ORDINANCE NO. 2015-953

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 18.108 OF THE DEER PARK MUNICIPAL CODE RELATED TO ENFORCEMENT AND ABATEMENT OF ZONING CODE VIOLATIONS; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, in 2010, the City established a hearing examiner system; and

WHEREAS, in 2011, the City terminated its municipal court system and entered into a contractual relationship with Spokane County for court services; and

WHEREAS, the aforementioned procedural changes in the City necessitated revisions to multiple City Code provisions to conform those provisions to the new hearing examiner and court procedures; and

WHEREAS, the enforcement and abatement of zoning code violations are among the code provisions that need revision; and

WHEREAS, upon the recommendation of City staff, amendments should be made to Chapter 18.108 of the Deer Park Municipal Code ("DPMC") as set forth in this Ordinance in order to conform procedures to the current City enforcement processes to clarify and simplify procedures for enforcing and/or abating zoning code violations in the City; and

WHEREAS, the City Planning Commission has reviewed this Ordinance and on the 27th day of April, 2015, held a Public Hearing to consider the changes to the zoning code set forth in this Ordinance; and

WHEREAS, the City complied with the requirements of RCW 36.70A.106 and provided a copy of this Ordinance to the State of Washington Department of Commerce for review and comment; and

WHEREAS, following the Public Hearing of the Planning Commission, and after reviewing the Planning Commission's Findings, Conclusions and Recommendations as set forth in the minutes of the Planning Commission, the City Council has considered this matter at an Open Public Meeting of the Council and held a public hearing on the 20th day of May, 2015, and has determined that adoption of the zoning code amendments set forth in this Ordinance are in the best interest of the public health, safety and welfare of the citizens of the City of Deer Park and approves the recommendations of the Planning Commission as set forth in this Ordinance; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Chapter 18.108 of the Deer Park Municipal Code is hereby amended to read as follows:

Chapter 18.108
ENFORCEMENT AND PENALTIES

Sections:

18.108.010 Definitions.
18.108.020 Enforcement, authority and administration.
18.108.050 Procedures when violation is identified.
18.108.070 Obligations of persons responsible for zoning title violations.
18.108.080 Determination of compliance.
18.108.090 Voluntary compliance agreement – Authority.
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18.108.110 Failure to comply with terms of voluntary compliance agreement.
18.108.170 Notice of civil violation – Authority.
18.108.180 Notice of civil violation – Effect.

18.108.190 Notice of civil violation – Contents - Service - Enforcement.
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18.108.250 Abatement by city.
18.108.260 Stop work order – Authorized.
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18.108.300 Civil penalties – Assessment schedule.
18.108.310 Civil penalties – Duty to comply.
18.108.330 Civil penalties – Critical areas.
18.108.350 Collection of civil penalties, fees and costs.
18.108.360 Abatement.
18.108.370 Zoning title compliance abatement fund – Authorized.

18.108.010 Definitions.

As used in this chapter, the following words and terms shall have the following meanings:

A. "Abate" and "abatement" mean to take whatever corrective actions are deemed necessary to ensure that the property complies with applicable zoning title requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.

B. "City" means the city of Deer Park, Washington, acting by and through the authorized representatives and agents thereof, as designated by the mayor.

C. "Days" means business days when five or less days are allowed to do an act required by this chapter. "Days" means calendar days when more than five days are allowed to do an act required by this chapter.

D. "Enforcement officer" means the code enforcement officer of the city or his or her authorized designee.

E. "Mitigate" means to take measures, subject to city approval, to minimize the harmful effects of the zoning violation where remediation is either impossible or unreasonably burdensome.

F. "Permit" means any form of certificate, approval, registration, license or any other written permission issued by the city. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map, which are intended to serve or protect the general public, are deemed conditions applicable to all subsequent plat property owners, owners' tenants, and owners' agents as permit requirements enforceable under this title.

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

H. "Person responsible for the zoning violation" means the person who caused the zoning violation, if that can be determined, and/or the owner, lessor, tenant or other person entitled to any degree of control, use, and/or occupancy of the property where the zoning title violation occurs.

I. "Remediate" means to restore a site to a condition that complies with regulatory requirements as they existed before the zoning violation occurred; or, for sites that have been degraded under prior ownership, to restore to a condition which does not pose a probable threat to the environment or to the general public health, safety or welfare.

J. "Zoning title violation" or "zoning violation" means and includes an act or omission contrary to:

1. Any ordinance, resolution, regulation, policy, or other rule of the city that regulates or protects the use or development of land and critical areas; and/or

2. The conditions of any permit, notice of civil violation, decision or order, or stop work order issued pursuant to any such ordinance, resolution, regulation, policy, or other rule of the city that regulates or protects the use or development of land and critical areas.

18.108.020 Enforcement, authority and administration.

A. The procedures identified herein are not listed in any particular order and any of them may be applied or implemented, as the city determines appropriate, when a zoning violation has been identified by the city.

B. In order to discourage public nuisances and otherwise promote compliance with applicable zoning title provisions, the city may, in response to field observations, complaints, witness statements, relevant documents and data systems for tracking violations, and applicable city zoning provisions, determine that a zoning violation has occurred or is occurring, and may:

1. Enter into voluntary compliance agreements with the person(s) responsible for the zoning violation;

2. If the person(s) responsible for the zoning violation declines to enter into a voluntary compliance agreement, or attempts to enter into a voluntary compliance agreement are not required pursuant to other provisions of this chapter, issue a notice of civil violation with orders for abatement, remediation, mitigation, or other correction, and provide for an appeal before the hearing examiner;

3. If such abatement, remediation, mitigation, or correction is not timely completed by the person(s) responsible for the zoning violation as required by the voluntary compliance agreement or notice of civil violation, assess penalties to the person responsible for the violation, undertake the abatement, and charge the reasonable costs of such work as authorized by this chapter;

5. Order work stopped at a site by means of a stop work order, and if such order is not complied with, assess civil penalties as authorized by this chapter; and/or

6. Suspend, revoke or modify any permit previously issued by the city or deny a permit application as authorized by this chapter when other efforts to achieve compliance have failed.

C. The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the city from remedying or abating zoning violations in any other manner authorized by law.

D. In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the city may seek legal or equitable relief to abate any conditions or enjoin any acts or practices which constitute a zoning violation.

E. In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the city may assess or recover civil penalties accruing under this chapter by legal action.

F. The provisions of this chapter shall in no way adversely affect the rights of the owner, lessee, or occupant of any property to recover all costs and expenses incurred and required by this chapter from any person responsible for the zoning violation on or affecting the property.

G. In administering the provisions for zoning title enforcement, the city shall have the authority to waive any one or more such provisions, including assessment of penalties, so as to avoid substantial injustice by application thereof to the acts or omissions of any person, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a zoning violation. Any determination of substantial injustice shall be made by the city in its sole discretion on a case by case basis.

H. The provisions of this chapter detailing the administration of zoning title compliance procedures are intended only for the purpose of providing guidance to city employees and are not jurisdictional, and are not to be construed as creating a basis for appeal or a defense of any kind to an alleged zoning title violation.

I. The city may, upon presentation of proper credentials, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued court order or inspection warrant, enter at reasonable times any building or premises, subject to the consent, order, or warrant, to perform the duties imposed by this chapter.

J. The city may request that the county sheriff, local fire district, Spokane Regional Health District, or other appropriate city department or other non-city agency assist in enforcement.

18.108.050 Procedures when violation is identified.

A. The city shall determine, based upon information derived from sources including but not limited to field observations, complaints, statements of witnesses, relevant documents and data systems for tracking violations, and applicable city zoning code provisions, ordinances, resolutions, regulations, policies, permit conditions, stop work orders, administrative provisions, or other rules, whether or not a zoning violation has occurred. In the event the city determines that a zoning violation has occurred, the city's code enforcement officer shall document the zoning violation and promptly notify the person(s) responsible for the zoning violation of the violation and attempt to gain voluntary compliance by the person responsible for the zoning violation to promptly abate, remediate, mitigate, and otherwise correct the zoning violation as deemed appropriate by the enforcement officer.

B. If the zoning violation is not abated, remediated, mitigated or otherwise corrected, or a voluntary compliance agreement is not executed within a reasonable time, as determined by the city, following notification by the city, or if the violation qualifies for an exemption from the requirement to pursue voluntary compliance pursuant to other provisions of this chapter, a notice of civil violation and/or stop work order may be issued. Stop work orders may also be issued promptly upon discovery of a zoning violation in progress.

18.108.070 Obligations of persons responsible for zoning title violations.

A. It shall be the responsibility of each person responsible for the zoning title violation, as identified by the city, to bring the property into a safe and reasonable condition to achieve zoning title compliance. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing the corrective work required by the city and having the property brought into compliance to the extent reasonably possible under the circumstances.

B. Any person(s) responsible for the zoning title violation pursuant to a notice of civil violation shall be liable for the payment of any civil penalties and abatement costs; provided, however, that if a property owner affirmatively demonstrates that the action which resulted in the zoning violation was taken without the owner's knowledge or consent by someone other than the owner or someone acting on the owner's behalf, that owner shall be responsible only for bringing the property into compliance to the extent reasonably feasible under the circumstances as determined by the city. Should the owner not abate or correct the violation as required by the city, only those abatement costs necessary to bring the property into a safe and reasonable condition, as determined by the city, shall be assessed by the city.

18.108.080 Determination of compliance.

After issuance of a voluntary compliance agreement, notice of civil violation, or stop work order, and after the person(s) responsible for the zoning violation has come into compliance, as determined by the city, the city shall issue a written determination of compliance to the person(s) responsible for the violation. The city shall mail copies of the determination of compliance to each person originally named in the voluntary compliance agreement, notice of civil violation, and/or stop work order.

18.108.090 Voluntary compliance agreement – Authority.

A. Whenever the city determines that a zoning title violation has occurred or is occurring, the city shall make reasonable efforts to secure voluntary compliance from the person(s) responsible for the zoning violation. Upon contacting the person(s) responsible for the zoning violation, the city may enter into a voluntary compliance agreement as provided for in this chapter.

B. A voluntary compliance agreement may be entered into at any time after the city determines that a zoning violation exists.

C. Upon entering into a voluntary compliance agreement, the person responsible for the zoning violation waives the right to administratively appeal the zoning violation and/or the corrective action set forth in the voluntary compliance agreement.

D. The voluntary compliance agreement shall incorporate the shortest reasonable time period for compliance, as determined by the city. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the city if the person responsible for the zoning violation has shown due diligence or substantial progress in correcting the violation, but circumstances render full and timely compliance, under the original conditions, unattainable. Any such extension or modification must be in writing and signed by the city enforcement officer and person(s) who signed the original voluntary compliance agreement.

E. The city shall have the right to inspect the subject property to determine compliance with the terms of the voluntary compliance agreement.

F. If the terms of the voluntary compliance agreement are not met, the city may abate the zoning violation and/or assess penalties to the person responsible for the zoning violation as authorized by the terms of the voluntary compliance agreement and/or this chapter.

18.108.100 Voluntary compliance agreement – Contents.

The voluntary compliance agreement is a written, signed commitment by the person(s) responsible for the zoning title violation in which such person(s) agrees to abate the violation, remediate the site, mitigate the impacts of the violation, and/or take other corrective action, all as required by the city. A voluntary compliance agreement may also be referred to as a voluntary correction agreement. The voluntary compliance agreement shall include the following:

A. The name and address of the person responsible for the zoning title violation;

B. The tax parcel number and street address or other identification or description of the location of the zoning violation;

C. A description of the zoning violation and a reference to the provision(s) of the ordinance (codified or not), resolution, regulation, rule, policy, permit condition, stop work order, or administrative decision that has been violated;

D. A description of the necessary abatement, mitigation, remediation, and/or other corrective action to be taken, and identification of the date or time by which such action must be completed and compliance achieved;

E. An agreement by the person responsible for the zoning violation that the city may inspect the property as may be necessary to determine compliance with the voluntary correction agreement;

F. The amount of civil penalties that will be imposed if the voluntary compliance agreement required corrective action does not timely occur;

G. An acknowledgement or agreement that, if the city determines that the terms of the voluntary compliance agreement are not met, the city may assess monetary penalties pursuant to this chapter to the person responsible for the zoning violation, and abate the zoning violation and recover its costs and expenses, including attorneys' fees from said person, all as additional civil monetary penalties;

H. An acknowledgement or agreement that if a penalty is assessed or cost is incurred by the city to abate the zoning violation, and if any assessed penalty, fee or cost is not paid, the city may charge the unpaid amount as a lien against the property where the zoning title violation occurred if the property is owned by the person responsible for the zoning title violation;

I. An acknowledgement or agreement that, by entering into the voluntary compliance agreement, the person responsible for the zoning violation waives the right to appeal the zoning violation and/or the required corrective action; and

J. An acknowledgement or agreement that, if the city determines that the terms of the voluntary compliance agreement are not met, the city may pursue any other remedy authorized by this chapter or by law.

18.108.110 Failure to comply with terms of voluntary compliance agreement.

If the terms of the voluntary compliance agreement are not completely met, as determined by the city in its sole discretion, and an extension of time has not been granted, the city may take any or all of the following actions:

A. Without court order, enter the real property and abate the violation and assess all costs of abatement, including attorneys fees, to the person responsible for the zoning violation as further set forth in this chapter;

B. Without issuance of a notice of civil violation, assess civil penalties, as set forth in this chapter, to the person responsible for the zoning violation. Penalties imposed when a voluntary compliance agreement is not complied with shall accrue from the date that the abatement or corrective action was required to be completed in the voluntary compliance agreement;

C. Issue a notice of civil violation or stop work order for failure to comply with the terms of a voluntary compliance agreement; and

D. Pursue any other remedy authorized by this chapter or by law.

18.108.170 Notice of civil violation – Authority.

When the city enforcement officer determines that a zoning title violation exists, or has occurred, and is unable to secure voluntary compliance pursuant to other provisions in this chapter, the enforcement officer is authorized to issue a notice of civil violation to any person(s) responsible for the zoning title violation. The enforcement officer may issue a notice of civil violation without having attempted to secure voluntary compliance under the following circumstances:

A. When an emergency exists; or

B. When a repeat zoning violation occurs; or

C. When the person responsible for the zoning violation knows or reasonably should have known that a zoning violation is occurring; or

D. When the code enforcement officer is unable to establish communication with the person responsible for the zoning violation as determined by the code enforcement officer.

18.108.180 Notice of civil violation – Effect.

A. A notice of civil violation represents a determination by the city that a zoning violation has occurred, that the party to whom the notice is issued is a person responsible for the zoning violation, that the zoning violations identified in the notice of civil violation requires abatement, mitigation, remediation or other correction, and that failure to take such corrective action may further subject the person(s) responsible for the violation to the assessment of penalties and other remedies authorized by this chapter and specified in the notice.

B. Upon a determination by the enforcement officer that a violation has occurred pursuant to a notice of civil violation, the city is authorized to order abatement, mitigation, remediation, and/or other correction of the zoning violation and to impose civil penalties on the person(s) responsible

for the zoning violation if correction of the zoning violation is not timely achieved as directed by the city.

C. Any person responsible for the zoning violation, as determined by the city and identified in the notice of civil violation, shall have the opportunity to appeal the notice of civil violation to the Hearing Examiner as set forth in Section 18.108.215 DPMC. Failure to appeal the notice of civil violation shall render the notice of civil violation a final determination that the conditions described in the notice of civil violation exist and constitute a zoning violation, and that the named party is liable as a person responsible for the zoning violation.

D. Issuance of a notice of civil violation in no way limits the city's authority to issue a stop work order or to enter into a voluntary compliance agreement with the person responsible for the zoning violation.

18.108.190 Notice of civil violation – Contents- Service - Enforcement.

A. The notice of civil violation shall contain the following information:

1. The name and address of each property owner of record, and any other person the city has determined is a person responsible for the zoning violation;

2. The tax parcel number and street address, legal description, or other information or description sufficient for identification of the property upon which the zoning violation is located;

3. A brief description of the zoning violation(s) found, including, to the extent possible, references to applicable provisions of any city code provisions, ordinances, resolutions, regulations, rules, policies, permit conditions, stop work orders, administrative provisions, or other rules that are being violated;

4. The required corrective action (i.e. abatement, mitigation, remediation, or other corrective action) and a date and time by which the correction must be completed and compliance achieved, after which the city may assess civil penalties, and abate the zoning violation in accordance with other provisions of this chapter;

5. A statement advising the person responsible for the zoning violation of the right to appeal the notice of civil violation to the Hearing Examiner within 15 days of the date of service of the notice, and further advising that failure to timely appeal the notice of civil violation to the Hearing Examiner within 15 days will render the notice of civil violation final, and the person will not be entitled to enter evidence that the person complied with the notice or that the condition of the property is not a violation of this chapter in any subsequent action filed by the city in the Spokane County Superior Court to enforce the notice;

6. A statement advising that, in the event the person responsible for the zoning violation fails or refuses to complete the corrective action (i.e. abatement, remediation, mitigation, or other

corrective action) by the date specified in the notice of civil violation, civil penalties in the amounts set forth in other provisions of this chapter will be imposed by the city and will be requested to be ordered paid by the Hearing Examiner on appeal or by the Spokane County Superior Court (if no appeal is filed) together with the costs and expenses of abatement incurred by the city as authorized by other provisions of this chapter for failure to timely correct or abate the zoning violation that may be assessed against the person to whom the notice of civil violation is issued;

7. A warning: "the failure or refusal to complete the corrective action by the date required will result in enforcement action and civil penalties as provided in chapter 18.108 DPMC";

8. A statement advising that the notice of civil violation may be recorded against the property in the Spokane County auditor's office subsequent to service; and

9. A statement advising that a failure to correct the violations cited in the notice of civil violation could lead to denial of subsequent City permit applications related to the subject property.

B. The enforcement officer shall cause the notice of civil violation to be served upon those persons identified in Subsection (A)(1) of this Section, either personally or by mailing, certified, return receipt requested, a copy of the notice of civil violation to such person at his/her last known address. If the person to whom the notice is issued cannot, after due diligence, be personally served within Spokane County, and if an address for mailed service cannot, after due diligence, be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected premises or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

C. In the event the person responsible for the zoning violation fails to timely abate, remediate, mitigate, or otherwise correct the zoning violation as required by the notice of civil violation, the city may assess civil penalties to the person responsible for the zoning violation in the monetary amounts authorized in other provisions of this chapter. In addition, the city may enforce the notice of civil violation by filing an action in the Spokane County Superior Court and recover civil monetary penalties imposed by the city and all related expenses incurred by the city, including attorney fees, court costs, and abatement costs, which shall collectively be considered civil monetary penalties ordered to be paid by the court.

18.108.200 Notice of civil violation – Recording.

A. When a notice of civil violation is served on a person responsible for the zoning violation, the city may elect to record a copy of the same with the Spokane County auditor's office.

B. If the city elects to record a copy of the notice of civil violation with the Spokane County auditor's office, when all violations specified in the notice of civil violation have been abated,

remediated, mitigated, or otherwise corrected to the satisfaction of the city, the city shall record a certificate of compliance with the Spokane County auditor's office.

18.108.210 Notice of civil violation – Supplementation, revocation, modification.

A. The city may add to, revoke in whole or in part, or otherwise modify a notice of civil violation by issuing a written supplemental notice of civil violation. The supplemental notice of civil violation shall be governed by the same procedures and time limits applicable to all notices of civil violation contained in this chapter.

B. The city may issue a supplemental/modified notice of civil violation, or revoke a notice of civil violation issued under this chapter:

1. If the city determines the original notice of civil violation was issued in error; or

2. Whenever there is new information or a change of circumstances that the city deems should warrant issuance of a supplemental or amended notice.

C. Such supplementation, modification or revocation shall identify the reasons and underlying facts for supplementation, modification or revocation, and shall be recorded with the Spokane County auditor's office, if the city recorded the original notice of civil violation.

18.108.215 Hearing before the Hearing Examiner

A. A person to whom a notice of civil violation is issued may appeal the notice to the city Hearing Examiner. The appeal must be in writing and must be filed with the City Clerk-Treasurer within 15 days of the date of service of the notice of civil violation.

B. Any hearing on the appeal before the Hearing Examiner will be scheduled to occur no less than ten (10) days and no more than forty (40) days from the date of receipt of the written appeal by the city. The Hearing Examiner may continue the hearing beyond forty days from the date of receipt of the appeal if reasonably required by the Hearing Examiner or agreed to by the city and person appealing the notice of civil violation.

C. The Hearing Examiner shall conduct a hearing on the notice of civil violation pursuant to the then-current applicable rules of proceeding before the Hearing Examiner. The enforcement officer and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a zoning violation occurred or exists and that the city required corrective action (i.e. abatement, remediation, mitigation, or other corrective action) is reasonable under the circumstances. The determination of the enforcement officer as to the need for the required corrective action shall be accorded substantial weight by the Hearing Examiner in determining the reasonableness of the required corrective action.

D. Decision of the Hearing Examiner.

1. The Hearing Examiner shall determine and enter written findings as to whether the city has established by a preponderance of the evidence that a zoning violation occurred or exists and that the required correction is reasonable under the circumstances, and shall affirm, vacate, or modify the city's decisions regarding the alleged zoning violation and/or the required corrective action, with or without written conditions.

2. The Hearing Examiner shall issue an order to the person responsible for the zoning violation which contains the following information:

a. The decision regarding the alleged zoning violation, including findings of fact and conclusions based thereon in support of the decision;

b. The required corrective action;

c. The date and time by which the correction must be completed and compliance achieved;

d. The monetary penalties assessed based on the criteria in subsection (D)(3) of this section; and

e. The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

3. Assessment of Monetary Penalty. The Hearing Examiner shall be authorized to impose monetary penalties assessed or requested by the City in accordance with other provisions in this chapter and as further set forth in this section.

a. The Hearing Examiner shall have the following options in assessing monetary penalties:

i. Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter;

ii. Assess monetary penalties beginning on the correction date set by the enforcement officer or an alternate correction date set by the hearing examiner and thereafter;

iii. Assess less than the established monetary penalty set forth in this chapter and/or proposed to be assessed by the enforcement officer for failure to comply with the notice of civil violation based on the criteria of subsection (D)(3)(b) of this section; or

iv. Assess no monetary penalties.

b. In determining the monetary penalty assessment, the Hearing Examiner may consider the following factors:

i. Whether the person responded to the enforcement officer's attempts to contact the person, and cooperated to correct the zoning violation;

ii. Whether the violation was a repeat zoning violation;

iii. Whether the person showed due diligence and/or substantial progress in correcting the zoning violation; and

iv. Any other relevant factors.

c. The Hearing Examiner may double the monetary penalty schedule if the zoning violation is a repeat violation. In determining the amount of the monetary penalty for repeat violations the Hearing Examiner shall consider the factors set forth in subsection (D)(3)(b) of this section.

E. The city may enforce the Hearing Examiner's order and recover all related expenses incurred by the city, including attorney fees, costs of the hearing (including the fees paid to the Hearing Examiner), and any monetary penalty from that person, which shall collectively be considered civil monetary penalties ordered to be paid by the Hearing Examiner.

F. Any appeal of the Hearing Examiner's order shall be filed with the Spokane County Superior Court and served on the City Clerk-Treasurer within 21 calendar days from the date of the Hearing Examiner's order.

18.108.230 Suspension, revocation or limitation of permit for abatement.

A. The city may suspend, revoke or modify any permit issued by the city for implementation of any corrective action required by a voluntary compliance agreement, notice of civil violation, stop work order, or otherwise issued, whenever:

1. The permit holder has committed a violation in the course of performing activities subject to that permit;

2. The permit holder has interfered with the authorized representative(s) of the city in the performance of his or her duties related to that permit;

3. The permit was issued in error or on the basis of materially incorrect information supplied to the city;

4. Permit fees or costs were paid to the city by check and returned from a financial institution marked nonsufficient funds (NSF) or canceled; or

5. For a permit or approval that is subject to critical area review, if the applicant has failed to disclose a change of circumstances on the development proposal which materially affects an applicant's ability to meet the permit or approval conditions, or which makes inaccurate the critical area study that was the basis for establishing permit or approval conditions.

B. Such suspension, revocation, or modification shall be carried out through the notice of civil violation provisions of this chapter and shall be effective upon the compliance date established by the notice of civil violation. Such suspension, revocation, or modification may be appealed to the Hearing Examiner using the appeal provisions of this chapter applicable to notices of civil violation.

C. Notwithstanding any other provision of this chapter, the city may immediately suspend operations under any permit by issuing a stop work order.

18.108.240 Application for permit - Denials.

A. As further set forth herein, permits or approvals may be granted to the extent necessary to accomplish any abatement, remediation, mitigation or other correction of a zoning violation required by the city pursuant to this chapter. The city shall have sole discretion to determine whether the means or actions proposed in the permit application to correct the zoning violation are acceptable, or whether additional or alternative actions may be required for permit approval. The city will not issue a permit until the application sets forth means or actions to correct the zoning violation that are acceptable to the city. A permit for abatement, remediation, mitigation or other correction of a zoning violation may subsequently be suspended, revoked, or modified as authorized by DPMC 18.108.230.

B. The city may deny a building or development permit when, with regard to the site or project for which the permit is submitted:

1. Any person owning the property or submitting the development proposal or permit application has been found in violation of any city code provision, ordinance, resolution, regulation, policy, permit condition, stop work order, administrative decision, or other rule of the city that regulates or protects the public health, safety and welfare, or the use and development of land and critical areas; and/or

2. Any person owning the property or submitting the development proposal or permit application has been found in violation and remains in violation of the conditions of any permit, notice of civil violation, or stop work order issued pursuant to any such city code provision, ordinance, resolution, regulation, policy, permit condition, stop work order, administrative decision, or other rule.

C. In the event a building or development permit is denied, such denial may continue until the violation is cured and accepted as complete by the city, and until payment in full of any civil penalty, if any, imposed by the city for the violation.

18.108.250 Abatement by City.

A. The city may abate a zoning violation when:

1. The terms of a voluntary compliance agreement entered into pursuant to this chapter have not been satisfied; or

2. A notice of civil violation has been issued pursuant to this chapter and (i) the person to whom the notice was directed did not timely appeal the notice, or after an appeal, the Hearing Examiner required correction was not completed by the date specified in the Hearing Examiner's order, and (ii) the City obtains an order from the Spokane County Superior Court authorizing the abatement activity to occur; or

3. The condition is subject to summary abatement as provided for in subsection B of this section.

B. Whenever a zoning violation is occurring which constitutes an immediate and emergent threat to the public health, safety, or welfare, or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the zoning violation and the property owner (if a different person) as soon as reasonably possible after the abatement.

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

D. The costs, including incidental expenses, of correcting the zoning violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use, and/or occupy the premises and shall become due and payable to the city within 20 calendar days following billing. In any action brought by the city in Spokane County Superior Court to enforce a voluntary compliance agreement, a notice of civil violation that was not the subject of an appeal to the city Hearing Examiner, or an order of a Hearing Examiner, the city shall be entitled to the entry of an order or orders awarding the city judgments for its costs and incidental expenses identified in this section as additional civil monetary penalties. The term "incidental expenses" includes but is not limited to:

1. City personnel and out-of-pocket costs, both direct and indirect, incurred by the city and related to the enforcement action;

2. All actual reasonable attorneys fees and costs incurred by the city and related to the enforcement action;

3. Costs incurred in documenting the zoning violation;

4. Construction, demolition, hauling, storage and disposal expenses;

5. Actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work;

6. Hearing Examiner costs and expenses including all time spent by the Hearing Examiner as billed to the city; and

7. The costs of any required personal service, printing, and mailing.

E. Obstruction Violation. Any person who knowingly obstructs, impedes, or interferes with the city or its agents, or with a person responsible for the zoning violation in the performance of duties imposed by this chapter, or an order issued by the Hearing Examiner, or an agreement between the city and a person responsible for the zoning violation, shall be deemed to have committed a civil infraction and shall be subject to the penalties as set forth in DPMC 1.16.020.

18.108.260 Stop work order – Authorized.

The city is authorized to issue a stop work order to a person responsible for a zoning violation. Issuance of a notice of civil violation is not a condition precedent to the issuance of a stop work order.

18.108.270 Stop work order – Effect.

A. A stop work order represents a determination that a zoning title violation has occurred or is occurring, and that any work or activity that caused, is causing, or contributing to the violation on the property where the violation has occurred, or is occurring, must cease.

B. A stop work order requires the immediate cessation of the specified work or activity on the named property. Work activity may not resume unless specifically authorized in writing by the city.

C. A stop work order may be appealed according to the procedures prescribed in this chapter for appeals of notices of civil violations.

D. Failure to appeal the stop work order within the timelines established in this chapter for appeals of civil violations to the Hearing Examiner renders the stop work order a final determination that the civil zoning title violation occurred and that work was properly ordered to cease.

E. A stop work order will be enforced by the city's enforcement officer; however, the city may request the assistance of the county sheriff.

18.108.275 Stop work order - Service.

A. Service of a stop work order on any person responsible for the zoning title violation may be made by posting the stop work order in a conspicuous place on the property where the zoning violation occurred or by serving the stop work order in any other manner permitted for service of a notice of civil violation in this chapter.

B. The failure of the city to make or attempt service on any person named in the stop work order, shall not invalidate any proceedings as to any other person duly served.

18.108.280 Stop work order – Remedy – Civil penalties.

A. In addition to any other judicial or administrative remedy, the city may assess civil penalties for the violation of any stop work order according to the civil penalty schedule authorized in this chapter.

B. Civil penalties for the violation of any stop work order shall begin to accrue on the first day the stop work order is violated and shall cease accruing on the day the work is actually stopped.

C. Violation of a stop work order shall be a separate violation from any other zoning title violation.

18.108.300 Civil penalties – Assessment schedule.

A. Civil penalties for zoning title violations may be imposed for remedial purposes for each zoning violation identified in a voluntary compliance agreement, notice of violation, or stop work order. Monetary penalties may be assessed by the city for each day that a zoning violation occurs or continues following the date for compliance set forth in an applicable voluntary compliance agreement, notice of civil violation, and/or stop work order. Except as otherwise set forth in Section 18.108.330 DPMC for zoning violations in critical areas, the monetary penalty for each day, or portion thereof, that the zoning violation is permitted to continue shall be as follows:

1. First day, $100.00;

2. Second day, $200.00;

3. Third day, $300.00;

4. Fourth day, $400.00;

5. Each additional day beyond four days, $500.00 per day.

B. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the voluntary correction agreement, notice of civil violation, or stop work order was issued of the duty to abate, remediate, mitigate, or otherwise correct the zoning violation.

C. The monetary penalty constitutes a personal obligation of the person to whom the voluntary compliance agreement, notice of civil violation, and/or stop work order is issued. Any monetary penalty assessed must be paid to the city within 20 calendar days from the date of the Hearing Examiner's order in the event of appeal, or, in absence of an appeal, the date of any notice from the city that penalties are due and payable. The city attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty, plus reasonable attorneys' fees and costs incurred in collecting said monetary penalty, which shall be considered additional civil monetary penalties.

D. Payment of the civil penalties assessed under this chapter does not relieve the person(s) responsible for a zoning violation of the duty to correct the violation and/or pay any and all civil monetary penalties or other cost assessments issued pursuant to this chapter.

E. The city may suspend civil penalties if the person responsible for the zoning title violation has entered into a voluntary compliance agreement. Penalties shall begin to accrue again, pursuant to the terms of the voluntary compliance agreement, if any necessary permits applied for are denied, canceled, or not pursued, or if the corrective action identified in the voluntary compliance agreement is not completed as specified.

F. Civil penalties assessed create a joint and several personal obligation of all persons responsible for the zoning violation.

18.108.310 Civil penalties – Duty to comply.

Any person responsible for a zoning violation shall have a duty to notify the city in writing of any actions taken to achieve compliance with the voluntary compliance agreement, notice of civil violation, or stop work order. For the purposes of assessing civil penalties, a zoning violation shall be considered ongoing until the person(s) responsible for a zoning violation has come into compliance with the notice of civil violation, voluntary compliance agreement, or stop work order, and has provided sufficient evidence of such compliance to the city.

18.108.330 Civil penalties – Critical areas.

A. Persons responsible for violations of the critical areas provisions of the zoning title, as further defined below, will not only be required to abate violations and restore damaged critical areas, insofar as that is possible and beneficial, but will also be required to pay a civil monetary penalty for the redress of ecological, recreational, and economic values lost or damaged due to their unlawful actions.

B. The provisions of this section are in addition to, and not in lieu of, any other penalty, sanction, or right of action provided by law for other related violations.

C. Where feasible, the owner of the land on which the zoning violation within critical areas occurred shall be named as a party to the voluntary compliance agreement (if any), notice of civil violation, and/or stop work order. In addition to any other persons who may be responsible for a zoning violation, and subject to the exception provided in Section 18.108.070(B) DPMC, the owner shall be jointly and severally liable for the restoration of a site and payment of any civil penalties imposed.

D. Violation of critical areas provisions of the zoning title means:

1. The violation of any provisions of Chapter 18.70 DPMC, Resource Land and Critical Areas Regulations, or of the administrative rules promulgated thereunder;

2. The failure to obtain a permit required for work in a critical area; or

3. The failure to comply with the conditions of any permit, approval, terms and conditions of any setback area, easement, covenant, plat restriction, or binding assurance, or any notice of civil violation, stop work order, mitigation plan, contract, or agreement issued pursuant to the provisions of this chapter.

E. Any person in violation of Chapter 18.70 DPMC, Resource Land and Critical Areas Regulations, may be subject to civil monetary penalties, costs, and fees as follows:

1. According to the civil penalty schedule under DPMC 18.108.300; provided, that the exact amount of the penalty per violation shall be determined by the city based on the physical extent and severity of the violation; or

2. The greater of:

a. An amount determined to be equivalent to the economic benefit that the person responsible for a critical areas zoning title violation derives from the violation, measured as the total of:

i. The resulting increase in market value of the property;

ii. The value received by the person responsible for the violation;

iii. The savings of construction costs realized by the person responsible for the critical areas zoning title violation as a result of performing any act in violation of Chapter 18.70 DPMC, Resource Land and Critical Areas Regulations; or

b. Critical areas zoning title compliance costs (such amount shall not exceed the value as set forth in DPMC 18.108.300) incurred by the city to enforce Chapter 18.70

DPMC, Resource Land and Critical Areas Regulations, as adopted or hereafter amended, against the person responsible for a critical areas zoning title violation.

18.108.350 Collection of civil penalties, fees and costs.

The city may use the services of a collection agency in order to collect any civil penalties, fees, costs and/or interest owing under this chapter.

18.108.370 Zoning title compliance abatement fund – Authorized.

All monies collected from the assessment of civil penalties and for abatement costs and work shall be allocated to support expenditures incurred by the city for enforcement and for abatement, and shall be accounted for through either creation of an account in the fund for such abatement costs, or other appropriate accounting mechanism.

Section 2. If any section, sentence, clause, or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 3. This Ordinance shall take effect and be in full force five (5) days after this Ordinance or a summary thereof consisting of the title is published.

APPROVED:

MAYOR ROBERT WHISMAN

ATTEST/AUTHENTICATED:

DEBY CRAGUN, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BY: _____
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK	:	28 April 2015
PASSED BY THE CITY COUNCIL	:	17 June 2015
PUBLISHED	:	23 June 2015
EFFECTIVE DATE	:	29 June 2015
ORDINANCE NO.	:	2015-953

SUMMARY OF ORDINANCE NO. 2015-953

of the City of Deer Park, Washington

On the 17th day of June, 2015, the City Council of the City of Deer Park, Washington, passed Ordinance No. 2015-953. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 18.108 OF THE DEER PARK MUNICIPAL CODE RELATED TO ENFORCEMENT AND ABATEMENT OF ZONING CODE VIOLATIONS; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 18th day of June, 2015.

CITY CLERK-TREASURER, DEBY CRAGUN