ORDINANCE NO. 654

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, ADOPTING A CIVIL INFRACTION CODE

WHEREAS, shortly after incorporation, the City adopted the Washington State statute that allows cities to establish a civil infraction system; and

WHEREAS, a civil infraction system allows City staff to cite violations of the City's municipal code as non-criminal civil infractions which are typically utilized to enforce nuisance codes and parking regulations through the civil adjudicative powers of a city municipal court; and

WHEREAS, most cities have adopted both a civil infraction code, and also a civil violation code applicable to more complex development code violations involving the unpermitted erection, alteration, enlargement, demolition, maintenance or use of a structure or the alteration or use of any land which is adjudicated through the Hearing Examiner; and

WHEREAS, though the City adopted the State statute authorizing a civil infraction code, University Place never actually adopted civil infraction provisions, only adopting a civil violation process which is well-suited to complex development code violations, but poorly suited to simpler code violations such as nuisance or parking violations; and

WHEREAS, because the City has only adopted a civil violation code, any City code violation, regardless of how minor or urgent, can only be processed through the formal Hearing Examiner process which can take at minimum months, and sometimes years, to reach resolution, or if the particular code section at issue allows, charged as a criminal misdemeanor; and

WHEREAS, the City's lack of a standard civil infraction code is anomalous among Washington cities and inhibits this City's ability to efficiently and effectively promote the health, safety and welfare of its residents; and

WHEREAS, the City has full power and authority within its jurisdiction to adopt a civil infraction code to promote public health, safety and welfare in University Place.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. <u>Penalties - Civil Infractions</u>. A new Chapter 1.30 of the University Place Municipal Code entitled "Civil (Non-Traffic)" is hereby adopted to read as follows:

1

Chapter 1.30

CIVIL (NON-TRAFFIC) INFRACTIONS

Sections:

1.30.010	Civil violations to which this chapter applies.
1.30.020	Civil infraction – Monetary penalties – Restitution.
1.30.030	Enforcement officers.
1.30.040	Notice of civil infraction – Issuance, service and filing.
1.30.050	Person receiving notice - Identification and detention.
1.30.060	Notice of civil infraction – Form.
1.30.070	Notice – Determination final unless contested.
1.30.080	Response to notice of infraction – Required.
1 30 090	Response to notice of infraction – Uncontested determination.

- 1.30.100 Response to notice of infraction Contested determination.
- 1.30.110 Response to notice of infraction Mitigation hearing.
- 1.30.120 Response to notice of infraction Failure to respond or appear.
- 1.30.130 Hearings Rules of procedure.
- 1.30.140 Hearings Counsel.
- 1.30.150 Hearings Contesting determination that infraction committed Appeal.
- 1.30.160 Hearing Explanation of mitigating circumstances.
- 1.30.170 Monetary penalties When payable.
- 1.30.180 Order of court Civil nature Modification of penalty Community service.
- 1.30.190 Vehicle Impounds Authorized.
- 1.30.200 Costs.
- 1.30.210 Notice Failure to sign Nonappearance Failure to pay penalty Misdemeanor.
- 1.30.220 Definitions.
- 1.30.230 Notices of civil infraction System established.
- 1.30.240 Disposition of original and copies of notices of infraction.
- 1.30.250 Notices of infraction Records Cancellation prohibited Penalty Audit.

1.30.010 Civil violations to which this chapter applies.

This chapter shall be applicable to all non-criminal violations of the University Place Municipal Code, except for traffic infractions, but including parking violations.

- 1.30.020 Civil infraction Monetary penalties Restitution.
- (1) Any person found to have committed a civil infraction shall be assessed a monetary penalty in the sum of \$100.00, not including statutory assessments, unless a greater or lesser sum is specified for a particular infraction within the University Place Municipal Code.
- (2) In addition to the imposition of a civil penalty, a court may order a person found to have committed a civil infraction to make restitution, including any costs or expenses incurred by the city in abating or eliminating a public nuisance.

1.30.030 Enforcement officers.

Department heads or supervisors and city employees as designated by the department head or supervisor, or employees of other governments performing enforcement services for the city pursuant to an interlocal agreement, shall be and are designated and appointed as "enforcement officers" and are authorized to initiate, issue and serve notices of civil infraction pursuant to this chapter, for violations of the University Place Municipal Code for regulation provisions or sections that are subject to their supervision, interpretation or enforcement.

- 1.30.040 Notice of civil infraction Issuance, service and filing.
- (1) A civil infraction proceeding is initiated by the issuance, service and filing of a notice of infraction.
- (2) A notice of civil infraction may be issued by an enforcement officer upon certification that the issuer thereof has probable cause to believe, and does believe, that a person has committed an infraction contrary to law. The infraction need not have been committed in the enforcement officer's presence, except as provided by statute.
- (3) A notice of infraction may be served either by:
- (a) The enforcement officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance;
- (b) The enforcement officer filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address. If a notice of infraction served by mail is returned to the court as undeliverable, the court shall issue a summons.

- (4) A notice of infraction shall be filed with the University Place Municipal Court within 48 hours of issuance, excluding Saturdays, Sundays and legal holidays. A notice of infraction not filed within the time limits prescribed in this section may be dismissed without prejudice.
- 1.30.050 Person receiving notice Identification.

A person who receives a notice of infraction under this chapter is required to identify himself or herself to the enforcement officer by giving his or her true name, address, and date of birth. Upon request of the enforcement officer, the person shall produce reasonable identification, including a driver's license.

1.30.060 Notice of civil infraction - Form.

The notice of civil infraction shall be as prescribed by the administrator for the courts, and shall contain the following information:

- (1) A statement that the notice of infraction represents a determination that a civil infraction has been committed by the defendant and that the determination is final unless contested as provided in this chapter;
- (2) A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;
- (3) A statement of the specific infraction that the defendant is alleged to have committed and the accompanying statute, regulation or University Place Municipal Code section number, the date, time and place the alleged infraction occurred, the time that the notice of infraction was issued, and the name and, if applicable, the number of the enforcement officer;
- (4) A statement that the defendant must respond to the notice of infraction within 14 days of issuance;
- (5) A space for the defendant to sign a promise to respond to the notice of infraction within the time required;
- (6) A space for the entry of a monetary penalty which defendant may pay in lieu of appearing in court;
- (7) A statement that a mailed response must be mailed not later than midnight on the day the response is due;
- (8) A statement of the options provided in this chapter for responding to the notice of civil infraction and the procedures necessary to exercise these options;
- (9) A statement that at any hearing to contest the determination that the city has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that the defendant may subpoena witnesses including the enforcement officer who issued the notice of civil infraction;
- (10) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the defendant will be deemed to have committed the civil infraction and may not subpoena witnesses;
- (11) A statement that failure to respond to the notice of infraction or a failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in a default judgment against the defendant in the amount of the penalty;
- (12) A statement that the defendant shall sign that the defendant promises to respond to the notice of infraction in one of the ways provided in this chapter;
- (13) A statement that failure to respond to a notice of infraction as promised or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail;
- (14) A statement that the City has authority to impound vehicles parked in violation of the University Place Municipal Code.
- (15) The name, address, and telephone number of the University Place Municipal Court;
- (16) The name and address of the defendant.

1.30.070 Notice – Determination final unless contested.

A notice of infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in this chapter.

1.30.080 Response to notice of infraction – Required.

A defendant who receives a notice of infraction shall respond to such notice as provided within 15 days of the date of the notice if it is personally served or, if the notice is served by mail, within 10 days of the date the notice was mailed. If the response is mailed, it must be postmarked not later than midnight of the day the response is due.

1.30.090 Response to notice of infraction – Uncontested determination.

If the person determined to have committed the civil infraction does not contest the determination, such person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court. A check or money order in the amount of the penalty prescribed for the civil infraction must be submitted with the response. The clerk of the court may accept cash in payment for a civil infraction. When a response that does not contest the determination is received, an appropriate order shall be entered into the court's records.

1.30.100 Response to notice of infraction - Contested determination.

If the person determined to have committed the civil infraction wishes to contest the determination, such person shall respond by completing the appropriate portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall be not earlier than seven days nor more than 90 days from the date of the notice of hearing, except by agreement.

1.30.110 Response to notice of infraction - Mitigation hearing.

If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, such person shall respond by completing the appropriate portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall be not earlier than seven days nor more than 90 days from the date of the notice of hearing, except by agreement.

1.30.120 Response to notice of infraction – Failure to respond or appear.

The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction if a person issued a notice of infraction:

- (1) Fails to respond to the notice of infraction; or
- (2) Fails to appear at a hearing requested.
- 1.30.130 Hearings Rules of procedure.

Procedures for the conduct of all hearings provided for in this chapter are those established by the Washington State Supreme Court in the "IRLJ".

- 1.30.140 Hearings Counsel.
- (1) A person subject to proceedings under this chapter may be represented by counsel.
- (2) The attorney representing the city may appear in any proceedings under this chapter but need not appear, notwithstanding a statute or rule of court to the contrary.

- 1.30.150 Hearings Contesting determination that infraction committed Appeal.
- (1) A hearing held to contest the determination that a civil infraction has been committed shall be without a jury and shall be recorded in the manner provided for in courts of limited jurisdiction.
- (2) The court may consider the notice of infraction and any other written report made under oath submitted by the enforcement officer who issued the notice of infraction or whose statement was the basis for the issuance of the notice of infraction in lieu of the enforcement officer's personal appearance at the hearing. The person named in the notice of infraction may request the court for issuance of a subpoena of witnesses, including the enforcement officer who issued the notice of infraction, and has the right to present evidence and examine witnesses present in court.
- (3) The burden of proof is upon the city to establish the commission of the civil infraction by a preponderance of the evidence.
- (4) After consideration of the evidence and argument, the court shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice of infraction shall be entered into the court's records. Where it has been established that the civil infraction was committed, an appropriate order shall be entered into the court's records.
- (5) An appeal from the court's determination or order shall be to the superior court in the manner provided by the "Rules for Appeal of Decisions of Courts of Limited Jurisdiction".
- 1.30.160 Hearing Explanation of mitigating circumstances.
- (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a civil infraction shall be an informal hearing. The person may not subpoen witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.
- (2) After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.
- (3) There is no appeal from the court's determination or order.
- 1.30.170 Monetary penalties When payable.

Whenever a monetary penalty is imposed by the court under this chapter, it is immediately due and payable. If the person is unable to pay at that time, the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments.

- 1.30.180 Order of court Civil nature Modification of penalty Community service.
- (1) An order of court entered after receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances, is civil in nature.
- (2) The court may waive, reduce or suspend the monetary penalty prescribed for the civil infraction. If the court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.
- 1.30.190 Vehicle Impounds Authorized
- (1) Vehicles parked in violation of the University Place Municipal Code upon the public right-of-way or other City-owned or City-controlled property may be impounded.
- (2) The written form of authorization to impound shall be the Notice of Civil Infraction authorized in this chapter, which shall clearly denote the City's authority to impound.

- (3) The owner may request a hearing in University Place Municipal Court to contest the validity of the impoundment.
- 1.30.200 Costs.

Each party to a civil infraction case is responsible for costs incurred by that party, but the court may assess witness fees against a non-prevailing defendant.

- 1.30.210 Notice Failure to sign Nonappearance Failure to pay penalty Misdemeanor.
- (1) A person upon whom a notice of civil infraction is personally served by an enforcement officer who fails to sign the same is guilty of a misdemeanor.
- (2) Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by an appearance by counsel.
- (3) A person who willfully fails to pay a monetary penalty or to perform community service as required by a court under this chapter may be found in contempt of court.
- 1.30.220 Definitions.
- (1) "Regulation" means any and all Washington state statutes, or any standard code of technical regulations adopted by reference by ordinances of the city, including, but not limited to, the building code, the fire code, and portions of the Washington Administrative Code.
- (2) "Department" means any division of the administration of the city which is directed by a department head or supervisor.
- (3) "Defendant" means a person named in a notice of infraction under this chapter as having committed a civil infraction.
- 1.30.230 Notices of civil infraction System established.
- (1) There is placed in effect a system of notices of infraction whereby each enforcement officer shall obtain from his or her department head or supervisor, and sign a receipt for, all books of notices of infraction, in the form prescribed by the administrator for the courts of the state of Washington.
- (2) Notices of infraction shall be in quadruplicate and shall be consecutively numbered.
- (3) Any enforcement officer issuing a notice of infraction in accordance with this chapter shall complete the same in accordance with this chapter and in accordance with the rules and regulations of the Supreme Court of the state of Washington.
- (4) The enforcement officer issuing a notice of infraction shall serve and file the same in accordance with this chapter and in accordance with the rules of the Supreme Court of the state of Washington.
- (5) Enforcement officers may each obtain not more than two books at any one time but must promptly turn in, to his or her department head or supervisor, each used book to be filed and kept of record in the files of the department by which such enforcement officer is employed.
- 1.30.240 Disposition of original and copies of notices of infraction.
- (1) The original, white in color, shall be filed with the University Place Municipal Court.
- (2) The first copy, white in color, shall be retained by the department that employs the enforcement officer issuing the notice of infraction.
- (3) The second copy, green in color, shall be served upon the defendant or person determined to have committed a civil infraction.

- (4) The third copy, white in color, shall not be removed from and shall be retained in the book of notices of infraction.
- 1.30.250 Notices of infraction Records Cancellation prohibited Penalty Audit.
- (1) The City shall be the custodian and shall maintain a supply of books of notices of infraction for use pursuant to this chapter. All notices of infraction shall conform to the requirements of the administrator for the courts.
- (2) The City may deliver or provide to department heads or supervisors a sufficient quantity of books of notices of infraction for use by such department heads or supervisors and the enforcement officers employed in their respective departments. Department heads or supervisors shall be required to sign for all books of notices of infraction issued to them, and thereafter shall be responsible for retention thereof in accordance with this chapter.
- (3) The department head or supervisor of each department shall be responsible for the issuance of such books and shall maintain a record of every such book and each notice of infraction contained therein issued to enforcement officers of his or her department and shall require and retain a signed receipt for every book so issued.
- (4) Upon the deposit of the original notice of infraction with the court, copies may be disposed of only as provided in this chapter.
- (5) It is official misconduct for any enforcement officer or city employee to dispose of a notice of infraction or copies thereof or of the record of the issuance thereof in a manner other than as required in this chapter.
- (6) Any person who cancels or solicits the cancellation of any notice of infraction in any manner other than as provided for in this chapter is guilty of a misdemeanor.
- (7) All notices of infraction required to be filed in departmental files, all books of notices of infraction, and all records pertaining to notices of infraction shall be subject to audit or examination at all times.
- Section 2. <u>Severability</u>. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.
- Section 3. <u>Effective Date</u>. This Ordinance shall be in full force and effect five (5) days from and after its passage, approval, and publication as provided by law.

PASSED BY THE CITY COUNCIL ON MARCH 16, 2015.

Denise McCluskey, Mayor

ATTEST:

Emelita Genetia, City Clerk

APPROVED AS TO FORM:

Steve Victor, City Attorney

Publication Date: 03/18/15 Effective Date: 03/23/15