

Skagit County Code 14.44 Citizens' Committee

sent by email to commissioners@co.skagit.wa.us and delivered by hand

Board of County Commissioners
1800 Continental Place
Mount Vernon, Washington 98273

22 May 2014

re: Citizens' proposed revision of Skagit County Code 14.44

Dear Commissioner Dahlstedt, Commissioner Dillon, and Commissioner Wesen,

The Citizens' Committee appreciates the opportunity the County has provided for citizens to have direct input into our County Code. We did not take this opportunity or responsibility lightly. We ask you to adopt the proposed enabling ordinance with the attached code compliance revision submitted by this letter.

Citizens want Skagit County to pursue code compliance actively, vigorously, and in a timely manner to protect the health, safety, and welfare of the general public. Both compliance and enforcement costs are less when the code is clear. Citizens want a code that the average person can read and understand; a code that provides for consistently applied, uniform, detailed, and efficient procedures; and a code that conforms to fundamental Washington and United States Constitutional principles.

When County staff proposed a revision to SCC 14.44, citizens reacted to that proposal with significant opposition. Current Code lacked detail; procedures were unclear and, in some cases, ineffective. Citizens deemed the proposed staff revision to be no better. The more citizens scrutinized current code and the staff-proposed revision, the more unssatisfactory this section of code was in meeting citizens' needs.

What citizens want is a code compliance chapter that facilitates the following simple criteria:

“Tell me what the rules are.”

“Tell me what happens if I break the rules.”

“Tell me what happens if the County says I broke a rule but I don't think I did.”

Commissioner Wesen, to his great credit and leadership, asked a committee of citizens if they could provide a better revision. We replied with a resounding, “Yes”; and today, we have done so.

Attached is a proposed ordinance to adopt the Citizens' Committee's revision to SCC 14.44. Attachment 1 to that ordinance is the Citizens' Committee's proposed revision.

The proposal to revise SCC 14.44 is the work of citizens who very carefully studied the current version of this code chapter and the staff-proposed revision. Citizens researched laws, and, in particular, researched similar sections of code from a number of other counties. The committee consulted with a number of attorneys on specific matters of law to ensure everything in the citizens' proposed revision is legally achievable and effective. The final draft was written with the assistance and advice from the various attorneys consulted.

The proposed revision achieves citizens' goals for clarity, equity, effectiveness, fairness, recourse, and procedural detail - all while observing constitutional principles that protect each citizen's rights. All extraneous language not *directly* pertinent to code compliance was removed and may need to be added back into the code in a more appropriate section(s).

We trust you will recognize the hard work done by the citizens' committee and the improved Code Compliance Skagit County can have by adopting the citizens' proposed revision to SCC 14.44.

Thank you.

Ellen Bynum, Aileen Good, Randy Good, Roger Mitchell, Ed Stauffer, Paul Taylor, Andrea Xaver

**An Ordinance Amending Skagit County Code Chapter 14.44
Enforcement/Penalties**

Whereas, citizens want Skagit County to pursue code compliance actively, vigorously, and in a timely manner in order to protect the health, safety, and welfare of the general public and always in a manner consistent with adherence to, and respect of, fundamental Washington and United States Constitutional principles; and

Whereas, Skagit County citizens want Skagit County Code 14.44 to provide uniform, detailed, and efficient procedures consistently applied, Skagit County Code Chapter 14.44 is more appropriately entitled "Code Compliance"; and

Whereas, citizens want Skagit County to emphasize code compliance by education and prevention as a first step and utilize enforcement and civil penalties for remedial compliance purposes; and

Whereas, revisions to SCC Chapter 14.44 are necessary to address these issues and improve the clarity and effectiveness of the chapter; and

Whereas, on March 13, 2014, the Board of County Commissioners published notice of a proposed ordinance and of a public hearing; and

Whereas, on April 7, 2014, the Board of County Commissioners held a public hearing on the proposed revisions to Skagit County Code; and

Whereas, on April 22, 2014, the Board of County Commissioners discussed and deliberated on the proposed ordinance and the public comments and appointed a citizens' committee to submit a proposed ordinance amending Skagit County Code 14.44 by May 22, 2014 and the citizens' committee complied; and

Whereas, on May 27, 2014, the Board of County Commissioners discussed and deliberated on the citizens' committee's proposed ordinance;

Now, Therefore, Be It Ordained by the Board of County Commissioners that:

Section 1. Skagit County Code Chapter 14.44 is hereby amended as shown in Attachment 1.

Witness Our Hands and the Official Seal of Our Office this ___ day of _____, 2014.

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Ryan Walters, Civil Deputy
Skagit County Prosecutor's Office

Dale Pernula, Director
Planning & Development Services

**Board of County Commissioners
Skagit County, Washington**

Ron Wesen, Chair

Kenneth A. Dahlsetdt, Commissioner

Sharon D. Dillon, Commissioner

Attachment 1

Skagit County Code Chapter 14.44 Code Compliance

Sections:

14.44.010	Name, Purpose, and Authority
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14.44.030	Definitions
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14.44.074	Affirmative Defense to Enforcement Action
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14.44.010 Name, Purpose, and Authority

- A. This title will be known as “Code Compliance”. The purpose of this title is to identify processes and procedures to encourage compliance with county ordinances and regulations that Skagit County has adopted pursuant to Article XI, Section 11 of the Washington Constitution and other state laws to promote and protect the general public health, safety, and environment of county residents. Generally this title declares most acts to be civil violations and establishes non-penal enforcement procedures and civil penalties. Under certain circumstances set forth herein, continued failure to comply with Code Compliance or certain other actions in violation of a court order issued as result of enforcement action may be subject to contempt powers of the Superior Court and result in additional fines, court costs, and incarceration for the violator.
- B. It is the intention of Skagit County to pursue code compliance actively and vigorously in order to protect the health, safety and welfare of the general public. This intention is to be pursued in a way that is consistent with adherence to, and respectful of, fundamental constitutional principles.
- C. This title applies to SCC Titles 14 or 15 or resolutions passed by the Skagit County Board of Commissioners and other land use ordinances or resolutions which purpose is to regulate or protect public health, the environment or the use and development of land or water.
- D. This title has no effect on any federal, state, county, municipal, and other official government entity, which includes but is not limited to diking, drainage, irrigation, and flood districts. Any potential violations that involve other government entities shall be resolved by separate agreement or in the court having jurisdiction over the parties.

14.44.020 Policy and Goal

It is the policy of Skagit County to emphasize code compliance by education and prevention as a first step. This policy is designed to ensure code compliance and timely action that is available to all persons

and uniform in its implementation. While warnings and voluntary compliance are desirable as a first step, enforcement and civil penalties should be used for remedial purposes as needed to assure and effect the goal of code compliance. Abatement or remediation should be pursued when appropriate and feasible. Uniform and efficient procedures, with consistent application tailored by regulation to each department's mission, should be used to accomplish this goal.

14.44.030 Definitions

The words and phrases designated in this section will be defined for the purposes of this title as follows:

"Abate" means to take whatever steps are deemed necessary by the Administrative Official to return a property to the condition in which it reasonably existed before a civil code violation occurred or to assure that the property complies with the intent of applicable code requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement, or repair.

"Appealing Party" means that Person Responsible for Code Compliance has been served with a Notice of Violation and Order to Abate or Stop Work Order or Violation of the terms of a Voluntary Compliance Agreement and has appealed the determination to the Skagit County Hearing Examiner or to the Skagit County Superior court.

"Civil Code Violation" means and includes one or more of the following:

(1) any act or omission contrary to any ordinance, resolution, or regulation of the county that regulates or protects public health, the environment or the use and development of land or water; and

(2) any act or omission contrary to the conditions of any permit, notice and order or stop work order issued pursuant to any such an ordinance, resolution, or regulation.

"Contested hearing" means a hearing requested in response to a written notice of violation to contest the finding that a violation occurred or to contest that the person issued the written notice of violation is responsible for the violation.

"Administrative Official" means the Director of Planning and Development Services, provided the Director may authorize certain staff to act on behalf of the Director, for specific decisions under this Title, as long as the staff is acting under the supervision and direction of the Director.

"Alleged Violator" means a person who is alleged to be in violation of any provision of SCC Titles 14 or 15 or any permit issued under these chapters.

"Complainant" means a person who has filed a written complaint to the Country Administrative Official alleging a Civil Code Violation.

"Contempt" means intentional disobedience of any lawful judgment, decree, order, or process of the court per RCW 7.21.010.

"Contempt Procedure " means the procedures and definitions set forth in Chapter 7.21 RCW.

"Disputing Party" means any person responsible for code compliance who objects to the determination of violation and/or appeals the determination of the Administrative Official as to the basis of the violation or the amount of the civil penalty or other action by the Administrative Office.

"Enforcement Action" means any action taken by the Administrative Official that involves alleged violations of the Skagit County Code Title 14 or Title 15 or resolutions passed by the Skagit County Board of Commissioners or other land use ordinances or resolutions which purpose is to regulate or protect public health, the environment or the use and development of land or water.

"Emergency" means an activity or conduct that poses an imminent threat to environmental health or to the public safety and/or an immediate and irreparable land use or health hazard that would threaten the safety or health of the occupants of the property or neighborhood.

"Found in violation" or **"Determined To Be In Violation"** means that:

(1) A written notice of violation, notice and order, or stop work order has been issued and not timely appealed;

(2) A voluntary compliance agreement has been entered into which has been breached as determined by the Skagit County Hearing Examiner and the Hearing Examiner's determination has not been stayed or reversed on appeal; or

(3) The Hearing Examiner has determined that the violation has occurred and the Hearing Examiner's determination has not been stayed or reversed on appeal.

"Hearing Examiner" means the Skagit County Hearing Examiner, as provided in S.C.C. Chapter 14.02.070

"Negotiation" means a process whereby the parties meet with their representatives and/ or experts, and enter into good faith negotiations with the goal of reaching an agreement to resolve the alleged violation.

"Mediation" means a meeting wherein a mediator conducts a meeting or meetings between the disputing parties with the purpose of improving communication, developing consensus about possible solutions, and to clarify their differences with the goal of reaching a mutually acceptable agreement.

"Mediator" means a neutral third party who has received at least twenty-five hours of mediation training from a reputable mediation program recognized by Skagit County.

"Mitigate" means to take measures, subject to county approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome on the property owner.

"Mitigation Hearing" means a hearing requested by a person in response to a written notice of violation to explain mitigating circumstances surrounding the commission of a violation.

"Permit" means any form of certificate, approval, registration, license, or any other written permission issued by Skagit County including all conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public.

"Person" means any individual, association, partnership, corporation, or legal entity, public or private, and the agents and assigns of the individual, association, partnership, corporation, or legal entity.

"Person Responsible for Code Compliance" means either the person who caused the violation, if that can be determined, or the owner, manager, tenant or other person entitled to control, use or occupy, or any combination of control, use or occupy, property where a civil code violation occurs, or both.

"Public Nuisance" or "Nuisance" means all violations of land use ordinances, statutes, and regulations contained in Skagit County Code Titles 14 and 15 are detrimental to the public health, safety and welfare.

"Remediate" means to restore a site to a condition that complies with critical area or other regulatory requirements as it reasonably existed when the violation occurred; or, for sites that have been degraded under prior ownerships, to restore them to a condition that does not pose a probable threat to the environment or to the public health, safety, or welfare.

"Resolution" means any law enacted by resolution of the Board of Skagit County Commissioners but not yet codified into the Skagit County Code.

"Skagit County Code" or "SCC" means the current Skagit County Code as hereinafter modified or revised.

"Violator" means a person who is determined to be in violation of SCC Titles 14 or 15.

"Voluntary Compliance Agreement" means a mutually negotiated written agreement executed between the person responsible for code violation and the Administrative Official to abate an alleged Civil Code Violation which requires the person to abate the violation, remediating the site, or mitigating the impacts of the violation.

14.44.040 Violations Defined

All violations of SCC Titles 14 or 15, or Skagit County land use statutes, or regulations, are hereby declared to be detrimental to the public health, safety, and welfare and are hereby declared to be public nuisances. A public nuisance is a continuing harm against the order and economy of Skagit County and all conditions which that are determined by the Administrative Official to be in violation of SCC Titles 14 and/or 15, and/or land use statutes or regulations must bear subject to the provisions of this Chapter and must be abated by any reasonable and lawful means as provided herein.

Whenever the Administrative Official has reason to believe that a use or condition exists in violation of SCC Titles 14 and/or 15, and/or land use statutes or regulations, the Administrative Official must initiate enforcement action as herein provided and, at the option of the Administrative Official, may commence an administrative notice and order process to cause the enforcement and correction of each violation as set forth herein. Upon written request, the Complainant must be notified of all official actions taken by the Administrative Official. The Alleged Violator must be given a copy of the Complainant's written request if an enforcement and correction procedure is instituted by the Administrative Official.

14.44.050 Civil Infractions and Penalties Defined

- A. **Civil Infractions.** Any person who violates SCC Titles 14 and/or 15, land use statute or regulation, or any order issued pursuant to SCC Titles 14 and/or 15, or by any act of commission or omission procures, aids or abets such violation, must be subject to a Class 1 civil infraction in accordance with Chapter 7.80 RCW. The maximum penalty and the default amount for a Class 1 civil infraction will be \$250.00, not including statutory assessments and /or civil penalties as set forth herein.
- B. **Civil Penalty.** In addition to, or as an alternative to a civil infraction, or in addition to any other judicial or administrative remedy provided herein or by law, any person who violates SCC Titles 14 and/or 15, any land use statute or regulation, or any order issued pursuant to SCC Titles 14 and/or 15, or by any act of commission or omission procures, aids or abets such violation will be subject to a civil penalty in an amount of \$100.00 per day for each continuous violation. The Administrative Official must assess such civil penalty through the notice and order provisions of this Chapter until such violation is corrected. All civil penalties assessed will be enforced and collected in accordance with SCC 14.44.160, or as otherwise authorized by law.
- C. Any person who is determined to have committed a repeat violation of the previous infraction under the provisions of SCC Titles 14 and/or 15 within a period of 1 year after the resolution of a prior violation of SCC Titles 14 and/or 15 may be subject to double the civil penalties normally imposed for such violation.
- D. For the purposes of this Subsection, a person will have been found to be in violation when:
 - (1) A notice and order alleging a violation is issued and not timely appealed in accordance
 - (2) with SCC 14.44.120; or
 - (3) A determination is made by the Hearing Examiner that a person has committed a violation
 - (4) and that determination is appealed to Superior Court within thirty days and is not subsequently

reversed or otherwise stayed.

(5) A determination is made by the Hearing Examiner that a person has committed a violation

E. and that determination is not appealed to Superior Court within thirty days.

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

14.44.060 Required Procedures

Whenever the Administrative Official has reason to believe that a use or condition exists in violation of SCC Titles 14 and/or 15, and/or land use statutes or regulations, the Administrative Official must follow the procedures set forth in SCC 14.44.061 through 14.44.064 below.

14.44.061 Investigation

A. Generally. Whenever necessary to make an inspection to enforce the provisions of SCC Titles 14 and/or 15, or land use statutes, or regulations, or whenever the Administrative Official has reasonable cause to believe that any building, structure, property or portion thereof is being used in violation of SCC Titles 14 and/or 15, or a land use statute, or regulation, the Administrative Official may, upon presentation of proper credentials and with consent of the property owner, the person responsible for code compliance, or other person having charge or control of the building, structure, or property, enter such building, structure, property or portion thereof at a reasonable time to inspect the same. If such building, structure, property or portion thereof is unoccupied, the Administrative Official must make a reasonable effort to locate the owner, or person responsible for code compliance, or other persons having charge or control of the building, structure, property or portion thereof and request permission for entry. If entry is refused or a person responsible for code compliance cannot be located, the Administrative Official may ask the Prosecuting Attorney's office to assist in obtaining a warrant. Such warrant to search must comply with constitutional requirements.

B. Initial investigation - notice - procedures. This section sets forth guidelines for more specific procedures to be used by the Administrative Official in implementing this title. The guidelines set forth in this section are not jurisdictional, and failure to meet them in any particular case will not affect the county's authority to enforce county code provisions with regard to the case.

(1) Before conducting a field verification, code enforcement personnel must notify the owner, occupant, or other person responsible for code compliance of a possible violation through any combination of phone, first class mail, and/or electronic mail, that a field verification of the possible violation is pending. Code enforcement personnel may not enter private property without prior notification, except in an emergency or specifically for the purpose of posting a notice.

(2) In cases involving a third party complaint, the Administrative Official must provide notice (prior to or concurrent with a field verification) in the following manner:

a. The owner, occupant, and person responsible for code compliance, if not an owner or occupant, must be advised by personal contact, phone, posting or mail of any complaint; and the complainant should be contacted by phone and, if possible, in person, immediately before or during the field visit.

b. To the extent possible, the Administrative Official must record land-based violations in a data base system, which should be accessible to all other departments.

c. To the extent possible, the Administrative Official must check County records and the records of other agencies for previous violations on the site of the

alleged violation or by the owner or occupant of the site or such other person as may be responsible for code compliance.

d. Staff undertaking field investigations must comply with the provisions of this title regarding right of entry.

14.44.062 Right of Entry - Requirements

Any entry onto private property for the purpose of inspection for code violations must be accomplished in strict conformity with United States Constitutional and Washington State Constitutional requirements regarding entry onto private property. If required, the Administrative Official, through the Skagit County Prosecuting Attorney, must apply to a court of competent jurisdiction for a search warrant authorizing access to property for the purpose of administering this title. The court may upon such application issue the search warrant for the purpose requested.

14.44.063 Investigation Report

After conclusion of the investigation the Administrative Official shall prepare a written report detailing the alleged complaint, setting forth specific findings, listing and attaching the evidence considered, and stating the results of the investigation, and concluding with a recommendation for correcting the violation, and if appropriate and necessary, appropriate enforcement action. Such written report must specifically cite the specific alleged code violation(s). If the investigation does not warrant further action, it should so state along with the reasons for that recommendation. Both the Complainant and alleged violator must be given a copy of the written investigation report.

14.44.064 Written Notice and Order to Abate

A. If the written investigation report finds that a violation of SCC Chapters 14 or 15, or violation of a land use statute, has occurred or is occurring, the Administrative Official must issue a written Notice of Violation to the alleged violator. The Notice of Violation shall be addressed to the alleged violator whether it be the owner or manager, or the person in possession of the property where the violation originates, or the person otherwise causing or responsible for the violation, and/or the person responsible for code compliance.

B. The Notice of Violation and Order to Abate must contain the following:

(1) The name and address of the person responsible for code compliance.

(2) The legal description of real property where the violation occurred or is located, and if applicable, a description of personal property sufficient for identification.

(3) A statement that the Administrative Official has found the person responsible for code compliance to be in violation of SCC Titles 14 and/or 15, and/or land use statutes or regulations, with a brief and concise description of the basis for the violation along with the Investigation Report, if not previously given to the alleged violator.

(4) A statement of the specific code sections of the ordinance, resolution, regulation, permit condition, notice and order provision, or stop work order that was or is being violated.

(5) A statement of the corrective action required to be taken. If the Administrative Official has determined that corrective work is required, the order must state what permits must be secured and a that the corrective work commence within a reasonable time, as directed by the Administrative Official under the circumstances, and a reasonable date certain when the work must be completed.

(6) A statement specifying the civil infraction amount and the dollar amount of any civil penalty assessed as a result of each violation and, if applicable, the conditions on which assessment of such civil penalty are contingent.

(7) A statement advising what procedural steps Skagit County may take to ensure compliance should the alleged violator fail to accomplish the corrective action in a timely manner per SCC 14.44.070 set forth below.

(8) The notice must contain a signature block to be signed by the owner, or person in charge or control of the property, or the person responsible for code compliance as acknowledgement of receipt of the notice.

C. Method of Service. Skagit County must use reasonable due diligence to ensure that the alleged violator has actual notice. Service of the Notice and Order to Abate must be made upon all persons identified therein either by personal delivery per the Superior Court Civil Rules or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested. Personal service shall be effective on the date of service if supported by an affidavit or declaration stating the details of the service. Service by certified mail in the manner herein provided will be effective on the third business day following the date of mailing.

If the address of any such person cannot reasonably be ascertained, then a copy of the notice and order must be mailed to such person at the address of the location of the alleged violation and a copy must be posted in a conspicuous location on the premises. Additionally, an affidavit or declaration stating what efforts have been made to ascertain the correct address and that the efforts made herein were accomplished to provide notice. Once the notice procedures have been accomplished, the case may proceed without further delay.

If the procedures above have been followed and the alleged violator claims lack of notice, the burden will be on the alleged violator to prove the steps taken by the County were insufficient to provide notice.

D. Stop Work Notice and Order.

1. A Stop Work Notice and Order represents a determination by the Administrative Official that a civil code violation has occurred and that any work or activity that is causing or contributing to an immediate an irreparable land use or health hazard violation on the property where the violation has occurred or is occurring must immediately cease until authorized by the Administrative Official posting an order to proceed.

2. Pending commencement and completion of the Notice of Violation and Order to Abate procedure provided for in this Chapter, and if applicable, the Administrative Official may cause a Stop Work Notice to be posted on the subject property or served on persons engaged in any work or activity in violation of SCC Titles 14 and/or 15, and/or any land use statute or regulation. The stop work notice must require the immediate cessation of such work or activity until authorized by the Administrative Official posting the order to proceed. A stop work notice may also be served if the Administrative Official has reason to believe that conditions of the violation create an emergency as defined herein.

3. A Stop Work Notice and Order may be appealed within ten (10) days of notice according to the procedures prescribed by SCC Chapter 14.44.075

4. Failure to appeal the Stop Work Order within the applicable time limits renders the Stop Work Order a final determination that the civil code violation occurred and can be enforced in the Skagit County Superior Court in accordance with SCC14.44.070 E and F.

Failure to comply with the terms of a stop work order subjects the person responsible for code compliance to civil penalties and costs.

14.44.070 Skagit County Remedies - Enforcement Authority and Administration

It is the intent of this title to resolve all violations as quickly as possible at the lowest possible level. In order to discourage public nuisances, make efficient use of public resources and otherwise promote compliance with applicable code provisions, a Administrative Official may, in response to Investigation Reports prepared pursuant to SCC 14.44.063 may takes the following action in order set forth below.

A. For minor violations, the Administration Official may modify the permit, if applicable, and/or impose a civil infraction and/or elect not to take any enforcement action.

B. The Administrative Official, upon request by the Alleged Violator, may enter into alternate dispute resolution in accordance with the procedures set for in SCC 14.44.075.

C. The Administrative Official may negotiate and enter into voluntary compliance agreements in accordance with the procures set forth in SCC 14.44.072 with persons responsible for code compliance, and issue notices of noncompliance if the persons responsible fail to comply with the terms of the voluntary compliance agreement and/or impose a civil infraction and/or elect not to take any enforcement action.

C. The Administrative Official may issue a Notice of Violation and Order to Abate and Stop Work Order and/or assess a civil infraction and/or civil penalties as authorized by SCC 14.44.050 and/or elect not to take any enforcement action.

D. When other efforts to achieve compliance have failed, the Administrative Official may issue a Notice of Violation and Order to Abate and/or suspend, revoke, or modify, or deny the permit and/or issue a Stop Work Order and/or assess a civil infraction and/or civil penalties as authorized by SCC 14.44.050

E. The Administrative Official may file a civil lawsuit in Skagit County Superior Court for enforcement alleging a nuisance and requesting an injunction for enforcement of the abatement requirement and requesting that the civil infractions and civil penalties will be reduced to a judgment against the alleged violator. Any Court order entered granting the enforcement relief requested by Skagit County in the form of a mandatory or other injunction shall describe with specificity the actions that must be taken by the Defendant, the timing of said actions, and other actions that are required to abate the nuisance. The amount of the civil penalty shall be determined by the Court. Any monetary judgment entered by the Court shall be enforced in the same manner as all civil judgments.

F. If the Defendant fails to take the action required to abate the nuisance, Skagit County may enforce the order through contempt proceeding in Superior Court under Chapter 7.21 RCW. If the Court determines the Defendant is in contempt of any order of abatement in accordance with the contempt procedures pursuant to Chapter 7.21 RCW, it may impose monetary sanctions and confinement.

The procedures set forth in this title are not meant to be exclusive, but to provide a sequential method to ensure compliance. These procedures must not in any manner limit or restrict the County from remedying civil code violations or abating civil code violations in any other manner authorized by law. This title must not be construed to affect the authority of the Skagit County Board of Health in enforcement of the Skagit County board of health code or regulations.

The provisions of this title shall in no way adversely affect the rights of any owner, tenant or occupant of any property to recover damages, costs and expenses incurred from the actions of any person causing such violation.

In administering the above provisions for code enforcement, the Administrative Official has the authority to waive any one or more such provisions so as to avoid substantial injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit

has accrued to such entity or individual from a code violation and any necessary remediation is being promptly provided.

The provisions of this title authorizing the enforcement of non-codified ordinances are intended to assure compliance with conditions of approval on plats, unclassified use permits, zone reclassifications, and other similar permits or approvals which may have been granted by ordinances which have not been codified, and to enforce new regulatory ordinances approved by the Board of County Commissioners which are not yet codified. The Administrative Official and any Court reviewing such cases should be sensitive to the possibility that citizens may not be aware of these ordinances, and should have been given notice of these requirements prior to enforcing such ordinances, except in emergencies.

14.44.071 Settlement of Suits.

The Administrative Official may, after consultation with the Skagit County Prosecuting Attorney, enter into negotiations with parties to a code enforcement action that results in a lawsuit under this title and/or their legal representatives, for the purposes of negotiating a settlement to such lawsuit. This negotiation shall must be in the best interests of the County and may include a compromise regarding the collection of civil penalties. Such negotiations shall balance the interests of the general public, the nature and extent of the violation, and property rights of individuals.

14.44.072 Voluntary Compliance Agreement - Authority and Requirements.

- A. After conducting and/or reviewing the Investigation Report and the Administrative Official determines that a code violation has occurred or is occurring, the Administrative Official must make reasonable efforts to secure voluntary compliance from the person responsible for code compliance. Upon contacting the person responsible for code compliance, the Administrative Official may enter into a voluntary compliance agreement as provided for in this section.
- B. A voluntary compliance agreement may be entered into at any time, including but not limited to the following: before or after (1) a Report of Investigation; (2) a Notice of Violation and Order to Abate; (3) a Stop Work Order; (4) a hearing before the hearing examiner; (5) the filing a lawsuit for an injunction; or (6) the filing of any appeal.
- C. The Voluntary Compliance Agreement must include the following:
 - 1. The name and address of the person responsible for code compliance.
 - 2. The address or other identification of the location of the violation, including the legal description of the property.
 - 3. A description of the violation and a specific reference to the provision(s) of the ordinance, resolution or statute that has allegedly been violated.
 - 4. A detailed description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed. For the purpose of this subsection, the Administrative Official may either require that compliance be achieved by a specific date or that compliance be achieved by a date to be determined based on the occurrence of some future event.
 - 5. The amount of the civil penalty that will be imposed, if any, pursuant to SCC 14.44.050 if the voluntary compliance agreement is not satisfied.
 - 6. An acknowledgment that if the Administrative Official determines that the terms of the voluntary compliance agreement are not met, the Administrative Official may issue a notice of noncompliance, and if the notice of noncompliance is not successfully appealed pursuant to SCC 14.44.075, the County may, without issuing a written Notice of Violation and Order of Abatement,

or Stop Work Order, impose any remedy authorized by this title, including but no limited to assessment of the civil penalties identified in the Voluntary Compliance Agreement, assessment of the costs and attorney's fees incurred by the County to pursue code compliance through Superior Court to abate the violation, and the suspension, revocation or limitation of a development permit.

7. An acknowledgment that by entering into the voluntary compliance agreement the person responsible for code compliance thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil violation.
8. An agreement that the person responsible for code compliance waives the right to appeal the existence of the conditions and that such conditions constituted a civil code violation to the hearing examiner and to Superior Court, except that if a notice of noncompliance is issued and not successfully appealed, the person is also subject to assessment of the civil penalties identified in the Voluntary Compliance Agreement, assessment of the costs and attorney's fees incurred by the County to pursue code compliance through Superior Court to abate the violation, and the suspension, revocation or limitation of a development permit.
9. An acknowledgment that the person responsible for code compliance understands that he or she knowingly, voluntarily, and intelligently waives the right to appeal a written notice of violation, notice and order or stop work order for any violation identified in the voluntary compliance agreement.

D. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the Administrative Official if the person responsible for code compliance has shown due diligence or substantial progress in correcting the violation and the particular circumstances support such an extension.

14.44.073 Obligations of Persons Responsible for Code Compliance.

It is the responsibility of any person identified as responsible for code compliance to bring the property into a safe and reasonable condition to achieve code compliance. Payment of civil infractions and /or civil penalties, applications for permits, acknowledgment of stop-work orders and compliance with other remedies does not substitute for performing the corrective work required and having the property brought into compliance to the extent reasonably possible under the circumstances.

14.44.074 Affirmative Defense to Enforcement Action

If a Person Responsible for Code Compliance demonstrates by a preponderance of evidence that the action which resulted in the alleged violation was without that person's knowledge or was caused by a third party not acting on the person's behalf or with the person's consent, or by someone other than the person, that person may only be responsible for bringing the property into compliance to the extent reasonably feasible under the circumstances. To the extent possible, the County will attempt to determine the person responsible for the violation and take whatever remedial action under this title to hold that person responsible. The person/property owner who is not at fault for the violation may be required correct the violation, but only to the extent that said abatement costs or corrective action is necessary to bring the property into a safe and reasonable condition, as determined by the Administrative Official. No civil infractions or penalties shall be assessed against such person.

14.44.075 Dispute Resolution

A. Intent. The Board of County Commissioners finds there is a need for negotiation and mediation as forms of alternative dispute resolution as a means to gain compliance with provisions of the Skagit County Code and applicable state codes. The Board of County Commissioners further declares that as a public policy, good faith negotiation can be an effective technique to avoid disputes by developing an agreement between parties to a dispute. Both negotiation and mediation can often resolve disputes in a

more efficient, effective, economical, and constructive manner without the necessity of more formal administrative action or litigation. The Board of County Commissioners further finds that negotiation and mediation can foster better relations among and with the citizenry of Skagit County and enhance the reputation of the County.

B. Procedure. Within ten (10) days of receiving the Notice of Violation and Order to Abate, the Person Responsible For Code Compliance ("Disputing Party") shall notify the Administrative Official requesting negotiation of the alleged violation and order. The Parties shall arrange a time and place to meet to negotiate a resolution of the dispute which meeting shall be scheduled to be held within two weeks of the request to negotiate. The Parties may agree to extend the period to hold the meeting to meet the schedules of party representative and/or experts. If negotiation is unsuccessful the Parties may agree to mediation. Mediation shall be scheduled as soon as possible before a mediator at a mutually agreed place and time. The cost of the mediation shall be split equally between the Parties.

C. Confidentiality. All documents and discussions related to negotiations and mediation held pursuant to this ordinance shall be confidential and inadmissible (pursuant to Washington Evidence Rule 408) as evidence in any subsequent administrative or judicial proceeding.

D. Failure to Comply / Enforcement.

If a Disputing Party fails to participate in negotiation after requesting it or, to participate in mediation after agreeing to it, or fails to comply with the terms of an agreement reached pursuant to negotiation or mediation or facilitation, then the Administrative Official may pursue all or any of the administrative or legal actions or remedies provided herein and by law.

14.44.080 Appeals

A. Appeal to the Hearing Examiner. Appeals of the Notice of Violation and Order to Abate and /or a Stop Work Order must be made in writing within fourteen (14) calendar days after service is made. Appeals will be processed in accordance with Chapter 14.06 SCC.

B. Filing Requirements

1. **Timing of Appeal.** Any Person Responsible for Code Compliance named in a Notice of Violation and Order to Abate, or Stop Work Order, or Violation of the terms of a Voluntary Compliance Agreement where the alleged violation occurred for which a Notice of Violation and Order to Abate or Stop Work Order is issued, may file with the Administrative Official a Notice of Appeal. The Notice of Appeal must be filed within fourteen days of the service of the Notice of Violation and Order to Abate,, or Stop Work Order or Violation of the terms of a Voluntary Compliance Agreement.

2. **Form of Notice of Appeal.** The Notice must contain the following information:

- a. The name and address of the person responsible for code compliance.
- b. The address or other identification of the location of the violation, including the legal description of the property.
- c. As appropriate and applicable, a brief response to each specific violation explaining why it should not be a violation.
- d. As appropriate and applicable, a brief response to the recommended corrective action and/or time by which compliance must be completed.
- e. As appropriate and applicable, a response to the amount of the recommended civil penalty.

- f. An acknowledgment that if the Appealing Party does not prevail in the appeal, or if the Administrative Official determines that the terms of the Voluntary Compliance Agreement are not met, the Administrative Official may issue a notice of noncompliance, and if the notice of noncompliance is not successfully appealed pursuant to SCC 14.44.075, the County may impose any remedy authorized by this title, including but not limited to assessment of the civil penalties identified in the Notice of Violation and Order to Abate or as set forth in the Voluntary Compliance Agreement, including and if necessary to ensure compliance, assessment of the costs and attorney's fees incurred by the County to pursue code compliance through Superior Court litigation, and the suspension, revocation or limitation of a development permit.
- g. Any documents supporting the Appeal including but not limited to photographs, videos, receipts, written reports of experts, and other documentary evidence relevant to the issues on appeal.

C. Hearing Procedure.

1. The appeal hearing must be conducted in accordance with procedures promulgated by the Skagit County Hearing Examiner as provided for in SCC 14.02.070, except that where specific provisions in this title conflict with those procedures, the provisions of this title will govern.
2. Enforcement of any Notice of Violation and Order to Abate or Stop Work Order issued by the Administrative Official pursuant to this title shall be stayed during the pendency of any appeal under this title, except when the Administrative Official determines that the violation constitutes an emergency and such justification is stated in the Notice of Violation and Order to Abate or Stop Work Order.
3. Once the Appeal of the Appealing Party is received, the Administrative Official must notify the hearing examiner that a hearing has been requested and forward to the Hearing Examiner the following documents: The Report of Investigation, the Notice of Violation and Order to Abate, or Stop Work Order, or, if applicable, the Violation of a Voluntary Compliance Agreement, and the Notice of Appeal and any documents attached thereto. No other evidence or documents may be submitted prior to the hearing by either party.
4. The Office of the Hearing Examiner shall:
 - a. Schedule a hearing to be held within sixty (60) days after the Administrative Official provides Notice of Appeal to the Hearing Examiner; and
 - b. At least thirty (30) days before the date of the hearing, provide notice of the time, place, and date of the hearing by Certified mail with Return Receipt to the parties to the hearing.
5. Except as otherwise provided in this section, hearings must be conducted pursuant to the Rules of Procedure of the Skagit County Hearing Examiner. Prior to the Hearing Examiner and either Party may issue subpoenas for witnesses and, upon reasonable request of either party, the Hearing Examiner may order limited discovery. All requests for issuance of a subpoena or for limited discovery must be in writing with notice to the other party with sufficient time to allow for a response.
6. At least ten (10) days prior to the Hearing, both parties must exchange copies of documents they intend to submit at the hearing, a list of witnesses with their contact information each party intends to call, and copies of any expert reports intended to be submitted along with each expert's qualifications. Admissibility of all documents and testimony shall be determined within the discretion of the Hearing Examiner.
7. Failure of the Administrative Official or other Skagit County Officials to follow the above procedures shall result in dismissal with prejudice of the action.

8. The burden of proof is on the county to establish by a preponderance of the evidence that the code violation was committed by the Appealing Party.

9. After conducting a full and fair hearing, the Hearing Examiner shall make specific findings to support the conclusions and order. The Hearing Examiner shall enter an Order upholding, modifying, or dismissing the Order to Abate or Stop Work Order. This Order may be enforced by either party in Skagit County Superior Court pursuant to an injunctive action and appropriate motion. The Hearing Examiner has no authority to award attorney's fees or costs to the prevailing party.

10. The Order of the Hearing Examiner may be appealed by either party to the Superior Court. After a hearing *de novo*, the Superior Court may uphold the Hearing Examiner's decision, modify the Hearing Examiner's Order, or reverse the Hearing Examiner's Order. The Superior Court shall award attorney's fees and costs to the prevailing party on appeal.

14.44.090 Conflict with Other Ordinances

If there is a conflict between the terms of this title and any other title or ordinance with respect to code compliance or enforcement the language and terms of this title defined herein shall prevail.