation is pending may order such nuisance abated, in addition to any fine or other punishment that it may impose for such violation, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant, except that if the conviction was in a district court, the district court judge may not issue the order and warrant of abatement, but on application must transfer the cause to the superior court to try the issue of abatement in the same manner as if the action had been originally commenced therein.

20.10.080 Joint and several liability.

In addition to any other person who may be liable for a civil violation, the property owner is jointly and severally liable for the civil violation, payment of any civil penalties, and restoration of the site.

20.10.100 Required report to City Council.

By February 1 of each year, the Director must report in writing to the City Council the number of code enforcement complaints received during the previous calendar year, the number investigated, the number found to be without basis, the number resolved, and the manner in which each was resolved.

Chapter 20.20 Procedures

20.20.020 Investigation—Right of entry.

A. Investigation.

1. Any person who believes a civil violation has occurred may notify the Director.

2. The Director must investigate an alleged civil violation and confirm it has occurred before proceeding to correct it.

B. Right of Entry.

1. Whenever necessary to make an inspection of an alleged or suspected civil violation, the Director may, upon presentation of proper credentials and consent of the property owner
or other person having charge or control of the building, structure or property, enter such
building, structure, property or portion thereof at all reasonable times to inspect the same.

2. If the building, structure, property, or portion thereof is unoccupied, the Director must
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.

3. If entry is refused or a responsible party cannot be located, the Director may ask the City
Attorney to assist in obtaining a warrant.

20.20.040 Administrative orders including stop work orders.

A. Generally. The Director may issue an administrative order to compel correction of a civil
violation, abatement of a nuisance, or payment of civil penalties.

B. Stop work orders. The Director may issue an administrative order to immediately cease any
work or activity that is causing a civil violation or a public nuisance.

C. Supplemental orders. The Director may at any time add to, rescind in part, or otherwise modify
an order by issuing a supplemental order.

D. Final orders. An administrative order becomes final if it is not timely appealed, or if it is timely
appealed and not stayed or reversed.

E. Violations of administrative orders.

1. If the person to whom an order is directed does not obey the order or does not pay the civil
penalty assessed by the order, the Director may pursue any combination of the remedies in
AMC Chapter 20.30.

2. Failure to comply with a stop work order is a gross misdemeanor punishable upon
conviction by a minimum fine of $500 up to a maximum fine of $1,000 or one year in jail, or
both. Each day or part thereof of noncompliance with a stop work order is a separate
offense.

20.20.060 Administrative orders—contents.

An order must contain the following:

A. The name and address of the property owner, the person in possession of the property, and any
other person responsible for the violation or condition.

B. The street address or description of the property sufficient for identification of the location
where the violation occurred or condition is located.

C. A statement that the Director has identified a public nuisance or found a violation of specific
code sections, permit condition, stop work order, or other administrative order.

D. For stop work orders:
1. A directive to immediately cease the work or activity until the Director rescinds the order.

2. A statement of the penalties for failure to comply.

E. For orders other than stop work orders:

1. A statement of the corrective action required to be taken. If the Director has determined that corrective work is required, the order must require that all necessary permits be secured and the corrective work physically commence within a reasonable time, as determined by the Director, and a reasonable date by which the work must be completed.

2. A statement specifying the amount of any civil penalty assessed as a result of the violation and, if applicable, the conditions on which assessment of such civil penalty are contingent.

3. A statement that if the corrective action is not commenced or completed within the time specified, the Director may proceed to abate the violation, cause the corrective work to be done, and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation.

F. A statement of the procedural steps the City may take to ensure compliance if the violation is not corrected consistent with the order.

G. A statement that the order is effective upon service or, for stop work orders, when the Director posts it on the subject property or serves it on the persons engaged in the work.

H. A statement of the right to appeal an order and the method and deadline for doing so, and that failure to file a timely and complete appeal may constitute a waiver of all rights to appeal the order.

20.20.080 Administrative orders—Service

A. All persons identified in the order must be served either personally or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested.

B. If the address of a person cannot reasonably be ascertained, then a copy of the order must be mailed by certified mail, return receipt requested, to such person at the address of the location of the violation and a copy must be posted in a conspicuous location on the premises. The failure of any such person to receive such notice does not affect the validity of any proceedings taken under this Chapter.

C. Service by certified mail is effective on the date of mailing.

20.20.100 Appeals.

A. Filing.

1. Who may file. Any person subject to an administrative order issued pursuant to this Chapter may appeal it in writing to the Hearing Examiner.
2. When to file. An appeal must be filed within 14 calendar days of service of the administrative order being appealed.

3. How to file. An appeal must be filed by submitting a Notice of Appeal to the Director on forms provided by the City, with the appeal fee set by City Council resolution.

4. Fees.
   a. The City Council will establish a fee schedule for appeals of code enforcement actions, which may include a reduced fee for an appellant that qualifies for low-income utility charges pursuant to AMC Chapter 13.44.
   b. If an appellant prevails on their appeal, the City will reimburse the appeal fee paid by appellant.

5. Contents. The Notice of Appeal must contain the following:
   a. Identification of the order being appealed;
   b. The name and address of the appellant and the appellant’s interest(s) in the matter;
   c. The specific reasons why the appellant believes the order is in error;
   d. The requested relief;
   e. Identification of any applicable Anacortes Municipal Code sections.

B. Automatic stay. An administrative order other than a stop work order is stayed during an appeal to the Hearing Examiner except when the Director determines that the violation will cause immediate and irreparable harm and so states in the order.

C. Standard of review.
   1. The appellant bears the burden of proving that the administrative order was clearly erroneous.
   2. The Hearing Examiner may not overturn or modify the Director’s order unless he or she finds it was clearly erroneous.

D. Hearing.
   1. The Hearing Examiner must hold a hearing, during regular business hours, to provide opportunities for the parties to be heard on the appeal.
   2. Before testifying, any witness, including city staff, must be required to declare that he or she will testify truthfully, by oath or affirmation.

E. Decision.
   1. The Hearing Examiner may affirm, reverse, or modify the appealed order.
   2. The Hearing Examiner’s written decision must include findings of fact, conclusions of law, and a decision on the appeal.
3. The Hearing Examiner must hold the hearing and provide the written decision on the appeal within 90 days of filing of the Notice of Appeal.

F. Reconsideration.

1. A party to an appeal may seek reconsideration of the Hearing Examiner’s decision by filing a written request for reconsideration, describing the specific errors alleged, within 10 days of the date of decision.

2. The Hearing Examiner must consider the request, without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

3. A request for reconsideration is not required to exhaust the appellant’s administrative remedies.

G. Exhaustion of administrative remedies.

1. The Hearing Examiner’s decision is the final decision of the City on the order.

2. The date of final decision is the date the Hearing Examiner issued its decision, unless any party timely requests reconsideration, in which case the date of final decision is the date the Hearing Examiner makes its decision on reconsideration.

Chapter 20.30 Remedies

20.30.020 Voluntary compliance agreement.

A. The City and the violator may enter into a voluntary compliance agreement at any time.

B. The Director is authorized on behalf of the City to enter into a voluntary compliance agreement, as provided for in this Section, at any time before the City becomes involved in any lawsuit related to the enforcement action.

C. Contents. A voluntary compliance agreement must contain the following:

1. The name and address of the property owner, the person in possession of the property, and any other person responsible for the violation or condition.

2. The street address or description of the property sufficient for identification of the location where the violation occurred or is located.

3. A description of the civil violation and a reference to the specific code provisions that were allegedly violated.

4. A detailed description of the agreed corrective action and the date by which it must be completed.
5. The amount of the civil penalty that will be imposed, if any, pursuant to AMC 20.30.080 if the terms of the voluntary compliance agreement are not met and that the City has a consensual lien against the property for the amount of the civil penalty plus any recording fees and costs.

6. A statement that the City retains the right to enforce the agreement as a matter of contract and retains all other rights and remedies available at law.

7. A statement that if the Director determines that the terms of the voluntary compliance agreement are not met, the Director may proceed with enforcement consistent with this Title.

8. A statement that by entering into the voluntary compliance agreement the violator admits that the conditions described in the voluntary compliance agreement exist and constitute a civil violation.

9. A statement that the violator knowingly, voluntarily, and intelligently waives the right to appeal any current or future administrative order arising from the same conditions or violations, including current or future civil penalties associated with the same conditions or violations.

D. The Director may grant an extension of the time limit for compliance or a modification of the required corrective action if the violator has shown due diligence or substantial progress in correcting the violation and the circumstances support such an extension.

20.30.040 Certificate of Non-Compliance.

A. After an administrative order becomes final, the Director may record with the County Auditor a certificate of non-compliance against any real property subject to the order.

B. The certificate of non-compliance must describe:
   1. the property subject to the order;
   2. the violation;
   3. the amount of unpaid civil penalties;
   4. the method of releasing the certificate of non-compliance.

C. Upon request of the property owner or violator, the Director must record a release of the certificate of non-compliance if:
   1. The administrative order is satisfied;
   2. All civil penalties are paid; and
   3. All costs associated with recording the certificate of non-compliance and the release of the certificate of non-compliance are paid.
20.30.060 Civil infraction.
A. A person who causes a civil violation, or by any act of commission or omission procures, aids, or abets such a civil violation, is subject to a class 1 civil infraction in accordance with RCW Chapter 7.80, unless otherwise specifically provided.
B. The maximum penalty and the default amount for a class 1 civil infraction is $250, not including statutory assessments.
C. A civil infraction may be imposed in addition to or as an alternative to any other judicial or administrative remedy.

20.30.080 Civil penalty.
A. In addition to or as an alternative to any other judicial or administrative remedy, a person who causes a civil violation, or by any act of commission or omission procures, aids, or abets such a civil violation, may be subject to a civil penalty.
B. Amount of Civil Penalty.
1. The amount of civil penalty is $100 per day per violation unless otherwise provided.
2. For a civil violation related to critical areas, as defined in the Anacortes Municipal Code, the Director may impose an additional civil penalty up to:
   a. An amount, not to exceed $25,000, that is reasonable based upon the nature and extent of the violation and the costs to the City of enforcing this Chapter against the violator; or
   b. An amount equal to twice the economic benefit that the violator derived from the violation as measured by the greater of:
      1. The resulting increase in the market value of the property or the value received by the violator; or
      2. The savings of construction costs realized by the violator derived from the act that constituted the violation.
3. A person found in violation of a new and separate civil violation within one year of the resolution of a prior civil violation may be subject to double the civil penalties normally imposed for such a violation.
4. The Director may reduce a civil penalty based on one or more of the following mitigating factors:
   a. The violator showed good faith or substantial progress, or both, in correcting the violation; or
   b. The violator was not the primary cause of the violation.
C. Collection of Civil Penalties.

1. An order to pay civil penalties is valid for the penalties accrued as of the date of the order, and for future penalties that accrue until a specified event.

2. The Director may issue a supplemental order for additional civil penalties. That order is appealable only for the additional civil penalties imposed by the supplemental order.

3. Per RCW 19.16.500, the Director may refer orders to pay civil penalties to collection agencies 30 days after service, and may add a reasonable fee to cover the costs of collection.

D. Payment of a civil penalty pursuant to this Chapter does not relieve the violator of the duty to correct the violation.

20.30.100 Abatement.

A. For a civil violation related to illicit discharges or connections, the Director may also:

1. Require implementation of BMPs described in the Stormwater Management Manual and, when necessary, AKART BMPs as described in RCW 90.48.010 and 90.48.520.

2. Require the violator to sample and analyze any discharge, surface and stormwater, groundwater, or sediment, in accordance with the sampling and analytical procedures and requirements determined by the Director, and provide that analysis to the Director.

3. Make inspections as required to determine compliance, including observation of BMPs or sampling surface and stormwater or groundwater as often as may be necessary.

B. If the required corrective work is not commenced or completed within the time specified, the Director may ask the City Attorney’s office to assist in abating the public nuisance.

C. Consistent with RCW 35A.21.160, RCW 35.22.280(30), and RCW 35.80.030, the City may abate the violation itself and charge the costs of abating the violation as a public nuisance lien against the property.

D. Per RCW 35.80.030, the City may abate unfit dwellings, buildings, structures, or property following the procedures in this Title and RCW 35.80.030, and may direct the County Treasurer to charge the costs of abatement as an assessment upon the tax rolls against the real property.

1. The Director is the municipal officer designated and authorized to exercise the powers necessary to carry out the purposes authorized by RCW 35.80.030.

2. The Hearing Examiner is the appeals commission designated to hear and decide appeals within sixty days of date of filing, as required by RCW 35.80.030(1)(g).

20.30.120 Settlement.

The Director may, with the advice and consent of the City Attorney, enter into negotiations with parties in an enforcement action or named in a lawsuit under this Title or their legal representatives, for the
purposes of negotiating a settlement to such action or lawsuit. The settlement may include a compromise regarding the collection of civil penalties but must consider the interests of the public and be in the best interests of the City.

20.30.140 Alternative remedies.

In addition to any other penalty or method of enforcement, the City Attorney may bring actions for injunctive or other relief to enforce the Anacortes Municipal Code.