

Title 1

GENERAL PROVISIONS

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Chapter 1.01

CODE ADOPTION

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1.01.005 Adoption of code.

Pursuant to the provisions of RCW 35A.21.130 and RCW 35.21.500 through 35.21.570, there is adopted the Bainbridge Island Municipal Code as contained in that certain copy on file in the office of the city clerk. (Ord. 84-15 § 2, 1984)

1.01.010 Title – Citation – Reference.

It shall be sufficient to refer to this code in any prosecution for the violation of any provision of this code or in any proceeding at law or equity. It shall also be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion of this code as an addition to, amendment to, correction of, or repeal of the Bainbridge Island Municipal Code. Reference may be made to the titles, chapters, sections and subsections of this code and such reference shall apply to that numbered title, chapter, section or subsection as it appears in this code. (Ord. 2003-24 § 1, 2003: Ord. 84-15 § 2, 1984)

1.01.020 Reference applies to amendments.

Whenever a reference is made to this code or to any portion of this code, or to any ordinance of the city, the reference shall apply to all amendments, corrections and additions to the code or ordinance presently existing or made in the future. (Ord. 2003-24 § 2, 2003: Ord. 84-15 § 2, 1984)

1.01.030 Codification authority.

This code consists of all of the regulatory and penal ordinances and certain of the administrative ordinances of the city, codified pursuant to RCW 35A.21.130 and 35.21.500 through 35.21.570. (Ord. 84-15 § 2, 1984)

1.01.040 Title, chapter and section headings.

Title, chapter and section headings contained in this code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section of this code. (Ord. 2003-24 § 3, 2003: Ord. 84-15 § 2, 1984)

1.01.050 Reference to specific ordinances.

The provisions of this code shall not in any manner affect documents or other matters of record that refer to ordinances that are specifically designated by number or otherwise, and that are included in this code. Such reference shall be construed to apply to the corresponding provisions contained in this code. (Ord. 2003-24 § 4, 2003: Ord. 84-15 § 2, 1984)

1.01.060 Effect of code on past actions and obligations.

The adoption of this code and the repeal or amendment of any ordinance or portion of any ordinance of the city by the adoption of this code shall not in any manner (A) affect the prosecution for violations of ordinances that were committed prior to the effective date of the ordinance codified in this chapter, (B) be construed as a waiver of any license, fee or penalty due and unpaid on the effective date of the ordinance codified in this chapter, (C) be construed as affecting any of the provisions of an ordinance relating to the collection of any

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such license, fee, or penalty, or (D) affect the validity of any bond or cash deposit required to be posted, filed, or deposited pursuant to any ordinance, and all rights and obligations under the bond or cash deposit shall continue in full force and effect. (Ord. 2003-24 § 5, 2003; Ord. 84-15 § 2, 1984)

1.01.070 Inconsistent ordinances superseded.

All general ordinances of the city inconsistent with this code are superseded, rather than repealed. If any portion of this code is for any reason found or held to be invalid, the superseded ordinance shall be revitalized and shall prevail. (Ord. 2003-24 § 6, 2003; Ord. 84-15 §, 1984)

1.01.080 Exclusions.

Every special ordinance of the city governing the following subject matter, whether contained in whole or in part in this code, is excluded from the operation and effect of BIMC 1.01.070: Annexations; franchises; naming roads, streets and public places; acquisition or disposal of public property; vacation of streets, alleys, or public ways; acceptance of any gift, device, license or other benefit; provided, that the foregoing list shall not be deemed to be exclusive or exhaustive, it being the intent and purpose to exclude from repeal any and all ordinances not of a general nature. (Ord. 2003-24 § 8, 2003; Ord. 84-15 § 2(part), 1984)

1.01.085 Repeal shall not revive any ordinances.

The repeal of an ordinance shall not repeal the repealing clause in the ordinance or revive any ordinance that was repealed by the repealing clause. (Ord. 2003-24 § 9, 2003)

1.01.090 Severability.

If any term, phrase, sentence, or provision of this code shall, to any extent, be held invalid or unenforceable by a valid order of any court or regulatory agency, the remainder of this code shall be valid and enforceable in all other respects and continue to be effective. In the event of a subsequent change in applicable law

so that the provision that had been held invalid or unenforceable is no longer invalid or unenforceable, said provision shall return to full force and effect without further action by the city. If, as determined by the city upon appropriate legal advice, or applicable court decision, any term, phrase, sentence, or provision of this code imposes a requirement that is prohibited by applicable federal or state law, or prohibits an action that must be allowed under applicable federal or state law, then any such term, phrase, sentence, or provision shall be construed to not impose the requirement that is prohibited by valid federal or state laws or not to prohibit the action that must be allowed under valid federal or state law. (Ord. 2003-24 § 10, 2003; Ord. 84-15 § 2, 1984)

Chapter 1.04

GENERAL PROVISIONS

Sections:

- 1.04.010** Definitions.
- 1.04.020** Title of office.
- 1.04.030** Interpretation of language.
- 1.04.040** Grammatical interpretation.
- 1.04.050** Acts by agents.
- 1.04.060** Prohibited acts include causing and permitting.
- 1.04.070** Computation of time.
- 1.04.080** Construction.
- 1.04.090** Repealed.

1.04.010 Definitions.

Whenever used in the ordinances of the city, the following words and phrases shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is stated in the ordinance using the word or phrase:

A. "Appeal" means a request for review of a city decision in accordance with appeal procedures adopted by the city.

B. "Applicant" means a person or authorized agent who applies to the city for a license, permit or other approval.

C. "Application" means an application for a license, permit or other approval that may be issued or denied by the city.

D. "BIMC" or "code" means the Bainbridge Island Municipal Code.

E. "Building official" means the person appointed to be responsible for supervising the enforcement of all applicable building codes, permit processes and inspections.

F. "City" means the city of Bainbridge Island.

G. "City engineer" means the duly appointed city engineer of the city, his employee or authorized deputy.

H. "Clerk" or "city clerk" means the city clerk or such city employee or agent as the mayor shall designate.

I. "Council" or "city council" means the legislative body for the city of Bainbridge Island.

J. "County" means Kitsap County.

K. "Day" means a calendar day.

L. "Director" means the director of a city department.

M. "Ecology" or "DOE" means Washington State Department of Ecology ("Ecology" is preferred).

N. "Fire marshal" means a designated agent of the city who has the authority to implement and enforce the provisions of the adopted fire code and related chapters of the code.

O. "Health district" means the Kitsap County health district.

P. "Health officer" means the Kitsap County director of the Kitsap County health district, or his authorized agent.

Q. "Hearing examiner" means an individual who has been appointed to conduct public hearings in quasi-judicial matters pursuant to Chapter 2.38 BIMC.

R. "Law" means applicable federal law, the Constitution and statutes of the state, the ordinances of the city, and regulations that may be promulgated under all such laws, Constitutions, statutes, and ordinances.

S. "May" is permissive.

T. "Month" means a calendar month.

U. "Must" and "shall" are each mandatory.

V. "Oath" includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

W. "Owner" means a person who keeps, has interest in, has control of, custody or possession of a business or real or personal property.

X. "Permit" means the official written approval by the city to do any action regulated by this code.

Y. "Person" means an individual, association, cooperative, club, society, corporation, partnership, limited liability company, firm, organization, trust, estate, receiver, federal, state or local governmental unit however designated, or municipal corporation.

Z. "Planning commission" means the planning commission of the city.

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AA. "Preceding" and "following" mean next before and next after, respectively.

BB. "State" means the state of Washington.

CC. "Year" means a calendar year. (Ord. 2003-22 § 1, 2003: Ord. 96-03 § 1, 1996; Ord. 82-05 § 1, 1982)

1.04.020 Title of office.

Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the city. (Ord. 82-05 § 2, 1982)

1.04.030 Interpretation of language.

All words and phrases not defined in the ordinances of the city shall be construed according to the common usage of the language, but technical words and phrases and such others as may have acquired a specific and appropriate meaning in the law shall be construed and understood according to such technical or specific meaning. (Ord. 2003-24 § 17, 2003: Ord. 82-05 § 3, 1982)

1.04.040 Grammatical interpretation.

The following grammatical rules shall apply in the ordinances of the city unless it is apparent from the context that a different construction is intended:

A. Gender. Each gender includes the masculine, feminine and neuter genders.

B. Singular and Plural. The singular number includes the plural and the plural includes the singular.

C. Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable. (Ord. 82-05 § 4, 1982)

1.04.050 Acts by agents.

When an act is required by an ordinance, the same being such that it may be done as well by an agent as by the principal, such requirement shall be construed to include all such acts performed by an authorized agent. (Ord. 82-05 § 5, 1982)

1.04.060 Prohibited acts include causing and permitting.

Whenever an ordinance of the city makes any act or omission unlawful, it shall also be unlawful to cause, allow, permit, aid, abet, suffer, or conceal the fact of such act or omission. (Ord. 2003-24 § 23, 2003: Ord. 82-05 § 6, 1982)

1.04.070 Computation of time.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is Saturday, Sunday or a holiday, in which case the time period shall run until the end of the following business day. (Ord. 2003-07 § 6, 2003: Ord. 82-05 § 7, 1982)

1.04.080 Construction.

The provisions of the ordinances of the city and all proceedings under them are to be construed to effect their objects and purposes and to promote justice. (Ord. 2003-24 § 24, 2003: Ord. 82-05 § 8, 1982)

1.04.090 Repeal shall not revive any ordinances.

Repealed by Ord. 2003-24. (Ord. 82-05 § 9, 1982)

Chapter 1.08

CLASSIFICATION OF CITY

Sections:

1.08.010 Adoption of classification.**1.08.010 Adoption of classification.**

Pursuant to and in accordance with RCW 35A.02.030 (Chapter 119, Laws Extraordinary Session 1967, Section 35A.02.030), and pursuant to Resolution No. 7/7/69, adopted by the city on the seventh day of July, 1969, and published on the eleventh day of July, 1969, the city council adopts for the city the classification of noncharter code city. Pursuant to an election held on May 19, 2009, in accordance with RCW 35A.06.040, 35A.06.050, 29.04.330 and other applicable law, the results of which were certified by the Kitsap County auditor on June 3, 2009, the city adopted the council-manager form of government as set forth in Chapter 35A.13 RCW, endowed with all the applicable rights, powers, privileges, duties and obligations of noncharter code cities as set forth in RCW Title 35A as the same now exists, including, but not by way of limitation, those set forth in Chapter 35A.11 RCW, and further including any and all supplements, amendments or other modifications of said RCW Title 35A which may hereafter be enacted. (Ord. 2009-21 § 1, 2009: Ord. 69-21, 1969)

Chapter 1.12

OFFICIAL POSTING PLACES¹

Sections:

1.12.010 Posting places.**1.12.020 Publication of ordinances.****1.12.010 Posting places.**

Bainbridge Island City Hall, 280 Madison Avenue North, Bainbridge Island, Washington 98110 is designated as the official posting place for all city notices and other documents required by law to be posted. In addition, the city shall post all city notices and other documents required by law to be posted on the city's website. (Ord. 2010-47 § 1, 2010: Ord. 2000-26 § 1, 2000: Ord. 93-40 § 1, 1993; Ord. 77-26 § 1, 1977)

1.12.020 Publication of ordinances.

Promptly after adoption, the text of each ordinance passed by the city council or a summary of the content of the ordinance shall be published at least once in the official newspaper of the city as designated by resolution in accordance with RCW 35A.21.230. (Ord. 93-40 § 2, 1993; Ord. 77-26 § 2, 1977)

1. RCW 35A.12.160 – Notice of the passage of an ordinance may be given by publication of the text or a summary of the text of the ordinance in the official newspaper.

Chapter 1.16

RIGHT OF ENTRY FOR INSPECTION

Sections:

- 1.16.010 Authorized.
- 1.16.020 Manner of entry.
- 1.16.030 Conflict with other ordinances.

1.16.010 Authorized.

A. Prior to entering the building or property, the city officer, official or employee shall comply with BIMC 1.16.020, except in the case of an emergency or when consent to the entry has been obtained otherwise.

B. Any officer, official or employee of the city is authorized to enter any building or property:

1. To inspect, observe, measure, sample, test or investigate the building or property in connection with the review of a permit or license application;
2. To inspect, observe, measure, sample, test or investigate any condition relating to; or to operate, maintain, or repair any city utility or facility;
3. To inspect reported conditions;
4. To perform periodic inspections required by any provision of this code;
5. To assess compliance with any permit, license or approval;
6. To make an inspection or to otherwise enforce any provision of this code or any ordinance of the city;
7. To meet the scheduled requirements of recorded agreements, such as an open space management plan;
8. When cause exists to believe that a violation of this code or any city ordinance was or is being committed; or
9. For any other reason required by this code or any city ordinance. (Ord. 2003-28 § 1, 2003; Ord. 82-04 § 1, 1982)

1.16.020 Manner of entry.

Any officer, official or employee of the city may enter any building or property during regular city business hours and at other reason-

able times in accordance with this chapter for purposes stated in BIMC 1.16.010.

A. If the building or property to be inspected is occupied, the officer, official or employee shall present city credentials including photo identification to the owner or person responsible for the building or property, state the reason for the inspection, and request entry.

B. If the building or property to be inspected is unoccupied, the official, officer or employee shall make a reasonable effort to locate the owner or other person having charge or control of the building or property and request entry.

C. Consent to enter buildings or property may be obtained by any means, including but not limited to written, facsimile, telephonic, or in-person consent. In addition, a property owner's application for any permit, license or approval with respect to an activity in or on a building or property shall be deemed to be consent for city officers, officials and employees to enter the building or property to perform any inspections, measurements, sampling, or other action required to review and process the application; provided, that if the city intends to enter a structure or building, the city shall first contact the owner or occupant and arrange a mutually convenient time for the entry. The owner's or occupant's failure to consent to entry or to arrange a mutually convenient time for entry shall be grounds for the city to deny the application for the permit, license or approval.

D. If entry is refused or if an official officer or employee is unable to obtain consent, the city shall have recourse to every remedy provided by law to secure entry, including but not limited to application to any court of competent jurisdiction for an administrative search warrant or other remedy.

E. Nothing in this chapter requires a city officer, official or employee to obtain the property owner's consent (1) to an inspection that is conducted while the officer, official or employee remains on adjacent public property, such as a public right-of-way, or on other adjacent property for which consent to entry has

been obtained, or (2) to enter property in which the city has a written easement for purposes authorized in the easement instrument.

F. Notwithstanding the provisions above, whenever it appears to the city that conditions exist requiring immediate inspection or other action to protect the public health, safety or welfare, or to preserve property, a city officer, official or employee is authorized to enter in or upon any building or property, public or private, without first obtaining the owner's consent, or when any other circumstance exists making such entry lawful under the common law. (Ord. 2003-28 § 1, 2003: Ord. 82-04 § 2, 1982)

1.16.030 Conflict with other ordinances.

This chapter shall control over the provisions of any other ordinance on the same subject, unless such ordinance provides differently by an express reference to this chapter. Notwithstanding any other ordinance of the city, whether heretofore or hereafter adopted, it is not a violation of this chapter to refuse or fail to consent to an entry for inspection for which a warrant is required to be obtained. (Ord. 2003-28 § 1, 2003: Ord. 82-04 § 3, 1982)

Chapter 1.20

IMPRISONMENT IN COUNTY JAIL

Sections:

1.20.010 For violation of city ordinances.

1.20.010 For violation of city ordinances.

Whenever it is necessary to imprison any person for violation of ordinances of the city, such imprisonment shall be in the county jail. (Ord. 134, 1963)

Chapter 1.22

JAIL FACILITIES

Sections:

- 1.22.010 Holding facilities – Adoption by reference.**
- 1.22.020 Copies on file.**

1.22.010 Holding facilities – Adoption by reference.

The following chapters and sections of the Washington Administrative Code which pertain to 30-day holding facilities, as defined therein, which are not classified as advisory, including all future amendments thereto, are adopted by reference pursuant to requirements of Chapter 70.48 RCW, as amended by Chapter 462, Section 17, Laws of 1987:

- WAC Chapter
 - 289-02 Introduction and Definitions
 - 289-14 Administration
 - 289-15 Safety
 - 289-18 Security
 - 289-19 Prisoner Conduct
 - 289-20 Health and Welfare
 - 289-22 Services and Programs
 - 289-24 Communications

(Ord. 88-04 § 1, 1988)

1.22.020 Copies on file.

The city clerk is directed to record an authenticated copy of Chapters 289-02 and 289-14 through 289-24 WAC with the ordinance codified in this chapter and to maintain not less than one copy of such rules on file in the office of the city clerk for use and examination by the public pursuant to RCW 35A.12.140. (Ord. 88-04 § 2, 1988)

Chapter 1.24

GENERAL PENALTY

Sections:

- 1.24.010 General penalties.**
- 1.24.020 Separate offense for each day violation committed.**

1.24.010 General penalties.

A. Criminal Penalty.

1. Unless otherwise provided, any person violating any provision or failing to comply with any mandatory requirement of this code or any ordinance of the city shall be guilty of a misdemeanor, and shall be punished as stated in RCW 9.92.030, as amended.

2. Any person violating any provision or failing to comply with any mandatory requirement of this code or an ordinance of the city that is designated a gross misdemeanor shall be punished as stated in RCW 9.92.020, as amended.

B. Civil Penalty.

1. Any person violating any of the provisions of this code or any ordinance of the city that is designated a civil offense or civil violation shall have committed a civil infraction.

2. Unless otherwise provided by city resolution, any person committing a civil infraction shall be assessed a monetary penalty of \$500.00 for each day the violation occurs. (Ord. 2003-27 § 1, 2003: Ord. 2001-01 § 1, 2001: Ord. 82-35 § 1, 1982: Ord. 82-06 § A, 1982)

1.24.020 Separate offense for each day violation committed.

Each person is guilty of a separate offense for each and every day during any portion of which any violation of this code or any ordinance of the city is committed, continued or permitted by any person, and is punishable accordingly. (Ord. 2003-27 § 1, 2003: Ord. 82-06 § B, 1982)

Chapter 1.26

CODE ENFORCEMENT

Sections:

- 1.26.010** Applicability of chapter.
- 1.26.020** Duty to enforce – Inspections – Duty to comply.
- 1.26.025** Investigation and notice of violation.
- 1.26.026** Notice of infraction – Service.
- 1.26.027** Notice of infraction – Form – Contents.
- 1.26.028** Notice of infraction – Filing – Hearing in municipal court.
- 1.26.029** Notice of infraction – Determination infraction committed.
- 1.26.030** Notice of infraction – Response requesting a hearing – Failure to respond or appear – Order to set aside.
- 1.26.031** Notice, failure to sign, Nonappearance – Failure to satisfy penalty.
- 1.26.032** Representation by attorney.
- 1.26.033** Infraction – Hearing – Procedure – Burden of proof – Order – Appeal.
- 1.26.034** Infraction – Explanation of mitigating circumstances.
- 1.26.035** Judgment – Fine – Restitution – Costs – Attorneys’ fees.
- 1.26.036** Order of court – Civil nature – Modification of penalty – Community service.
- 1.26.037** Notice of infraction does not limit further action.
- 1.26.038** Violations – Failure to provide information identifying person.
- 1.26.039** Reserved.
- 1.26.040** Reserved.
- 1.26.050** Stop work order.
- 1.26.060** Emergency order.
- 1.26.065** Notice of violation – Procedures.
- 1.26.070** Review by the director.
- 1.26.075** Time to comply.

- 1.26.080** Extension of compliance date – Revocation.
- 1.26.090** Civil penalty.
- 1.26.100** Criminal penalties.
- 1.26.110** Additional relief.

1.26.010 Applicability of chapter.

The provisions of this chapter shall apply to enforcement of BIMC Title 18 and Chapters 15.04, 15.18, 15.34, 16.20, and 16.22 BIMC, and specified provisions outlined in BIMC Title 20, with the exception of BIMC 15.04.090. For purposes of this chapter, such titles and chapters shall be referred to as “the applicable chapters and titles of this code.” (Ord. 2008-10 § 6, 2008: Ord. 2003-16 § 3, 2003: Ord. 2002-15 § 3, 2002: Ord. 97-07 § 4, 1997; Ord. 95-02 § 1, 1995)

1.26.020 Duty to enforce – Inspections – Duty to comply.

A. It shall be the duty of the director of planning and community development to enforce the applicable chapters and titles of this code. The director may call upon other city departments and officers to assist in enforcement. Whenever used in this chapter the term “director” includes the code enforcement officer or other official duly authorized by the director.

B. Code Enforcement Officer – Definition. A city official charged with the responsibility to ensure compliance with all state, city and zoning codes and ordinances as adopted by the city council.

C. The director may enter any building or property to perform duties imposed by the applicable titles and chapters of this code in accordance with Chapter 1.16 BIMC.

D. This chapter and the applicable titles and chapters of this code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

E. It is the intent of this chapter and the applicable title and chapters of this code to place the obligation of complying with their requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of the applicable titles and chapters of this code.

1.26.025

F. No provisions of or term used in this chapter or the applicable titles and chapters of this code is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action. (Ord. 2003-28 § 2, 2003; Ord. 2001-02 § 1, 2001; Ord. 95-02 § 1, 1995)

1.26.025 Investigation and notice of violation.

A. The director shall investigate any structure or use which the director reasonably believes does not comply with the standards and requirements of the applicable titles and chapters of this code.

B. Whenever the director determines that a violation of the code has occurred there shall be served upon the responsible person either:

- 1. A notice of violation and corrective order; or
- 2. A notice of infraction.

C. The director shall issue a notice of violation and corrective order; provided, that a notice of infraction shall be issued if the person cited has been served with a prior notice of violation, the person cited has committed prior violations of the code, the person is cited for failing to comply with a stop work order or an emergency order, or the violation creates an immediate threat to public health, safety or welfare.

D. The director may issue a stop work order or emergency order in appropriate cases without regard to whether any other enforcement action has been or will be taken. (Ord. 2001-02 § 2, 2001; Ord. 95-02 § 1, 1995)

1.26.026 Notice of infraction – Service.

The director may issue a notice of infraction if the director reasonably believes that a provision of the applicable titles and chapters of this code has been violated. A notice of infraction may be served either by:

A. The director serves the notice of infraction on the person named in the notice of infraction at the time of issuance; or

B. The director files the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person

named in the notice of infraction at his or her address. (Ord. 2001-02 § 3, 2001; Ord. 95-02 § 1, 1995)

1.26.027 Notice of infraction – Form – Contents.

The notice of infraction shall include the following:

A. A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the termination shall be final unless contested as provided in this chapter;

B. A statement that the infraction is a non-criminal offense for which imprisonment shall not be imposed as a sanction;

C. A statement of the specific infraction for which the notice was issued;

D. A statement that monetary penalties as set forth below have been established for each infraction;

E. A statement of the options provided in this ordinance for responding to the notice and the procedures necessary to exercise these options;

F. A statement that at any hearing to contest the determination the city has the burden of proving by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative who issued and served the notice of infraction;

G. A statement, which the person who has been served with the notice of infraction shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

H. A statement that refusal to sign the infraction as directed in subsection G of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and

I. A statement that a person's failure to respond to a notice of infraction as promised is a misdemeanor and may be punishable by a fine or imprisonment in jail. (Ord. 95-02 § 1, 1995)

1.26.028 Notice of infraction – Filing – Hearing in municipal court.

A notice of infraction shall be filed in municipal court within 48 hours of issuance, excluding Saturdays, Sundays, and holidays. Bainbridge Island municipal court shall have jurisdiction to hear and determine these matters. (Ord. 95-02 § 1, 1995)

1.26.029 Notice of infraction – Determination infraction committed.

Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction. (Ord. 95-02 § 1, 1995)

1.26.030 Notice of infraction – Response requesting a hearing – Failure to respond or appear – Order to set aside.

A. A person who receives a notice of infraction shall respond to the notice as provided in this section within 15 days of the date the notice was served.

B. If the person named in the notice of infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response order shall be furnished to the department of planning and community development (DPCD).

C. If the person named in the notice of infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing. The date of the hearing shall not be earlier than

seven days nor more than 90 days from the date of the notice of the hearing, except by agreement.

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

E. The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction, and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing if any person issued a notice of a civil infraction;

1. Fails to respond to the notice of civil infraction as provided in subsection B of this section; or

2. Fails to appear at a hearing requested pursuant to either subsection C or D of this section. If a default judgment is entered, the court shall notify the DPCD of the entry of the default judgment, and the reason therefor. (Ord. 95-02 § 1, 1995)

1.26.031 Notice, failure to sign, Nonappearance – Failure to satisfy penalty.

A. A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

B. Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction; provided, that a written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by appearance of counsel.

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C. A person who willfully fails to pay a fine or to perform community service as required by a court under this chapter may be found in civil contempt of a court after notice and hearing. (Ord. 2001-02 § 4, 2001: Ord. 95-02 § 1, 1995)

1.26.032 Representation by attorney.

A. A person subject to proceedings under this chapter may appear or be represented by counsel.

B. The city prosecutor may, but need not, appear in any proceedings under this chapter. (Ord. 95-02 § 1, 1995)

1.26.033 Infraction – Hearing – Procedure – Burden of proof – Order – Appeal.

A. A hearing held to contest the determination that an infraction has been committed shall be without a jury.

B. The court may consider the notice of infraction and any sworn statements submitted by the authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized representative who has issued and served the notice, and has the right to present evidence and examine witnesses present in court.

C. The burden of proof is on the city to establish the commission of the infraction by a preponderance of evidence.

D. After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that a civil infraction has been committed, an appropriate order shall be entered in the court's records.

E. An appeal from the court's determination or order shall be to the superior court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The decision of the superior court is subject

only to discretionary review pursuant to the Rules of Appellate Procedure. (Ord. 95-02 § 1, 1995)

1.26.034 Infraction – Explanation of mitigating circumstances.

A. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

B. After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.

C. There shall be no appeal from the court's determination or order. (Ord. 95-02 § 1, 1995)

1.26.035 Judgment – Fine – Restitution – Costs – Attorneys' fees.

A. Upon a finding that a civil infraction has been committed the court shall enter judgment requiring:

1. Payment of a fine of not more than \$500.00 for each day of noncompliance.
2. Payment of court costs as defined by rule or statute.
3. Payment to the prevailing party of its reasonable attorneys' fees as allowed by RCW 7.80.140.

B. Whenever a fine is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time, the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay. The court shall also notify the department of planning and community development of the failure to pay the penalty,

1.26.036

and the department shall not issue the person any future permits for any work until the monetary penalty has been paid.

C. The court may also order a person found to have committed a civil infraction to make restitution. (Ord. 2001-02 § 5, 2001: Ord. 95-02 § 1, 1995)

1.26.036 Order of court – Civil nature – Modification of penalty – Community service.

A. An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

B. The court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction. If the court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour. (Ord. 95-02 § 1, 1995)

1.26.037 Notice of infraction does not limit further action.

Issuance or disposition of a notice of infraction shall not limit or preclude any action or proceeding pursuant to Chapter 1.24 BIMC or BIMC 1.26.050, 1.26.060, 1.26.090 or 1.26.100. (Ord. 2001-02 § 6, 2001: Ord. 95-02 § 1, 1995)

1.26.038 Violations – Failure to provide information identifying person.

Willful refusal to provide information identifying a person as required by this section is a misdemeanor. (Ord. 95-02 § 1, 1995)

1.26.039 Reserved.

1.26.040 Reserved.

1.26.050 Stop work order.

Whenever a continuing violation of the applicable titles and chapters of this code will materially impair the director's ability to secure compliance with such titles and chapters, or when the continuing violation threatens the environment, health or safety of the public, the director or duly authorized representative of the director, may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of the applicable titles and chapters of this code. (Ord. 2001-02 § 7, 2001: Ord. 95-02 § 1, 1995)

1.26.060 Emergency order.

A. Whenever any use or activity in violation of the applicable titles and chapters of this code threatens the environment, health or safety of the occupants of the premises or any member of the public, the director may issue an emergency order directing that the use or activity be immediately discontinued and the condition causing the threat to the environment, health or safety be corrected. The emergency order shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of the applicable titles and chapters of this code.

B. Any condition described in the emergency order which is not corrected within the time specified is hereby declared to be a public nuisance and the director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or the person responsible or both in the manner provided by law. (Ord. 2001-02 § 8, 2001: Ord. 95-02 § 1, 1995)

1.26.065 Notice of violation – Procedures.

A. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action, if any, is necessary to comply with the standards or requirements, and shall set a reasonable time for compliance. The notice shall state that any subsequent violations may result in criminal

prosecution as provided in BIMC 1.26.100. In the event of violations of the standards or requirements of Chapter 16.20 or 16.22 BIMC, the required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area and replacement of damaged or destroyed trees.

B. The code enforcement officer filing the notice of violation may file with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of violation at his or her address, or in accordance with subsection C of this section.

C. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the director makes an affidavit to that effect, the service of the notice upon such person or persons may be made by mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known or if unknown, to the address of the property involved in the proceedings.

D. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to BIMC 1.26.050 or 1.26.060.

F. The director may mail, or cause to be delivered to all residential and/or nonresidential units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.

G. A notice or an order may be amended at any time in order to correct clerical errors or cite additional authority for a stated violation. (Ord. 2001-02 § 8, 2001: Ord. 97-07 § 5, 1997; Ord. 95-02 § 1, 1995)

1.26.070 Review by the director.

A. Any person affected by a notice of violation issued under BIMC 1.26.050 or 1.26.060 may request a review of the notice by requesting such review within seven days after service 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 4:00 p.m. on the next business day. The request shall be in writing, clearly and concisely identifying the errors of the director, or the basis for any claimed mitigation, and upon receipt of the request, the director shall review the materials and:

1. Determine, in the sole discretion of the director, whether a review meeting should be held; or

2. Respond in writing denying the request for review citing the reasons for the denial. A director's review may be denied if:

a. The review is being requested for an obvious or flagrant violation for which fines or penalties, but no mitigation, are required;

b. The review is being requested solely to seek a reduction or elimination of fines and penalties;

c. The review is being requested to seek a waiver or reduction of the enforcement fee;

d. The review is being requested for any matter relating to burning violations.

If the director determines a review meeting should be held, the director shall notify any persons served the notice of violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than 10 nor more than 20 days after the request is received. Before the date set for the review, any person affected by the notice of violation may submit any additional written material to the director for consideration at the review. During the administrative review, the

order shall be in full force and effect until the order is corrected or the decision is overturned.

B. The review will consist of an informal review meeting held at the department of planning and community development. A representative of the director who is familiar with the case and the applicable ordinances will attend. The director or representative of the director will explain the reasons for the issuance of the notice and will listen to any additional information presented by the persons attending. At or after the review, 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.

C. The director shall issue an order containing the decision within 10 working days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named in the notice of violation, mailed to the complainant, if possible, and filed with the Bainbridge Island municipal court and Kitsap County auditor if necessary for recording on the title to the property.

D. The decision of the director may be appealed pursuant to the procedures set forth in BIMC 2.16.130. (Ord. 2001-02 § 9, 2001: Ord. 95-02 § 1, 1995)

1.26.075 Time to comply.

A. When calculating reasonable time for compliance, the director shall consider the following criteria:

1. The type and degree of the violation cited in the notice;
2. The stated intent, if any, of a 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, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and

5. Any other circumstances beyond the control of the responsible party.

B. Unless a request for review before the director is made in accordance with BIMC 1.26.070, the notice of violation shall become the final order of the director. A copy of the notice may be filed with the Bainbridge Island municipal court. The director may choose not to file a copy of the notice or order if the notice or order is directed only to a person other than the owner of the property. (Ord. 2001-02 § 10, 2001: Ord. 95-02 § 1, 1995)

1.26.080 Extension of compliance date – Revocation.

A. The director may grant an extension of time for compliance with any notice or order, whether pending or final, upon finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

B. An extension of time may be revoked by the director if it is shown that the conditions at the time the extension was granted have changed, if the director determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date. The procedures for revocation, notification of parties, and appeal of the revocation shall be established by rule. (Ord. 2001-02 § 11, 2001: Ord. 95-02 § 1, 1995)

1.26.090 Civil penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of the applicable titles and chapters of this code shall be subject to a cumulative penalty in the amount of \$1,000 per day for each violation from the date set for compliance until the date of compliance.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The director shall notify the city prosecutor in writing of the name of any person subject to the penalty, and the city prosecutor shall, with the assistance of the director

or duly authorized representative of the director, take appropriate action to collect the penalty.

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

1. The violation giving rise to the action was caused by the willful act, neglect, or abuse of another; or

2. Correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by the inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstances beyond the control of the violator. (Ord. 2001-02 § 12, 2001: Ord. 95-02 § 1, 1995)

condition which constitutes or will constitute a violation of the applicable titles and chapters of this code when civil or criminal penalties are inadequate to effect compliance. (Ord. 2001-02 § 14, 2001: Ord. 95-02 § 1, 1995)

1.26.100 Criminal penalties.

A. In addition to any civil penalty that may be imposed, any person violating or failing to comply with the applicable titles and chapters of this code and having a judgment entered against the person pursuant to BIMC 1.26.090 within the past five years, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not more than \$5,000 or by imprisonment for a period not to exceed one year, or by both such fine and imprisonment. Each day of noncompliance shall constitute a separate offense.

B. In addition to any civil penalty that may be imposed, a criminal penalty, not to exceed one year imprisonment and/or \$5,000 per violation, may be imposed:

1. For violations of BIMC 16.20.120.D and 18.123.010.D and Section 205(c) of the Uniform Building Code as amended by BIMC 15.04.030;

2. For any other violation of the applicable title and chapters of this code for which corrective action is not possible; and

3. For any refusal to comply with a stop work order or an emergency order. (Ord. 2001-02 § 13, 2001: Ord. 95-02 § 1, 1995)

1.26.110 Additional relief.

The city prosecutor, with the assistance of the director, may seek legal or equitable relief to enjoin any acts or practices and abate any

Chapter 1.28

FEES

Sections:

- 1.28.010 Miscellaneous fees charged.
- 1.28.015 Rental fees charged.
- 1.28.020 Engineering and other consultant services.
- 1.28.025 Fire inspection fees.
- 1.28.030 Code enforcement fee.
- 1.28.035 Hourly rate.
- 1.28.040 Collection of fees.
- 1.28.045 Collection of amounts owed to the city.
- 1.28.047 Use of collection agency authorized.
- 1.28.050 Reduction of land use fees.

1.28.010 Miscellaneous fees charged.

A. The city shall charge an appropriate fee in the amount established by the city by resolution for the following services provided or permits issued by the city:

1. Boundary line adjustment review;
2. Bulkheads and seawalls – repairs and new bulkheads;
3. Forest practices review;
4. Grading permits;
5. Clearing permits;
6. Open space review;
7. Preapplication conferences (this fee is not refundable);
8. Public dance permits;
9. Visa/citizen/immigration document processing;
10. Escheat transaction processing;
11. Notary services;
12. Concealed weapons permit duplicates;
13. House moving permits;
14. Written reports to escrow companies;
15. Reports to insurance companies;
16. Fingerprint card processing;
17. Administrative code interpretation;
18. Buffer reduction or averaging review;
19. Land use consultation;

20. Vegetation management plan review;

21. Planned unit development applications; and

22. Extensions of planned unit development applications.

B. The city shall impose an appropriate fee as established by the city by resolution on any person making or presenting a check, which is later dishonored, for a payment to the city. (Ord. 97-10 § 1, 1997; Ord. 92-24 § 13, 1992)

1.28.015 Rental fees charged.

A. Persons seeking to rent facilities owned by the city shall submit to the city clerk a rental application in the form approved by the city, with a nonrefundable rental application fee in the amount established by the city by resolution. If the applicant rents the city facilities, the city shall charge a rental fee for the use of the facilities in the amount established by the city by resolution. The rental application fee shall be applied to the rental fee.

B. If city personnel are required to perform services in connection with the rental of city facilities before or after the personnel's ordinary working hours, the renter shall pay the city an after hours activity fee in the amount established by the city by resolution. (Ord. 96-13 § 1, 1996; Ord. 94-16 § 1, 1994)

1.28.020 Engineering and other consultant services.

A. Whenever any land use application or related data or property is to be processed, reviewed, or inspected, in addition to paying all other fees required by the city the applicant shall:

1. Reimburse the city for all fees (plus 10 percent for administration) paid or owed by the city to engineers or other consultants that the city determines are necessary for processing the application or performing any reviews or inspections in connection with the application; and

2. Pay the city a fee in the amount established by resolution for all staff time spent to process the application or perform any

reviews or inspections in connection with the application.

B. If a land use applicant desires to expedite the processing of an application, the applicant may request that the city retain engineering or other consultants to process the application of perform reviews or inspections in connection with the application. If the city agrees, the applicant shall reimburse the city for all fees paid or owed by the city to such engineers or other consultants plus 10 percent for administration. (Ord. 97-10 § 2, 1997; Ord. 92-24 § 13, 1992)

1.28.025 Fire inspection fees.

Whenever any application is to be processed, reviewed, or inspected by the city, and it is necessary for the city to review or inspect the application, structure, or property for compliance with the city's fire code, the applicant shall pay a fee as established by the city by resolution. (Ord. 97-10 § 3, 1997)

1.28.030 Code enforcement fee.

Whenever the city is required to act to enforce any provision of the code, in addition to any other fines, charges or penalties imposed on the person committing the violation, the city shall charge the person an appropriate fee as established by the city by resolution. (Ord. 92-24 § 13, 1992)

1.28.035 Hourly rate.*

A. In all sections of the city's fee schedule, adopted by resolution and as amended, that specify an hourly rate shall be charged, the city shall charge the hourly rate established in this section for all staff time spent on the permit, approval, or other action covered by the fee schedule. The hourly rate shall include overhead and direct costs related to the permit, approval, or action (such as posting, publication, and mailing of notices) but shall not include amounts charged by third parties to the city (such as legal costs, engineering services, or other consulting charges from individuals or firms pursuant to contracts with the city). In addition to the hourly rate charge, applicants for permits, approvals, or other actions for which the hourly rate charge is imposed shall

pay to the city 110 percent of amounts charged to the city by third parties in connection with the permit, approval or action.

B. The hourly rate shall cover the full cost of the regulatory function of processing land use applications for the year prior to the imposition of the rate, excluding the costs of long range planning and policy formulation, less a taxpayer contribution. Different taxpayer contributions may be applied to different types of permits. Unless a taxpayer contribution is approved for a specific period, the taxpayer contribution shall be zero. Specific periods shall not exceed one year.

C. The city council shall review the hourly rates imposed by the city periodically as needed but at least once in every three years. The review may include the method and amount of the rate calculation, the amount of the taxpayer contributions, and the permits, approvals, and actions for which hourly fees are charged.

D. An applicant that is aggrieved by the number of hours charged to a particular permit, approval, or action may appeal the amount charged to the hearing examiner. The decision of the hearing examiner shall be final.

E. The city's hourly rate charge shall be \$180.00 per hour. (Ord. 2003-31 § 1, 2003; Ord. 2001-50 § 1, 2001; Ord. 2000-51 § 1, 2000; Ord. 99-47 § 1, 1999)

*Code reviser's note: Ords. 2000-51 and 99-47 add this section as 1.28.025. It has been editorially renumbered to avoid duplication.

1.28.040 Collection of fees.

When a fee charged by the city pursuant to this code is not due in full upon submitting the application or requesting the service for which the fee is charged, the fee shall be collected in the manner established by the city by resolution. (Ord. 92-24 § 13, 1992)

1.28.045 Collection of amounts owed to the city.

A. In addition to all other remedies for collecting amounts owed to the city, the city may withhold the provision of services described in subsection B of this section to persons who

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have failed to pay fees owed to the city, other than utility base and consumption rates, if the fees owed are more than 90 days delinquent from the date payment is due. The city may not withhold services based on the delinquent amounts owed to the city if the person owing the delinquent amount has filed a legal administrative or judicial appeal regarding the services previously rendered or the amounts owed to the city.

B. Under this section, the city may withhold any service provided by the city, including the processing of applications for permits, except for police services, animal control services, monthly utility service, court services, administrative appeal services, services which if withheld would create a clear public health or safety hazard, and services relating to the processing of permits for which a vested application has been filed prior to the effective date of this section.

C. In order to withhold services based on a person's failure to pay amounts owed to the city, the city must have evidence that the person was billed for the amount, that the amount is at least 90 days delinquent at the time that the city withholds the services, and that the person was notified in writing of the city's right to withhold services pursuant to this section. The written notice shall be sent by regular or certified mail, at the city's discretion, to the person's last known address according to the city's records at least 30 days prior to the time that the city withholds services.

D. All permits, approvals, and regulatory actions are issued on the condition that all fees and charges required for that permit, approval, or regulatory action be paid in full. In the event that a legally required fee or charge is not paid in full within 60 days of the date of the city's invoice to the applicant, the permit, approval, or regulatory action for which the payment is required shall be immediately and automatically revoked and thereafter shall be null and void. (Ord. 2000-51 § 2, 2000; Ord. 99-47 § 2, 1999; Ord. 95-04 § 1, 1995)

1.28.047 Use of collection agency authorized.

A. In addition to all other remedies for collecting amounts owed to the city, the city

may use the services of a collection agency to collect amounts owed to the city for services provided by the city pursuant to the procedures set forth in this section. If the city uses a collection agency to collect amounts owed to the city, in addition to the outstanding debt, the debtor shall pay a fee in an amount established by resolution for the collection agency fee incurred by the city.

B. To use the services of a collection agency to collect amounts owed to the city, the city must have evidence that the city sent the debtor a written bill for the amount.

C. If an amount owed to the city is not paid within 60 days of the date on which the amount becomes due, the director of finance may send written notice, by regular or certified mail, to the debtor at the debtor's last known address according to the city's records. The notice shall state the amount owed to the city, the amount of any applicable interest and penalties, that the city may use the services of a collection agency to collect amounts owed to the city if the amount owed to the city, together with any applicable interest and penalties, is not paid in full within 30 days of the date of the notice, and that if the city uses the services of a collection agency, the city shall charge the debtor a fee in the amount established by the resolution.

D. If the amount owed to the city, together with any applicable interest and penalties, is not paid in full within 30 days of the date of the notice, the city may use the services of a collection agency to collect the outstanding amount owed to the city, any applicable interest and penalties, and the collection agency services fee. (Ord. 97-29 § 1, 1997)

1.28.050 Reduction of land use fees.

In cases where the planning department has the authority to waive submittal requirements for applications, and the department waives at least one submittal requirement, the director of planning and community development may, in the director's discretion and with the approval of the city administrator, reduce the amount of the base fee charged to the applicant for the application. (Ord. 92-24 § 13, 1992)