

Chapter **17.5417.52** CODE ENFORCEMENT

Sections:

- 17.5417.52.010 Introduction.**
- 17.5417.52.020 Suspension, revocation, and denial of permits.**
- 17.5417.52.030 Unfit buildings, dwellings, and structures.**
- 17.5417.52.040 Critical area violations.**
- 17.5417.52.050 Shoreline violations.**
- 17.5417.52.060 Violations of sexually oriented business regulations.**
- 17.5417.52.070 Violations of state licensed marijuana production, processing, and sales regulations.**

17.5417.52.010 Introduction.

A. It is a violation of this title for any person, firm, or corporation to:

1. Initiate or maintain or cause to be initiated or maintained the use of any building, structure, land or property within the city without first obtaining permits or authorizations required for the use by this title.
2. Use, construct, locate, demolish or cause to be used, constructed, located or demolished any structure, land or property within the city in any manner that is not permitted by the terms of any permit or authorization issued.
3. Fail to comply with the terms and conditions of approval of permits issued by the city including conditions recorded on the face of a plat or notices recorded on a deed or title.
4. Remove or deface any sign, notice, complaint or order required by or posted in accordance with this title.
5. Misrepresent any material fact in any application, plans or other information submitted to obtain any land use permits or authorizations.
6. Fail to comply with the requirements of this title.
7. Fail to comply with any stop work or compliance order issued pursuant to this title.

- B. Enforcement of violations of this title shall be conducted in accordance with the procedures established with Chapter [1.50](#).
- C. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any provisions of this title shall be deemed guilty of a civil violation or misdemeanor.
 - 1. Each day that a violation is permitted to exist shall constitute a separate offense.
 - 2. Offenses shall be processed in accordance with the provisions of Chapter [1.40](#), General Penalty, and Chapter [1.50](#), Code Enforcement. (Ord. 3889 § 3 (Exh. A), 2017)

~~17.54~~[17.52](#).020 Suspension, revocation, and denial of permits.

- A. The city may suspend, revoke, or modify any permit issued by the city whenever:
 - 1. The permit holder has committed a violation in the course of performing activities subject to that permit;
 - 2. The permit holder has interfered with the authorized representatives of the city in the performance of his or her duties related to that permit;
 - 3. The permit was issued in error or on the basis of materially incorrect information supplied to the city;
 - 4. Permit fees or costs were paid to the city by check and returned from a financial institution marked nonsufficient funds (NSF) or canceled;
 - 5. For a permit or approval that is subject to sensitive area review, the applicant has failed to disclose a change of circumstances on the development proposal site which materially affects an applicant's ability to meet the permit or approval conditions, or which makes inaccurate the sensitive area study that was the basis for establishing permit or approval conditions. Such suspension, revocation, or modification shall be carried out through the notice and order provisions of this chapter and shall be effective upon the compliance date established by the notice and order. Such suspension, revocation, or modification may be appealed to the hearing examiner using the appeal provisions of this chapter.
- B. The city may immediately suspend operations under any permit issued under this title by issuing a stop work order.

C. In order to further the remedial purposes of this chapter, such suspension or denial may continue until the violation is cured by restoration, accepted as complete by the city, and by payment of any civil penalty imposed for the violation, except that permits or approvals shall be granted to the extent necessary to accomplish any required restoration or cure. (Ord. 3889 § 3 (Exh. A), 2017)

17.5417.52.030 Unfit buildings, dwellings, and structures.

- A. Chapter [35.80](#) RCW, Unfit Dwellings, Buildings and Structures, as it currently exists or is hereinafter amended, is hereby adopted.
- B. The city manager and his/her designee is designated as the city's "improvement officer," and shall have the full scope of authority granted to that official under Chapter [35.80](#) RCW. The city's hearing examiner is designated as the city's "appeals commission," and shall have the full scope of authority granted to that commission under Chapter [35.80](#) RCW.
- C. If, after a preliminary investigation of any dwelling, building, structure or premises, the improvement officer finds that it is unfit for human habitation or other use, the improvement officer may issue a complaint conforming to the provisions of RCW [35.80.030](#), stating in what respects such dwelling, building, structure or premises is unfit for human habitation or other use. In determining whether a dwelling, building, structure or premises should be repaired or demolished, the improvement officer shall be guided by the Kelso Municipal Code and such other codes adopted pursuant to the Kelso Municipal Code as the improvement officer deems applicable, in particular the most recent edition of the International Property Maintenance Code.
- D. Complaints issued under this section shall be served on the parties and posted on the subject property pursuant to RCW [35.80.030](#), and shall also be filed with the Cowlitz County auditor. All complaints or other documents posted on the subject property shall remain in place until the complaint has been resolved. For purposes of service, such complaints or other documents are deemed effective on the day of posting.
1. Not less than ten days nor more than thirty days after serving a complaint, the improvement officer shall hold a hearing conforming to the provisions of RCW [35.80.030](#), at which all parties in interest shall be given the right to appear in person, to bring witnesses, and to give testimony regarding the complaint. At any time prior to or at the time of the hearing, any party may file an answer to the complaint. The improvement officer shall adopt procedural rules governing the procedure of such hearing, which shall be available for public inspection at the city clerk's office.
 2. Within ten days of the complaint hearing, the improvement officer shall issue a determination, findings of fact, and order stating the improvement officer's determination as to whether the

subject dwelling, building, structure or premises is unfit for human habitation or other use, the findings of fact supporting the determination, and an order specifying the actions necessary to address any unfitness and a deadline for completing the actions. The determination, findings of fact, and order shall be served and posted as set forth in this section and Chapter [1.50](#), and if no appeal is filed within the deadline specified, a copy of the determination, findings of fact, and order shall be filed with the Cowlitz County auditor.

3. Within thirty days of service of a determination, findings of fact, and order, any party may file an appeal to the appeals commission. Such an appeal shall be governed by the city of Kelso hearing examiner's procedural rules, except that the appeals commission shall conduct a hearing on the appeal and issue a ruling within sixty days from the date the appeal is filed; and if the appeals commission issues any oral findings of fact, the ruling shall contain a transcript of such findings in addition to any findings issued at the time of the ruling. The ruling shall be served and posted as set forth in this section and Chapter [1.50](#) and if no appeal is filed within the deadline specified, a copy of the ruling shall be filed with the Cowlitz County auditor.
4. Any person affected by a determination, findings of fact, and order issued by the improvement officer who has brought an appeal before the appeals commission pursuant to this section and Chapter [1.50](#) may, within thirty days after the appeals commission's ruling has been served and posted pursuant to this section and Chapter [1.50](#), petition the Cowlitz County superior court for an injunction restraining the improvement officer from carrying out the provisions of the determination, findings of fact, and order. In all such proceedings, the court is authorized to affirm, reverse or modify the order, and such trial shall be heard de novo.
5. If a party, following exhaustion of the party's rights to appeal, fails to comply with the determination, findings of fact, and order, the improvement officer may direct or cause the subject dwelling, building, structure or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished pursuant to Chapter [35.80](#) RCW.
6. The cost of any action taken by the improvement officer under this section and Chapter [1.50](#) shall be assessed against the subject property pursuant to Chapter [35.80](#) RCW. Upon certification by the city that the assessment amount is due and owing, the Cowlitz County treasurer shall enter the amount of such assessment upon the tax rolls against the subject property pursuant to the provisions of RCW [35.80.030](#). (Ord. 3889 § 3 (Exh. A), 2017)

[17.5417.52.040](#) Critical area violations.

- A. The compliance provisions for critical areas are intended to protect critical areas and the general public from harm, to recognize the principles of Chapter [36.70A](#) RCW (the Growth Management Act), and to further the remedial purposes of this chapter. To achieve this, a person responsible for a code violation will not only be required to restore damaged critical areas, insofar as that is possible and beneficial, but will also be required to pay a civil penalty for the redress of ecological, recreational, and economic values lost or damaged due to their unlawful action.
- B. The provisions of this section are in addition to, and not in lieu of, any other penalty, sanction, or right of action provided by law for other related violations.
- C. Where feasible, the owner of the land on which the violation occurred shall be named as a party to the notice and order. In addition to any other person who may be liable for a violation, and subject to the exceptions provided in this chapter, the owner shall be jointly and severally liable for the restoration of a site and payment of any civil penalties imposed.
- D. Violation of critical area provisions of this code means:
 - 1. The violation of any provision of Chapter [17.3840](#), Environmentally Sensitive Areas, or of the administrative rules promulgated thereunder;
 - 2. The failure to obtain a permit required for work in a critical area; or
 - 3. The failure to comply with the conditions of any permit, approval, terms and conditions of any sensitive area tract or setback area, easement, covenant, plat restriction or binding assurance, or any notice and order, stop work order, mitigation plan, contract or agreement issued or concluded pursuant to the above-mentioned provisions.
- E. Any person in violation of Chapter [17.3840](#), Environmentally Sensitive Areas, may be subject to civil penalties, costs, and fees as follows:
 - 1. According to the civil penalty schedule under Chapter [1.50](#); provided, that the exact amount of the penalty per violation shall be determined by the city based on the physical extent and severity of the violation; or
 - 2. The greater of:
 - a. An amount determined to be equivalent to the economic benefit that the person responsible for a code violation derives from the violation, measured as the total of:

- i. The resulting increase in market value of the property;
- ii. The value received by the person responsible for a violation; and
- iii. The savings of construction costs realized by the person responsible for a code violation as a result of performing any act in violation of Chapter 17.~~3840~~, Environmentally Sensitive Areas.

F. In addition to the other remedies available under this chapter and those authorized by law, upon issuance of a notice and order or stop work order the city shall charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for a code violation. These charges include:

1. Reasonable Legal Fees and Costs. For purposes of this section, “reasonable legal fees and costs” shall include, but are not limited to, legal personnel costs, both direct and related, incurred to enforce the provisions of this chapter as may be allowed by law;
2. Administrative Personnel Costs. For purposes of this section, “administrative personnel costs” shall include, but are not limited to, administrative employee costs, both direct and related, incurred to enforce the provisions of this chapter;
3. Abatement Costs. The city shall keep an itemized account of costs incurred by the city in the abatement of a violation under this chapter. Upon completion of any abatement work, the city shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, and interest accrued; and
4. Actual expenses and costs of the city in preparing notices, specifications and contracts; in accomplishing or contracting and inspecting the work; and the costs of any required printing, mailing, or court filing fees.

G. Such costs are due and payable thirty days from mailing of the invoice unless otherwise stated in a written agreement with the city. The city reserves the right to collect interest at the statutory set rate on any outstanding balance not paid within thirty days.

1. All costs assessed by the city in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for a violation.
2. In addition to, or in lieu of, any other state or local provision for the recovery of costs, the city may, after abating a violation pursuant to this chapter, file and/or record with the Cowlitz County

auditor to claim a lien against the real property for the assessed costs identified in this chapter if the violation was reasonably related to the real property, in accordance with any lien provisions authorized by state law.

3. Any lien filed shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall share priority. The city may cause a claim for lien to be filed and/or recorded within ninety days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated. The claim of lien shall contain sufficient information regarding the notice and order, a description of the property to be charged with the lien, the owner of record, and the total of the lien. Any such claim of lien may be amended from time to time to reflect changed conditions. Any such lien shall bind the affected property for the period as provided for by state law. (Ord. 3889 § 3 (Exh. A), 2017)

17.5417.52.050 Shoreline violations.

For violations of the city of Kelso shoreline master program see Chapter 17.4042. (Ord. 3889 § 3 (Exh. A), 2017)

17.5417.52.060 Violations of sexually oriented business regulations.

A. Violation—Penalty. Any person violating Section 17.5417.52.050, Adult oriented business overlay, or related provisions in this title, shall be guilty of a misdemeanor. Any person convicted of such a violation shall be punished by a fine of not more than one thousand dollars or a jail term of not more than one year, or both. Each such person is guilty of a separate misdemeanor for each and every day which any violation of this chapter is committed, continued or permitted by any such person and said person shall be punished accordingly.

1. Public Nuisance—Injunctions. Any sexually oriented businesses and violation of this title shall be deemed a public nuisance, which, in addition to all other remedies, may be abated by injunctive relief. (Ord. 3889 § 3 (Exh. A), 2017)

17.5417.52.070 Violations of state licensed marijuana production, processing, and sales regulations.

A. Violations of Chapter 17.58, State licensed marijuana production, processing, and sales, or related provisions in this title, including the sign code or zoning code, shall result in a Class 1 civil infraction as defined by RCW 7.80.120, with each day of violation being a separate infraction. The city may enforce this section pursuant to Chapter 7.80 RCW. For violations of WAC 314-55-155 and 314-55-525, the city may report the violation to the Washington State Liquor and Cannabis Board.

1. In addition to any other applicable remedy and/or penalty, any violation of this chapter is declared to be a public nuisance per se, and may be abated by the city under the applicable provisions of the Kelso Municipal Code or state law.
 2. Nothing in this chapter shall be construed as a limitation on the city's authority to abate any violation which may exist from the cultivation of marijuana from any location, including from within a fully enclosed and secure building.
- B. It shall not be a defense to a prosecution of a civil infraction under this section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed. (Ord. 3889 § 3 (Exh. A), 2017)