

Ordinance No. 121241

Council Bill No. 114640

The City of Seattle  
Council Bill/Ordinance

AN ORDINANCE relating to Street and Sidewalk Use, amending Section 15.48.900; repealing Chapter 15.50; and adding a new Chapter 15.90 to Title 15 of the Seattle Municipal Code.

7/29/03 <sup>RC, RM, HW</sup> <sup>PAID AS AMMO</sup>

CF No. \_\_\_\_\_

|                              |                      |  |
|------------------------------|----------------------|--|
| Date Introduced:             | 7-21-03              |  |
| Date 1st Referred:           | To: (committee)      | Transportation                           |
| Date Re - Referred:          | To: (committee)      |  |
| Date Re - Referred:          | To: (committee)      |  |
| Date of Final Passage:       | Full Council Vote:   |  |
| 8-4-03                       | 9-0                  |  |
| Date Presented to Mayor:     | Date Approved:       |  |
| 8-5-03                       | 8/13                 |  |
| Date Returned to City Clerk: | Date Published:      | T.O. <input type="checkbox"/>            |
| 8/13/03                      | 10/10/03             | F.T. <input checked="" type="checkbox"/> |
| Date Vetoes by Mayor:        | Date Veto Published: |  |
|                              |                      |  |
| Date Passed Over Veto:       | Veto Sustained:      |  |
|                              |                      |  |

8-4-03 Pass

This file is complete and ready

Law Department

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by:

*Richard Conlin*

Councilmember

*(E)*

*Read As Amended*

**Committee Action:**

*1/03 RC, RM, HW*

*8-4-03 Passed 9-0*

This file is complete and ready for presentation to Full Council.

Committee:

*RC 7/29/03*

(initial/date)

*Department*

Law Dept. Review

OMP Review

*(initial)*

City Clerk Review

*(initial)*

Electronic Copy Loaded

*(initial)*

Indexed

ORDINANCE 121241

AN ORDINANCE relating to Street and Sidewalk Use, amending Section 15.48.900; repealing Chapter 15.50; and adding a new Chapter 15.90 to Title 15 of the Seattle Municipal Code.

WHEREAS, the enforcement system for processing Street and Sidewalk Use Code violations should recognize that the majority of citizens will voluntarily comply with the code requirements once they are aware of a violation; and

WHEREAS, the current enforcement system can be changed to be more effective in dealing with the more difficult street and sidewalk use cases, particularly those involving continuing offenders and adjacent property owners who are unwilling to comply with the City's requirements; and

WHEREAS, it is appropriate that the Street and Sidewalk Use Code should discourage continuing violations by imposing cumulative penalties; and

WHEREAS, enforcement against violators is necessary to protect the public health, safety and welfare, and effective implementation of the street and sidewalk use permit program requires consistent ongoing enforcement against violators, even though most people will abide by all the rules and regulations required by Title 15;

NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. SMC 15.48.900 is amended as follows:

A. Each violation of Section 15.48.040 shall be a civil infraction as contemplated by RCW Chapter 7.80 and deemed to be a Class 3 civil infraction under RCW 7.80120(c), and shall subject the violator to a maximum penalty and a default amount of Fifty Dollars (\$50.00) plus statutory assessments. If the person is unable to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty.

B. Each violation of Section 15.48.10((0))5 shall be a civil infraction as contemplated by RCW Chapter 7.80 and deemed to be a Class 1 civil infraction under RCW 7.80.120(a), and shall subject the violator to a maximum penalty and default amount of Two Hundred Fifty Dollars (\$250.00) plus



1 statutory assessments. The penalty for a civil infraction is in addition to the civil liability of the person  
2 responsible for the posting to the City for the cost of removal under Sections 15.48.120 and 15.48.130.

3 C. As contemplated by RCW 7.80.160, a person who fails to sign a notice of civil infraction or  
4 who willfully violates his or her written and signed promise to appear in court or his or her written and  
5 signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the  
6 disposition of the notice of civil infraction. A person who willfully fails to pay a monetary penalty or  
7 perform community service as ordered by a court may be found in contempt of court as provided in  
8 chapter 7.21 RCW.

9 D. An action for a civil infraction shall be initiated and process in the manner contemplated by  
10 RCW Chapter 7.80 and the Infraction Rules for Courts of Limited Jurisdiction. For purposes of RCW  
11 7.80.040, the "enforcement officer" authorized to enforce the provisions of this title are: (1) as to park  
12 drives and boulevards, the Superintendent of Parks and Recreation, and as to other public places, the  
13 Director of the Seattle Department of Transportation; (2) authorized representatives or assistants of either  
14 of them; and (3) a commissioned officer of the Seattle Police Department and a person issued a Special  
15 Police Officer Commission by the Chief of Police with authority to enforce this title.

16  
17 Section 2. Chapter SMC 15.50 is repealed.

18  
19 Section 3. A new Chapter SMC 15.90 Enforcement is adopted to read as follows:  
20 SMC 15.90.002 Violations.

21  
22 A. It is a violation of Title 15 for any person to initiate or maintain or cause to be initiated  
23 or maintained the use of any public place within The City of Seattle without first obtaining the  
24 permits or authorizations required for the use by Title 15.

25 B. It is a violation of Title 15 for any person to use any public place in any manner that is  
26 not permitted by the terms of any permit or authorization issued pursuant to Title 15 or previous  
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1 codes, provided that the terms or conditions are explicitly stated on the permit or the approved  
2 plans.

3 C. It is a violation of Title 15 to remove or deface any sign, notice, complaint or order  
4 required by or posted in accordance with Title 15.

5 D. It is a violation of Title 15 to misrepresent any material fact in any application, plans  
6 or other information submitted to obtain any street or sidewalk use authorization.

7 E. It is a violation of Title 15 for anyone to fail to comply with the requirements of Title  
8 15.

9 SMC 15.90.004 Authority to enforce.

10 A. The Director of the Seattle Department of Transportation is authorized to enforce Title  
11 15. The Director may call upon the police, fire, health or other appropriate City departments to  
12 assist in enforcement. The Director is also authorized to enforce Section 23.55.004, Signs  
13 projecting over public rights-of-way.

14 B. Upon presentation of proper credentials, the Director or duly authorized representative  
15 of the Director may, with the consent of the owner or occupier of a building or premises, or  
16 pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or  
17 premises subject to the consent or warrant to perform the duties imposed by the Street and  
18 Sidewalk Use Code. The Director or duly authorized representative of the Director may enter  
19 any public place at any time.

20 C. The Street and Sidewalk Use Code shall be enforced for the benefit of the health,  
21 safety and welfare of the general public, and not for the benefit of any particular person or class  
22 of persons.

23 D. It is the intent of this Street and Sidewalk Use Code to place the obligation of  
24 complying with its requirements upon the adjacent property owner, occupant or other person  
25 responsible for the use of public places within the scope of this Code.



1 E. No provision of or term used in this Code is intended to impose any duty upon the City  
2 or any of its officers or employees which would subject them to damages in a civil action.

3 SMC 15.90.006 Investigation and notice of violation.

4 A. The Director is authorized to investigate any use of a public place which the Director  
5 reasonably believes does not comply with the standards and requirements of this Street and  
6 Sidewalk Use Code.

7 B. If after investigation the Director determines that the standards or requirements have  
8 been violated, the Director may issue a notice of violation to the adjacent property owner,  
9 occupant or other person responsible for the violation. The notice of violation shall state  
10 separately each standard or requirement violated, shall state what corrective action, if any, is  
11 necessary to comply with the standards or requirements; and shall set a reasonable time for  
12 compliance.

13 C. The notice shall be served upon the adjacent property owner, occupant or other person  
14 responsible for the violation by personal service in the manner set forth in RCW 4.28.080 for  
15 service of a summons or sent by first class mail, addressed to the last known address of such  
16 person(s). Service shall be complete at the time of personal service, or if mailed, three days  
17 following the date of mailing. If a notice of violation sent by first class mail is returned as  
18 undeliverable, service may be made by posting the notice of violation at a conspicuous place on  
19 the site.

20 D. Nothing in this section shall be deemed to limit or preclude any action or proceeding  
21 pursuant to Section 15.90.010 or Section 15.90.012, and nothing in this section shall be deemed  
22 to obligate or require the Director to issue a notice of violation prior to the imposition of civil or  
23 criminal penalties.

24 E. A notice or an Order may be amended at any time in order to:

- 25 1. Correct clerical and other errors, or
- 26 2. Cite additional authority for a stated violation.



1 F. Violations of SMC 15.48.040 and 15.48.100 shall be cited in accordance with SMC  
2 15.48.900.

3 G. Unless a request for review before the Director is made in accordance with Section  
4 15.90.014 the notice of violation shall become the final order of the Director. After the notice of  
5 violation becomes the final order of the Director, a copy of the notice of violation may be filed  
6 with the King County Department of Records and Elections. Any final order other than a stop-  
7 work order or emergency order issued by the Director pursuant to this subtitle may be appealed to  
8 the Hearing Examiner by an aggrieved person. Appeals to the Hearing Examiner shall be  
9 initiated by filing a written notice with the applicable fee within fifteen (15) days of the date set  
10 for compliance in the notice of violation or Order following a review by the Director.

11 SMC 15.90.008 Time to comply.

12 When calculating a reasonable time for compliance, the Director shall consider the  
13 following criteria:

- 14 1. The type and degree of violation cited in the notice;
- 15 2. The stated intent, if any, of an adjacent property owner, occupant or other  
16 responsible party to take steps to comply;
- 17 3. The procedural requirements for obtaining a permit to carry out corrective  
18 action;
- 19 4. The complexity of the corrective action; and
- 20 5. Any other circumstances beyond the control of the adjacent property owner,  
21 occupant or other responsible party.

22 SMC 15.90.010 Stop Work Order.

23 Whenever a violation of this Code will materially impair the Director's ability to secure  
24 compliance with this Code, when the violation threatens the health or safety of the public, or  
25 when the violation interferes with the public's use and enjoyment of the public place the Director  
26 may issue a Stop Work Order specifying the violation and prohibiting any work or other activity  
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1 at the site by posting the Stop Work Order in a conspicuous place at the site, if posting is  
2 physically possible, or by serving the adjacent property owner, occupant or other person  
3 responsible for the use. A failure to comply with a Stop Work Order shall constitute a violation  
4 of this Street and Sidewalk Use Code.

5 SMC 15.90.012 Emergency Order.

6 Whenever any use or activity in violation of this Code threatens the health and safety of  
7 any member of the public, the Director may issue an Emergency Order directing that the use or  
8 activity be discontinued and the condition causing the threat to the public health and safety be  
9 corrected. The Emergency Order shall specify the time for compliance and shall be posted in a  
10 conspicuous place at the site, if posting is physically possible, or served on the adjacent property  
11 owner, occupant or other person responsible for the use. A failure to comply with an Emergency  
12 Order shall constitute a violation of this Street and Sidewalk Use Code.

13 SMC 15.90.014 Review by the Director.

14 A. Any person aggrieved by a notice of violation issued by the Director pursuant to  
15 Section 15.90.006 may obtain a review of the notice by requesting such review in writing within  
16 ten (10) days of the date of the notice. When the last day of the period so computed is a Saturday,  
17 Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business  
18 day. The request shall be in writing, and within thirty (30) days of the request for review the  
19 aggrieved person shall submit any additional information to be considered for the review. Before  
20 the deadline for submission of information, any person aggrieved by or interested in the notice of  
21 violation (including any persons served the notice of violation and the complainant) may submit  
22 any additional information in the form of written material to the Director for consideration as part  
23 of the review.

24 B. The review will be made by a representative of the Director who is familiar with the  
25 case and the applicable ordinances. The Director's representative will review all additional  
26 information received by the deadline for submission of information. The reviewer may also  
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1 request clarification of information received and a site visit. After review of the additional  
2 information, the Director may:

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

8 C. The Director shall issue an Order of the Director containing the decision and shall  
9 cause the same to be mailed by first class mail to the person or persons named on the notice of  
10 violation. The Director may file the Order with the Department of Records and Elections of  
11 King County. Appeal of the Order shall be made in accordance with SMC 15.90.006(G).  
12 SMC 15.90.016 Extension of Compliance Date.

13 The Director may grant an extension of time for compliance with any notice or Order,  
14 whether pending or final, upon the Director's finding that substantial progress toward compliance  
15 has been made and that the public will not be adversely affected by the extension. An extension  
16 of time may be revoked by the Director if it is shown that the conditions at the time the extension  
17 was granted have changed, the Director determines that a party is not performing corrective  
18 actions as agreed, or if the extension creates an adverse effect on the public. The date of  
19 revocation shall then be considered the compliance date.

20 15.90.018 Civil penalty.

21 A. In addition to any other sanction or remedial procedure which may be available, any  
22 person violating or failing to comply with any of the provisions of Title 15 and who is identified  
23 in an order of the Director shall be subject to a cumulative penalty of up to Five-hundred Dollars  
24 (\$500) per day for each violation from the date set for compliance until the person complies with  
25 the requirements of the code.



1 B. The penalty imposed by this section shall be collected by civil action brought in the  
2 name of the City. The Director shall notify the City Attorney in writing of the name of any person  
3 subject to the penalty, and the City Attorney shall, with the assistance of the Director, take  
4 appropriate action to collect the penalty. In any civil action for a penalty, the City has the burden  
5 of proving by a preponderance of the evidence that a violation exists or existed; the issuance of  
6 the notice of violation or of an order following a review by the Director is not itself evidence that  
7 a violation exists.

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

9 1. That the violation giving rise to the action was caused by the wilful act, or  
10 neglect, or abuse of another; or

11 2. That correction of the violation was commenced promptly upon receipt of the  
12 notice thereof, but that full compliance within the time specified was prevented by  
13 inability to obtain necessary materials or labor, inability to gain access to the public place,  
14 or other condition or circumstance beyond the control of the defendant.

15 SMC 15.90.020 Alternative criminal penalty.

16 Any person who violates or fails to comply with any of the provisions of Title 15 shall be  
17 guilty of a gross misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except  
18 that absolute liability shall be imposed for such a violation or failure to comply and none of the  
19 mental states described in Section 12A.04.030 need be proved. The Director may request the City  
20 Attorney to prosecute such violations criminally as an alternative to the notice of violation  
21 procedure outlined in this chapter. Each day any person shall continue to violate or fail to  
22 comply with the provisions of this title and each occurrence of a prohibited activity shall be  
23 deemed and considered a separate offense.

24 SMC 15.90.022 Additional relief.

25 The Director may seek legal or equitable relief to enjoin any acts or practices and abate  
26 any condition which constitutes or will constitute a violation of the Street and Sidewalk Use  
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1 Code when civil or criminal penalties are inadequate to effect compliance. In any such action,  
2 the City has the burden of proving by a preponderance of the evidence that a violation exists or  
3 will exist; the issuance of the notice of violation or of an order following a review by the Director  
4 is not itself evidence that a violation exists or will exist. Nothing in this section shall prevent the  
5 Director from abating any use of a public place without a permit or impounding personal  
6 property in a public place without a permit pursuant to SMC 15.04.072, 15.18.020, and Chapter  
7 15.38.

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1 Section 4. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 4<sup>th</sup> day of August, 2003, and signed by me in open  
5 session in authentication of its passage this 4<sup>th</sup> day of August, 2003.

6 Pete Stemburk  
7 President \_\_\_\_\_ of the City Council

8 Approved by me this 13 day of August, 2003.

9 Gregory Niekels  
10 Gregory Niekels, Mayor

11 Filed by me this 13<sup>th</sup> day of August, 2003.

12 Janith E. Peppin  
13 City Clerk

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15 (Seal)  
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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

| <b>Department:</b>     | <b>Contact Person/Phone:</b> | <b>DOF Analyst/Phone:</b> |
|------------------------|------------------------------|---------------------------|
| Seattle Transportation | Richard Richmire/684-0391    | Jennifer Devore/615-1328  |

**Legislation Title:**

AN ORDINANCE relating to Street and Sidewalk Use, amending Section 15.48.900; repealing Chapter 15.50; and adding a new Chapter 15.90 to Title 15 of the Seattle Municipal Code.

• **Summary of the Legislation:**

Provides an alternative civil process to gain voluntary compliance of the Street Use Code in addition to the existing criminal penalties, which are seldom applied except under the most severe emergency conditions. The existing criminal penalties are often considered too harsh for the violations and do not offer an effective communication and appeals process between Seattle Transportation and the person violating the code. This Notice of Violation (NOV) process is closely modeled after DCLU's NOV process, which has proven to be a fair and effective code enforcement tool. The civil penalties included in this ordinance are expected to be used infrequently, since most code violations will be corrected when Seattle Transportation issues a NOV warning, and thus have no impact on revenue.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

**The existing Street Use Code allows criminal prosecution for violations of the applicable sections of the SMC. These penalties do not provide for an effective communication tool to achieve the goal of voluntary compliance with the code. Seattle Transportation then faces the difficult task of achieving compliance without an established civil process, or utilizing the available criminal penalties, which are typically more extreme in punishment than the department is willing to pursue.**

- *Please check one of the following:*

**X** **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*



**ORDINANCE**

AN ORDINANCE relating to Street and Sidewalk Use, amending Section 15.48.900; repealing Chapter 15.50; and adding a new Chapter 15.90 to Title 15 of the Seattle Municipal Code.

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WHEREAS, it is appropriate that the Street and Sidewalk Use Code should discourage continuing violations by imposing cumulative penalties; and

WHEREAS, enforcement against violators is necessary to protect the public health, safety and welfare, and effective implementation of the street and sidewalk use permit program requires consistent ongoing enforcement against violators, even though most people will abide by all the rules and regulations required by Title 15;

NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

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A. Each violation of Section 15.48.040 shall be a civil infraction as contemplated by RCW Chapter 7.80 and deemed to be a Class 3 civil infraction under RCW 7.80120(c), and shall subject the violator to a maximum penalty and a default amount of Fifty Dollars (\$50.00) plus statutory assessments. If the person is unable to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty.

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4 A. The Director is authorized to investigate any use of a public place which the Director  
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7 B. If after investigation the Director determines that the standards or requirements have  
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18 undeliverable, service may be made by posting the notice of violation at a conspicuous place on  
19 the site.

20 D. Nothing in this section shall be deemed to limit or preclude any action or proceeding  
21 pursuant to Section 15.90.010 or Section 15.90.012, and nothing in this section shall be deemed  
22 to obligate or require the Director to issue a notice of violation prior to the imposition of civil or  
23 criminal penalties.

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- 26 2. Cite additional authority for a stated violation.

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13 SMC 15.90.014 ~~23.90.014~~ Review by the Director.

14 A. Any person aggrieved by a notice of violation issued by the Director pursuant to  
15 Section 15.90.006 may obtain a review of the notice by requesting such review in writing within  
16 ten (10) days of the date of the notice. When the last day of the period so computed is a Saturday,  
17 Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business  
18 day. The request shall be in writing, and within thirty (30) days of the request for review the  
19 aggrieved person shall submit any additional information to be considered for the review. Before  
20 the deadline for submission of information, any person aggrieved by or interested in the notice of  
21 violation (including any persons served the notice of violation and the complainant) may submit  
22 any additional information in the form of written material to the Director for consideration as part  
23 of the review.

24 B. The review will be made by a representative of the Director who is familiar with the  
25 case and the applicable ordinances. The Director's representative will review all additional  
26 information received by the deadline for submission of information. The reviewer may also  
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28

1 request clarification of information received and a site visit. After review of the additional  
2 information, the Director may:

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

8 C. The Director shall issue an Order of the Director containing the decision and shall  
9 cause the same to be mailed by first class mail to the person or persons named on the notice of  
10 violation. The Director may file the Order with the Department of Records and Elections of  
11 King County. Appeal of the Order shall be made in accordance with SMC 15.90.006(G).  
12 SMC 15.90.016 Extension of Compliance Date.

13 The Director may grant an extension of time for compliance with any notice or Order,  
14 whether pending or final, upon the Director's finding that substantial progress toward compliance  
15 has been made and that the public will not be adversely affected by the extension. An extension  
16 of time may be revoked by the Director if it is shown that the conditions at the time the extension  
17 was granted have changed, the Director determines that a party is not performing corrective  
18 actions as agreed, or if the extension creates an adverse effect on the public. The date of  
19 revocation shall then be considered the compliance date.

20 15.90.018 Civil penalty.

21 A. In addition to any other sanction or remedial procedure which may be available, any  
22 person violating or failing to comply with any of the provisions of Title 15 and who is identified  
23 in an order of the Director shall be subject to a cumulative penalty of up to Five-hundred Dollars  
24 (\$500) per day for each violation from the date set for compliance until the person complies with  
25 the requirements of the code.

1 B. The penalty imposed by this section shall be collected by civil action brought in the  
2 name of the City. The Director shall notify the City Attorney in writing of the name of any person  
3 subject to the penalty, and the City Attorney shall, with the assistance of the Director, take  
4 appropriate action to collect the penalty. In any civil action for a penalty, the City has the burden  
5 of proving by a preponderance of the evidence that a violation exists or existed; the issuance of  
6 the notice of violation or of an order following a review by the Director is not itself evidence that  
7 a violation exists.

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

9 1. That the violation giving rise to the action was caused by the wilful act, or  
10 neglect, or abuse of another; or

11 2. That correction of the violation was commenced promptly upon receipt of the  
12 notice thereof, but that full compliance within the time specified was prevented by  
13 inability to obtain necessary materials or labor, inability to gain access to the public place,  
14 or other condition or circumstance beyond the control of the defendant.

15 ~~SMC 15.90.020 23.90.020~~ Alternative criminal penalty.

16 Any person who violates or fails to comply with any of the provisions of Title 15 shall be  
17 guilty of a gross misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except  
18 that absolute liability shall be imposed for such a violation or failure to comply and none of the  
19 mental states described in Section 12A.04.030 need be proved. The Director may request the City  
20 Attorney to prosecute such violations criminally as an alternative to the notice of violation  
21 procedure outlined in this chapter. Each day any person shall continue to violate or fail to  
22 comply with the provisions of this title and each occurrence of a prohibited activity shall be  
23 deemed and considered a separate offense.

24 ~~SMC 15.90.022 23.90.022~~ Additional relief.

25 The Director may seek legal or equitable relief to enjoin any acts or practices and abate  
26 any condition which constitutes or will constitute a violation of the Street and Sidewalk Use  
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1 Code when civil or criminal penalties are inadequate to effect compliance. In any such action,  
2 the City has the burden of proving by a preponderance of the evidence that a violation exists or  
3 will exist; the issuance of the notice of violation or of an order following a review by the Director  
4 is not itself evidence that a violation exists or will exist. Nothing in this section shall prevent the  
5 Director from abating any use of a public place without a permit or impounding personal  
6 property in a public place without a permit pursuant to SMC 15.04.072, 15.18.020, and Chapter  
7 15.38.

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Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2002, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Gregory Nickels, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
City Clerk

(Seal)



# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

July 8, 2003

Honorable Peter Steinbrueck  
President  
Seattle City Council  
Municipal Building, 11<sup>th</sup> Floor

Dear Council President Steinbrueck:

The attached ordinance provides an alternative enforcement mechanism to the Street Use Code in addition to the criminal penalties presently allowed by the Seattle Municipal Code. This Notice of Violation process provides better communication tools for Seattle Department of Transportation (SDOT) staff to notify citizens of violations of the Street Use Code, and a review and appeal process for citizens to dispute violations of the Code. Cumulative civil penalties for non-compliance are also allowed, which offer increased incentive for citizens to correct safety and nuisance violations in a timely manner. The existing criminal penalties are rarely implemented, since these penalties are considered too harsh for most violations and are difficult to implement.

Last year, SDOT staff were given authority under separate ordinance (Ordinance #120822) to issue civil citations and warnings for minor violations of the Street Use Code, such as street vending, debris in public places and other non-critical violations. This new system has proven extremely effective; typically a written warning is all that is required to gain compliance. SDOT is confident that this Notice of Violation process will be similarly effective in establishing communication with appropriate individuals and explaining the steps they must take to remedy the situation or provide an avenue to dispute the violation.

This legislation was modeled very closely on the existing DCLU Notice of Violation process which has proven to be a fair and effective code compliance tool.

Thank you for your consideration of this legislation. Should you have questions, please contact Richard Richmire at 206-684-0391.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Nickels', written over a dotted line.

GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 12<sup>th</sup> Floor, Seattle, WA 98104-1873

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E:mail: mayors.office@ci.seattle.wa.us

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**ORDINANCE**

AN ORDINANCE relating to Street and Sidewalk Use, amending Section 15.48.900; repealing Chapter 15.50; and adding a new Chapter 15.90 to Title 15 of the Seattle Municipal Code.

WHEREAS, the enforcement system for processing Street and Sidewalk Use Code violations should recognize that the majority of citizens will voluntarily comply with the code requirements once they are aware of a violation; and

WHEREAS, the current enforcement system can be changed to be more effective in dealing with the more difficult street and sidewalk use cases, particularly those involving continuing offenders and adjacent property owners who are unwilling to comply with the City's requirements; and

WHEREAS, it is appropriate that the Street and Sidewalk Use Code should discourage continuing violations by imposing cumulative penalties; and

WHEREAS, enforcement against violators is necessary to protect the public health, safety and welfare, and effective implementation of the street and sidewalk use permit program requires consistent ongoing enforcement against violators, even though most people will abide by all the rules and regulations required by Title 15; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. SMC 15.48.900 is amended as follows:

A. Each violation of Section 15.48.040 shall be a civil infraction as contemplated by RCW Chapter 7.80 and deemed to be a Class 3 civil infraction under RCW 7.80.120(c), and shall subject the violator to a maximum penalty and a default amount of Fifty Dollars (\$50.00) plus statutory assessments. If the person is unable to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty.

B. Each violation of Section 15.48.10((0))5 shall be a civil infraction as contemplated by RCW Chapter 7.80 and deemed to be a Class 1 civil infraction under RCW 7.80.120(a), and shall subject the violator to a maximum penalty and default amount of Two Hundred Fifty Dollars (\$250.00) plus statutory assessments. The penalty for a civil infraction is in addition to the civil liability of the person responsible for the posting to the City for the cost of removal under Sections 15.48.120 and 15.48.130.



1 C. As contemplated by RCW 7.80.160, a person who fails to sign a notice of civil infraction or  
2 who willfully violates his or her written and signed promise to appear in court or his or her written and  
3 signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the  
4 disposition of the notice of civil infraction. A person who willfully fails to pay a monetary penalty or  
5 perform community service as ordered by a court may be found in contempt of court as provided in  
6 chapter 7.21 RCW.

7 D. An action for a civil infraction shall be initiated and processed in the manner contemplated  
8 by RCW Chapter 7.80 and the Infraction Rules for Courts of Limited Jurisdiction. For purposes of RCW  
9 7.80.040, the "enforcement officer" authorized to enforce the provisions of this title are: (1) as to park  
10 drives and boulevards, the Superintendent of Parks and Recreation, and as to other public places, the  
11 Director of Seattle Transportation; (2) authorized representatives or assistants of either of them; and (3) a  
12 commissioned officer of the Seattle Police Department and a person issued a Special Police Officer  
13 Commission by the Chief of Police with authority to enforce this title.

14  
15 Section 2. Chapter SMC 15.50 is repealed

16 Section 3. A new Chapter SMC 15.90 is adopted to read as follows:

17 SMC 15.90.002 Violations.

18  
19 A. It is a violation of Title 15 for any person to initiate or maintain or cause to be initiated  
20 or maintained the use of any public place within The City of Seattle without first obtaining the  
21 permits or authorizations required for the use by Title 15.

22 B. It is a violation of Title 15 for any person to use any public place in any manner that is  
23 not permitted by the terms of any permit or authorization issued pursuant to Title 15 or previous  
24 codes, provided that the terms or conditions are explicitly stated on the permit or the approved  
25 plans.

26 C. It is a violation of Title 15 to remove or deface any sign, notice, complaint or order  
27 required by or posted in accordance with Title 15.

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1 D. It is a violation of Title 15 to misrepresent any material fact in any application, plans  
2 or other information submitted to obtain any street or sidewalk use authorization.

3 E. It is a violation of Title 15 for anyone to fail to comply with the requirements of Title  
4 15.

5 SMC 15.90.004 Authority to enforce.

6 A. The Director of Seattle Transportation is authorized to enforce Title 15. The Director  
7 may call upon the police, fire, health or other appropriate City departments to assist in  
8 enforcement. The Director is also authorized to enforce Section 23.55.004, Signs projecting over  
9 public rights-of-way.

10 B. Upon presentation of proper credentials, the Director or duly authorized representative  
11 of the Director may, with the consent of the owner or occupier of a building or premises, or  
12 pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or  
13 premises subject to the consent or warrant to perform the duties imposed by the Street and  
14 Sidewalk Use Code. The Director or duly authorized representative of the Director may enter  
15 any public place at any time.

16 C. The Street and Sidewalk Use Code shall be enforced for the benefit of the health,  
17 safety and welfare of the general public, and not for the benefit of any particular person or class  
18 of persons.

19 D. It is the intent of this Street and Sidewalk Use Code to place the obligation of  
20 complying with its requirements upon the adjacent property owner, occupant or other person  
21 responsible for the use of public places within the scope of this Code.

22 E. No provision of or term used in this Code is intended to impose any duty upon the City  
23 or any of its officers or employees which would subject them to damages in a civil action.

24 SMC 15.90.006 Investigation and notice of violation.

25 A. The Director is authorized to investigate any use of a public place which the Director  
26 reasonably believes does not comply with the standards and requirements of this Street and  
27 Sidewalk Use Code.

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1 B. If after investigation the Director determines that the standards or requirements have  
2 been violated, the Director may issue a notice of violation to the adjacent property owner,  
3 occupant or other person responsible for the violation. The notice of violation shall state  
4 separately each standard or requirement violated, shall state what corrective action, if any, is  
5 necessary to comply with the standards or requirements; and shall set a reasonable time for  
6 compliance.

7 C. The notice shall be served upon the adjacent property owner, occupant or other person  
8 responsible for the violation by personal service in the manner set forth in RCW 4.28.080 for  
9 service of a summons or sent by first class mail, addressed to the last known address of such  
10 person(s). Service shall be complete at the time of personal service, or if mailed, three days  
11 following the date of mailing. If a notice of violation sent by first class mail is returned as  
12 undeliverable, service may be made by posting the notice of violation at a conspicuous place on  
13 the site.

14 D. Nothing in this section shall be deemed to limit or preclude any action or proceeding  
15 pursuant to Section 15.90.010 or Section 15.90.012, and nothing in this section shall be deemed  
16 to obligate or require the Director to issue a notice of violation prior to the imposition of civil or  
17 criminal penalties.

18 E. A notice or an Order may be amended at any time in order to:

- 19 1. Correct clerical and other errors, or
- 20 2. Cite additional authority for a stated violation.

21 F. Violations of SMC 15.48.040 and 15.48.105 shall be cited in accordance with SMC  
22 15.48.900.

23 G. Unless a request for review before the Director is made in accordance with Section  
24 15.90.014 the notice of violation shall become the final order of the Director. After the notice of  
25 violation becomes the final order of the Director, a copy of the notice of violation may be filed  
26 with the King County Department of Records and Elections. Any final order other than a stop-  
27 work order or emergency order issued by the Director pursuant to this subtitle may be appealed to  
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1 the Hearing Examiner by an aggrieved person. Appeals to the Hearing Examiner shall be  
2 initiated by filing a written notice with the applicable fee within fifteen (15) days of the date set  
3 for compliance in the notice of violation or Order following a review by the Director.

4 SMC 15.90.008 Time to comply.

5 When calculating a reasonable time for compliance, the Director shall consider the  
6 following criteria:

- 7 1. The type and degree of violation cited in the notice;
- 8 2. The stated intent, if any, of an adjacent property owner, occupant or other  
9 responsible party to take steps to comply;
- 10 3. The procedural requirements for obtaining a permit to carry out corrective  
11 action;
- 12 4. The complexity of the corrective action; and
- 13 5. Any other circumstances beyond the control of the adjacent property owner,  
14 occupant or other responsible party.

15 SMC 15.90.010 Stop Work Order.

16 Whenever a violation of this Code will materially impair the Director's ability to secure  
17 compliance with this Code, when the violation threatens the health or safety of the public, or  
18 when the violation interferes with the public's use and enjoyment of the public place the Director  
19 may issue a Stop Work Order specifying the violation and prohibiting any work or other activity  
20 at the site by posting the Stop Work Order in a conspicuous place at the site, if posting is  
21 physically possible, or by serving the adjacent property owner, occupant or other person  
22 responsible for the use. A failure to comply with a Stop Work Order shall constitute a violation  
23 of this Street and Sidewalk Use Code.

24 SMC 15.90.012 Emergency Order.

25 Whenever any use or activity in violation of this Code threatens the health and safety of  
26 any member of the public, the Director may issue an Emergency Order directing that the use or  
27 activity be discontinued and the condition causing the threat to the public health and safety be  
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1 corrected. The Emergency Order shall specify the time for compliance and shall be posted in a  
2 conspicuous place at the site, if posting is physically possible, or served on the adjacent property  
3 owner, occupant or other person responsible for the use. A failure to comply with an Emergency  
4 Order shall constitute a violation of this Street and Sidewalk Use Code.

5 SMC 23.90.014 Review by the Director.

6 A. Any person aggrieved by a notice of violation issued by the Director pursuant to  
7 Section 15.90.006 may obtain a review of the notice by requesting such review in writing within  
8 ten (10) days of the date of the notice. When the last day of the period so computed is a Saturday,  
9 Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business  
10 day. The request shall be in writing, and within thirty (30) days of the request for review the  
11 aggrieved person shall submit any additional information to be considered for the review. Before  
12 the deadline for submission of information, any person aggrieved by or interested in the notice of  
13 violation (including any persons served the notice of violation and the complainant) may submit  
14 any additional information in the form of written material to the Director for consideration as part  
15 of the review.

16 B. The review will be made by a representative of the Director who is familiar with the  
17 case and the applicable ordinances. The Director's representative will review all additional  
18 information received by the deadline for submission of information. The reviewer may also  
19 request clarification of information received and a site visit. After review of the additional  
20 information, the Director may:

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

26 C. The Director shall issue an Order of the Director containing the decision and shall  
27 cause the same to be mailed by first class mail to the person or persons named on the notice of  
28



1 violation. The Director may file the Order with the Department of Records and Elections of  
2 King County. Appeal of the Order shall be made in accordance with SMC 15.90.006(G).  
3 SMC 15.90.016 Extension of Compliance Date.

4 The Director may grant an extension of time for compliance with any notice or Order,  
5 whether pending or final, upon the Director's finding that substantial progress toward compliance  
6 has been made and that the public will not be adversely affected by the extension. An extension  
7 of time may be revoked by the Director if it is shown that the conditions at the time the extension  
8 was granted have changed, the Director determines that a party is not performing corrective  
9 actions as agreed, or if the extension creates an adverse effect on the public. The date of  
10 revocation shall then be considered the compliance date.

11 15.90.018 Civil penalty.

12 A. In addition to any other sanction or remedial procedure which may be available, any  
13 person violating or failing to comply with any of the provisions of Title 15 and who is identified  
14 in an order of the Director shall be subject to a cumulative penalty of up to Five-hundred Dollars  
15 (\$500) per day for each violation from the date set for compliance until the person complies with  
16 the requirements of the code.

17 B. The penalty imposed by this section shall be collected by civil action brought in the  
18 name of the City. The Director shall notify the City Attorney in writing of the name of any person  
19 subject to the penalty, and the City Attorney shall, with the assistance of the Director, take  
20 appropriate action to collect the penalty. In any civil action for a penalty, the City has the burden  
21 of proving by a preponderance of the evidence that a violation exists or existed; the issuance of  
22 the notice of violation or of an order following a review by the Director is not itself evidence that  
23 a violation exists.

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

25 1. That the violation giving rise to the action was caused by the wilful act, or  
26 neglect, or abuse of another; or  
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1           2. That correction of the violation was commenced promptly upon receipt of the  
2 notice thereof, but that full compliance within the time specified was prevented by  
3 inability to obtain necessary materials or labor, inability to gain access to the public place,  
4 or other condition or circumstance beyond the control of the defendant.

5 SMC 23.90.020 Alternative criminal penalty.

6           Any person who violates or fails to comply with any of the provisions of Title 15 shall be  
7 guilty of a gross misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except  
8 that absolute liability shall be imposed for such a violation or failure to comply and none of the  
9 mental states described in Section 12A.04.030 need be proved. The Director may request the City  
10 Attorney prosecute such violations criminally as an alternative to the notice of violation  
11 procedure outlined in this chapter. Each day any person shall continue to violate or fail to  
12 comply with the provisions of this title and each occurrence of a prohibited activity shall be  
13 deemed and considered a separate offense.

14 SMC 23.90.022 Additional relief.

15           The Director may seek legal or equitable relief to enjoin any acts or practices and abate  
16 any condition which constitutes or will constitute a violation of the Street and Sidewalk Use  
17 Code when civil or criminal penalties are inadequate to effect compliance. In any such action,  
18 the City has the burden of proving by a preponderance of the evidence that a violation exists or  
19 will exist; the issuance of the notice of violation or of an order following a review by the Director  
20 is not itself evidence that a violation exists or will exist. Nothing in this section shall prevent the  
21 Director from summarily abating any use of a public place without a permit or impounding  
22 personal property in a public place without a permit pursuant to SMC 15.04.072, 15.18.020, and  
23 Chapter 15.38.

24           Section 4. This ordinance shall take effect and be in force thirty (30) days from and after  
25 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
26 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.



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Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2003, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Gregory J. Nickels, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
City Clerk

(Seal)



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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162170  
City of Seattle, Clerk's Office

No. ORDINANCE IN FULL

**Affidavit of Publication**

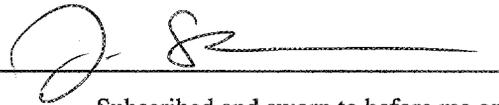
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121241 ORD IN FULL

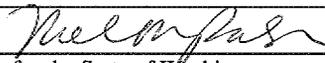
was published on

8/19/2003

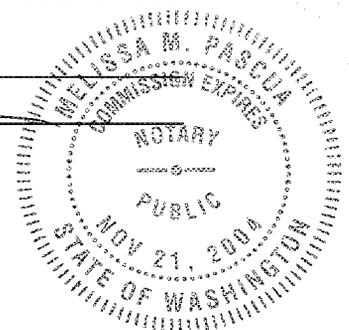
  
\_\_\_\_\_

Subscribed and sworn to before me on

8/19/2003

  
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication



# State of Washington, K

## City of Seattle

### ORDINANCE 121341

AN ORDINANCE relating to Street and Sidewalk Use, amending Section 15.48.900, Chapter 15.90 to Title 15 of the Seattle Municipal Code.

WHEREAS, the enforcement system for processing Street and Sidewalk Use Code violations should recognize that the majority of citizens will voluntarily comply with the code requirements once they are aware of a viola-

WHEREAS, the current enforcement system can be changed to be more effective in dealing with the more difficult street and sidewalk use cases, particularly those involving continuing offenders and adjacent property owners who are unwilling to comply with the City's requirements; and

WHEREAS, it is appropriate that the Street and Sidewalk Use Code should discourage continuing violations by imposing cumulative penalties; and

WHEREAS, enforcement against violators is necessary to protect the public health, safety and welfare, and effective implementation of the street and sidewalk use permit program requires consistent ongoing enforcement against violators, even though most people will abide by all the rules and regulations required by Title 15;

#### NOW, THEREFORE,

#### BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. SMC 15.48.900 is amended as follows:

A. Each violation of Section 15.48.040 shall be a civil infraction as contemplated by RCW Chapter 7.80 and deemed to be a Class 3 civil infraction under RCW 7.80.120(c), and shall subject the violator to a maximum penalty and a default amount of Fifty Dollars (\$50.00) plus statutory assessments. If the person is unable to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty.

B. Each violation of Section 15.48.100 shall be a civil infraction as contemplated by RCW Chapter 7.80 and deemed to be a Class 1 civil infraction under RCW 7.80.120(a), and shall subject the violator to a maximum penalty and default amount of Two Hundred Fifty Dollars (\$250.00) plus statutory assessments. The penalty for a civil infraction is in addition to the civil liability of the person responsible for the posting to the City for the cost of removal under Sections 15.48.120 and 15.48.130.

C. As contemplated by RCW 7.80.160, a person who fails to sign a notice of civil infraction or who willfully violates 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 person who willfully fails to pay a monetary penalty or will not perform community service as ordered by a court may be found in contempt of court as provided in chapter 7.41 RCW.

D. An action for a civil infraction shall be initiated and process in the manner contemplated by RCW Chapter 7.21 and the Enforcement Rules for Councils of Limited Jurisdiction For purposes of RCW 7.80.040, the provisions of this title are: (1) as to park drives and boulevards, the Superintendent of Parks and Recreation, and (2) as to other places, the Director.

any action or proceeding pursuant to Section 15.90.010 or Section 15.90.012, and nothing in this section shall be deemed to obligate or require the Director to issue a notice of violation prior to the imposition of civil or criminal penalties.

E. A notice or an Order may be amended at any time in order to:

1. Correct clerical and other errors, or
2. Cite additional authority for a stated violation.

F. Violations of SMC 15.48.040 and 15.48.100 shall be cited in accordance with SMC 15.48.900.

G. Unless a request for review before the Director is made in accordance with Section 15.90.014 the notice of violation shall become the final order of the Director. After the notice of violation becomes the final order of the Director, a copy of the notice of violation may be filed with the King County Department of Records and Elections. Any final order other than a stop-work order or emergency order issued by the Director pursuant to this subtitle may be appealed to the Hearing Examiner by an aggrieved person. Appeals to the Hearing Examiner shall be initiated by filing a written notice with the applicable fee within fifteen (15) days of the date set for compliance in the notice of violation or Order following a review by the Director.

SMC 15.90.008 Time to comply.

When calculating a reasonable time for compliance, the Director shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of an adjacent property owner, occupant or other responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action; and
5. Any other circumstances beyond the control of the adjacent property owner, occupant or other responsible party.

SMC 15.90.010 Stop Work Order.

Whenever a violation of this Code will materially impair the Director's ability to secure compliance with this Code, when the violation threatens the health or safety of the public, or when the violation interferes with the public's use and enjoyment of the public place, the Director may issue a Stop Work Order specifying the violation and prohibiting any work or other activity at the site by posting the Stop Work Order in a conspicuous place at the site, if posting is physically possible, or by serving the adjacent property owner, occupant or other person responsible for the use. A failure to comply with a Stop Work Order shall constitute a violation of this Street and Sidewalk Use Code.

SMC 15.90.012 Emergency Order.

Whenever any use or activity in violation of this Code threatens the health and safety of any member of the public, the Director may issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall specify the time for compliance and shall be posted in a conspicuous place at the site, if adjacent property owner, occupant or other person responsible for the use. A failure to comply with an Emergency Order shall constitute a violation of this Street and Sidewalk Use Code.

SMC 15.90.014 Review by the Director.

A. Any person aggrieved by a notice of violation issued by the Director pursuant to Section 15.90.006 may obtain a review of the notice by requesting such review in writing within ten (10) days of the date of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day. The request shall be in writing, and within thirty (30) days of the request for review the aggrieved person shall submit any additional information to be considered for the review. Before the deadline for submission of information, any person aggrieved by or interested in the notice of violation (including any persons served the notice of violation and the complainant) may submit any additional information in the form of written material to the Director for consideration as part of the review.

B. The review will be made by a representative of the Director who is familiar with the case and the applicable ordinances. The Director's representative will review all additional information received by the deadline for also request clarification of information received and a site visit. After review of the additional information, the Director may:

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