

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5907

AN ORDINANCE adopting section 1.18.075 in chapter 1.18 of the Bellevue City Code establishing escalating enforcement procedures for violations relating to control of illicit discharges, chapter 24.06 BCC, and chapter 23.76 BCC; providing for severability; and establishing an effective date.

WHEREAS, the City of Bellevue (the "City") is subject to the terms of the National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewer Systems ("Permit"), issued January 17, 2007, and modified on June 17, 2009, by the State of Washington Department of Ecology in compliance with the federal Clean Water Act and state law;

WHEREAS, the Permit requires municipalities to adopt provisions relating to control of illicit (non-stormwater) discharges and enforcement procedures thereof;

WHEREAS, in applying section 1.18.075, the director intends to use public education and voluntary compliance as a primary means of gaining compliance with applicable codes and standards; and

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

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

Section 1. Section 1.18.075 hereby reads as follows:

1.18.075 Enforcement Procedures For Violations of Chapter 24.06 BCC and Chapter 23.76 BCC.

The following subsections contain the enforcement processes and penalties associated with violations of chapter 24.06 BCC and chapter 23.76 BCC. The definitions contained in chapter 24.06 BCC and chapter 23.76 BCC supplement this section and shall apply in replacement (where duplicates exist) or in addition to the definitions contained in BCC 1.18.020. Reference to "director" in this section shall mean the respective director or his designee for the development services and utility departments. For the definition of "emergency" as referenced to in this section, refer to BCC 24.06.040.

A. Civil Violations. The following constitute civil violations of chapter 24.06 BCC and chapter 23.76 BCC:

1. General. It is a violation to not comply with any requirement, or to act in a manner prohibited by chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notice of violations issued pursuant to this section;

2. Aiding and Abetting. It is a violation to aid, abet, counsel, hire or otherwise procure another person to violate chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notice of violations issued pursuant to this section;

3. Interference. It is a violation for any person to interfere with or impede the correction of any violation, or compliance with any correction notices, stop work orders, emergency orders, notice of violations, or the abatement of any nuisance;

4. Altering a Posted Order. It is a violation for any person to remove, obscure, or mutilate any posted order of the director or his designee, including correction notices, stop work orders, emergency orders, or notices of violation issued pursuant to this section; and

5. Continuing Work. It is a violation for any work to be done after service or posting of a notice of violation, emergency order, stop work order, or correction notice, until authorization is given by the director or his designee; provided work necessary to perform the required corrective action may be performed and would not constitute a violation.

B. Liability and Defenses of Responsible Persons.

1. Who Must Comply. It is the intent of this section to place the obligation of compliance with chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notice of violations issued pursuant to this section upon responsible person(s).

2. Liability. Each responsible person is jointly and severally liable for violations of chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notice of violations issued pursuant to this section. The director, his designee, or an enforcement officer may take enforcement action, in whole or in part, against any responsible person. All applicable civil penalties may be imposed against each responsible person(s).

C. Defenses. A responsible person shall not be liable under this section when the responsible person proves, by a preponderance of the evidence, one of the following:

1. The violation was caused solely by an act of God;
2. The violation was caused solely by another responsible person over whom the defending responsible person had no authority or control, and the defending responsible person could not have reasonably prevented the violation;
3. The violation was caused solely by a prior owner or occupant when the defending responsible person took possession of the subject property without knowledge of the violation, after using reasonable efforts to identify violations; provided the defending responsible person shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant of the subject property; or
4. The responsible person implemented and maintained all appropriate drainage control facilities, treatment facilities, flow control facilities, erosion and sediment controls, source controls, and best management practices identified in chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, or notice of violations to correct a violation, or as otherwise identified and required by the director in writing.

D. Right of Entry - Substantial, Present, or Imminent Danger – Emergency Entry. The director, his designee, or an enforcement officer may enter any property to investigate and correct a condition associated with prohibited discharges, grading, drainage, erosion control, drainage water, or a drainage facility when it reasonably appears that the condition creates a substantial and present or imminent danger to the public health, safety, welfare, the environment, or public or private property without permission or a warrant of abatement or other order from a court with competent jurisdiction only in the case of an extreme emergency placing human life, property, or the environment in immediate and substantial jeopardy, which requires corrective action before either permission or warrant, or another court order can be obtained.

E. Enforcement Process. The provisions of this section may be utilized when the director, his designee, or the enforcement officer determines that a violation of chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notices of violation issued pursuant to this section has occurred or is occurring.

1. Voluntary Correction Process.

a. The director, his designee, or the enforcement officer shall pursue a reasonable attempt to secure voluntary correction by contacting the responsible person(s) for the violation when possible, explaining the violation, providing education on how to avoid or otherwise correct the violation, and requesting correction; provided the violation does not constitute a circumstance described in BCC 1.18.075(E)(2) or (3), which in that case the director may bypass attempts to gain voluntary compliance and issue a notice of violation, a stop work order, or an emergency order.

b. As part of the city's attempt to secure voluntary compliance, the city may require the responsible party to perform, including but not limited to, the following:

i. implementation of business practices, which prevent the violation from occurring again;

ii. implementation of more stringent or additional best management practices to mitigate or correct source control to cease the exceedance of the prohibited discharge;

iii. elimination of the cause or contributing factor to the known or likely violation of water quality standards and of the city's NPDES permit; or

iv. construction or installation of a facility or structural modifications to prevent the pollutant from entering the storm and surface water system.

c. In addition to the requirements contained in subsection (b) above, during the voluntary correction process, the City may:

i. issue a correction notice;

ii. issue a stop work order; or

iii. execute a voluntary correction agreement as provided for in BCC 1.18.030(C).

d. No civil penalty shall be imposed during the voluntary correction process, or as a result of issuance of a correction notice or a stop work order; provided penalties may be issued in connection with execution of a voluntary correction agreement.

2. Notice of Civil Violation. The director, his designee, or the enforcement officer is not required to pursue voluntary correction as described in subsection 3 above and may issue a notice of violation or an emergency order when the following circumstances occur:

a. When an emergency exists as defined in BCC 24.06.040;

b. When there are repeat violations of chapter 24.06 BCC, chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notices of violation issued pursuant to this section;

c. When the violation is determined to be an illicit connection and BCC 1.18.075(C)(4) does not apply; or

d. When the director determines, at his discretion, that the activity requires issuance of a notice of violation.

3. Emergency Order. The director may order responsible persons to take emergency corrective action and set a schedule for compliance and/or may require immediate compliance with an emergency order to correct the violation when the director determines that it is necessary to do so in order to obtain immediate compliance with or to correct a violation of any provision of chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notice of violations issued pursuant to this section.

F. Procedural Requirements:

1. Contents. The content of a correction notice, stop work order, notice of violation, or stop work order for purposes of administering this section shall include the following:

a. A description of the violation;

b. A description of the corrective action required to bring the property into compliance; and

c. A date by which the corrective action shall be completed.

2. Delivery. The correction notice, stop work order, notice of violation, or stop work order shall be personally served on the responsible person(s), posted conspicuously on the premises, or mailed to responsible person(s) with delivery confirmation.

G. Penalties. The director or hearing examiner, after considering all available information, shall assess a penalty for each violation described in BCC 1.18.075(A) but the amount of the penalty may be modified based on the mitigating factors set forth below:

1. Schedule of Civil Penalties. The director or hearing examiner shall determine penalties as follows:

a. **Maximum Penalty.** A violation described in BCC 1.18.075(A) is subject to a civil penalty of up to five hundred dollars (\$500) per day. Each day or portion thereof during which the violation exists is a separate civil violation and may be considered a repeat violation as described in subsection 2 set forth below.

b. **Commencement Date.** The penalty shall commence on the date of the violation, unless otherwise provided for in a notice of violation.

c. **Mitigating Factors.** The penalty shall be assessed by the director or hearing examiner based on the severity of the violation, taking into account the following mitigating factors described below:

- i. Was the responsible party willful or knowing of the violation?
- ii. Was the responsible party unresponsive in correcting the violation?
- iii. Was there improper operation or maintenance?
- iv. Does the violation provide economic benefit for non-compliance?
- v. Does the discharge result in adverse economic impact to others?
- vi. Will clean up activities be able to fully mitigate or remediate the impacts?
- vii. Is there a history of violations?
- viii. Were there unforeseeable circumstances that precluded compliance?; and
- ix. Did the responsible party make a good faith effort to comply?

2. **Repeat Violations.** For repeat violations that occur within two years of a previous violation, the director or hearing examiner may impose the following penalties, taking into account the mitigating factors described in subsection 1 set forth above:

- a. For the first repeat violation the penalty may equal up to one thousand dollars (\$1,000) per day;
- b. For the second repeat violation, the penalty may equal up to two thousand dollars (\$2,000) per day;
- c. For the third repeat violation, the penalty may equal up to three thousand dollars (\$3,000) per day;

d. For the fourth repeat violation, the penalty may equal up to four thousand dollars (\$4,000) per day; and

e. For each additional violation that may occur beyond the fourth repeat violation, the penalty may equal up to five thousand dollars (\$5,000) per day.

3. Allocation of Penalties. In the event a notice of violation is issued against more than one responsible person(s), recoverable penalties, costs, and expenses may be allocated among the responsible person(s) by the hearing examiner or a court with competent jurisdiction based upon the extent to which each responsible person's acts or omissions caused the violation. If this factor cannot easily be determined by the hearing examiner or a court, the hearing examiner or court may consider the following:

a. Awareness of the violation;

b. Ability to correct the violation;

c. Ability to pay the damages, costs, and expenses;

d. Cooperation with governmental agencies;

e. Degree to which any impact or threatened impact on water or sediment quality, human health, the environment, or public or private property is related to acts or omissions by each responsible person;

f. Degree to which the responsible persons made good-faith efforts to avoid a violation or to mitigate its consequences; and

g. Other equitable factors.

H. Collection of Monetary Penalty and Abatement Costs.

1. The monetary penalty constitutes a personal obligation of the responsible person to whom the notice of violation is directed. Any monetary penalty assessed must be paid to the city at the permit center within 10 calendar days from the 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 her designee is authorized to take appropriate action to collect the monetary penalty;

3. The city may take appropriate action to collect all monies spent by the city to abate existing violations of chapter 24.06 BCC and/or chapter 23.76 BCC, engineering standards, permits or other approvals, rules promulgated by the director, in manuals published by the Washington State Department of Ecology, correction notices, stop work orders, emergency orders, or notice of violations issued pursuant to this section and as provided for in BCC 24.06.125(F); and

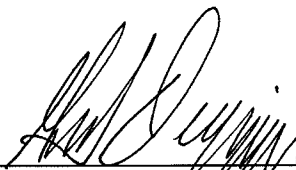
4. The responsible person named in a notice of violation is not relieved of the duty to correct the violation by paying the penalty associated with such violations.

Section 2. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 3. This ordinance shall take effect and be in force thirty (30) days after legal publication.

Passed by the City Council this 5th day of October, 2009
and signed in authentication of its passage this 5th day of October,
2009.


(SEAL)



Grant S. Degginger, Mayor


Approved as to form:

Lori M. Riordan, City Attorney



Lacey L. Madche, Assistant City Attorney

Attest:



Myrna L. Basich, City Clerk

Published October 8, 2009