



**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND, WA**

**AB 5475  
September 17, 2018  
Consent Calendar**

<b>CODE COMPLIANCE CODE AMENDMENTS (2<sup>ND</sup> READING AND ADOPTION)</b>	<b>Action:</b> Conduct second reading of the Code Compliance Code Amendments and adopt Ordinance 18C-06	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
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<b>DEPARTMENT OF</b>	Development Services Group (Alison Van Gorp)
<b>COUNCIL LIAISON</b>	n/a
<b>EXHIBITS</b>	1. Proposed Ordinance No. 18C-06 with Attachment A
<b>2018-2019 CITY COUNCIL GOAL</b>	6. Update Outdated Codes, Policies and Practices
<b>APPROVED BY CITY MANAGER</b>	

<b>AMOUNT OF EXPENDITURE</b>	\$	n/a
<b>AMOUNT BUDGETED</b>	\$	n/a
<b>APPROPRIATION REQUIRED</b>	\$	n/a

**SUMMARY**

The City of Mercer Island is proposing amendments to Titles 1, 8, 15, 17 and 19 of the Mercer Island City Code (MICC), as shown in Exhibit 1, Attachment A. The proposed amendments create a new chapter 6.10 related to code compliance and amend chapters 1.16, 8.24, 15.06, 15.14, 17.14 and 19.15 MICC for consistency, to update cross-references, and to remove duplication.

On September 4, 2018, City Council conducted the first reading of proposed Ordinance No. 18C-06 and provided amendments to the Ordinance for second reading. Revisions and grammatical corrections were made to the final version of the Ordinance and Attachment A (see Exhibit 1).

Please note that the language related to providing notice BY MAIL to a workplace [MICC 6.10.040 (c)] was retained in the Ordinance as this form of notice is needed when the person responsible is a contractor, tree company, or another entity that performed work on a property that was not in compliance with the applicable codes. The language related to providing notice IN PERSON at the workplace of the person responsible has been removed as directed by the Council [MICC 6.10.040 (a)].

**RECOMMENDATION**

*DSG Ombudsman/Administrative Services Manager*

**MOVE TO:** Adopt Ordinance No. 18C-06 amending Mercer Island City Code Titles 1, 8, 15, 17 and 19 and adopting Chapter 6.10 MICC to consolidate and improve code compliance provisions.

**CITY OF MERCER ISLAND  
ORDINANCE NO. 18C-06**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON  
AMENDING MERCER ISLAND CITY CODE CHAPTERS 1.16, 8.24, 15.06,  
15.14, 17.14 AND 19.15 AND ADOPTING CHAPTER 6.10 TO  
CONSOLIDATE AND IMPROVE THE CODE COMPLIANCE  
PROVISIONS; PROVIDING FOR SEVERABILITY AND RATIFICATION;  
AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, effective code compliance is necessary to maintain public health, welfare and safety, environmental protection and community character; and,

WHEREAS, the Mercer Island City Council determined that the code compliance provisions should be consolidated, updated and strengthened; and,

WHEREAS, code compliance regulations are currently in chapters 1.16, 8.24, 15.06, 15.14, 17.14 and 19.15 MICC, and do not provide sufficient authority to resolve code compliance cases in a timely, efficient and effective manner; and,

WHEREAS, the Mercer Island Planning Commission held a public hearing on June 20, 2018, and held two public meetings on April 4 and May 2, 2018, to consider the code text amendments to establish a new chapter 6.10 and amend chapters 1.16, 8.24, 15.06, 15.14, 17.14 and 19.15 MICC; and

WHEREAS, the Washington Department of Commerce granted expedited review of the proposed amendments to the MICC on August 2, 2018;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1:**     **Amend Chapters 1.16, 8.24, 15.06, 15.14, 17.14 and 19.15 of the Mercer Island City Code.** Chapters 1.16, 8.24, 15.06, 15.14, 17.14 and 19.15 of the Mercer Island City Code are hereby amended as set forth in Attachment “A.”

**Section 2:**     **Adoption of a New Chapter 6.10 to the Mercer Island City Code.** A new Chapter 6.10 to the Mercer Island City Code as set forth in Attachment “A” to this ordinance is hereby adopted.

**Section 3:**     **Codification of the Regulations.** The City Council authorizes the Development Services Group Director and the City Clerk to correct scrivener’s errors in Attachment A, codify the regulatory provisions in chapter 6.10 of the Mercer Island City Code, and publish the amended code.

**Section 4:**     **Interpretation.** The City Council authorizes the Development Services Group Director to adopt administrative rules, interpret, and administer the amended code as necessary to implement the legislative intent of the City Council.

**Section 5:**     **Severability.** If any section, sentence, clause, or phrase of this ordinance or any city code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or the amended code section.

**Section 6:**     **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 7:**     **Effective Date.** This Ordinance shall take effect and be in full force five days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 17<sup>th</sup> day of September 2018 and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Debbie Bertlin, Mayor

Approved as to Form:

ATTEST:

\_\_\_\_\_  
Kari Sand, City Attorney

\_\_\_\_\_  
Deborah A. Estrada, City Clerk

Date of Publication: \_\_\_\_\_

1 **Ordinance No. 18C-06**  
2 **Attachment A**

3  
4  
5 Chapter 1.16  
6 ENFORCEMENT PROVISIONS

7 ...  
8 **1.16.020 Violation of ordinance provision – A misdemeanor, gross misdemeanor or traffic infraction.**

9 A. The violation of any provision of any ordinance or code provision is a misdemeanor unless specifically  
10 designated as a gross misdemeanor, civil violation (as defined in section 6.10.110), ~~or~~ traffic infraction,  
11 or civil infraction (as defined in section 6.10.110). Each violation may be prosecuted by the city in the  
12 name of the people of the state or the city or may be redressed by civil action at the option of the city,  
13 or both.

14 B. The maximum penalty for a violation designated as a misdemeanor or as a gross misdemeanor is the  
15 maximum penalty set forth in RCW 35A.11.020, or as amended.

16 C. The maximum penalty for a violation designated as a traffic infraction is a fine not to exceed \$500  
17 except where another penalty is provided for by state statute or city code provision.

18 D. Each day a violation is committed or permitted to continue shall constitute a separate offense and  
19 shall be punishable as such. (Ord. A-87 § 2, 1991; added during 1980 codification).

20 ...

21 Chapter 6.10

22 CODE COMPLIANCE

23  
24 Sections:

25 6.10.010 Purpose and Scope

26 6.10.020 General Provisions

27 6.10.030 Right of Entry

28 6.10.040 Service of Written Notice

29 6.10.050 Enforcement Provisions

30 6.10.060 Voluntary Compliance Agreements

31 6.10.070 Stop Work Orders

32 6.10.080 Abatement

- 1 6.10.090 Appeals
- 2 6.10.100 Recovery of Penalties and Costs
- 3 6.10.110 Definitions
- 4

5 **6.10.010 PURPOSE AND SCOPE**

6 **A. Purpose and Intent**

7 The purpose of this chapter is to ensure compliance with the City’s adopted building, land development,  
8 land use, nuisance and related codes as specified in subsection B, enabling the City to fulfil its duty to  
9 protect the health, safety and welfare of the public. These regulations establish procedures and  
10 mechanisms to resolve violations of the City’s adopted building, land development, land use, nuisance,  
11 and related codes. Chapter 6.10 MICC establishes penalties for violations, provides an opportunity for a  
12 prompt hearing, decision, and appeal as to alleged code violations, provides for abatement when  
13 necessary, and provides a mechanism to recover the City’s costs. This chapter shall be enforced for the  
14 benefit of the general public, not for the benefit of any particular person or class of persons.

15 It is the intent of this chapter to place the obligation for code compliance on the person responsible for  
16 a violation, within the scope of this chapter, and not to impose any duty upon the City or any of its  
17 officers, officials or employees, which would subject them to damages in a civil action.

18 **B. Scope**

19 This chapter may be applied for the purposes of enforcing the Mercer Island City Code (MICC) Chapter  
20 8.24 Nuisance Control Code, Title 15 Water, Sewers and Public Utilities, Title 17 Construction Codes,  
21 Title 19 Unified Land Development Code, and other codes, ordinances, resolutions, permit conditions, or  
22 public rules that promote or protect the public health, safety or welfare and the environment. The  
23 provisions of this chapter are not exclusive and may be used, to the fullest extent permitted by law, in  
24 addition to other applicable provisions of the MICC or other applicable law or regulation.

25

26 **6.10.020 GENERAL PROVISIONS**

27 **A. Declaration of Public Nuisance**

28 All code violations are determined to be detrimental to the public health, safety, welfare and  
29 environment, and are declared to be public nuisances. All conditions determined to be code violations  
30 may be subject to and enforced pursuant to the provisions of this chapter, except where specifically  
31 excluded by law or regulation.

32

33 **B. Authority and Approach**

34 The director (as that term is defined in section 6.10.110) is authorized to enforce the provisions of the  
35 MICC Chapter 8.24 Nuisance Control Code, Title 15 Water, Sewers and Public Utilities, Title 17  
36 Construction Codes, Title 19 Unified Land Development Code, and other codes, ordinances, resolutions,  
37 or public rules that promote or protect the public health, safety or welfare and the environment. The  
38 violation of any regulation is unlawful, and the director may take reasonable action to bring about  
39 compliance through the use of the provisions of this chapter and any other applicable provisions of the

1 MICC, including but not limited to the revocation or modification of permits, and/or through the  
2 enforcement, penalty and abatement provisions described in this chapter.

3  
4 Code compliance actions will be pursued at the discretion of the director primarily in a complaint driven  
5 manner. Responses to complaints or evidence of a civil violation shall be prioritized based on  
6 significance and severity, with potential violations concerning health, safety and welfare of the public or  
7 damage to the environment receiving highest priority.

8  
9 After a complaint has been investigated, the director will determine the course of action. If a violation is  
10 present, the City may pursue compliance with City codes through the provisions of this chapter. The  
11 director shall have discretion to follow an incremental approach to securing compliance. This means  
12 starting by contacting the person responsible, explaining the violation and requesting voluntary  
13 correction. The director has the authority to reasonably determine the level of compliance, mitigation or  
14 remediation that is required as well as a reasonable timeline for completing the required actions. When  
15 appropriate, the director may secure compliance by proceeding incrementally to higher penalty levels  
16 by using the techniques and options in this title. Likewise, the director has the authority to offer  
17 reasonable extensions of timelines or other measures as appropriate when extenuating circumstances  
18 are present.

19  
20 Alternatively, in the course of the investigation, the director may determine: a) no violation exists; or b)  
21 the basis of the issue is private in nature; or c) the violation is *de minimus*. In which case, the director  
22 may decide to take no further action. Further, the director may find that a complaint or series of  
23 complaints between two or more individuals are frivolous, excessive and/or a form of harassment. In  
24 this case, the director may work with the complainant(s) to identify alternative means of dispute  
25 resolution (e.g. mediation), and may, under consultation with the city attorney, choose to limit  
26 communication with complainants and responses to complaints that are frivolous or excessive. The City  
27 does not intend to ignore complaints and will continue to investigate subsequent, unrelated complaints  
28 from the complainant.

29  
30 Nothing in this section shall preclude the director from taking other appropriate enforcement action to  
31 preclude harm to the health, safety or welfare of the public or the environment.

### 32 33 **C. Duty to Comply**

34 It shall be the responsibility of any person responsible for a violation to cure the violation, and if  
35 property is involved, to bring the property into compliance. Payment of fines, applications for permits,  
36 acknowledgment of stop work orders, and compliance with other remedies does not substitute for  
37 performing the corrective work required and having the property brought into compliance to the  
38 maximum extent reasonably possible under the circumstances. The date set for compliance in the notice  
39 of violation takes precedence over any date established for the expiration of any required permit(s) and  
40 will be subordinate only if modified by a supplemental notice of violation.

41  
42 The person responsible has a duty to notify the director of any actions taken to achieve compliance. A  
43 violation shall be considered ongoing until the person responsible has come into compliance and has  
44 notified the director of this compliance, and an official inspection has verified compliance and all  
45 assessed penalties and costs have been paid to the City.

1  
2 **D. Additional Enforcement Provisions**

3 The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner  
4 limit or restrict the City from remedying or abating code violations in any other manner authorized by  
5 law.

6  
7 **6.10.030 RIGHT OF ENTRY**

8 The director is authorized to enter any property or premises at any reasonable time to determine  
9 whether a civil violation has occurred or is occurring, or to enforce any provision of the MICC or any City  
10 ordinance, violation of which is a civil violation under this title and could be a criminal violation under  
11 the MICC, or to perform follow up inspections related to such a violation. The director may make  
12 examinations, surveys, and studies as may be necessary in the performance of his or her duties. These  
13 may include, but are not limited to, the taking of photographs, digital images, videotapes, video images,  
14 audio recordings, samples, or other physical evidence. If the property or premises is occupied, the  
15 director shall first present credentials and request entry. If an owner, occupant, or agent refuses entry,  
16 the City may apply to a court of competent jurisdiction for a search warrant authorizing access.

17 **6.10.040 SERVICE OF WRITTEN NOTICE**

18 Service of a notice of violation, stop work order, infraction or other official written notice of violation  
19 issued by the director shall be made by one of the following methods:

20 (a) Personal service. By personal service to the person responsible for the code violation, or by leaving a  
21 copy of the written notice at such person's place of residence with a person of suitable age and  
22 discretion who resides therein.

23 (b) Service by posting. By posting the written notice in a conspicuous place on the property where the  
24 violation occurred and concurrently sending a notice either by electronic mail or by first class mail.

25 (c) Service by mail. By mailing the written notice by regular first class mail, to the person responsible for  
26 the code violation at his, her or its last known address, at the address of the violation, or at the address  
27 of the place of business of the person responsible for the code violation. The taxpayer's address as  
28 shown on the tax records of the county shall be deemed to be the proper address for the purpose of  
29 mailing such notice to the landowner of the property where the violation occurred. Service by mail shall  
30 be presumed effective upon the third business day following the day upon which the official written  
31 notice of violation was placed in the mail.

32 (d) Service by publication. For notice of violation only, when the address of the person responsible for  
33 the code violation cannot reasonably be determined, service may be made by publishing the abstract of  
34 the notice of violation substantially in the manner as set forth in RCW 4.28.110, as currently enacted or  
35 hereafter amended.

36 The failure of the director to make or attempt service of written notice shall not invalidate any  
37 proceedings as to any other person duly served.

38  
39 **6.10.050 ENFORCEMENT PROVISIONS**

1 Violations may be enforced by issuing one or more civil infractions or one or more notices of violation or  
2 any combination thereof. The City shall have discretionary authority to enforce a violation by issuing a  
3 civil infraction or a notice of violation pursuant to this chapter or prosecuting it as a criminal matter.

4 Each day during which a code violation is committed, occurs or continues shall be considered a separate  
5 offense for purposes of civil infractions or notices of violation.

6 **A. Misdemeanors**

7 Any person who willfully or knowingly causes, aids or abets a code violation by any act of commission or  
8 omission is guilty of a misdemeanor, unless specifically designated as a gross misdemeanor, where such  
9 code violation results, or is likely to result, in a threat to public health, life, or safety or in significant  
10 harm to the environment. Upon conviction, the person shall be punished by a fine not to exceed \$1,000  
11 and/or imprisonment in the County jail for a term not to exceed 90 days.

12 **B. Code Violations**

13 Whenever the director has reason to determine that a code violation occurred or is occurring, or that  
14 the code violations cited in an infraction have not been corrected, or that the terms of a Voluntary  
15 Correction Agreement have not been met, the director is authorized to issue a notice of violation to any  
16 person responsible for the code violation.

17 Subsequent violations shall be treated as new violations for purposes of this section.

18 **1. Notice of Violation**

19 A notice of violation shall be completed in a form approved by the director and the city attorney, and  
20 shall be served consistent with MICC 6.10.040 and shall, at minimum, include the following:

21 (a) The tax parcel number(s), address, when available, or description sufficient for identification of the  
22 building, structure, premises or land upon which or within which the violation has occurred or is  
23 occurring;

24 (b) A statement of each ordinance, regulation, code provision or permit requirement violated, and the  
25 facts to support that the violation(s) occurred or is occurring;

26 (c) The name of the City official issuing the notice and order and the name(s), if known, of the  
27 responsible party(ies) to whom the notice and order is being issued;

28 (d) An order requiring corrective action to be taken; description of corrective action that is necessary to  
29 achieve compliance; and a date by which the correction must be completed;

30 (e) A statement that if the violation is not corrected and the notice is not appealed, the determination is  
31 final and monetary penalties shall be due;

32 (f) The amount of penalty that will be assessed; and

33 (g) A statement advising of the right to appeal the notice of violation to the hearing examiner,  
34 instructions on how to file an appeal, and the date by which it must be filed.

35 **2. Supplementation, revocation or modification**

36 Whenever there is new information or a change in circumstances, the director may add to, rescind in  
37 whole or in part or otherwise modify a notice of violation by issuing a supplemental notice of violation.

1 The supplemental notice shall be governed by the same procedures applicable to all notices of violation  
2 contained in this title, including the right to appeal to the hearing examiner. In addition, the director is  
3 authorized to issue penalties accrued as a part of the supplemental notice of violation. If the deadline to  
4 appeal the notice of violation has expired, only portions from the notice of violation that are modified in  
5 the supplemental notice of violation are subject to appeal to the hearing examiner.

### 6 **3. Failure to correct**

7 Failure to correct the code violation in the manner prescribed in the notice of violation subjects the  
8 person responsible to any of the following compliance remedies:

- 9 a. civil penalties and costs;
- 10 b. continued responsibility for abatement, remediation and/or mitigation;
- 11 c. permit suspension, revocation, modification and/or denial;
- 12 d. costs of abatement incurred by the City; and/or
- 13 e. other remedies that may be available to the City.

### 14 **4. Time Limits**

15 (a) Persons receiving a notice of violation shall rectify the code violations identified within the time  
16 period specified by the director in the notice of violation issued pursuant to this chapter.

17 (b) Unless an appeal is filed with the City for a hearing before the hearing examiner in accordance with  
18 the provisions of this chapter, the notice of violation shall become the final administrative order of the  
19 director, and the civil penalties assessed and accrued shall be immediately due and subject to  
20 collection.

### 21 **5. Appeals**

22 Any person identified in a notice of violation (or supplemental notice of violation) as a person  
23 responsible for a violation may appeal the same within 14 days of service, according to the procedures  
24 described in MICC 6.10.090. Failure to appeal the notice within 14 days shall render the notice a final  
25 determination that the conditions described therein existed and constitutes a code violation, assessed  
26 and accrued civil penalties are due, and that the named party is liable as a person responsible.

### 27 **C. Civil Infractions**

28 Whenever the director has reason to determine that a civil code violation occurred or is occurring, the  
29 director is authorized to issue a civil infraction in accordance with chapter 7.80 RCW, which is  
30 incorporated herein by this reference, upon the person responsible for the condition and or who  
31 committed the civil code violation. First offenses shall be class 2 civil infractions, for which the maximum  
32 penalty and the default amount shall be \$125 for each infraction, and second or subsequent violations  
33 shall be class 1 civil infractions, for which the maximum penalty and the default amount shall be \$250  
34 for each infraction, not including fees, costs, and assessments. The Mercer Island Municipal Court shall  
35 have jurisdiction over all infractions issued under this chapter.

### 36 **D. Civil Penalties**

#### 37 **1. Civil Penalties**

1 A civil penalty for violation of the terms and conditions of a notice of violation, stop work order or  
2 voluntary correction agreement shall be imposed at the rate of \$100 per day for each violation, accruing  
3 for every day after the compliance date listed in the notice of violation. Thirty days after the compliance  
4 date, the penalty will increase to a rate of \$250 per day for each violation. Sixty days after the  
5 compliance date, the penalty will increase to a rate of \$500 per day for each violation, up to a maximum  
6 total penalty of \$50,000 for each violation.

7 **2. Priority Violations**

8 In addition to the penalties described above in Section D (1), any person that is responsible for a  
9 violation of the provisions of the following regulations will be subject to additional penalties. These  
10 penalties for priority violations will be assessed one time, will not accrue daily and are not subject to any  
11 maximum, as described below:

12

<b><u>Violation</u></b>	<b><u>Penalty</u></b>
<u>Damage or removal of trees in violation of chapter 19.10 MICC</u>	<u>Triple the value of the cut or damaged tree, plus the cost of remediation. See MICC 19.10.160 for details.</u>
<u>Ecological damage in violation of chapter 19.07 MICC</u>	<u>Up to \$25,000, plus the cost of remediation.</u>
<u>Failure to meet storm water, erosion control requirements in violation of chapter 15.09 MICC</u>	<u>Up to \$10,000, plus the cost of remediation.</u>
<u>Fat, oil, grease discharge in violation of chapter 15.06 MICC</u>	<u>Up to \$10,000, plus the cost of remediation.</u>
<u>Violation of stop work order or voluntary compliance agreement in violation of sections 6.10.060 or 6.10.070 MICC</u>	<u>Up to \$10,000</u>

13  
14 When the potential penalty amount is listed as a range, the director will set the penalty based on the  
15 following criteria:

- 16 a) The significance and severity of the violation and its impact on the public and the environment.  
17 b) The difficulty and time involved in resolving the violation and mitigating or remediating the area  
18 impacted by the violation.  
19 c) The resulting ill-gotten economic benefit and savings of construction costs realized by the  
20 person responsible for the violation.

21  
22 **3. Repeat Violations**

23 A repeat violation is a violation that has occurred on the same property or that has been committed by  
24 the same person responsible elsewhere within the city, for which voluntary compliance previously has  
25 been agreed to or any enforcement action taken that was not timely appealed or if appealed, the appeal  
26 was dismissed, within the previous 36-month period. (For purposes of this subsection, repeat violation  
27 does not include each day in violation being counted as a separate violation.) To constitute a repeat  
28 violation, the violation need not be the same violation as the prior violation. Violation of a written order

1 of the hearing examiner that has been served as provided in this chapter shall also constitute a repeat  
2 violation. Repeat violations will incur double the civil penalties set forth in Sections D (1) and (2), above.  
3 If violations are repeated a third or subsequent time within a 36-month period, the penalties will be five  
4 times those set forth above. The City also has authority to suspend or revoke a business license when a  
5 responsible party is repeatedly doing work in violation of City regulations (chapter 5.01 MICC).

#### 6 **4. Deliberate Violation**

7 If a violation was deliberate, the result of blatant disregard for direction from the City or knowingly false  
8 information submitted by the property owner, agent or their contractor, civil penalties will be incurred  
9 at double those set forth above in Sections D(1), (2) and (3).

#### 10 **5. Voluntary compliance**

11 The director may reduce penalties at their discretion, if voluntary compliance is achieved. The remaining  
12 penalty shall reflect the significance and severity of the violation, whether or not the violation was  
13 deliberate, and the costs incurred by the City in enforcing a notice of violation, stop work order, or  
14 voluntary compliance agreement.

#### 16 **E. Suspension, Revocation or Limitation of a Permit**

17 The director may suspend, revoke or limit any permit issued whenever:

- 18 a. The permit holder has committed a code violation in the course of performing activities subject  
19 to that permit;
- 20 b. The permit holder has interfered with the director in the performance of his or her duties  
21 relating to that permit;
- 22 c. The permit was issued in error or on the basis of materially incorrect information supplied to  
23 the City by the permit holder; or
- 24 d. Permit fees or costs were paid to the City by check and returned from a financial institution  
25 marked nonsufficient funds (NSF) or cancelled.

26 Such suspension, revocation or modification shall be carried out through the civil violation provisions of  
27 this chapter and shall be effective upon the compliance date established by the notice of violation. Such  
28 revocation, suspension or cancellation may be appealed to the hearing examiner using the appeal  
29 provisions of this chapter. Notwithstanding any provision of this chapter, the director may immediately  
30 suspend operations under any permit by issuing a stop work order.

#### 31 **F. Hold on Future Permits**

32 The director may place a hold on the issuance of future permits on a property if:

- 33 a. A notice of violation or stop work order has been issued, and
- 34 b. The appeal period has passed, or an appeal was brought but it was dismissed, and
- 35 c. The violation has not been corrected and/or penalties or fines have not been paid, and
- 36 d. The permits relate to the violation.

37 A hold on future permits will prevent the issuance of any land use or building permit for the subject  
38 property, and for the person responsible on any other property within the city, until the violation is

1 resolved, corrective actions are taken and penalties are paid. The director may use their discretion to  
2 issue exceptions to this subsection for emergencies or hazardous situations, or other situation they  
3 deem reasonable.

4 **G. Notice on Title**

5 The director may file a notice with the King County recorder's office, or its successor agency, if:

- 6 a. A notice of violation or stop work order has been issued, and
- 7 b. The appeal period has passed, or an appeal was brought but it was dismissed, and
- 8 c. The violation has not been corrected and/or penalties or fines have not been paid, and
- 9 d. The violation relates to real property owned by the responsible party.

10 The notice shall inform the public of the presence of an unresolved notice of violation or stop work  
11 order on the subject property.

12 When all violations specified in the notice of violation have been corrected or abated, the director shall  
13 record within a reasonable time a release of notice with the King County recorder's office, or its  
14 successor agency.

15  
16 **6.10.060 VOLUNTARY COMPLIANCE AGREEMENTS**

17 **A. Timing**

18 A voluntary compliance agreement (VCA) may be used to resolve code compliance cases, and may be  
19 entered into at any time before an administrative appeal is decided.

20 **B. Contents**

21 A VCA is a written contract between the person responsible for the violation and the City, where such  
22 person agrees to abate the violation within a specified time and according to specified conditions. The  
23 VCA shall be completed on a form approved by the director and the city attorney and shall, at minimum,  
24 include the following:

25 (1) The name and address of the person responsible;

26 (2) The street address or other description sufficient for identification of the building, structure,  
27 premises, or land upon which the violation has occurred or is occurring;

28 (3) A description of the violation(s) and a reference to the code(s) which has been violated;

29 (4) The necessary corrective action to be taken, and the date by which the correction must be  
30 completed;

31 (5) An agreement by the person responsible that the City may inspect the premises as may be necessary  
32 to determine compliance with the VCA;

33 (6) The reduced amount of the civil penalty, if any, that the person responsible is agreeing to pay to the  
34 City for the violation;

35 (7) A statement that the person responsible acknowledges that the violation occurred as described in  
36 the VCA and waives the right to an administrative or judicial hearing for appeal purposes; and

1 (8) An agreement by the person responsible that if the City determines that such person does not meet  
2 his or her obligations specified in the VCA, the City may impose any remedy authorized by this chapter,  
3 including, but not limited to:

4 (a) Assessment of civil penalties;

5 (b) Abatement of the violation;

6 (c) Assessment of all costs and expenses incurred by the City to pursue code enforcement and to  
7 abate the violation, including legal and incidental expenses; and

8 (d) Suspension, revocation, or limitation of a permit.

9 **C. Waiver of Appeal**

10 In consideration of the City's agreement to enter into a VCA, the person responsible shall completely  
11 surrender and have no right to an administrative or judicial hearing, under this chapter or otherwise,  
12 regarding the matter of the violation and/or the required corrective action. The VCA is a final, binding  
13 agreement, it is not a settlement agreement, and its contents are not subject to appeal.

14 **D. Amendment**

15 The director may amend a VCA to grant an extension of the time limit for compliance, or a modification  
16 of the required corrective action, if the person responsible has shown due diligence and/or substantial  
17 progress in correcting the violation but unforeseen circumstances or circumstances beyond the control  
18 of the person responsible, render full and timely compliance under the original conditions unattainable.  
19 Such request shall be made in writing by the person responsible and clearly establish the need for such  
20 an amendment.

21  
22 **6.10.070 STOP WORK ORDERS**

23 **A. Issuance**

24 The director shall issue a stop work order if the director finds that:

25 1. The work is not authorized by a valid permit or inaccurate information was used to obtain the  
26 permit; or

27 2. The permittee is not complying with the terms or conditions of the permit or approved plans,  
28 including storm water management and erosion control requirements, conditions of a seasonal  
29 development deviation, tree protection, construction impact mitigation plan; or

30 3. Previously unknown contamination of site soils from hazardous materials is encountered and poses  
31 a potential risk to human health and the environment; or

32 4. Adverse weather is causing significant problems on or off site; or

33 5. The work is adversely affecting the public health, safety, or welfare; or

34 6. The work is a hazard to property or is adversely affecting, or could adversely affect, adjacent  
35 property including: a right-of-way, a drainage way, a watercourse, an environmentally critical area, a  
36 storm water facility or a storm water treatment and flow control best management practice; or

37 7. Otherwise materially impairs the director's ability to secure compliance with the MICC.

1 The stop work order shall state the reasons for the order, specify the violation(s) and prohibit any work  
2 or other activity at the site. The stop work order may be appended to, or incorporate by reference, a  
3 notice of violation. However, issuance of a notice of violation is not a condition precedent to the  
4 issuance of a stop work order. A stop work order shall be served consistent with MICC 6.10.040 and  
5 shall take effect immediately upon service.

6 **B. Effect**

7 When a stop work order has been issued, posted and/or served pursuant to this section, it is unlawful to  
8 conduct the activity or perform the work covered by the order, even if the order has been appealed,  
9 until the director has removed the copy of the order, if posted, and issued written authorization for the  
10 activity or work to be resumed. Any violation of a stop work order is hereby declared to be a nuisance  
11 and the director is authorized to enjoin or abate such nuisance by any legal or equitable means  
12 available. The costs, specifically including reasonable attorney and expert witness fees, for the injunction  
13 or abatement, shall be recovered by the City from the person responsible for the code violation in the  
14 manner provided by law. Failure to comply with the terms of a stop work order subjects the person  
15 responsible for the code violation to civil penalties and costs as set forth in this chapter, including a  
16 monetary penalty that shall accrue for each day that a violation of a stop work order occurs.

17 **C. Appeal**

18 A stop work order may be appealed according to the procedures prescribed by MICC 6.10.090. During  
19 any such appeal, the stop work order shall remain in effect. Failure to appeal the stop work order within  
20 the applicable time limits renders the stop work order a final determination that the civil code violation  
21 occurred and that work was properly ordered to cease.

22 **D. Removal of a Stop Work Order**

23 When a stop work order has been posted in conformity with the requirements of this chapter, removal  
24 of such order without the authorization of the City, or the hearing examiner if the matter has been  
25 heard by the hearing examiner, is unlawful and a violation. The director will remove the stop work  
26 order and write a letter of authorization to resume work only when the director finds that the reason for  
27 the order has been resolved or abated.

28  
29 **6.10.080 ABATEMENT**

30 **A. Abatement**

31 Upon consultation with the city attorney and prior approval by the city manager, the City may abate a  
32 condition which was caused by or continues to be a code violation when:

33 (a) The terms of the Voluntary Correction Agreement pursuant to this chapter have not been met;  
34 or

35 (b) A notice of violation or stop work order has been issued, the period for filing an appeal with  
36 the hearing examiner has expired, and the required correction has not been completed; or

37 (c) A notice of violation or stop work order has been issued, a timely appeal was filed, the  
38 appellant failed to appear at the scheduled hearing or a hearing was held as provided in this

1 chapter and the required correction has not been completed by the date specified by an order of  
2 the hearing examiner; or

3 (d) The condition is subject to abatement as provided for in this chapter or other provisions of city  
4 or state law.

5 **B. Summary Abatement**

6 Other provisions in this chapter notwithstanding, when a code violation causes a condition, the  
7 continued existence of which constitutes an immediate and emergent threat to the public health, safety,  
8 or welfare or to the environment, the City may summarily, and without prior notice to the person  
9 responsible, abate the condition. Notice of such abatement, including the reason for it, shall be given to  
10 the person responsible for the violation as soon as reasonably possible after the abatement.

11 **C. Authorized Action by the City**

12 Using any lawful means, the City may enter upon the subject property and may remove or correct the  
13 condition which is subject to abatement. The City may seek judicial process as it deems necessary to  
14 effect the removal or correction of such condition.

15 **D. No Cause of Action Against City**

16 No cause of action shall lie against the City or its agents, officers, or employees for actions reasonably  
17 taken, or not taken, to prevent or cure any immediate threats.

18  
19 **6.10.090 APPEALS**

20 **A. Administrative Appeal – Filing Requirements**

21 Persons named in a notice of violation or stop work order, or any owner of the land where the violation  
22 for which such a notice or order is issued, may file with the city clerk a notice of appeal within 14 days of  
23 the service of the notice or order. The notice of appeal shall be made in writing using the appropriate  
24 City form, clearly explaining the basis for the appeal, and shall include the applicable appeal fee as  
25 established in a fee schedule adopted by the Mercer Island City Council.

26 **B. Administrative Appeal – Procedures**

- 27 1. Upon receipt of the appeal, the City shall schedule an appeal hearing before the hearing examiner.  
28 The hearing shall be conducted in accordance with the procedures set forth in MICC 3.40 and the  
29 rules of procedure of the hearing examiner.
- 30 2. Enforcement of a notice of violation issued pursuant to this chapter shall be stayed as to the  
31 appealing party during the pendency of any administrative appeal under this section, except when  
32 the director determines that the violation poses a significant threat of immediate and/or irreparable  
33 harm and so states in any notice issued.
- 34 3. Enforcement of a stop work order issued pursuant to this chapter shall not be stayed during the  
35 pendency of any administrative appeal under this section.
- 36 4. When multiple stop work orders or notices of violation have been issued for any set of related facts  
37 constituting various violations, their appeals may be consolidated.

38 **C. Administrative Appeal – Final Order**

1 1. Following review of the evidence submitted, if the examiner finds that no violation has occurred, the  
2 hearing examiner shall uphold the appeal and reverse the notice of violation or stop order. If the  
3 hearing examiner finds that a violation has occurred, the hearing examiner shall issue an order to  
4 the person responsible for the violation which includes the following information:

5 (a) The decision regarding the alleged violation including findings of fact and conclusions based  
6 thereon in support of the decision;

7 (b) The required corrective action;

8 (c) The date by which the correction must be completed; and

9 (d) The civil penalties assessed based on the provisions of this chapter and the fee resolution;

10  
11 2. If an owner of property where a violation has occurred has affirmatively demonstrated that the  
12 violation was caused by another person or entity not the agent of the property owner and without  
13 the property owner's knowledge or consent, such property owner shall be responsible only for  
14 abatement of the violation.

15  
16 **D. Effect of Decision**

17 The decision of the hearing examiner shall constitute the final decision of the City, and the failure to  
18 comply with the decision of the hearing examiner, unless the decision is appealed to a court of  
19 competent jurisdiction, shall constitute a misdemeanor punishable by a fine of not more than \$1,000 or  
20 up to 90 days' imprisonment, or both. In addition to criminal punishment pursuant to this section, the  
21 City may pursue collection and abatement as authorized by law.

22  
23 **6.10.100 RECOVERY OF PENALTIES AND COSTS**

24 **A. Payment**

25 Any monetary penalties or costs assessed pursuant to this chapter constitute a personal obligation of  
26 the person responsible for the violation. In addition, the monetary penalties or costs assessed pursuant  
27 to this chapter may be assessed against the property that is the subject of the enforcement action. The  
28 city attorney is authorized to collect the monetary penalty or costs by use of appropriate legal remedies,  
29 the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem  
30 monetary penalties so long as the violation continues.

31 **B. Recovery of Costs**

32 All reasonable expenses incurred by the City in abating a violation shall be billed to the person  
33 responsible for the violation and shall become due and payable to the City within 30 calendar days from  
34 the date of the bill. Such costs may include, but are not limited to, the following:

35 1. "Legal expenses," which shall include, but are not limited to:

36 (a) Personnel costs, both direct and indirect, including attorney's fees and all costs incurred by the  
37 city attorney's office or its designee;

1 (b) Actual and incidental expenses and costs incurred by the City in preparing notices, contracts,  
2 court pleadings, and all other necessary documents; and

3 (c) All costs associated with retention and use of expert witnesses or consultants.

4 2. "Abatement expenses," which shall include, but are not limited to:

5 (a) Costs incurred by the City for preparation of notices, contracts, and related documents;

6 (b) All costs associated with inspection of the abated property and monitoring of said property  
7 consistent with orders of compliance issued by the City's hearing examiner or a court of competent  
8 jurisdiction;

9 (c) All costs incurred by the City for hauling, storage, disposal, or removal of vegetation, trash,  
10 debris, dangerous structures or structures unfit for occupancy, potential vermin habitat or fire  
11 hazards, junk vehicles, obstructions to public rights-of-way, and setback obstructions;

12 (d) All costs incurred by law enforcement or related enforcement agencies;

13 (e) All costs incurred by the City during abatement of nuisance and code violations may include  
14 interest in an amount as prescribed by law; and

15 The city manager or designee, or the hearing examiner, may in their discretion waive in whole or part  
16 the assessment of any costs upon a showing that abatement has occurred or is no longer necessary or  
17 that the costs would cause a significant financial hardship for the person responsible for the violation.  
18 Any challenge to the amount of the legal or abatement costs must be made within 14 days of issuance  
19 of the bill and shall be heard by the hearing examiner. The hearing examiner shall make a determination  
20 as to whether or not the City's costs were accurate and necessary for correcting the violation.

21 **C. Use of Collection Agency**

22 Pursuant to RCW 19.16.500, as currently enacted or hereafter amended, the City may, at its discretion,  
23 use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this  
24 chapter. The collection agency may add fees or interest charges to the original amount assigned to  
25 collections as allowed by law.

26 **D. Continuing Duty to Abate Violations**

27 Payment of a monetary penalty or costs pursuant to this chapter does not relieve the person  
28 responsible for the violation of the duty to correct or abate the violation. Additional notices of violation  
29 may be issued and/or criminal charges filed for continuing failure to correct or abate a violation.

30  
31 **6.10.110 DEFINITIONS**

32 Except where specifically defined in this section, all words used in this title shall carry their customary  
33 meanings. The word "shall" is always mandatory, and the word "may" denotes a use of discretion in  
34 making a decision. The following words and phrases used in this title shall have the following meanings:

35 "Abate" means to take whatever steps are deemed necessary in the interest of the general health,  
36 safety, and welfare of the City by the director to return a property to the condition in which it existed  
37 before a civil code violation occurred or to assure that the property complies with applicable code

1 requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal,  
2 replacement or repair.

3 “Appeal hearing” means a hearing requested in response to a notice of violation, stop work order, or  
4 other official written notice of violation issued by the director to contest the finding that a violation  
5 occurred or to contest that the person cited for a violation is responsible for the violation.

6 “Civil penalty” or “monetary penalty,” means a fine or fee levied as a consequence for a civil violation,  
7 civil infraction or stop work order.

8 “Civil violation” or “code violation” or “violation” means and includes one or more of the following:

9 (1) Any act or omission contrary to any ordinance, resolution, regulation or public rule of the City  
10 that regulates or protects public health, the environment or the use and development of land or  
11 water, whether or not the ordinance, resolution or regulation is codified.

12 (2) Any act or omission contrary to the conditions of any permit, violation notice or stop work or  
13 other order issued pursuant to any such ordinance, resolution, regulation or public rule.

14 “Compliance” means the violation has been abated, remediated or otherwise resolved and any  
15 applicable penalties or costs have been paid.

16 “Complainant” means the person that makes a complaint to the City reporting a violation or potential  
17 violation.

18 “Costs” means, but is not limited to, contract expenses and City employee labor expenses incurred in  
19 abating a nuisance; a rental fee for City equipment used in abatement; costs of storage, disposal, or  
20 destruction; legal expenses and attorneys’ fees associated with civil judicial enforcement of abatement  
21 orders or in seeking abatement orders; and any other costs incurred by the City, excluding fees and  
22 expenses associated with appeals authorized by this code or by state law.

23 “De minimus” means a civil violation that is of very low impact and poses low risk to the health, safety  
24 and welfare of the public and to the environment.

25 “Development” means the erection, alteration, enlargement, demolition, maintenance or use of any  
26 structure or the alteration or use of land above, at, or below ground or water level, and all acts  
27 authorized by a City permit or regulation.

28 “Director” means the director of the development services group, or their designee.

29 “Excessive Complaint” means a complainant that repeatedly reports to the City the same or closely  
30 related issues in a manner that may be intended to harass or antagonize the alleged person responsible.

31 “Found in violation” means that:

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

1 (2) The hearing examiner has determined that the violation has occurred and the hearing examiner's  
2 determination has not been stayed or reversed on appeal.

3 "Frivolous complaint" means a complaint that is based on an issue that is not a code violation or is a de  
4 minimus violation. The complaint may be an attempt to harass or antagonize the alleged person  
5 responsible.

6 "Hearing examiner" means the City of Mercer Island hearing examiner, as provided in chapter 3.40  
7 MICC.

8 "Infraction" or "civil infraction" means any code violation designated as an infraction or civil infraction  
9 by the director pursuant to Chapter 7.80 RCW, incorporated herein by reference.

10 "Mortgagee" means a financial institution, including a bank, credit union or other commercial lender,  
11 which holds mortgaged property as security for repayment of a loan.

12 "Notice of violation" means a written statement, issued by the director, that contains the information  
13 required under MICC 6.10.050 (B)(1) notifying a person that they are responsible for one or more civil  
14 violations of the MICC, orders the timely correction of the same, and/or assesses civil penalty for failure  
15 to timely correct.

16 "Nuisance" (also referred to herein as "violation" or "nuisance violation") means:

17 (1) A violation of any City of Mercer Island development, land use, or public health ordinance;

18 (2) Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission  
19 that annoys, injures, or endangers the comfort, repose, health, or safety of others, is unreasonably  
20 offensive to the senses, or that obstructs or interferes with the free use of property so as to  
21 interfere with or disrupt the free use of that property by any lawful owner or occupant;

22 (3) Potential vermin habitat or fire hazard; or

23 (4) Junk Vehicles. A "junk vehicle" includes apparent inoperable, immobile, disassembled, or  
24 extensively damaged vehicles. In addition, any wrecked inoperable, abandoned, or disassembled  
25 trailer, house trailer, boat, tractor, automobile, other vehicle, or any parts thereof.

26 "Owner" means any owner, part owner, joint owner, tenant in common, tenant in partnership, joint  
27 tenant, or tenant by the entirety, of the whole or of a part of a building or land.

28 "Permit" means any form of certificate, approval, registration, license or any other written permission  
29 issued by the City of Mercer Island. All conditions of approval, and all easements and use limitations  
30 shown on the face of an approved final plat which are intended to serve or protect the general public  
31 are deemed conditions applicable to all subsequent plat property owners and their tenants and agents  
32 as permit requirements enforceable under this chapter.

33 "Person responsible for the violation" or "person responsible" or "violation" means any of the following:  
34 the person doing the work, a person who has titled ownership or legal control of the property or

1 structure that is subject to the violation; an occupant or other person in control of the property or  
2 structure that is subject to the violation; a developer, builder, business operator, or owner who is  
3 developing, building, or operating a business on the property or in a structure that is subject to the  
4 violation; a mortgagee that has filed an action in foreclosure on the property that is subject to the  
5 violation, based on breach or default of the mortgage agreement, until title to the property is  
6 transferred to a third party; a mortgagee of property that is subject to the violation and has not been  
7 occupied by the owner, the owner's tenant, or a person having the owner's permission to occupy the  
8 premises for a period of at least 90 days; or any person who created, caused, participated in, or has  
9 allowed a violation to occur.

10 "Public nuisance" means a nuisance that affects equally the rights of an entire community or  
11 neighborhood, although the extent of the damage may be unequal.

12 "Resolution" means any resolution adopted by the Mercer Island City Council.

13 "Repeat violation" means a violation that has occurred on the same property or that has been  
14 committed by the same person responsible elsewhere within the city, for which voluntary compliance  
15 previously has been agreed to or any enforcement action taken that was not timely appealed or if  
16 appealed, the appeal was dismissed, within the previous 36-month period. (For purposes of this  
17 subsection, repeat violation does not include each day in violation being counted as a separate  
18 violation.) To constitute a repeat violation, the violation need not be the same violation as the prior  
19 violation. Violation of a written order of the hearing examiner that has been served as provided in this  
20 chapter shall also constitute a repeat violation.

21 "Stop work order" means a written order specifying code violations and prohibiting any work or other  
22 activity at a particular site.

23 "Voluntary compliance agreement" or "VCA" means a written contract between the person responsible  
24 for the violation and the City, under which such person agrees to abate the violation within a specified  
25 time and according to specified conditions.

26 ...

27 Chapter 8.24  
28 NUISANCE CONTROL CODE

29 ...

30 **8.24.050 Enforcement ~~notice.~~**

31 Any person who violates any provision of this chapter may be issued a civil infraction, notice of violation,  
32 or other penalties as authorized by Chapter 6.10 MICC

33 ~~An enforcement officer appointed by the city manager, having knowledge of any public nuisance, shall~~  
34 ~~cause any owner or other responsible person to be notified of the existence of a public nuisance on~~

~~any premises and shall direct the owner or other responsible person to abate the condition within 10 days after notice or other reasonable period. The notice shall be substantially in the following form:~~

~~NOTICE TO ABATE UNSAFE OR UNLAWFUL CONDITION~~

~~(Name and address of person notified)~~

~~As owner, agent, lessee or other person occupying or having charge or control of the building, lot or premises at \_\_\_\_\_ you are hereby notified that the undersigned pursuant to Chapter 8.24 of Mercer Island city code has determined that there exists upon or adjoining said premises the following condition contrary to the provisions of subsection \_\_\_ of 8.24.020:~~

~~You are hereby notified to abate said condition to the satisfaction of the undersigned within 10 days of the date of this notice. If you do not abate such condition within \_\_\_ days the city will abate the condition at your expense.~~

~~Abatement is to be accomplished in the following manner:~~

~~Dated: \_\_\_\_\_ (Name of enforcement officer)~~

~~by \_\_\_\_\_~~

~~(Ord. 486 § 1, 1979).~~

~~8.24.060 Abatement by city.~~

~~In all cases where the enforcement officer has determined to proceed with abatement, 10 days after giving notice, the city shall acquire jurisdiction to abate the condition at the person's expense as provided in this chapter. Upon the abatement of the condition or any portion thereof by the city, all the expenses thereof shall constitute a civil debt owing to the city jointly and severally by such of the persons who have been given notice as provided in this chapter. The debt shall be collectable in the same manner as any other civil debt owing to the city. (Ord. 486 § 1, 1979).~~

~~8.24.070 Abatement by owner or other responsible person.~~

~~If and when an owner or other responsible person undertakes to abate any condition described in this chapter, whether by order of the enforcement officer or otherwise, all needful and legal conditions pertinent to the abatement may be imposed by the enforcement officer. It is unlawful for the owner or other responsible person to fail to comply with such conditions. Nothing in this chapter shall relieve~~

~~any owner or other responsible person of the obligation of obtaining any required permit to do any work incidental to the abatement. (Ord. 486 § 1, 1979).~~

~~8.24.080 Immediate danger — Summary abatement.~~

~~Whenever any condition on, or use of, property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public, or a significant portion thereof, the enforcement officer shall have the authority to summarily and without notice abate the same. The expenses of such abatement shall become a civil debt against the owner or other responsible party and be collected as provided in MICC 8.24.060. (Ord. 486 § 1, 1979).~~

~~8.24.090 Violation a misdemeanor.~~

~~Any person violating any of the provisions of this chapter is guilty of a misdemeanor. (Ord. 486 § 1, 1979).~~

...

Title 15  
WATER, SEWERS AND PUBLIC UTILITIES

...

**15.06.180 Enforcement.**

Failure to comply with any applicable provisions under this chapter shall be deemed a violation. Each day that any violation or failure to comply exists may be construed as a separate offense. Enforcement proceeds under this chapter shall follow the processes and procedures set forth in [Chapter 6.10](#) MICC [Title 6 19.15.030\(C\), \(D\), \(E\), \(F\), \(G\) and \(H\)](#). (Ord. 14C-03 § 2).

...

**15.14.080 Enforcement.**

A. The city shall have the authority to terminate water service, take abatement action as set forth in MICC 15.14.090 and impose monetary penalties for violations of the inspection, testing and installation requirements in this chapter.

B. Water Service Termination and Monetary Penalties. In the event that the water purveyor, or his/her designee, determines that an unlawful cross-connection exists and/or that the consumer has failed to

1 meet the inspection and testing requirements for backflow preventers, the consumer shall be subject to  
2 the following penalties:

3 1. Warning. Written notice shall be sent to the consumer or, alternatively, a copy of such written  
4 notice shall be posted on the premises involved. The notice shall provide that the unlawful cross-  
5 connection shall be corrected by testing or installation within 30 days of the date the notice is  
6 mailed or posted on the premises.

7 2. First Violation. If the consumer does not correct the violation by testing or installation within 30  
8 days of the first written notice, the consumer shall ~~receive a \$100 penalty~~ be issued an infraction  
9 as provided in MICC 6.10.050 (C) and a ~~and~~ notice that water service to the premises may be  
10 terminated after 30 days.

11 3. Second Violation. If the consumer does not correct the violation by testing or installation within  
12 30 days of the issuance of the first ~~penalty~~ infraction, the consumer shall be issued a second  
13 infraction as provided in MICC 6.10.050 (C) ~~receive an additional \$150 penalty~~ and water service to  
14 the premises may be shut off immediately.

15 4. If the water purveyor determines that service should not be interrupted, the city may hire a  
16 contractor to abate the unlawful cross-connection as set forth in MICC 15.14.090. (Ord. 15C-09  
17 § 1; Ord. A-38 § 1, 1985).

18 ...

19 Chapter 17.14  
20 CONSTRUCTION ADMINISTRATIVE CODE

21 ...

22 SECTION 114

23 VIOLATIONS

24 114.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect,  
25 construct, alter, extend, repair, move, remove, demolish or occupy any building, structure  
26 or equipment regulated by the construction codes and the Construction Administrative  
27 Code, or cause same to be done, in conflict with or in violation of any of the provisions of  
28 the construction codes or the Construction Administrative Code.

1 114.2 Enforcement. Enforcement of the construction codes and the Construction  
2 Administrative Code shall be in conformance with the procedures set forth in ~~MICC Chapter~~  
3 ~~6.10 MICC19.15.030~~; provided, that references to the development code shall be deemed  
4 to refer to the Construction Administrative Code and the Construction Codes.

5 114.3 Enforcement Authority.

6 1. Development Services Group. The development services group of the city of Mercer  
7 Island shall be responsible for enforcement of the construction codes, under the  
8 administrative and operational control of the building official, who shall be designated by  
9 the code official (as defined by MICC [19.16.010](#)); provided, the fire code official or his or her  
10 designee shall be responsible for enforcement of the International Fire Code, IBC Chapter 9  
11 – Fire Protection Systems and IRC Appendix Q related to residential fire sprinklers.

12 2. Building Official. The building official is responsible for administration and interpretation  
13 of the Construction Administrative Code and the construction codes; provided, the fire code  
14 official or his or her designee shall be responsible for administration and interpretation of  
15 the fire code, IBC Chapter 9 – Fire Protection Systems and IRC Appendix Q related to  
16 residential fire sprinklers.

17 Whenever the term or title “administrative authority,” “responsible official,” “building  
18 official,” “chief inspector,” “code enforcement officer” or other similar designation is used  
19 in this title or in any of the construction codes, it shall be construed to mean the building  
20 official designated by the code official; provided, with regard to the International Fire Code,  
21 it shall mean the fire code official or his or her designee.

22 ...

23 Chapter 19.15  
24 ADMINISTRATION

25 **19.15.030 Enforcement.**

26 A. Violations.

27 1. It is a violation of the development code, MICC Title 19, for any person to initiate or maintain or  
28 cause to be initiated or maintained the use of any structure, land or real property within the city  
29 of Mercer Island without first obtaining proper permits or authorizations required for the use by  
30 the development code.

1 2. It is a violation of the development code for any person to use, construct, locate, demolish or  
2 cause to be used, constructed, located, or demolished any structure, land or property within the  
3 city of Mercer Island in any manner that is not permitted by the terms of any permit or  
4 authorization issued pursuant to the development code or previous codes.

5 3. It is a violation of the development code to misrepresent any material fact in any application,  
6 plans or other information submitted to obtain any land use authorization.

7 4. It is a violation of the development code for anyone to fail to comply with the requirements of  
8 the development code, as set out in the specific sections of the code.

9 5. Any person who violates any provision of this chapter may be issued a civil infraction, notice of  
10 violation, or other penalties as authorized by [Chapter 6.10 MICC Title 6](#).

11 ~~B. Duty to Enforce.~~

12 ~~1. It shall be the duty of the director of the development services group to enforce the~~  
13 ~~development code. The director may call upon the police, fire, health or other appropriate city~~  
14 ~~departments to assist in enforcement.~~

15 ~~2. Upon presentation of proper credentials, the director or duly authorized representative of the~~  
16 ~~director may, with the consent of the owner or occupier of a building or premises, or pursuant to~~  
17 ~~a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to~~  
18 ~~the consent or warrant to perform the duties imposed by the development code.~~

19 ~~3. The development code shall be enforced for the benefit of the health, safety and welfare of the~~  
20 ~~general public, and not for the benefit of any particular person or class of persons.~~

21 ~~4. It is the intent of the development code to place the obligation of complying with its~~  
22 ~~requirements upon the owner, occupier or other person responsible for the condition of the land~~  
23 ~~and buildings within the scope of this code.~~

24 ~~5. No provisions or term used in this code is intended to impose any duty upon the city or any of~~  
25 ~~its officers or employees, which would subject them to damages in a civil action.~~

26 ~~C. Investigation.~~

1 ~~1. The director or his/her designee, shall investigate any structure or use which the director~~  
2 ~~reasonably believes does not comply with the standards and requirements of this development~~  
3 ~~code.~~

4 ~~2. If, after investigation, the director determines that the standards or requirements have been~~  
5 ~~violated, the director shall serve a notice of violation upon the owner, tenant or other person~~  
6 ~~responsible for the condition. The notice of violation shall state separately each standard or~~  
7 ~~requirement violated; shall state what corrective action, if any, is necessary to comply with the~~  
8 ~~standards or requirements; and shall set a reasonable time for compliance. The notice shall state~~  
9 ~~that any further violation may result in criminal prosecution and civil penalties.~~

10 ~~3. The notice shall be served upon the owner, tenant or other person responsible for the condition~~  
11 ~~by personal service, registered mail, or certified mail with return receipt requested addressed to~~  
12 ~~the last known address of such person. If, after a reasonable search and reasonable efforts are~~  
13 ~~made to obtain service, the whereabouts of the person or persons is unknown or service cannot~~  
14 ~~be accomplished and the director makes an affidavit to that effect, then service of the notice upon~~  
15 ~~such person or persons may be made by publication and mailing to the last known address.~~

16 ~~D. Stop Work/Emergency Orders.~~

17 ~~1. Stop Work Order. Whenever a continuing violation of the development code will materially~~  
18 ~~impair the director's ability to secure compliance with this code, or when the continuing violation~~  
19 ~~threatens the health or safety of the public, the director may issue a stop work order specifying~~  
20 ~~the violation and prohibiting any work or other activity at the site. A failure to comply with a stop~~  
21 ~~work order shall constitute a violation of this development code.~~

22 ~~2. Emergency Order. Whenever any use or activity in violation of this code threatens the health~~  
23 ~~and safety of the occupants of the premises or any member of the public, the director may issue~~  
24 ~~an emergency order directing that the use or activity be discontinued and the condition causing~~  
25 ~~the threat to the public health and safety be corrected. The emergency order shall specify the~~  
26 ~~time for compliance and shall be posted in a conspicuous place on the property, if posting is~~  
27 ~~physically possible. A failure to comply with an emergency order shall constitute a violation of this~~  
28 ~~development code.~~

29 ~~3. Any condition described in the emergency order which is not corrected within the time~~  
30 ~~specified is hereby declared to be a public nuisance and the director is authorized to abate such~~  
31 ~~nuisance summarily by such means as may be available. If the city declines to bring an abatement~~  
32 ~~action, then such action may be brought by any person who owns or resides on property within~~

1           ~~300 feet of the structure or whose use and enjoyment of property is impaired by the structure or~~  
2           ~~use complained of.~~

3   ~~E. Extension of Compliance Date.~~

4           ~~1. The director may grant a reasonable extension of time for compliance with any notice or order,~~  
5           ~~whether pending or final, upon the director's finding that substantial progress toward compliance~~  
6           ~~has been made and that the public will not be adversely affected by the extension. Such extension~~  
7           ~~of time shall not exceed 180 days.~~

8           ~~2. An extension of time may be revoked by the director if it is shown that the conditions at the~~  
9           ~~time the extension was granted have changed, the director determines that a party is not~~  
10           ~~performing corrective actions as agreed, or if the extension creates an adverse effect on the~~  
11           ~~public. The date of revocation shall then be considered as the compliance date.~~

12   ~~F. Civil Penalty.~~

13           ~~1. In addition to any other sanction or remedial procedure which may be available, any person~~  
14           ~~violating or failing to comply with any of the provisions of the development code, stop work order~~  
15           ~~or emergency order shall be subject to a cumulative monetary penalty. Each separate day of~~  
16           ~~noncompliance shall be a separate and distinct violation of the development code and shall be~~  
17           ~~subject to a separate notice of civil infraction. The penalty shall be:~~

18                   ~~a. Fifty dollars (\$50) for the first day of noncompliance after the compliance date set in the~~  
19                   ~~notice.~~

20                   ~~b. Seventy-five dollars (\$75) for the second day of noncompliance after the compliance date~~  
21                   ~~set in the notice.~~

22                   ~~c. One hundred dollars (\$100) for the third and each following additional day of~~  
23                   ~~noncompliance after the compliance date set in the notice.~~

24           ~~2. The penalty imposed by this section shall be collected by notice of civil infraction, as authorized~~  
25           ~~by Chapter 7.80 RCW.~~

26           ~~3. The director of development services, and his/her designees, are the authorized enforcement~~  
27           ~~officers for purposes of issuing a notice of infraction for violation of the development code.~~

1 ~~4. A notice of infraction issued under this section represents a determination that a civil infraction~~  
2 ~~has been committed, and the determination is final unless contested.~~

3 ~~5. The city's notice of infraction shall include the following:~~

4 ~~a. A statement that the notice represents a determination that a civil infraction has been~~  
5 ~~committed by the person named and the determination is final unless contested.~~

6 ~~b. A statement that a civil infraction is a noncriminal offense for which imprisonment may~~  
7 ~~not be imposed.~~

8 ~~c. A statement of the specific violation of the development code for which the notice is~~  
9 ~~issued.~~

10 ~~d. A statement of the monetary penalty for the violation.~~

11 ~~e. A statement of the options available for responding to the notice of infraction and the~~  
12 ~~procedures necessary to exercise those options.~~

13 ~~f. A statement that at the hearing to contest the notice the city has the burden of proving, by~~  
14 ~~a preponderance of the evidence, that the civil infraction was committed and that the~~  
15 ~~person may subpoena witnesses, including the enforcement officer issuing the notice.~~

16 ~~g. A statement that at any hearing requested to explain mitigating circumstances~~  
17 ~~surrounding the commission of the civil infraction, the person will be deemed to have~~  
18 ~~committed the infraction and may not subpoena witnesses.~~

19 ~~h. A statement that the person must respond to the notice within 14 days.~~

20 ~~i. A statement that failure to respond to the notice or to appear at a hearing, if requested,~~  
21 ~~will result in a default judgment in the amount of the penalty and may be referred for~~  
22 ~~criminal prosecution for failure to appear.~~

23 ~~j. A statement, which the person shall sign, that the person promises to respond to the~~  
24 ~~notice of civil infraction in one of the ways set forth in this section.~~

25 ~~6. Any person who receives a notice of infraction for violation of the development code shall~~  
26 ~~respond to the notice as provided in this section within 14 days of the date of the notice.~~

1 a. If the person does not contest the determination, he/she shall respond by completing the  
2 appropriate portion of the notice and sending it, with a check or money order in the amount  
3 of the penalty, to the court specified on the notice.

4 b. If the person wishes to contest the civil infraction, the person shall complete the portion  
5 of the notice requesting a hearing and submit it to the court specified on the notice. The  
6 court shall notify the person of the time and place of the hearing.

7 c. If the person does not contest the violation but wishes to explain mitigating circumstances  
8 surrounding the violation, the person shall complete the portion of notice requesting a  
9 hearing for that purpose and submit it to the court specified on the notice. The court shall  
10 notify the person of the time and place of the hearing.

11 d. The court shall enter a default judgment for the amount of the penalty for the civil  
12 infraction if a person fails to respond within 15 days or to appear at the hearing.

13 7. The violator may show as full or partial mitigation of the infraction:

14 a. That the violation giving rise to the action was caused by the willful act, or neglect, or  
15 abuse of another; or

16 b. That correction of the violation was commenced promptly upon receipt of the notice  
17 thereof, but that full compliance within the time specified was prevented by inability to  
18 obtain necessary materials or labor, inability to gain access to the subject structure, or other  
19 condition or circumstance beyond the control of the defendant.

20 8. Failure to respond to a civil citation within 14 days or to appear for a requested hearing is a  
21 misdemeanor, punishable by fine or imprisonment in jail.

22 G. Criminal Penalties. Any person violating or failing to comply with any of the provisions of this  
23 development code shall be subject to criminal prosecution and upon conviction shall be fined in a sum  
24 not exceeding \$1,000 or be imprisoned in the city jail for a term not exceeding 90 days or be both fined  
25 and imprisoned. Each day of noncompliance with any of the provisions of this development code shall  
26 constitute a separate offense. However, the aggregate penalty for all days of noncompliance shall not  
27 exceed \$5,000 or one year in the city jail.

28 H. Additional Relief. The director may seek legal or equitable relief to enjoin any actions or practices and  
29 abate any condition which constitutes or will constitute a violation of this development code when civil  
30 or criminal penalties are inadequate to effect compliance. (Ord. 99C-13 § 1).