

**TOWN OF EATONVILLE
PLANNING COMMISSION AGENDA
Monday, July 20th, 2015 – 7:00 P.M.
COMMUNITY CENTER
305 CENTER STREET WEST**

Call to Order

Roll Call: Beach ___ Bertioia ___ Craig ___ Justice ___ Lambert ___ Miller _____

Town Staff Present: Mayor Schaub, Doug Beagle and Kerri Murphy

Pledge of Allegiance

Approval of the Agenda:

Approval of Minutes: June 15th, 2015

Communications and Announcements:

From Public:

From Commissioners:

New Business: Sign Code Amendment

Unfinished Business:

Public Comments:

Staff Comments:

Commissioner Comments:

Next Meeting: **August 4th, 2015**

TOWN OF EATONVILLE

TO: Planning Commission
FROM: Doug Beagle, Town Administrator
DATE: July 20, 2015
RE: Sign Code Amendment

In 2012, the Town Council adopted Ordinance No. 2012-20 relating to civil infraction procedures, which was codified as EMC 1.12.020. It is my understanding the Council's intent was use the civil infraction process described in EMC 1.12.020 and chapter 7.80 RCW as the primary tool for enforcing violations of the municipal code, uncodified ordinances, and regulations when the act or omission was designated as a civil infraction, or a civil violation, or for which a monetary penalty or fine may be imposed.

The Town's sign code, EMC chapter 18.06, is located in Title 18 Zoning. Title 18 also includes chapter 18.10 Enforcement, which describes the procedures for enforcing the requirements of Title 18. The enforcement procedures described in EMC chapter 18.10 are different from the enforcement procedures described in EMC 1.12.020. Most importantly, EMC 18.10.018 describes a civil action lawsuit for enforcing Title 18 and makes no mention of civil infractions.

In order to avoid confusion, and out of an abundance of caution, the town attorney has recommended the planning commission consider the following amendment to chapter 18.06 Sign Code:

Chapter 18.06.185 Violations – Penalties.

Notwithstanding the provisions of EMC chapter 18.10, a violation of EMC chapter 18.06 shall be a class 1 civil infraction. Enforcement of the civil infraction shall be in accordance with EMC 1.12.020.

Because the sign code is considered a development regulation, the Town is required to follow the code amendment process set forth in the Growth Management Act, RCW 36.70A.035 and 140. These requirements include published notice and a public meeting at which public comment is taken regarding the proposed amendment.

Attachments:

EMC chapter 1.12
EMC chapter 18.10

Chapter 1.12

GENERAL PENALTY*

Sections:

1.12.010 Designated.

1.12.020 Civil infractions.

*For statutory provisions authorizing towns to impose fines up to \$5,000.00 or imprisonment up to one year, or both such fine and imprisonment, see RCW 35.27.370(14).

1.12.010 Designated.

A. Unless otherwise specifically provided, any person violating any provisions or failing to comply with any of the mandatory requirements of the ordinances of the town is guilty of a misdemeanor, punishable in accordance with EMC 9.02.005.

B. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of the ordinances of the town is committed, continued or permitted by any such person, and he shall be punished accordingly. (Ord. 2013-03 § 4, 2013; Ord. 90-1 § 1, 1990).

1.12.020 Civil infractions.

A. Any act or omission that constitutes a violation of any regulation, and any act or omission that is designated in this code or the noncodified ordinances of the town as a civil infraction or as a civil violation or for which a monetary penalty or fine may be imposed, shall be and does hereby constitute a civil infraction within the meaning of Chapter 7.80 RCW and the infraction rules for courts of limited jurisdiction.

B. A law enforcement officer, the town prosecutor, and the municipal court shall have authority to issue a notice of infraction for each civil infraction committed in accordance with the provisions, and under authority of Chapter 7.80 RCW and pursuant to the infraction rules for courts of limited jurisdiction.

C. It is the intent of this section and of the town council that civil infractions may be heard and determined by the municipal court in accordance with the provisions, and under authority, of Chapter 7.80 RCW and pursuant to the infraction rules for courts of limited jurisdiction, unless specifically provided otherwise. Eatonville Municipal Code 1.12.020

D. The term "municipal court" shall mean the Eatonville municipal court, or the municipal court operated by the municipality or political subdivision operating as the town of Eatonville municipal court pursuant to interlocal agreement. The term "town attorney" shall include the prosecutor for any municipality or political subdivision providing prosecution services pursuant to interlocal agreement.

E. All persons deemed or found to have committed a civil infraction shall be subject to assessment and payment of monetary penalties and restitution as follows, unless otherwise provided by law:

1. The maximum penalty and the default amount for a civil infraction designated as a class 1 civil infraction shall be \$250.00, not including statutory assessments;

2. The maximum penalty and the default amount for a civil infraction designated as a class 2 civil infraction shall be \$125.00, not including statutory assessments;

3. The maximum penalty and the default amount for a civil infraction designated as a class 3 civil infraction shall be \$50.00, not including statutory assessments; and 4. The maximum penalty and the default amount for a civil infraction designated as a class 4 civil infraction shall be \$25.00, not including statutory assessments.

5. All civil infractions which are not classified in this code as class 1, class 2, class 3 or class 4 civil infractions are hereby designated as class 1 civil infractions.

F. The court may also order a person found to have committed a civil infraction to make community restitution.

G. Whenever a monetary penalty is assessed by a court for a violation or violations constituting a civil infraction under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the

same manner as other civil judgments and may notify the town attorney of the failure to pay.

H. Any person who, after receiving a statement of the options provided in Chapter 7.80 RCW for responding to a notice of civil infraction and the procedures necessary to exercise these options, fails to exercise one of the options in a timely manner is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A notice of civil infraction may be complied with by an appearance by counsel.

I. Whenever in this code or the noncodified ordinances of the town, any act or omission constitutes a civil infraction, it includes causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

J. Every act or omission which constitutes a civil infraction under this code shall constitute a separate offense for each and every day during any portion of which the act or omission constituting the violation is committed, continued or permitted.(Ord. 2012-20 § 1, 2012).

18.10.012 Emergency order.

A. Whenever any use or activity in violation of this title threatens the health and safety of the occupants of the premises or any member of the public, the planning director, may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this title.

B. Any condition described in the emergency order which is not corrected within the time specified is hereby declared to be a public nuisance, and the planning director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible, or both, in the manner provided by law. (Ord. 94-06 § 2, 1994).

18.10.014 Review by planning director.

A. Any person significantly affected by or interested in a notice of violation issued by the planning director pursuant to EMC 18.10.006 may obtain a review of the notice by requesting such review within 15 days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or town holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the request the planning director shall notify any persons served the notice of violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than 10 and not more that 20 days after the request is received unless otherwise agreed by all persons served with the notice of violation. Before the date set for the review, any person significantly affected by or interested in the notice of violation may submit any written material to the planning director for consideration at the review.

B. The review shall consist of an informal review meeting held at the department. A representative of the planning director who is familiar with the case and the applicable ordinances will attend. The planning director's representative will explain the reasons for the planning director's issuance of the notice and will listen to any additional information presented by the persons attending. At or after the review, the planning director may:

1. Sustain the notice of violation;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information; or
4. Modify the notice of violation, which may include an extension of the compliance date.

C. The planning director shall issue a final order containing the decision within seven days of the date of the completion of the review, and shall cause the order to be mailed by regular first class mail to the persons named on the notice of violation, mailed to the complainant, if possible, and filed with the department of records and elections of the county. (Ord. 94-06 § 2, 1994).

18.10.016 Extension of compliance date.

A. The planning director may grant an extension of time for compliance with any notice or order, whether pending or final, upon the planning director's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

B. An extension of time may be revoked by the planning director if it is shown that the conditions at the time the extension was granted have changed, if the planning director determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date. (Ord. 94-06 § 2, 1994).

18.10.018 Civil penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this title shall be subject to a cumulative penalty in the amount of \$75.00 per day for each violation, from the date set for compliance until the order is complied with.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the town. The planning director shall notify the town attorney, in writing, of the name of any person subject to the penalty, and the town attorney shall, with the assistance of the planning director, take appropriate action to collect the penalty.

C. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the willful act or neglect or abuse of another; or
2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant. (Ord. 94-06 § 2, 1994).

18.10.020 Criminal penalties.

A. Any person violating or failing to comply with any of the provisions of this title and who has had a judgment entered against him pursuant to EMC 18.10.018 or its predecessors within the past five years shall be subject to criminal prosecution, and upon conviction of a subsequent violation shall be fined in a sum not exceeding \$5,000 or be imprisoned in the town jail for a term not exceeding one year, or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this title shall constitute a separate offense.

B. A criminal penalty, not to exceed \$5,000 per occurrence, may be imposed:

1. For violations of EMC 18.10.002(D);
2. For any other violation of this title for which corrective action is not possible;
3. For any willful, intentional or bad faith failure or refusal to comply with the standards or requirements of this title. (Ord. 94-06 § 2, 1994).

18.10.022 Additional relief.

The planning director may seek legal or equitable relief to enjoin any acts or practices and restore or abate any condition which constitutes or will constitute a violation of this title when civil or criminal penalties are inadequate to effect compliance. (Ord. 94-06 § 2, 1994).