

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5720

AN ORDINANCE amending the Bellevue City Code to subject civil violations resulting from the failure to comply with the terms of a sound amplification permit to escalating monetary penalties; amending Sections 1.18.040 and 1.18.050.D.3 of the Bellevue City Code; and establishing an effective date.

WHEREAS, excessive noise is a serious hazard to public health, safety and welfare, the quality of life and the environment; and

WHEREAS, it is the desire of City Council that residents and property owners be provided with additional certainty regarding the application and administration of the City's Noise Control Code; and

WHEREAS, it is the desire of City Council that City staff be provided with adequate guidelines to effectively administer and enforce the City's Noise Control Code; and

WHEREAS, it is the desire of City Council to hold those who violate the Noise Control Code accountable through the issuance of civil violations, subject to escalating monetary penalties; and

WHEREAS, it is further the desire of City Council that City staff submit this ordinance to the Department of Ecology in compliance with the State Noise Control Act (Chapter 70.107 RCW) and Chapter 173-60 WAC; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, BCC 22.02; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. Section 1.18.040 of the Bellevue City Code is hereby amended as follows:

1.18.040 Notice of civil violation.

A. Issuance.

1. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to BCC 1.18.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.

2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in BCC 1.18.030 under the following circumstances:

- a. When an emergency exists;
- b. When a repeat violation occurs;
- c. When the violation creates a situation or condition which cannot be corrected;
- d. When the violation is of the sign code (Chapter 22B.10 BCC); or
- e. When the violation constitutes a noise disturbance as set forth in BCC 9.18.040.A.4 or 9.18.040.A.5; or
- f. When the person knows or reasonably should have known that the action is in violation of a city regulation.

B. Content. The notice of civil violation shall include the following:

1. The name and address of the person responsible for that violation; and
2. 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
3. A description of the violation and a reference to the provision(s) of the city regulation which has been violated; and
4. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with BCC 1.18.060 and the hearing examiner's order; and
5. The date, time and location of an appeal hearing before the hearing examiner which will be at least 10 days from the date the notice of civil violation is issued; and
6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least 48 hours prior to the hearing; except, that this statement need not be included where the violation constitutes a repeat violation, the violation creates a situation or condition which cannot be corrected, the violation is of the sign code (Chapter 22B.10 BCC), or the violation constitutes a noise disturbance as set forth in BCC 9.18.040.A.4 or 9.18.040.A.5; and
7. In the case of a violation of the sign code, either a statement indicating that the hearing will be canceled if the monetary penalty recommended by the applicable department director is paid in full to the city at least 72 hours prior to the scheduled hearing, or, in the applicable department director's discretion, a statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least 72 hours prior to the hearing; and
8. In the case of a violation constituting a noise disturbance as set forth in BCC 9.18.040.A.4 or 9.18.040.A.5, a statement indicating that the hearing will be canceled if the monetary penalty recommended by the applicable department director is paid in full to the city at least 72 hours prior to the scheduled hearing; and
9. A statement that the costs and expenses of abatement incurred by the city pursuant to BCC 1.18.060(D) and a monetary penalty in an amount per day for each violation as specified in subsection E of this section may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

C. Service of Notice. The applicable department director shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation 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 mail.

D. Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner.

E. Monetary Penalty.

1. Except for violations of the sign code (Chapter 22B.10 BCC) or violations constituting a noise disturbance as set forth in BCC 9.18.040.A.4 and 9.18.040.A.5, the monetary penalty for each violation per day or portion thereof shall be as follows, with adjustments as allowed pursuant to subsection 4 below for repeat violations:

- a. First day of each violation, \$100.00;
- b. Second day of each violation, \$200.00;
- c. Third day of each violation, \$300.00;
- d. Fourth day of each violation, \$400.00;
- e. Each additional day of each violation beyond four days, \$500.00 per day.

2. For violations of the sign code (Chapter 22B.10 BCC), the monetary penalty for each violation is \$100.00 per sign per day or portion thereof, with adjustments as allowed pursuant to subsection 4 below for repeat violations.

3. For violations constituting a noise disturbance as set forth in BCC 9.18.040.A.4 and 9.18.040.A.5, the monetary penalty for each violation is \$250.00, with adjustments as allowed pursuant to subsection 4 below for repeat violations.

4. Effect of Repeat Violations.

a. Violations Other than Sign Code (Chapter 22B.10 BCC) Violations or Violations Constituting a Noise Disturbance as Set Forth in BCC 9.18.040.A.4 and 9.18.040.A.5. Except in the case of violations of the sign code (Chapter 22B.10 BCC) or violations constituting a noise disturbance as set forth in BCC 9.18.040.A.4 or 9.18.040.A.5, 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 BCC 1.18.050(D)(3)(b).

b. Sign Code Violations (Chapter 22B.10 BCC). The hearing examiner shall successively double the per sign monetary penalty assessed for each repeat violation.

c. Violations Constituting a Noise Disturbance as Set Forth in BCC 9.18.040.A.4 and 9.18.040.A.5. The hearing examiner shall successively double the monetary penalty assessed for each repeat violation. Upon the hearing examiner's finding that a second consecutive repeat violation has occurred, the hearing examiner shall prohibit the issuance of sound amplification permits allowing the operation of amplified sound equipment at the same location or on the same property as the repeat violations occurred for a period of two years from the date of the second consecutive repeat violation.

F. Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

G. Collection of Monetary Penalty.

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city at the permit center within 10 calendar days from the date of mailing of the hearing examiner's decision or a notice from the city that penalties are due.

2. The city attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty.

Section 2. Section 1.18.050.D.3 of the Bellevue City Code is hereby amended as follows:

3. Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in BCC 1.18.040(E).

a. Violations Other than Sign Code (Chapter 22B.10 BCC) Violations or Violations Constituting a Noise Disturbance as Set Forth in BCC 9.18.040.A.4 and 9.18.040.A.5.

i. The hearing examiner shall have the following options in assessing monetary penalties:

(a) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

(b) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or

(c) Assess no monetary penalties.

ii. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

(a) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

(b) Whether the person failed to appear at the hearing;

(c) Whether the violation was a repeat violation;

(d) Whether the person showed due diligence and/or substantial progress in correcting the violation;

(e) Whether a genuine code interpretation issue exists; and

(f) Any other relevant factors.

b. Sign Code (Chapter 22B.10 BCC) Violations. The hearing examiner shall assess a monetary penalty for each sign cited within a single 24-hour period extending from 12:01 a.m. to 12:00 midnight on a single day.

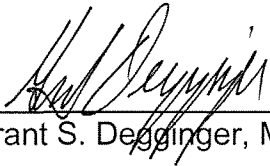
c. Violations Constituting a Noise Disturbance as Set Forth in BCC 9.18.040.A.4 and 9.18.040.A.5. The hearing examiner shall assess a monetary penalty for each violation as defined in BCC 9.18.050.C.

d. Effect of Repeat Violations. The hearing examiner shall assess a monetary penalty for each repeat violation as set forth in BCC 1.18.040.E.4.

Section 3. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this 20th day of February, 2007
and signed in authentication of its passage this 20th day of February,
2007.

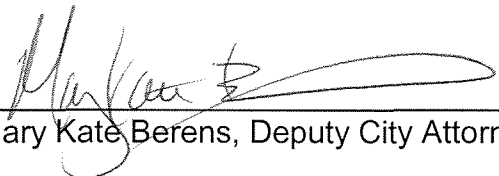
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Grant S. Degginger, Mayor

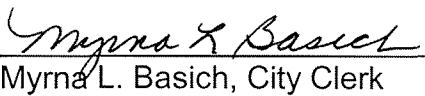
Approved as to form:

Lori M. Riordan, City Attorney



Mary Kate Berens, Deputy City Attorney

Attest:



Myrna L. Basich, City Clerk

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