

Title 22

UNIFORM ENFORCEMENT CODE

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- 22.01 GENERAL PROVISIONS**
- 22.02 ENFORCEMENT**
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Chapter 22.01

GENERAL PROVISIONS

Sections:

- 22.01.010 Authority.**
- 22.01.020 Purpose.**
- 22.01.030 Applicability.**
- 22.01.040 Conflicts.**
- 22.01.050 Meaning of terms.**

Section 22.01.010 Authority.

The City of Vancouver adopts this ordinance under the authority of Article XI, section 11 of the state constitution and RCW 35.22.280.
(M-3638, Added, 12/01/2003, Sec 32)

Section 22.01.020 Purpose.

The purpose of title 22 is to establish a uniform administrative system to enforce City of Vancouver ordinances and to ensure the citizenry's health, safety, and welfare. Any duty created by this title is a general duty running in favor of the public.
(M-3638, Added, 12/01/2003, Sec 32)

Section 22.01.030 Applicability.

The enforcement provisions of title 22 shall apply to the following substantive VMC chapters and titles:

- VMC chapter 5.62, Commercial recycling;
- VMC chapter 5.76, Vehicles for hire.
- VMC chapter 6.12, Garbage disposal;
- VMC chapter 8.20, Nuisances;
- VMC chapter 8.52, False Alarms, for the purposes of criminalizing the violation under 22.02.020 and for purposes of the appeal procedures under VMC chapter 22.03 only;
- VMC chapter 11.12, Sidewalk construction;
- VMC chapter 11.20, Driveways;
- VMC chapter 11.28, Excavations;
- VMC chapter 11.36, Protection of pavement;
- VMC chapter 11.40, Snow and ice removal;
- VMC chapter 11.44, Sidewalk openings;
- VMC chapter 11.48, Street oiling permit;
- VMC chapter 11.52, Curb, sidewalk, and driveway construction;
- VMC chapter 11.80, Street standards – general;
- VMC chapter 11.90, Street standards – development regulations;
- VMC chapter 12.04, Street trees;
- VMC chapter 14.24, Erosion control;
- VMC chapter 14.25, Stormwater control;
- VMC chapter 14.26, Water resources protection;
- VMC chapter 16.04, Firecode;
- VMC chapter 16.20, Fireworks;
- VMC chapter 16.30, Consumer fireworks;

All chapters in Title 17 of the VMC, but not including VMC chapter 17.32 and chapter 17.39. Title 22 shall not limit any corrective actions or remedies contained in Title 17 of the VMC;

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VMC Title 20, Development code, except that title 22 shall not apply to the damages calculations under VMC chapter 20.770, Tree Conservation, but shall apply to 20.770 for the purposes of enforcement procedures under VMC chapter 22.02 and the appeal procedures under VMC chapter 22.03.

(M-3857, Amended, 12/17/2007, Sec 1; M-3767, Amended, 10/16/2006, Sec 3; M-3766, Amended, 10/16/2006, Sec 2; M-3672, Amended, 11/15/2004, Sec 4; M-3663, Amended, 08/02/2004, Sec 28; M-3660, Amended, 07/12/2004, Sec 14; M-3643, Amended, 01/26/2004; M-3642, Amended, 01/26/2004; M-3638, Added, 12/01/2003, Sec 32)

Section 22.01.040 Conflicts.

In the event of a conflict between this title and any provision referenced in VMC 22.01.030 that provides for a civil or criminal penalty, this title shall control.

(M-3638, Added, 12/01/2003, Sec 32)

Section 22.01.050 Meaning of terms.

Except as otherwise provided in this section, all terms shall have the meaning as defined by those substantive code sections referenced in VMC 22.01.030, or in the absence of specific definition, terms shall be defined by their plain meaning.

“City official” shall mean that person responsible for the interpretation, enforcement or both interpretation and enforcement of the provisions referenced in VMC 22.01.030. "City official" shall include, but is not limited to, the city manager, department manager or any designated agent thereof who the city manager or department manager gives authority to enforce the provisions referenced in VMC 22.01.030.

“Code” shall mean any VMC section referenced in VMC 22.01.030.

“Certificate of occupancy” shall mean, for the purposes of this code, a permit.

"Frivolous" An appeal is frivolous if it raises no debatable legal or factual issues upon which reasonable minds might differ and if it is so totally devoid of merit that there is no reasonable possibility of success on the merits. When deciding whether an appeal is frivolous, the hearings examiner may consider the city's attempts to alert the appellant to the defects in his case, appellant's failure to state in the notice of appeal the alleged error of fact or law in the notice of civil violation and order or order to revoke permit, and/or the appellant's involvement in prior code enforcement actions for the same category of violation, regardless of the location of the violation.

“Gross misdemeanor” shall mean a criminal offense punishable by up to three hundred and sixty-five days (365) in jail or up to a \$5000.00 fine or both.

“Misdemeanor” shall mean a criminal offense punishable by up to ninety (90) days in jail or up to a \$1000.00 fine or both.

“Necessary and reasonable costs” shall mean the expenses incurred by the city to abate a violation. The expenses shall include, but shall not be limited to, personnel costs, both direct and indirect; costs of paying prevailing wages to public works contractors; attorney's fees; hauling, storage, and disposal expenses; and the costs of printing or mailing orders, notices and correspondence.

“Nuisance vehicle” shall mean any inoperable vehicle or junk vehicle as defined in VMC chapter 17.14.

“Owner” shall mean any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including tenants, the guardian of the estate of any

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such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court, as well as a bankruptcy trustee.

“Person” shall mean an individual, male or female, a firm, partnership, association, institution or corporation or any other group acting as a unit.

“Repeat violation” shall mean a violation of the same regulation in any location by the same person, for which a notice of civil violation or other order has been issued and was not timely appealed or was denied on appeal. A repeat violation may involve the same condition, action, or omission as a previous violation. A repeat violation may also involve non-compliance with the corrective action noted in a notice of civil violation and order or order to revoke permit which results in the issuance of an additional notice of civil violation and order or order to revoke permit.

“Violation” shall mean any condition, act, failure to act or omission that is inconsistent with any code section referenced in VMC 22.01.030.

(M-3857, Amended, 12/17/2007, Sec 2; M-3638, Added, 12/01/2003, Sec 32)

Chapter 22.02

ENFORCEMENT

Sections:

- 22.02.010** **Responsibility for code violations.**
- 22.02.020** **Enforcement provisions.**
- 22.02.030** **Correction notice.**
- 22.02.040** **Required Elements: Notice of civil violation and order - Order to revoke permit.**
- 22.02.050** **Imposition of cumulative monetary penalties.**
- 22.02.060** **Service of Notice of Civil Violation and Order to Revoke Permit.**
- 22.02.070** **Monetary penalties.**
- 22.02.080** **Summary abatement - Stop work order.**

Section 22.02.010 **Responsibility for code violations.**

A. It shall be unlawful for any person to violate any code provision referenced in VMC 22.01.030. In addition to the violator, there is a rebuttable presumption that the owner of a vehicle, building, structure, premises, personal property or land upon or within which a violation has occurred or is occurring is also responsible for the violation, so long as the owner had or has actual or constructive knowledge of the violation at the time the violation occurred or is occurring.

B. Any adult who is responsible for the care or supervision of a juvenile less than eighteen (18) years of age is liable for any violation of the codes reference in VMC 22.01.030 committed by the juvenile, so long as the responsible adult had or has actual or constructive knowledge of the violation at the time the violation occurred or is occurring.

(M-3703, Repealed & Replaced, 05/23/2005, Sec 5; M-3672, Amended, 11/15/2004, Sec 5; M-3638, Added, 12/01/2003, Sec 32)

Section 22.02.020 **Enforcement provisions.**

The city adopted the code pursuant to its police powers to protect the public's health, safety, and welfare. It shall be unlawful to violate the code. Whenever the city official determines that a violation has occurred or is occurring, the city official, in response to the seriousness and severity of the violation, may utilize one or a combination of the enforcement mechanisms in this section. The following enforcement mechanisms may be used instead of, or in addition to, the summary abatement procedures provided in VMC 22.02.080 and any other remedies available under law:

A. Correction notice. The city official may issue a correction notice to the person responsible for a violation. The correction notice shall conform to the requirements in VMC 22.02.030. The correction notice shall not impose civil or criminal penalties, and the correction notice is not subject to appeal.

B. Notice of civil violation and order. The city official may issue a notice of civil violation and order to the person responsible for a violation. The notice of civil violation and order may require corrective action or actions and impose monetary penalties according to VMC 22.02.070(D).

1. Required corrective action may include an order to vacate a building, structure or premises when vacation is necessary in the interest of health, safety and welfare.

2. The city may abate a violation in accordance with applicable law, if required corrective action is not commenced or stopped within the time specified in the notice of civil violation and order.

3. Non-compliance with the corrective action noted in the notice of civil violation and order constitutes a second or subsequent violation and may result in the issuance of an additional notice of civil violation and order.

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4. It shall be a separate offense for each and every day or portion thereof during which any violation is committed.

C. Order to revoke permit. The city official may issue an order to revoke a permit. An order to revoke a permit may be appropriate if the permittee is not complying with the terms of the permit or approved plans; or if the permit is issued in error; or if a permit is issued based upon incorrect information; or if the work is, in the city official's judgment, adversely affecting or about to adversely effect adjacent property or rights-of-way, a drainageway, watercourse, critical area or stormwater facility, city water system; or if the issuance of the permit is a hazard to the public health, safety, or welfare; or if a permit is contrary to law.

D. Summary abatement. Whenever any violation of the VMC poses an imminent threat to the health, safety, or welfare of persons or property, or to the environment, the city official may immediately order that the violation be abated in conformance with the requirements contained in VMC 22.02.080.

E. Criminal prosecution. The city official may refer a violation to the city prosecutor for criminal prosecution.

1. As specified in this subsection, a violation of the code may be classified as a misdemeanor or gross misdemeanor:

VMC CHAPTER	CRIMINAL CLASSIFICATION
VMC Chapter 5.62, Commercial recycling	Gross misdemeanor
VMC Chapter 5.76, Vehicles for Hire	Misdemeanor
VMC Chapter 6.12, Garbage disposal	Gross misdemeanor
VMC Chapter 8.20, Nuisances	Misdemeanor
VMC Chapter 8.52, False Alarms	Misdemeanor
VMC Chapter 11.12, Sidewalk construction	Misdemeanor
VMC Chapter 11.20, Driveways	Misdemeanor
VMC Chapter 11.28, Excavations	Misdemeanor
VMC Chapter 11.36, Protection of pavement	Misdemeanor
VMC Chapter 11.40, Snow and ice removal	Misdemeanor
VMC Chapter 11.44, Sidewalk openings	Misdemeanor
VMC Chapter 11.48, Street oiling permit	Misdemeanor
VMC Chapter 11.52, Curb, sidewalk and driveway construction	Misdemeanor
VMC Chapter 11.80, Street standards – general	Misdemeanor
VMC Chapter 11.90, Street Standards – development regulations	Misdemeanor
VMC Chapter 12.04, Street Trees	Misdemeanor
VMC Chapter 14.24, Erosion control	Misdemeanor
VMC Chapter 14.25, Stormwater control	Misdemeanor
VMC Chapter 14.26, Water resources protection	Misdemeanor.

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VMC Chapter 16.04, Firecode	Misdemeanor
VMC Chapter 16.20, Fireworks	Misdemeanor
VMC Chapter 16.30, Consumer fireworks	Misdemeanor, for possession of one pound or less of illegal consumer fireworks, exclusive of external packaging; Gross misdemeanor for possession of more than one pound of illegal consumer fireworks, exclusive of external packaging; Misdemeanor for use of illegal consumer fireworks; Misdemeanor for unlawful use or possession of legal consumer fireworks.
All Chapters in title 17 of the VMC, but not including VMC Chapters 17.32 and 17.39	Misdemeanor
VMC Title 20, except that title 22 shall not apply to VMC Chapter 20.770, Tree Conservation	Misdemeanor
Violation of a stop work order issued pursuant to VMC Title 22	Misdemeanor

2. It shall be a separate offense for each and every day or portion thereof during which any violation is committed.

3. The city official shall refer a violation to the city attorney's office for criminal prosecution only after the city official first attempts to achieve compliance through the issuance of a correction notice or notice of civil violation and order or order to revoke permit. Provided that, the city official may refer a violation to the city attorney's office for criminal prosecution, without attempting to achieve compliance through civil enforcement options, under the following circumstances:

- a. When a repeat violation occurs; or
- b. When the person acted with malicious intent, reckless indifference to the law or knew or reasonably should have known that the condition, act, failure to act or omission that prompted enforcement is in violation of the code; or
- c. When in the opinion of the city official and city attorney a notice of civil violation and order or order to revoke permit will not be effective or timely.

4. The procedures contained in VMC 22.02.020(E) shall not apply to members of the Vancouver Police Department who possess law enforcement authority to issue criminal citations.

F. Judicial relief. Nothing in this title shall prevent the city from filing a complaint or petition in a court of competent jurisdiction to seek any relief authorized by law before first seeking compliance through civil enforcement options when civil, administrative enforcement options or criminal prosecution would not prove timely or effective.

(M-3857, Amended, 12/17/2007, Sec 3; M-3767, Amended, 10/16/2006, Sec 4; M-3766, Amended, 10/16/2006, Sec 3; M-3692, Amended, 02/28/2005, Sec 17; M-3672, Amended, 11/15/2004, Sec 6; M-3663, Amended, 08/02/2004, Sec 29; M-3660, Amended, 07/12/2004, Sec 15; M-3643, Amended, 01/26/2004; M-3642, Amended, 01/26/2004; M-3638, Added, 12/01/2003, Sec 32)

Section 22.02.030 Correction notice.

The correction notice shall be in writing, and shall include the following information:

A. The first date of the violation; and

B. The name and address of the person responsible for the violation. If the person cannot be found or ascertained after consulting the county assessor's records, the correction notice may be conspicuously

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affixed or posted on the building, structure, premises, personal property or land upon or within which the violation has occurred or is occurring; and

C. The street address or other description sufficient for identification of the building, structure, premises, personal property or land upon or within which the violation has occurred or is occurring; and

D. A description of the violation and a reference to the violated code section or sections; and

E. The necessary corrective action to be taken and the date by which the action must be completed; and

F. A summary of the enforcement actions, including criminal prosecution, the city may use if the violation is not remedied in the time provided for in the correction notice; and

G. The city official may include any other appropriate information.
(M-3857, Amended, 12/17/2007, Sec 3; M-3638, Added, 12/01/2003, Sec 32)

Section 22.02.040 Required Elements: Notice of civil violation and order - Order to revoke permit.

A. Content. In cases where the city official does not seek to impose cumulative monetary penalties, a notice of civil violation and order or order to revoke permit shall be in writing, and shall include, at minimum, the following information:

1. The date of the violation; and
2. The name and address, if the address can be easily ascertained, of the person responsible for the violation; and
3. The location or approximate location of the violation; and
4. A short description of the violation and a reference to the violated substantive code section or sections; and
5. A statement whether the violation is a first or repeat violation, and if a repeat violation, whether it is a second or subsequent violation; and
6. The monetary penalty according to the monetary penalty schedule in VMC 22.02.070; and
7. A notice that the notice of civil violation and order or order to revoke permit may be appealed only as provided in VMC 22.03.020. The notice shall summarize the requirements of VMC 22.03.020 and state that failure to appeal constitutes a waiver of all right to an administrative hearing and determination of the matter and that the non-prevailing party may be responsible for the costs of the appeal hearing, including, but not limited to, direct and indirect personnel time, copy costs, postage expenses, and the hearing examiner's time; and
8. Any other information the city official deems relevant.

B. In cases where the city official seeks to impose cumulative monetary penalties for a continuing code violation(s), a notice of civil violation and order shall be in writing and shall include, at a minimum, all of the requirements referenced in VMC 22.02.040(A) and the following additional elements:

1. The required action to be taken to obtain compliance with the code and a date by which the actions must be completed; and
2. A statement that the person(s) responsible for a violation(s) shall automatically incur a daily monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.070(D) if the person(s) responsible for a violation fails to comply with the corrective action or actions in a notice of civil violation and order or order to revoke permit by the corrective date specified in the order; and
3. A statement that monetary penalties under VMC 22.02.070(D) shall accrue during the appeal

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period unless the appellant prevails on appeal; and that accrued monetary penalties shall not exceed three (3) times the amount of the daily monetary penalty set by VMC 22.02.070(D) for any single violation from the first date of the violation through the date the hearings examiner renders a final decision. (M-3857, Amended, 12/17/2007, Sec 5; M-3767, Amended, 10/16/2006, Sec 5; M-3766, Amended, 10/16/2006, Sec 4; M-3692, Amended, 02/28/2005, Sec 18; M-3672, Amended, 11/15/2004, Sec 7; M-3663, Amended, 08/02/2004, Sec 30; M-3660, Amended, 07/12/2004, Sec 16; M-3659, Amended, 07/12/2004, Sec 3; M-3643, Amended, 01/26/2004; M-3642, Amended, 01/26/2004; M-3638, Added, 12/01/2003, Sec 32)

Section 22.02.050 Imposition of cumulative monetary penalties.

If the person(s) responsible for the violation(s) fails to appeal a notice of civil violation and order that imposes cumulative monetary penalties or the person(s) responsible for the violation(s) loses at an appeal hearing, the city official may seek to collect cumulative monetary penalties for continued noncompliance with the city code provisions cited in the subject notice of civil violation and order. The city official shall not seek to collect cumulative civil penalties unless the person(s) responsible for the violation(s) has been given written notice of an opportunity to appeal the cumulative penalties, under the procedures contained in VMC 22.03.020. The appeal authorized in this section is limited to the sole issue of whether or not the conditions that gave rise to the issuance of the notice of civil violation and order have changed. The person(s) responsible for the violation(s) shall not be permitted to contest in such appeal, whether the conditions that gave rise to the issuance of the notice of civil violation and order constitute a violation of the code.

(M-3857, Amended, 12/17/2007, Sec 6; M-3638, Added, 12/01/2003, Sec 32)

Section 22.02.060 Service of Notice of Civil Violation and Order to Revoke Permit.

A. Service. The city official shall cause the notice of civil violation and order or order to revoke permit to be served upon the person to whom it is directed, either personally or by mailing a copy of it to the person's last known address. The city official may also cause the notice of civil violation and order or order to revoke permit to be conspicuously affixed or posted on the building, structure, premises, personal property, or land upon or within which the violation has occurred or is occurring.

1. If the person(s) responsible for the violation(s) is the owner of real property, but does not live at the site of the violation, and if the personal address of the person(s) responsible for the violation(s) is unknown, the city official may serve the notice of civil violation and order by mailing it to the billing address for the subject property that is on file in the Clark County Assessor's Office.

B. Additional Persons to be served. If known or disclosed from the county assessor's office, one copy of the notice of civil violation and order or order to revoke permit may be served on the holder of any mortgage or deed of trust or other lien or encumbrance of record or any lease of record or the holder of any other estate or legal interest of record in any building, structure, land, personal property or premises on which a violation has occurred or is occurring.

C. Failure to effect service. The failure of the city official to effect service on any person required or permitted to be served according to VMC 22.02.060(B) shall not invalidate any proceeding under this title as to any other person duly served or relieve any such person from any duty or obligation imposed by this title.

D. Service requirements for nuisance vehicles. A notice of civil violation and order concerning a nuisance vehicle must be served upon:

1. The nuisance vehicle's last registered and legal owner of record, unless the nuisance vehicle is in such a condition that identification numbers are not available to determine ownership; and
2. The property owner of record upon which the nuisance vehicle is located.

E. Service by posting. If the person to whom the notice of civil violation and order or order to revoke

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permit is directed cannot be personally served within Clark County and if an address for mailed service cannot be ascertained by reference to public records, the notice of civil violation and order or order to revoke permit may be conspicuously affixed or posted on the vehicle, building, structure, premises, personal property or land upon or within which the violation has occurred or is occurring.

F. Proof of service. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting service, declaring the time and date of service, the manner by which service was made, and, if by posting, the facts showing the efforts used in attempting to serve the person personally or by mail.

(M-3857, Added, 12/17/2007, Sec 7)

Section 22.02.070 Monetary penalties.

A. The person responsible for a violation shall incur an initial monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.070(D).

B. In addition to the monetary penalty in VMC 22.02.070(D), the person responsible for a violation shall automatically incur a daily monetary penalty, pursuant to whether the violation is a first, second or subsequent violation and according to the monetary penalty schedule in VMC 22.02.070(D), if the person responsible for a violation fails to comply with the corrective action or actions in a notice of civil violation and order or order to revoke permit by the corrective date specified in the order. The daily penalty shall begin to accrue after the corrective date specified in the notice of civil violation and order or order to revoke permit.

C. The city may not seek to collect cumulative monetary penalties unless the city official has complied with the requirements contained in VMC 22.02.050.

D. The monetary penalties for first, second and subsequent violations of the code enforced through this title, within any two (2) year period, shall be as follows:

VMC TITLE	FIRST VIOLATION	SECOND VIOLATION	SUBSEQUENT VIOLATIONS
VMC Chapter 5.62, Commercial Recycling	\$250	\$500	\$1,000
VMC Chapter 5.76, Vehicles for Hire	\$250	\$500	\$1,000
VMC Chapter 6.12, Garbage disposal	\$250	\$500	\$1,000
VMC Chapter 8.20, Nuisances	\$250	\$500	\$500
VMC Chapter 11.12, Sidewalk construction	\$100	\$200	\$200
VMC Chapter 11.20, Driveways	\$100	\$200	\$200
VMC Chapter 11.28, Excavations	\$100	\$200	\$200
VMC Chapter 11.36, Protection of pavement	\$100	\$200	\$200
VMC Chapter 11.40, Snow and ice removal	\$100	\$200	\$200
VMC Chapter 11.44, Sidewalk openings	\$100	\$200	\$200
VMC Chapter 11.48, Street oiling permit	\$100	\$200	\$200
VMC Chapter 11.52, Curb, sidewalk, and	\$100	\$200	\$200

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driveway construction			
VMC Chapter 11.80, Street standards – general	\$100	\$200	\$200
VMC Chapter 11.90, Street standards – development regulations	\$100	\$200	\$200
VMC Chapter 12.04, Street Trees	\$250	\$500	\$1,000
VMC Chapter 14.24, Erosion control	\$250	\$500	\$1,000
VMC Chapter 14.25, Stormwater control	\$250	\$500	\$1,000
VMC Chapter 14.26, Water resources protection	\$250	\$1000	\$5000
VMC Chapter 16.04, Firecode, excluding false alarms under VMC 16.04.140	\$500	\$500	\$1,000
VMC Chapter 16.20, Fireworks	\$500	\$1,000	\$1,000
VMC 16.30.040, Illegal consumer fireworks	\$500	\$1,000	\$1,500
VMC 16.30.050, Legal Consumer Fireworks	\$250	\$500	\$1,000
International Fire Code Section 503.4	\$100	\$100	\$100
All Chapters in Title 17 of the VMC, but not including VMC Chapters 17.32 and 17.39	\$250	\$500	\$1,000
Violation of a stop work order	\$250	\$500	\$1,000
VMC Title 20, except that title 22 shall not apply to VMC Chapter 20.770, Tree conservation except for the purposes of enforcement and the appeal process under VMC 22.02 & 22.03	\$250	\$500	\$1,000
VMC 20.935.030A	\$100	\$100	\$100
VMC Chapter 20.740, Critical Areas Protection Ordinance	\$500	\$1000	\$1,500

E. In the event of an appeal, monetary penalties under VMC 22.02.070(B) shall accrue during the appeal period unless the appellant prevails on appeal. Accrued monetary penalties shall not exceed three (3) times the amount of the daily monetary penalty set by VMC 22.02.070(D) for any single violation from the first date of the violation through the date the hearings examiner renders a final decision.

F. Payment of any monetary penalties associated with the violation does not relieve the person to whom the notice of civil violation and order or order to revoke a permit is directed of the duty to correct the violation.

G. Collection of monetary penalties and necessary and reasonable costs.

1. Payment. Monetary penalties and necessary and reasonable costs are due and payable to the applicable city department or service area ten (10) calendar days after the city personally serves the cited person with a written demand for payment, itemizing the costs the city incurred. If not served personally, monetary penalties and necessary and reasonable costs are due fifteen (15) calendar days after the city

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deposits in the U.S. mail such a demand and itemized costs. If a violation is appealed as provided herein, monetary penalties and necessary and reasonable costs are due fifteen (15) calendar days after the date the city deposits in the U.S. mail a copy of the hearings examiner's final order. The provisions of VMC 3.08.060 for dishonored checks and VMC 3.08.080 for late fees and interest shall apply to payments due under this title.

2. Approved collection methods. The city attorney or the city attorney's designee is authorized to take any appropriate legal action to collect monetary penalties and necessary and reasonable costs, including liens, personal obligations, assignment of claims to collection agencies, and other collection methods authorized by law.

3. Authority to negotiate settlement. The city official and the city attorney or the city attorney's designee may negotiate a settlement, compromise or otherwise dispose of an action when to do so would be in the best interest of the city.

(M-3857, Added, 12/17/2007, Sec 8)

Section 22.02.080 Summary abatement - Stop work order.

A. Summary abatement. Whenever any violation of the VMC poses an imminent threat to the health, safety, or welfare of persons or property, or to the environment, the city may summarily and without prior notice order the condition(s) abated.

B. Stop work order. A stop work order is a form of summary abatement. Whenever the city official determines that a violation of the VMC has occurred or is occurring, the city official may issue a stop work order and impose monetary penalties consistent with VMC 22.02.070. A stop worker order may be issued if:

1. Work is not authorized by a valid permit; or
2. The permittee is not complying with the terms of the permit or approved plans; or
3. The work is, in the city official's judgment, adversely effecting or about to adversely effect adjacent property or rights-of-way, a drainageway, watercourse, critical area or stormwater facility, city water system; or
4. The work creates a hazard to the public health, safety, or welfare.

C. Notice and appeal procedures.

1. Notice. Notice of summary abatement or a stop work order shall include:
 - a. The information required in VMC 22.02.040, except the notice shall refer to the method of summary abatement instead of a notice of civil violation and order or order to revoke a permit; and
 - b. Notice of the right to appeal the city's action in the manner described for an appeal of a notice of civil violation and order or order to revoke a permit in VMC 22.03.020, and the right to request compensation for damages proximately caused to the appellant by the city's summary abatement if the appellant prevails in the appeal.

2. Service of notice. Notice of summary abatement or a stop work order shall be served according to the requirements of VMC 22.02.060 as soon as reasonably possible.

D. Recovery of necessary and reasonable costs. The necessary and reasonable costs of summary abatement, including incidental expenses, shall be collected according to VMC 22.02.070(G).

(M-3857, Added, 12/17/2007, Sec 8)

Chapter 22.03

APPEAL

Sections:

- 22.03.010 Appeals heard by hearings examiner.**
- 22.03.020 Filing an appeal.**
- 22.03.030 Pre-hearing procedures.**
- 22.03.040 Appeal hearing.**
- 22.03.050 Decision of the hearings examiner.**
- 22.03.060 Official record of proceedings.**
- 22.03.070 Appeal to superior court.**

Section 22.03.010 Appeals heard by hearings examiner.

All appeals under this title shall be heard by a hearings examiner, as created and authorized under VMC chapter 2.51. This title shall supersede any rules promulgated under VMC 2.51.080. (M-3638, Added, 12/01/2003)

Section 22.03.020 Filing an appeal.

A. Standing to appeal. The person cited in the notice of civil violation and order or order to revoke permit or any person having any record title or legal interest in the building, structure, premise, personal property, or land where the violation is alleged to exist may appeal a notice of civil violation and order or order to revoke permit as provided in VMC 22.03.020.

B. Filing an appeal. An appeal of a notice of civil violation and order or order to revoke permit shall be in writing, signed by the person appealing, and shall be filed with the City Clerk no more than ten (10) calendar days from the date the city personally serves the notice of civil violation and order or order to revoke permit on all cited parties or, if not served personally, no more than thirteen (13) calendar days after the city deposits the notice of civil violation and order or order to revoke permit in the U.S. mail as provided in VMC 22.02.040(b).

C. Administrative denial of untimely appeals. The city official may administratively deny an appeal as untimely if the appellant fails to conform to the time requirements contained in VMC 22.03.020(B). The administrative denial shall be in writing and served in compliance with VMC 22.02.060. An appellant may appeal the city's official administrative denial by filing an appropriate action in a court of competent jurisdiction within thirty (30) days of the denial.

D. Content of an appeal. The written appeal shall state the name and address of the appellant and shall explain how the appellant is authorized by VMC 22.03.020(A) to file the appeal and shall list grounds for the appeal, including any alleged error of fact or law in the notice of civil violation and order or order to revoke permit. Failure to comply with this section constitutes a "frivolous appeal" as defined under VMC 22.01.050, and subject the appellant to costs and fees.

E. Failure to appeal. Failure to appeal a notice of civil violation and order or order to revoke permit as provided in this subsection constitutes a waiver of all right to an administrative hearing and determination of the matter.

(M-3857, Amended, 12/17/2007, Sec 10; M-3638, Added, 12/01/2003)

Section 22.03.030 Pre-hearing procedures.

A. Hearing date. As soon as practical after receiving the written appeal, and after coordinating with the hearings examiner, the city shall fix a date, time and place for the hearing of the appeal.

1. Such date shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date the appeal was filed with the City Clerk, providing the appeal hearing may be less than thirty (30) calendar days or more than ninety (90) calendar days from the date the appeal was filed if:

a. The city offers and the appellant signs a written statement agreeing to hold the hearing less than thirty (30) calendar days or more than ninety (90) calendar days from the date the appeal was filed; or

b. Prior to the hearing, the city or the appellant file a motion with the hearings examiner to hold the hearing less than thirty (30) calendar days or more than ninety (90) calendar days from the date the appeal was filed, and the hearings examiner concludes such a delay would be in the interests of justice and adopts findings to that effect.

c. If the parties, under VMC 22.03.030(A)(1)(a), set the hearing date less than thirty (30) days from the date the appeal was filed, the parties shall also set dates when exhibits, memoranda of authorities, responses thereto, and the official appeal file shall be delivered.

d. If the hearings examiner, under VMC 22.03.030(A)(1)(b), sets the hearing date less than (30) days from the date the appeal was filed, the hearings examiner shall also set dates when exhibits, memoranda of authorities, responses thereto, and the official appeal file shall be delivered.

2. Notice of hearing. The city shall provide the appellant with written notice of the time and place of the hearing by causing such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, to the address on the appeal at least twenty (20) calendar days prior to the date of the hearing.

3. If the appeal hearing concerns a nuisance vehicle, the city also shall send written notice of time and place of the hearing, by certified mail, with a five (5) day return receipt requested, to the following person:

a. The owner of the land where the nuisance vehicle is located, as shown on the last equalized assessment roll; and

b. The nuisance vehicle's last registered and legal owner of record, unless the nuisance vehicle is in such condition that identification numbers are not available to determine ownership.

B. Form of notice of hearing. The notice to appellant shall be substantially in the following form, but may include other information:

“You are hereby notified that a hearing will be held before the hearings examiner at _____ on the _____ day of _____, 20__, at the hour of _____ and at such times and places as the hearing is continued. You may be represented by an attorney, and you may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other items of evidence by filing an affidavit with the hearings examiner _____.

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C. Subpoenas. The hearings examiner, at the request of the city or appellant, may subpoena witnesses necessary for the presentation of their respective cases. The subpoena may be served by the city or appellant either personally or by mailing a copy of the subpoena to the witness's last known address. Proof of service shall be made by written declaration and executed by the person effecting service, declaring the time and date of service and the manner by which service was made. It is a misdemeanor to knowingly ignore the directives of a subpoena under this subsection.

D. The official appeal file. The city official and appellant shall deliver to the hearings examiner and to each other all relevant materials to the appeal, including, but not limited to, staff reports, legal memoranda, exhibits, names or potential witnesses, along with a brief summary of any witness's expected testimony, and any affidavits or declaration, at least seven (7) calendar days before the scheduled hearing.

E. Pre-Hearing conference. The hearings examiner may, on his or her own motion or at the request of a party, hold a conference prior to the appeal hearing to consider:

1. Simplification of issues; or
2. The existence of any undisputed facts that the parties will stipulate to; or
3. Such other matters that will aid in the efficient disposition of the action. Based upon such a conference, the examiner may enter a pre-hearing order. Pre-hearing conferences shall be recorded and the recordings shall be part of the official case record.

(M-3857, Amended, 12/17/2007, Sec 11; M-3638, Added, 12/01/2003)

Section 22.03.040 Appeal hearing.

A. Nature and scope of appeal hearings. Except on good cause shown, all hearings before the hearings examiner shall be open to the public. The appellant, the appellant's representative, the city official and any person whose interests are effected shall be given an opportunity to be heard. The scope of review in an appeal hearing is *de novo*, except that the hearings examiner shall defer to the city official's legal interpretation of the code, unless the city official's interpretation is arbitrary and capricious or clearly erroneous.

B. Special provisions for hearings concerning nuisance vehicles.

1. The owner of the land on which a nuisance vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing and deny responsibility for the presence of the nuisance vehicle on the owner's land.

2. The city may offer evidence to rebut the owner's denial.

3. If the hearings examiner determines after hearing that the vehicle was placed on the owner's land without the landowner's consent and that the landowner did not subsequently acquiesce in its presence, then the city shall not be authorized to assess costs of administration or removal of the nuisance vehicle against the property upon which the nuisance vehicle is located or otherwise attempt to collect the cost from the landowner.

C. Burden of proof. The city has the burden of proof in appeal hearings. The city must prove by a preponderance of evidence that a violation occurred and that the required corrective action, if applicable, conforms to the code.

Vancouver Municipal Code
VMC 22 Adopted 6-15-09

D. Evidence. The formal rules of evidence do not apply to hearings under this title. The hearings examiner shall admit all evidence that is offered, unless a party timely objects to the evidence, and the hearings examiner finds the disputed evidence is not relevant or is untimely.

1. Relevant evidence. Relevant evidence means evidence having any tendency to make the existent of any material fact that is of consequence to the hearing more probable or less probable than it would be without the evidence.

2. Prejudicial evidence. Prejudicial Evidence means evidence where the probative value of such evidence is outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.

3. Untimely evidence. Untimely Evidence means written testimony or other evidence that was not timely filed with the city pursuant to the timelines established by VMC 22.03.030. The hearings examiner may admit untimely evidence into the hearing record if the evidence is relevant; provided the hearings examiner shall keep the official hearing record open for fourteen (14) calendar days to allow the opposing party to file a written response.

4. Judicial notice. The hearings examiner may take official notice of judicially recognized facts and law including, but not limited to, city ordinances, resolutions, court cases, and in addition, may take notice of general technical or scientific facts accepted as such within the relevant scientific community.

E. Inspection of premises. The hearings examiner may inspect any vehicle, building, structure, land, personal property or premises involved in the appeal during the course of the hearing, provided that:

1. Notice of such inspection shall be given to the appellant before the inspection is made; and
2. The appellant is given an opportunity to be present during the inspection; and
3. The hearings examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn there from; and

4. The appellant then shall have a right to rebut or explain the matters so stated by the hearings examiner.

5. Unless good cause is shown, the appellant's refusal to allow an inspection shall result in the dismissal of the appellant's appeal.

F. Testimony. Both the city and the appellant have the right to elicit testimony from witnesses at the hearing. This can be done in the form of oral testimony or written testimony.

1. Oral Testimony. Oral testimony shall be taken only on oath or affirmation.

2. Written Testimony. Written testimony shall be taken by sworn affidavit or a certification conforming to RCW 9A.72.085.

G. Hearing Procedure. The hearings examiner generally shall conduct the appeal hearing in the following order:

1. Preliminary motions;

2. City's case in chief. After each witness the appellant has the right to cross-examine;

3. Appellant's case in chief. After each witness the city has the right to cross-examine;

4. Presentation of rebuttal evidence by either party;

5. City's closing argument;

6. Appellant's closing argument;

7. City's rebuttal argument.

H. Place of hearing. Appeal hearings under this title shall be conducted at a place specified in the notice of hearing.

I. Record. A record of the entire appeal hearing shall be made by the city by a video or tape recording.

J. Continuances and open records. The hearings examiner may continue a hearing or hold open the public record after the conclusion of the hearing. If the hearings examiner continues a hearing to a date, time and place certain, in the presence of the parties, no additional written notice of the continued hearing is required.

(M-3857, Amended, 12/17/2007, Sec 12; M-3638, Added, 12/01/2003)

Section 22.03.050 Decision of the hearings examiner.

A. Final order. The hearings examiner shall determine whether the city has established by a preponderance of evidence that a violation occurred and that the required corrective action conforms to the requirements of the code. The hearings examiner shall affirm, vacate, or modify the city's decision regarding the alleged violation; the required corrective action with or without written conditions; deadlines for compliance; and shall impose monetary penalties in accordance with VMC 22.02.070.

B. Modified corrective action. The hearings examiner may approve alternative materials or methods for any corrective action, provided that the hearings examiner finds, in writing, that the design, use or operation thereof satisfactorily complies with the requirements of the code and that the method of work performed or operation is, for the purpose intended, at least equivalent to that prescribed by the code in quality, strength, effectiveness, fire resistance, durability and safety.

C. Cost of appeal. Upon motion of the city, the hearings examiner may assess the costs of an appeal hearing under this title, including, but not limited to, the hearings examiner's fees and reasonable costs of staff time, if the hearings examiner finds the appeal was frivolous. Any appellant who fails to appear at his or her appeal hearing, unless for good cause shown, shall be responsible for the appeal hearing costs.

D. Decisions concerning nuisance vehicles. If the hearings examiner determines that a vehicle is a nuisance vehicle, the hearings examiner shall direct the Vancouver Police Department to dispose of the nuisance vehicle, or part thereof, under applicable law, and to give notice to the Washington State Patrol and the Washington Department of Licensing that the nuisance vehicle has been wrecked.

E. Contents of final order. Except as provided in VMC 22.03.050(F), the hearings examiner shall issue a written final order that contains the following information:

1. The hearings examiner's decision; and
2. Findings of fact and conclusions of law supporting the decision; and
3. The required corrective action, if any; and
4. The date and time by which the corrective action, if any, must be completed; and

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5. If corrective action is required, the date on which monetary penalties shall continue to accrue; and

6. To the extent the appellant does not prevail in the appeal, the past and future monetary penalties according to VMC 22.02.070; and

7. A statement itemizing the cost of the appeal hearing or hearings examiner or both, if applicable under VMC 22.03.050(C); and

8. The date and time when the city may abate the unlawful condition if the required corrective action is not taken within the time provided in the final order and that the appellant will be responsible for the city's necessary and reasonable costs.

F. In respect to violations for non-cumulative penalties issued pursuant to VMC 22.02.040(A), the hearings examiner shall affirm or dismiss the notice of civil violation and order after the city and appellant present their respective cases by signing a standard form prescribed by the City Clerk. If the city prevails, the hearings examiner may impose the costs of the appeal, if the conditions of VMC 22.03.050(C) apply, in addition of the monetary penalty imposed by the notice of civil violation and order.

G. Appeal of final order. The decision of the hearings examiner shall be final unless appealed by the appellant or the city to a court of competent jurisdiction within twenty-one (21) days of the date of the city's service of the final order on the appellant as specified in VMC 22.03.050(H).

H. Notice of decision. The hearings examiner shall mail the final order to the city within fourteen (14) calendar days after the close of the public record. The city shall serve the appellant with a copy of the final order as it would serve notice of the appeal hearing according to VMC 22.03.030(A).

I. Failure to appear. If the appellant or the appellant's representative fails to appear at the scheduled hearing, the hearings examiner shall issue and send or transmit to the city a final order containing the following:

1. A determination that a violation occurred; and

2. An assessment of the appropriate monetary penalties according to the criteria in VMC 22.02.070; and

3. A statement itemizing the cost of the appeal hearing, as outlined in VMC 22.03.050(C); and

4. A determination of the appropriate corrective action and that the appellant may be responsible for the city's necessary and reasonable costs.

(Admin Correction, Amended, 01/25/2008, G. 30 days to 21 days; M-3857, Amended, 12/17/2007, Sec 13; M-3672, Amended, 11/15/2004, Sec 8; M-3638, Added, 12/01/2003)

Section 22.03.060 Official record of proceedings.

Once the applicable city department or service area receives the hearings examiner's final notice and order, the city official shall compile an official record of proceedings that will include the following:

a. The final order; and

b. The video or tape recording of the appeal hearing and pre-hearing conference; and

c. The official appeal file; and

d. Any other documents or materials admitted into evidence at the appeal hearing.

(M-3638, Added, 12/01/2003)

Section 22.03.070 Appeal to superior court.

After a party has exhausted administrative remedies under this title, the city or appellant may appeal the hearings examiner's final order to superior court under the procedures of the Land Use Petition Act, RCW 36.70C. In the event RCW 36.70C does not apply, the city or appellant may appeal the hearings examiner's final order to superior court under the procedures of RCW 7.16.
(M-3638, Added, 12/01/2003)