

# CITY OF TACOMA

WASHINGTON

ORDINANCE NO. \_\_\_\_

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**AN ORDINANCE OF THE CITY OF TACOMA,  
WASHINGTON, RELATING TO ENFORCEMENT OF  
THE TACOMA MUNICIPAL CODE; AMENDING TITLE 2  
OF THE TACOMA MUNICIPAL CODE; ADDING NEW  
CHAPTER 1.82 (UNIFORM CODE ENFORCEMENT) AND  
CHAPTER 1.84 (HEARING EXAMINER-APPEAL OF  
CODE ENFORCEMENT ACTIONS); CREATING  
UNIFORM PROCEDURES; ESTABLISHING PENALTIES;  
PROVIDING FOR SEVERABILITY; AND ESTABLISHING  
AN EFFECTIVE DATE**

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WHEREAS, Article XI, Section 11 of the state constitution provides that any city may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws, and

WHEREAS, RCW 35.22.195 provides that any city adopting a charter under Article XI, Section 10 of the state constitution shall have all of the powers which are conferred upon incorporated cities and towns, and

WHEREAS, RCW 35.22.280 provides that first class cities shall have the power to regulate the maintenance and construction of buildings and other structures and to make and enforce all regulations necessary for the preservation of the public health, safety and welfare, and

WHEREAS, RCW 36.70B.160 provides that each local government shall adopt procedures to monitor and enforce permit decisions and conditions, and

WHEREAS, set forth in the various titles, chapters and sections of the Tacoma Municipal Code are provisions for enforcement of the land use codes, building codes, fire code, harbor code, public nuisance code, health and sanitation code, animal control code, tax and license code, utilities code, rights of way code, public works code and cable and telecommunications code, and

WHEREAS, the code enforcement provisions of the Tacoma Municipal Code lack uniform procedures and authority to enforce code violations and provide for administrative review of such enforcement actions; and

WHEREAS, the City Council desires to create a more consistent, clear, encompassing and uniform process for code enforcement and administrative review of code enforcement actions, and

WHEREAS, the City Council finds that it is in the best interests of the public health, safety and welfare to adopt the provisions herein;

NOW, THEREFORE, the City Council of the City of Tacoma, Washington, do ordain as follows:

**BE IT ORDAINED BY THE CITY OF TACOMA:**

Section 1. New Code Enforcement Chapter Added to Title 2 TMC. Title 1 of the Tacoma Municipal Code is hereby amended by the addition of a new chapter to be known and referred to as chapter 1.82 TMC (Code Enforcement) consisting of nine sections, to read as set forth in the attached Exhibit “A”.

Section 2. New Hearing Examiner Chapter added to Title 2 TMC. Title 1 of the Tacoma Municipal Code is hereby amended by the addition of new Chapter 1.84, to be known as Civil Violation Hearings, to read as set forth in the attached Exhibit “B”.

Section 3. Application. The provisions of Chapter 1.82 TMC shall apply to all violations in existence on or occurring after the effective date of this ordinance; provided that, any notice issued and pending final resolution prior to the effective date of this ordinance that would constitute a notice of civil violation under Chapter 1.82 TMC, and any order issued and pending final resolution prior to the effective date of this ordinance that would constitute a compliance order under Chapter 1.82 TMC, shall be vested to the procedures and remedies in place at the time that such notice or order was issued, but only as to such violation(s) described in such notice or order.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 5. Effective Date. This Ordinance shall take effect at 12:01 a.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

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City Clerk

Approved as to form:

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Deputy City Attorney

DRAFT

EXHIBIT “A”

**Chapter 1.82**  
**UNIFORM ENFORCEMENT CODE**

<b>1.82.010</b>	<b>DEFINITIONS</b>
<b>1.82.020</b>	<b>ENFORCEMENT - GENERAL</b>
<b>1.82.030</b>	<b>METHODS OF SERVICE</b>
<b>1.82.040</b>	<b>VOLUNTARY CORRECTION</b>
<b>1.82.050</b>	<b>CIVIL VIOLATIONS</b>
<b>1.82.060</b>	<b>COMPLIANCE ORDER</b>
<b>1.82.070</b>	<b><u>CORPORATE AND PERSONAL LIABILITY</u></b>
<b><u>1.82.080</u></b>	<b>ADDITIONAL ENFORCEMENT PROCEDURES</b>

## 1.82.010 DEFINITIONS

As used in this chapter the following words, terms, and phrases shall have the meanings ascribed to them in this section. Words, terms and phrases not defined herein shall be defined by their plain meaning.

“Abate” or “correct” or “remedy”, or any derivation thereof, means to act to stop an activity, and/or to repair, replace, remove, restore, rehabilitate or otherwise remedy a condition, where such activity or condition constitutes a violation; provided that, the actions taken must not endanger the general health, safety, and welfare of the community and must resolve the violation by bringing the activity or condition into compliance with the regulation alleged to have been violated, and into compliance with any standards or requirements applicable to the actions taken to repair, replace, remove, restore, rehabilitate or otherwise remedy the condition.

“Building Official” shall mean and refer to the individual authorized by the Director of Planning and Development Services Department of the City to administer and enforce the Building Code, or a duly authorized representative.

“Business day” shall mean Monday through Friday, excluding all state and national holidays and days that City Administrative Offices are closed due to inclement weather conditions, war, riots or natural disaster.

“City” means City of Tacoma, Washington.

“Civil infraction” shall mean any act or omission that constitutes a violation of any regulation and which violation is designated in the City code as a civil infraction.

“Compliance officer”, ~~or~~ “code enforcement officer” and “enforcement officer” means shall mean and refer to a person authorized by law to enforce the provisions of any regulation a violation of which is made subject to enforcement under the provisions of this chapter.

“Compliance order” shall mean an order or directive that is subject to enforcement under this chapter and issued by a compliance officer directing the responsible person to take corrective action or to cease certain action identified in the order. Compliance orders include, by way of example only and not limitation, an order to take corrective action, a stop-work order, a stop-use order, an emergency order, and an order to vacate, repair or demolish a non-compliant structure.

“Corporation” means any firm, business, association, partnership, limited liability company, corporation or other legal entity, public or private, however organized.

“Correction notice” means a verbal or written statement, made or issued by a compliance officer notifying a responsible person that a violation(s) has occurred or may occur, informing such person of the legal and factual basis for the determination that a violation has occurred or may occur, and informing such person that the violation(s) must be abated or mitigated or that certain action must be taken to prevent a violation(s) from occurring. A correction notice is

intended to be a warning and is not the equivalent of a compliance order and is not subject to appeal.

“Corrective action” means action to abate, mitigate, or remediate.

“Costs of abatement” or “costs of remediation” or “costs of mitigation” shall mean the costs of any abatement, remediation or mitigation action taken by the City to abate, remediate or mitigate the violation using lawful means in the event that the responsible person fails so to do. The term includes incidental expenses including, but not limited to, personnel costs, both direct and indirect and including attorney’s fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual costs and expenses of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; the costs of any required printing and mailing; and other administrative costs.

“Development” means the erection, installation, alteration, enlargement, demolition, maintenance, or use of any building, structure or associated equipment, or the alteration or use of land above, at, or below ground or water level, and all acts authorized by a city permit, approval, provision of the development code, or other regulation.

“Day” or “days,” as used in this chapter, shall mean calendar days unless expressly stated otherwise in a given section or subsection. Any portion of a 24-hour day shall constitute a full calendar day.

“Emergency” means a situation that requires immediate action to prevent or eliminate an imminent threat to the health, welfare or safety of persons or property.

“Hearing Examiner” means the Tacoma hearing examiner, and the office thereof established pursuant to Chapter 1.23 TMC to hear appeals of civil violations and compliance orders.

“Mailing” or “service by mail” shall mean sending the document by regular, first class mail, postage prepaid and properly addressed, to the last known address of the person subject to the document. The last known address shall be an address provided to the City by the person to whom the document is directed; if an address has not been provided to the City, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, or the taxpayer address appearing for the property on the official property tax information website for Pierce County; the address used for the payment of utilities for the property at which the violations are occurring; or, the address appearing on the project permit application. Where service of the notice of violation is by mail, service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday, or federal legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day.

“Mitigate” means to take measures, subject to City approval, to minimize the harmful effects of the violation where abatement is either impossible or unreasonably burdensome.

“Notice of violation” or “notice of civil violation” means a written statement, issued by a compliance officer, which contains the information required under TMC 1.82.050(B), and which notifies a person that he or she is responsible for one or more violations.

“Notice of infraction” or “notice of civil infraction” means a written statement compliant with the rules of the Washington Supreme Court, representing a determination that a civil infraction has been committed, and issued under authority of Chapter 7.80 RCW or a civil infraction system approved by ordinance adopting a civil infraction system under authority of Chapter 7.80 RCW.

“Owner” means any person, including any person, agent, operator or corporation having a legal or equitable interest in the property; or recorded in the official records of the Pierce County Assessor as holding title to the property; or otherwise having control of the property, including tenants, the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court, as well as a bankruptcy trustee.

“Person” means any individual or corporation. Because “person” shall include both human and non-human entities, any of the following pronouns may be used to describe a person: he, she, or it.

“Personal service” shall mean handing the document to the person subject to the document or leaving it at his or her dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or leaving it at his or her office or place of employment with a person in charge thereof

“Posting” shall mean affixing a copy of the document in a conspicuous place on the property (ies) where the violation occurred, with at least one copy of such document placed at an entryway to the property or structure if an entryway exists. Service by posting shall be accomplished on the date of the posting in compliance with this section.

“Project permit” or “project permit application” means any land use or environmental permit, approval or license required from the City for a project action including, by way of example and not limitation, building permits, street cut permits, clearing and grading permits, street excavation permits, sign permits, subdivisions, short subdivision, re-plat, re-division, boundary line adjustment, lot combination, binding site plans, planned unit developments, development permits, conditional use permit, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances or flood control ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

“Public official” means the City Manager or designee, the Building Official, and any Director, or other city official, vested with authority under the City Code for the interpretation or enforcement of any regulation subject to enforcement under the provisions of this chapter.

“Publication” shall mean publication as set forth in RCW 4.28.100 and 4.28.110 as now, or may be hereafter amended.

“Regulation” or “City regulation” means and includes any of the following:

1. Any title, chapter, section or subsection of the City code, as now or may be hereafter amended, re-numbered, or re-codified, that is by law made subject to enforcement under the provisions of this chapter;
2. All standards, regulations, rules, requirements and procedures, and any amendments thereto, adopted or promulgated by the City Council, or by a City Officer pursuant to or under authority of the City code or state law, that are by law made subject to enforcement under the provisions of this chapter;
3. The terms and conditions of any project permit or approval issued or granted by the city pursuant to or under authority of the City code or state law, that are by law made subject to enforcement under the provisions of this chapter;
4. The terms and conditions of any order, compliance order, permit or license issued or granted by a City Official pursuant to or under authority of the City code or state law, that are by law made subject to enforcement under the provisions of this chapter; and
5. The terms and conditions of any concomitant or development agreement, with the City, and any amendments thereto, which has been issued, granted or authorized by the City pursuant to provisions of the City code or state law, that are by law made subject to enforcement under the provisions of this chapter.

“Remediate” means to restore to a condition that complies with the development code or, for sites that have been degraded upon prior ownerships, to restore to a condition that does not pose a probable threat to the environment or to the public health, safety or welfare.

“Repeat violation” means, as evidenced by the prior issuance of a correction notice, compliance order, a notice of violation or a notice of civil infraction, that a violation has occurred on the same development site, property, premises or structure within a two-year period, or the responsible person has committed a violation elsewhere within the City of Tacoma within a two-year period. To constitute a repeat violation, the violation need not be the same type of violation as the prior violation. Policies and procedures promulgated pursuant to Section 1.82.020.D may provide that evidence of a prior violation shall be limited to a time period less than two years.

“Responsible Person” means any of the following: the owner of the building, premises, structure or land that is subject to the regulation alleged to have been violated; an occupant, or other person, in control of the building, premises, structure or land that is subject to the regulation alleged to have been violated; a developer, builder, business operator, or owner who is developing, building, or operating a business on the building, premises, structure or land that is subject to the regulation alleged to have been violated; any person who created, caused, or has allowed the violation to occur; or any person causing, allowing, or knowingly participating in the violation.

“Stop-Use Order” means a compliance order, or that part of a compliance order, directing the responsible person to immediately cease and desist a use identified in the order.

“Stop-Work Order” means a compliance order, or that part of a compliance order, directing the responsible person to immediately cease and desist, and/or to take, certain action identified in the order.

“Violation” means an act or omission proscribed by a provision of a regulation, which act or omission is by law made subject to enforcement under the provisions of this chapter.

#### **1.82.020        CODE ENFORCEMENT - GENERAL**

A. Application; Purpose. The policies, procedures and remedies provided herein shall apply to any violation. The purpose of this chapter is to establish a uniform and consistent administrative system for the enforcement of City regulations, and to ensure the health, safety and welfare of the citizens of Tacoma. Nothing in this chapter is intended to create a duty on the part of the City to any particular person or class of persons, or form the basis of any liability on the part of the City, its officials, officers, employees or agents, for any injury or damage resulting from any act or omission on the part of the City, its officials, officers, employees or agents. The provisions of this chapter, including the provision for monetary penalties, are not intended to affect a substantive or vested right and are remedial in nature and intent. Compliance orders issued under authority of this chapter are intended to bring the activity, use, property or structure into compliance with applicable standards and legal requirements.

B. Responsibility for Compliance. It is the intent of this chapter to place the obligation of complying with regulatory requirements that are made subject to enforcement under the provisions of this chapter, upon the owner, occupier or other person responsible for the condition of the land and/or structures, and upon persons otherwise responsible for actions regulated pursuant to such regulations.

C. Policy. It is the general policy of the City of Tacoma to emphasize code compliance by education and prevention and to pursue abatement, correction, remediation or mitigation, when appropriate and feasible.

D. Policies and Procedures. The director of each department of the City and the superintendents of each operating division of Tacoma Public Utilities having responsibility for

enforcement of a regulation are authorized to develop, promulgate, revise, and implement policies and procedures governing enforcement actions under this chapter over which such department or division has responsibility, authority and control. Such policies and procedures are intended to supplement the provisions of this chapter and are not intended to replace, modify or supersede any of the provisions of this chapter. Such policies and procedures may include provisions for suspension, reduction or waiver of the monetary penalties imposed pursuant to a notice of civil violation upon a showing of hardship, substantial completion of the necessary correction, unforeseeable circumstances beyond the control of the responsible person which render completion impossible by the date established as a good cause, or other factors or considerations establishing a basis for mitigation of the monetary penalty.

E. Choice of Action. The choice of enforcement action to be taken under this chapter and the severity of any penalty to be imposed should be guided by the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the person or persons subject to the enforcement action, the economic benefit that the violator derives from the violation, as measured by the greater of the resulting increase in market value of the property or the value received by the violator, the savings of construction costs realized by the violator, the reasonable value of property damaged, and such other factors related to the remedial purposes of enforcement action under this chapter and the enforcement policies authorized herein.<sup>+</sup>

F. Joint and Several Responsibility and Liability. Responsibility for violations subject to enforcement under this chapter is joint and several, and the City is not prohibited from taking action against a person where other persons may also be potentially responsible persons, nor is the City required to take action against all potentially responsible persons.

G. Presumption. Except as may be otherwise provided by law, proof that a violation exists or existed on privately owned (non-governmental) property shall constitute prima facie evidence that each owner of the property is a responsible person. However, this presumption shall not relieve or prevent enforcement against any other person who may also be a responsible person. Proof that a violation occurred on property subject to a project permit shall constitute prima facie evidence that the applicant for the project permit is a responsible person. However, this presumption shall not relieve or prevent enforcement against any other person who may also be a responsible person.

H. Prohibited Acts Include Causing and Permitting. Whenever in a regulation any act or omission constitutes a violation, such act or omission includes causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

I. Separate and Continuing Offense. Every act or omission which constitutes a violation shall constitute a separate violation for each and every day during any portion of which the act or omission constituting the violation is committed, continued, allowed, abetted, suffered or permitted. A violation continues to exist until abated, corrected or remedied.

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<sup>+</sup>-This policy is consistent with WAC 173-27-260.

J. Non-Exclusive. The provisions of this chapter are not exclusive and may be used in addition to other enforcement provisions authorized by the City code, state or federal law or regulation.

K. Conflicts. In the event of a conflict between a provision of a regulation made subject to enforcement under this chapter and a provision of this chapter, such conflicting provisions of the regulation shall control to the extent of the conflict.

L. Reference to Laws and Regulations. All references in this chapter to any title, chapter, section or subsection of City code, state law, or federal law, or any city, state or federal rule or regulation, shall mean and refer to such title, chapter, section or subsection, rule or regulation as it exists on the effective date of the ordinance enacting this chapter, or as it, or any part thereof, may thereafter be amended, renumbered, re-titled or re-codified.

M. Title. The provisions of this chapter, as now or may hereafter be amended, may be referred to throughout the City code as the “Uniform Enforcement Code” or “UEC”.

#### **1.82.030 METHODS OF SERVICE**

A. Methods of Service. For purposes of this chapter, the methods of service of any documents related to enforcement, such as ~~correction notices,~~ notices of civil violation, and compliance orders (hereinafter “document”) shall be by mailing, personal service, posting, ~~and~~ or publication.

B. When First Class Mail Deemed Service. Any correction notice, notice of civil violation, notice of hearing, compliance order, or other code enforcement document shall be deemed legally served upon a party by mailing, unless another method of service is expressly required in a particular subsection of this chapter, City Code, state law, or court rule.

#### **1.82.040 VOLUNTARY CORRECTION**

A. General. A compliance officer may attempt to secure the voluntary correction of a violation by contacting the responsible person, ~~explaining the violation, and requesting corrective action. This may be done verbally by the compliance officer or in writing and providing a correction notice.~~

B. Voluntary Correction Agreement - General. At the sole and reasonable discretion of the compliance officer, a written voluntary correction agreement may be entered into between the responsible person and the City. A voluntary correction agreement may be implemented following an oral or written notice of correction, service of a compliance order, issuance of a notice of violation or notice of infraction, or filing of a criminal complaint.

C. Effect of Agreement. Execution of a voluntary correction agreement represents acknowledgement and agreement by the responsible person that, (1) he or she is, as to each of the violations set forth in the voluntary correction agreement, the responsible person, (2) the

voluntary correction agreement represents a determination that the violation or violations as set forth in the voluntary correction agreement have been committed, and (3) this determination is final and conclusive.

D. Contents of Voluntary Correction Agreement. The voluntary correction agreement is a contract between the city and the responsible person under which that person agrees to take corrective action within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

1. A statement identifying the necessary corrective action to be taken, the date or time by which the corrective action must be completed, and an acknowledgement by the responsible person that he or she will correct the violation within the time specified in the voluntary correction agreement;

2. An acknowledgement by the responsible person that if the violation is not corrected in compliance with the terms and conditions of the voluntary correction agreement, the City may issue a notice of civil violation and impose monetary penalties for the time period for the violation or violations described in the voluntary correction agreement;

3. The name and last known address of the responsible person;

4. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

5. A description of the nature, extent, and time of the violation and a reference to the regulation or provision of the City code that has been violated;

6. An acknowledgement by the responsible person that each violation described in the voluntary correction agreement exists; that he or she is the responsible person for the violations set forth in the voluntary correction agreement, that the agreement represents a determination that the violation or violations as set forth in the voluntary correction agreement have been committed, and that this determination is final and conclusive;

7. Acknowledgement by the responsible person that the City may enter the building, structure, premises, or land and inspect the building, structure, premises, or land as may be necessary to determine compliance with the voluntary correction agreement;

8. Acknowledgement by the responsible person that the compliance officer shall have the decision making authority to determine if corrective action has been taken in compliance with the terms and conditions of the voluntary correction agreement;

9. The signature or official mark of the responsible person and the signature or official mark of the compliance officer; and

10. Any additional information that may be required under the regulation alleged to have been violated.

### **1.82.050 CIVIL VIOLATIONS**

A. Civil Violation. A compliance officer may issue a notice of civil violation when there is reasonable cause to believe that there is or has been a violation.

B. Content of Notice of Civil Violation. The notice of civil violation shall set forth and contain:

1. The name and last known address of the responsible person;
2. The name and business address and telephone number of the compliance officer issuing the notice of civil violation;
3. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
4. A description of the nature, extent, and time of the violation and a reference to the regulation that has been violated;
5. If a monetary penalty is imposed, a statement setting forth the monetary penalty(ies) imposed and each violation or violations that are subject to such monetary penalty(ies);
6. If the notice of civil violation is issued in conjunction or combined with a compliance order, and the violation is continuing in nature and will accrue daily monetary penalties until the violation is corrected, a statement (a) setting forth the amount of the daily monetary penalty for each such continuing violation, (b) that the violation is continuing in nature, and (c) that daily monetary penalties will accrue until the violation is corrected as set forth in the compliance order;
7. If the notice of civil violation is combined with a compliance order, the notice of violation shall include the content required pursuant to TMC 1.82.060(B) for issuance of a compliance order;
8. A statement that the person to whom the notice of civil violation is issued may appeal the notice of civil violation as provided in TMC 1.82.050(J);
9. A statement that a notice of civil violation issued pursuant to this section represents a determination that the violation/violations identified in the notice has/have been committed and that this determination is final and conclusive unless appealed as provided in TMC 1.82.050(J); and

10. Any additional information that may be required under the regulation that is alleged to have been violated.

C. Service. Except as provided herein, service of a notice of civil violation shall be by personal service or by mailing. If personal service is not accomplished after reasonable effort and if an address for mailed service cannot be ascertained, service shall be accomplished by posting a copy of the order conspicuously on the affected building, structure, premises, or land. If service by posting is ineffective or cannot be lawfully accomplished, service shall be accomplished by publication.

D. Effect of Notice of Civil Violation. A notice of civil violation issued pursuant to this section represents a determination that the violation/violations identified in the notice of civil violation has/have been committed. This determination is final and conclusive as to the violation or violations set forth in the notice of violation, unless a timely appeal is filed as provided in TMC 1.82.050(J). Nothing herein is intended to preclude timely appeal of a separate or subsequent compliance order, notice of civil violation, notice of infraction or imposition of criminal penalties related to the same or continuing violation or violations, to the extent an appeal may be available.

E. Continued Duty to Correct. Payment of a monetary penalty imposed pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the compliance officer.

F. Monetary Penalty. Unless a different monetary penalty is specified in the City code or state or federal law for a particular violation, the maximum monetary penalty for each violation per day or portion thereof, and each continuing day or portion thereof, shall be as follows:

1. First day of each violation, \$100.00;
2. Second day of each violation, \$200.00;
3. Third day of each violation, \$300.00;
4. Fourth day of each violation, \$400.00;
5. Each additional day of each violation continuing beyond four days, \$500.00 per day;
6. For each repeat violation, \$500.00 per day of each repeat violation; and
7. The monetary penalty for a violation may alternatively be assessed in an amount up to \$10,000 per day, upon consideration of the criteria set forth at TMC 1.82.020(E).

G. Other Action. In addition to the issuance of the notice of civil violation, the City may take other enforcement action available at law or in equity including, by way of example and not limitation, issuance of a notice of civil infraction, seeking injunctive or declaratory relief, seeking an order of abatement, taking action to seek imposition of criminal penalties, and where applicable, rescission as set forth in RCW 90.58.140. The City may also issue a notice of civil violation in conjunction with a compliance order.

H. Collection of Monetary Penalty. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed shall be immediately due and payable and must be paid to the City within 10 calendar days from the date the notice of civil violation becomes final and non-appealable. Any monetary penalties that accrue for on-going violations after the date the notice of civil violation becomes final and non-appealable must be paid within 10 calendar days from the date the penalty(ies) have accrued. The City Attorney is authorized to take appropriate action to collect the monetary penalty when past due and owing.

I. Application for Remission or Mitigation. When remission or mitigation of the monetary penalty is authorized under the City code, state or federal law, any person incurring a monetary penalty for a civil violation may, within 10 days of service of the notice of violation, apply in writing to the responsible public official for remission or mitigation of the monetary penalty. The responsible public official shall issue a decision on the application within 15 business days following receipt of such application. Upon timely receipt of a complete application for remission or mitigation, the responsible public official, or his/her designee, shall consider the application, together with any information the responsible public official, or his/her designee, determines is relevant, and may remit or mitigate the penalty only upon a finding by a preponderance of the evidence that applicant has demonstrated extraordinary circumstances, such as the presence of information or factors not considered in setting the original monetary penalty. When a monetary penalty is imposed jointly by the Department of Ecology and the City, the penalty may be remitted or mitigated only upon such terms as both the Department of Ecology and the City agree.

J. Appeal. A notice of civil violation may be appealed to the hearing examiner pursuant to the procedures set forth in Chapter 1.82 TMC for appeal of a notice of civil violation; provided that, an appeal of an enforcement action under the provisions of TMC Chapter 13.11. (Shoreline Management) shall be governed by TMC Chapter 13.11. In the event that a notice of civil violation is ~~issued in conjunction~~combined with a compliance order, the compliance order is subject to appeal pursuant to TMC 1.82.060(M) and may be subject to expedited informal review pursuant to TMC 1.82.060(H). Accrual and payment of the monetary penalty imposed shall be stayed during the pendency of any administrative appeal of the violation for which such monetary penalties have been imposed.

## **1.82.060 COMPLIANCE ORDERS**

A. In General. A compliance officer may issue a compliance order when there is reasonable cause to believe that there is or has been a violation or that failure to take action or to

refrain from taking action will result in a violation. The compliance order is remedial in nature and intended to prevent future violations, protect persons and property from injury or the imminent threat of injury, terminate on-going violations, and bring the activities, omissions, use, property and structures that are the subject of the order into compliance, as nearly as practicable, within applicable standards and requirements of the applicable regulation(s).

B. Content of Compliance Order. The order shall set forth and contain:

1. The name and last known address of the responsible person(s);
2. The name and business address and telephone number of the compliance officer issuing the compliance order;
3. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation will occur, has occurred or is occurring;
4. A description of the nature, extent, and time of the violation and a reference to the regulation that has been or may be violated;
5. An order that the act or omission or use causing or leading to a violation or a potential violation shall immediately cease and desist and/or, in appropriate cases, an order take specific corrective action in compliance with City code immediately or within a specific and reasonable time, which corrective action may include, but is not limited to, abatement, remediation, correction, and/or mitigation of the site and other property damaged;
6. A statement that any act or omission contrary to a provision of the compliance order constitutes a civil violation and is subject to enforcement under Chapter 1.82 TMC;
7. A statement that the person to whom the compliance order is issued may appeal the compliance order as provided at TMC 1.82.060(M);
8. If a stop-work or stop-use order is issued, a statement that the person to whom the compliance order is issued may, in addition to the right to appeal the order, seek expedited informal review as provided at TMC 1.82.060(H). The statement shall identify the public official vested with authority to review the stop-work or stop-use order and the phone number, name and title of the person authorized to initiate the process for informal expedited review;
9. A statement that the compliance order is final and conclusive unless appealed;
10. If the compliance order is combined with a notice of civil violation, the compliance order shall include the content required pursuant to TMC 1.82.050(B) for issuance of a notice of violation; and
11. Any additional information that may be required to be included in the compliance order under the regulation that is alleged to have been violated.

C. Service. Except as provided herein, service of a compliance order shall be by personal service or by mailing. If personal service is not accomplished after reasonable efforts and if an address for mailed service cannot be ascertained, service shall be accomplished by posting a copy of the order conspicuously on the affected building, structure, premises, or land. If service by posting is ineffective or cannot be lawfully accomplished, service shall be accomplished by publication.

D. Effective Date. A compliance order issued under this section shall become effective immediately upon service of the order upon the person to whom it is directed.

E. Effect of Compliance Order. A compliance order represents notice to the responsible person of a determination that the violation/violations identified in the compliance order has/have been committed, or that there is reasonable cause to believe that a violation will occur, and represents a determination that corrective action as described in the compliance order, or cessation of certain action identified in the order, is required to abate, correct, mitigate, remedy or prevent the violation. These determinations are final and conclusive unless appealed as provided in this chapter; provided that, nothing herein is intended to preclude timely appeal of a separate or subsequent order, notice of civil violation, notice of infraction or imposition of criminal penalties related to the same or continuing violation or violations, to the extent an appeal may be available.

F. Extension. Upon written request received prior to the expiration of the correction date or time, the compliance officer may extend the date set for correction for good cause or in order to accommodate a voluntary correction agreement. The compliance officer may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible or impracticable by the completion date established as a good cause.

G. Stop-Work Order; Stop-Use Order. Whenever a compliance officer finds reasonable cause to believe that a violation would, if the violation continued, (1) result in irreparable harm, (2) exacerbate injury already caused to any person or property, (3) result in damage or injury to wetlands or critical areas, (4) materially impair the code enforcement officer's ability to secure compliance, (5) materially impair the responsible persons' ability to correct the violation, or (6) cause or contribute to an emergency, the compliance officer may issue a stop-work or stop-use order, or issue a compliance order that includes a stop-work or stop-use order. The stop-work and stop-use order shall be deemed served and effective upon posting of the order; provided that, nothing herein shall preclude service in person, by mail or publication.

#### H. Expedited Informal Review.

1. Purpose. Expedited informal review is an informal process that is intended to provide an opportunity for the person to whom the stop-work or stop-use order is issued to seek immediate review to address any claimed errors in the determination by the compliance officer to issue such an order.

2. Who may seek review? The person to whom the stop-work or stop-use order is directed, or an authorized representative of that person, may seek expedited informal review of the order, by a public official vested with authority to review and uphold or terminate the stop-work or stop-use order.

3. Request for review. The person seeking expedited informal review may request review within ten days of service of the order by contacting, during normal city business hours, the person identified in the order as the person authorized to initiate the review, requesting initiation of expedited informal review, and providing a phone number at which the requesting person can be reached during business hours.

4. Review. The public official designated to conduct the review, or his or her designee, shall provide a reasonable opportunity for the person requesting review to submit in writing or orally, or both, a statement describing the error(s) of law and error(s) of fact, and any other supporting records or documents or information in any form, establishing why the stop-work or stop-use order was issued in error. The public official may consult with any person(s) who the public official determines may have relevant information, and take into consideration any relevant records or documents or information in any form.

5. Decision. The public official shall, within 3 business days following the date of the request for review, notify the person requesting review of the public official's decision to either terminate or uphold the issuance of the order; provided that, the public official may extend this time period for good cause.

6. Decision not subject to Administrative Appeal. The decision of the public official shall not be subject to appeal to the Hearing Examiner.

7. Effect of Filing an Appeal. Submitting a request for expedited informal review will not impair the right to appeal the stop-work or stop-use order pursuant to TMC 1.82.060(M) and will not operate toll the time period for filing such an appeal. A person appealing a stop-work or stop-use order is not required to request expedited informal review as a condition of filing an appeal. The filing of an appeal shall not operate to deprive the public official of jurisdiction to conduct an expedited informal review that has been timely requested.

I. Violation - Unlawful. When a compliance order has been issued, posted and/or served pursuant to this section, it is unlawful for any person to whom the order is directed or any person with actual or constructive knowledge of the order to conduct any activity or perform any work prohibited by the terms of the order, even if the order has been appealed, until the enforcement officer has removed the copy of the order, if posted, and issued written authorization for the activity or work to be resumed.

J. Removal of Compliance Order - Violation. It shall be unlawful to remove a compliance order posted in conformity with the requirements of this chapter without the prior authorization of a compliance officer, responsible public official of the City, the City hearing

examiner, or an order of a court with jurisdiction. A violation of the provisions of this subsection shall constitute a misdemeanor.

K. Compliance - Violation. It is unlawful to fail to comply with the terms and conditions of the compliance order. Failure to comply with a compliance order can result in enforcement actions including, but not limited to, the issuance of a notice of civil violation, issuance of a civil infraction, and imposition of criminal penalties.

L. Other Action. In addition to the issuance of the compliance order, the City may take other enforcement action available at law or in equity including, by way of example and not limitation, issuance of a notice of civil violation and penalties, issuance of a civil infraction, seeking injunctive or declaratory relief, imposition of criminal penalties, modification or revocation of the project permit or approval, seeking an order of abatement, and rescission as set forth in RCW 90.58.140. The City may also issue a notice of civil violation concurrent with a compliance order.

M. Appeal; Exhaustion. A compliance order may be appealed to the hearing examiner pursuant to the procedures set forth in Chapter 1.82 (Hearing Examiner-Appeals of Code Enforcement Actions) TMC for appeal of a compliance order; provided that, an appeal of an enforcement action under the provisions of TMC Chapter 13.11. (Shoreline Management) shall be governed by TMC Chapter 13.11. In the event that the City code provides that the applicant may request administrative review, remission or mitigation of the compliance order by a public official, applicant shall exhaust such administrative remedies prior to filing an appeal to the ~~Hearing hearing Examiner~~ hearing examiner; provided that, expedited informal review pursuant to TMC 1.82.060(H) is not considered an administrative remedy for purposes of this exhaustion requirement. In the event that a notice of civil violation is ~~issued in conjunction or is~~ combined with the compliance order, payment of the monetary penalty imposed shall be stayed during the pendency of any administrative appeal. In the event of a notice of appeal of an order revoking or rescinding a project permit or approval, the order shall be stayed during the pendency of any administrative appeal.

#### **1.82.070:- CORPORATE AND PERSONAL LIABILITY**

A. As used in this section:

“Agent” means any director, officer or employee of a corporation, or any other person who is authorized to act on behalf of the corporation.

“High managerial agent” means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

B. A corporation is strictly liable for the acts or omissions of its agents that constitute a civil violation.

C. A corporation is guilty of a criminal offense when:

1. The act or omission constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or

2. The act or omission constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and on behalf of the corporation; or

3. The act or omission constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by the Tacoma Municipal Code which clearly indicates an intent to impose such criminal liability on a corporation.

D. A person is civilly liable for an act or omission constituting a violation which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or behalf.

E. A person is criminally liable for an act or omission constituting a criminal offense which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or behalf.

F. Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he or she has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

**1.82.080 ADDITIONAL ENFORCEMENT PROCEDURES:**

The provisions of this Chapter are not exclusive and may be used in addition to other enforcement provisions authorized by regulation or state law.

## EXHIBIT “B”

### **Chapter 1.84 HEARING EXAMINER – APPEALS OF CODE ENFORCEMENT ACTIONS**

- 1.84.010 PURPOSE**
- 1.84.020 APPEAL - REQUEST FOR HEARING**
- 1.84.030 HEARING PROCEDURE**
- 1.84.040 DECISION OF THE HEARING EXAMINER**

#### **1.84.010: PURPOSE:**

The purpose of this chapter is to provide an opportunity for a prompt hearing and decision on all enforcement actions for which an appeal to the hearing examiner is provided pursuant to Chapter 1.82 TMC (Uniform Code Enforcement). The Office of the Hearing Examiner, created pursuant to Chapter 1.23 of the City code, shall have jurisdiction to hear all appeals filed pursuant to Chapter 1.82 TMC and exercise such authority as provided pursuant to this chapter. The provisions of this chapter are not intended to apply to or replace appeals of administrative land use decisions including, by way of example and not limitation, any administrative order, requirement, permit, decision, or determination on land use proposals made by the Planning Director, or a shoreline permit decisions or exemptions or any other action or land use decision.

#### **1.84.020: APPEAL - REQUEST FOR HEARING:**

##### **A. Appeal - Request for Hearing:**

1. Review of Civil Violation. A person to whom a notice of civil violation is issued pursuant to Chapter 1.82. TMC (the “appellant”) may appeal such notice to the hearing examiner within 10 calendar days after the date the notice of civil violation is served as determined in accordance with Chapter 1.82 TMC; provided that, a notice of civil violation issued for a violation of Chapter 13.11 (Shoreline Management) TMC, or any rule or regulation adopted pursuant to Chapter 13.11 (Shoreline Management) TMC, or any project permit or approval issued or granted pursuant to Chapter 13.11 (Shoreline Management) TMC, may be appealed in accordance with the time period and procedures set forth in Chapter 90.58 RCW and Chapter 173-27 WAC, as now or may hereafter be amended.

2. Review of Compliance Order. A person to whom a compliance order is issued pursuant to Chapter 1.82 TMC (the “appellant”) may appeal such order to the hearing examiner within 10 calendar days after the date the notice of compliance order is served as determined in accordance with Chapter 1.82 TMC; provided that, a compliance order pursuant to Chapter 13.11 (Shoreline Management) TMC, or any rule or regulation adopted pursuant to Chapter 13.11 (Shoreline Management) TMC, or any project permit or approval issued or granted pursuant to Chapter 13.11 (Shoreline Management) TMC, may be appealed in accordance with the time

period and procedures set forth in Chapter 90.58 RCW and Chapter 173-27 WAC, as now or may hereafter be amended. A request for expedited informal review shall not operate to toll the time period for filing an appeal of a stop-work or stop-use order.

B. Appeal – Filing:

1. Filing; Where. A notice of appeal shall be filed in writing with the Office of the City Hearing Examiner during regular business hours by the appellant, or, in the case of a corporation, a duly authorized agent of the appellant. The hearing examiner may adopt rules consistent with this chapter allowing electronic filing of a notice of appeal.

2. Week-ends; Holidays. If the final day to file a notice of appeal is on a weekend or holiday, the appeal will be timely if filed before the close of business on the next business day following the holiday or week-end. For purposes of this section, holiday shall mean those weekdays during which the City offices are closed for established holidays.

3. Jurisdiction of Hearing Examiner. The hearing examiner shall not have jurisdiction to hear an appeal for which the notice of appeal is not filed within the time periods set forth in this chapter.

4. Remission; Mitigation. A person to whom a notice of civil violation or compliance order has been issued, which civil violation or compliance order is subject to an application for mitigation or remission which application has been timely filed under the applicable provisions of the City code, may appeal the underlying notice of violation and/or compliance order, and the decision on the application for mitigation or remission, by filing an appeal within 10 calendar days after the date of service of the decision on the application for mitigation or remission.

C. Content of Notice – Filing:

1. Notice of Appeal of Civil Violation. The written notice of appeal of a civil violation and request for hearing shall identify with specificity, (a) the name of the appellant, (b) the mailing address at which the appellant may receive notices related to the hearing, (c) the notice of civil violation sought to be appealed, (d) the violation or violations being appealed, and (e) a statement identifying the relief the appellant is seeking from the hearing examiner. If the notice of civil violation is issued in conjunction with a compliance order and the appellant intends to appeal the compliance order, the notice of appeal and request for hearing must also comply with TMC 1.84.020(C)(2) below. The notice of appeal shall be signed by the appellant or a duly authorized representative of the appellant, and in the case of a corporation, a duly authorized agent of the appellant.

2. Compliance Order. The written notice of appeal of a compliance order and request for hearing shall identify with specificity, (a) the name of the appellant, (b) the mailing address at which the appellant may receive notices related to the hearing, (c) the compliance order sought to be appealed, (d) the parts of the order that the appellant alleges are in error, (e) a concise statement of each alleged error(s) of law and/or error(s) of fact that form the basis for the

appeal, (f) a concise statement of facts upon which the appellant relies to sustain the statement of error, and (g) a statement identifying the relief the appellant is seeking from the hearing examiner. If the compliance order is issued in conjunction with a notice of civil violation and the appellant intends to appeal the notice of violation, the notice of appeal and request for hearing must also comply with TMC 1.84.020(C)(1) above. The notice of appeal shall be signed by the appellant, or a duly authorized representative of the appellant, and in the case of a corporation, a duly authorized agent of the appellant. The filing of such an appeal shall not alter the time for compliance with the compliance order unless modified by the hearing examiner following a hearing.

**ED.** **Hearing to Be Scheduled.** The Office of the ~~hearing-Hearing examiner~~ Examiner will determine and schedule the time and date for a hearing before the hearing examiner. Extensions may be granted by the hearing examiner for good cause shown or when there is mutual agreement of the parties or to accommodate the schedule of the hearing examiner.

### **1.84.030 HEARING; PROCEDURE**

A. **Hearing - Procedure.** The ~~Hearing-hearing~~ examiner shall conduct an adjudicative hearing on the appeal pursuant to the rules of procedure of the hearing examiner. The City and the appellant shall be the parties in the hearing and each party may call witnesses and may be represented by legal counsel and may present testimony, confront and cross-examine adverse witnesses, and submit evidence and information in accordance with procedures prescribed by the hearing examiner. The hearing examiner shall give substantial weight to any discretionary decision, or any construction of the City code or related regulation, rendered by the compliance officer or responsible public official. The written administrative record underlying the contested action or determination may be submitted to the hearing examiner and made a part of the record on appeal.

B. **Burden of Proof.** The City shall have the burden of proof to demonstrate by a preponderance of the evidence that the violation or violations that are the subject of the appeal was or were committed and that the appellant is the responsible person. In the case of an appeal of a compliance order, the appellant shall have the burden of proof to demonstrate by a preponderance of the evidence that the compliance order was imposed, issued or determined in error.

#### **C. Proceedings.**

1. **Prehearing Conference.** A prehearing conference may be required by the Hearing Examiner in accordance with TMC 1.23.080 (Prehearing conference).

2. **Conduct of Proceedings.** All hearings shall be conducted in accordance with TMC 1.23.100 (Conduct of proceedings).

3. **Subpoenas.** The hearing ~~Examiner-examiner~~ shall have authority to issue and enforce subpoenas as provided in TMC 1.23.105 (Hearing Examiner Subpoenas).

D. Stay of Action Pending Appeal. An appellant may request the hearing examiner to stay or suspend an action by the City to implement the decision under review pending the outcome of the administrative appeal. The request must set forth a statement of grounds for the stay and the factual basis for the request. The hearing examiner may grant a stay only if the hearing examiner finds that:

1. The party requesting the stay is likely to prevail on the merits;
2. Without the stay the party requesting it will suffer irreparable harm;
3. The grant of a stay will not substantially harm other parties to the proceedings;
4. The grant of a stay will not cause or contribute to an imminent threat of harm to persons or property; and
5. The request for the stay is timely in light of the circumstances of the case.

The hearing examiner may grant the request for a stay upon such terms and conditions, including the filing of security, as are necessary to prevent harm to other parties by the stay.

#### **1.84.040 DECISION OF THE HEARING EXAMINER**

A. Determination. The hearing examiner shall, as to each violation subject to appeal, determine whether the City has established by a preponderance of the evidence that the violation was committed and that the appellant is the responsible person, and shall affirm or vacate the City's decision regarding such violation or violations.

The hearing examiner shall, as to each compliance order subject to appeal, determine whether the appellant has established by a preponderance of the evidence that the order was imposed, issued or determined in error based upon one or more of the following:

1. the order was imposed, issued or determined in excess of the authority or jurisdiction of the City or compliance officer; or
2. the order was imposed, issued or determined upon unlawful procedure; or
3. the order was affected by material error of law or fact; or
4. the order was clearly erroneous in view of the entire record as submitted; or
5. the order was arbitrary or capricious.

The hearing examiner may, as to each compliance order subject to appeal, (a) affirm the decision of the compliance officer, (b) remand the matter back to the compliance officer for

further action consistent with the decision of the hearing examiner, (c) reverse the order or determination if the substantial rights of the appellant may have been prejudiced because the order or determination was in violation of one or more factors set forth above, or (d) modify the order or decision to the extent necessary to correct the error.

**CB.** **Issue Order:** The hearing examiner shall issue an order to the parties which order shall contain the following information:

1. The decision regarding the matter being appealed including findings of fact and conclusions based thereon in support of the decision; and/or
2. The required corrective action; and/or
3. The date and time by which the correction must be completed; and/or
4. The monetary penalties assessed; and/or
5. A remand and order for further action.

**EC.** **Notice of Decision:** The hearing examiner shall give notice of the decision to the appellant and the applicable City official within a reasonable period of time following the hearing. This decision shall be considered the final decision in the absence of a motion for reconsideration as provided at TMC 1.84.040(~~HE~~).

**FD.** **Failure to Appear:** If the appellant fails to appear at the scheduled hearing, the hearing examiner shall enter an order of dismissal of the appeal, unless good cause is found to extend the hearing date or the city agrees to extend the hearing date, or the hearing examiner finds that notice of the hearing was not provided to the appellant.

**GE.** **Failure to Comply:** It shall be unlawful to fail to comply with a final non-appealable decision of the hearing examiner. For purposes of this section, non-appealable means that all administrative and judicial appeals have been exhausted. Violations of a final non-appealable decision of the hearing examiner are subject to enforcement pursuant to Chapter 1.82 TMC. Willful noncompliance with a final non-appealable decision of the hearing examiner shall constitute a misdemeanor and shall be punished by a fine of up to \$1,000 or 90 days in jail, or by both such fine and imprisonment. Each day that a violation continues shall constitute a separate and continuing offense.

**HE.** **Reconsideration.** An appellant may seek reconsideration of the decision of the hearing examiner in conformance with the provisions of TMC 1.23.140. If a timely motion is filed meeting the jurisdictional requirements for reconsideration of the decision of the hearing examiner, the decision of the hearing examiner shall not be final until the decision of the hearing examiner upon the motion for reconsideration is served personally or by mailing.

**IG. Final Decision.** A party aggrieved by a final decision of the hearing examiner may appeal or seek review of the decision in accordance with applicable law. Unless another period of time applies under applicable law or court rule, any appeal of the decision of the hearing examiner must be filed within twenty-one (21) calendar days from the date the hearing examiner's final decision was served personally or by mailing.

**JH. Subsequent Repeat Violation – Failure to Abate – Misdemeanor.** The commission of a subsequent violation or the failure or refusal to take corrective action pursuant to a decision of the hearing examiner after receipt of written notice of such decision shall constitute a misdemeanor. The city attorney, or his or her designee, shall, at his or her discretion, have authority to file a subsequent violation as either a civil violation pursuant to this chapter, or a civil infraction or a misdemeanor.