

## CHAPTER 2.25

### ***CODE ENFORCEMENT OFFICER & CIVIL INFRACTION CITATION AUTHORITY***

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**Cross-Reference: 7.80 RCW.**

#### **2.25.010 Authority.**

- A. Pursuant to the provisions of 7.80 RCW, the City finds that many minor offenses established as misdemeanors are obsolete or can be more appropriately punished by the imposition of civil fines. The City finds that some misdemeanors should be decriminalized to allow resources of the legal system, such as judges, prosecutors, juries, and jails, to be used to punish serious criminal behavior, since acts characterized as criminal behavior have a tremendous fiscal impact on the legal system.
- B. This Title is established to provide a method to issue civil infractions for minor violations of City Ordinances. This allows a more expeditious and less expensive method of disposing of minor municipal code offenses to decrease the cost and workload of the City's Municipal Court.

**2.25.020 Code Enforcement Officer Duties.**

- A. The Code Enforcement Officer investigates citizen and agency inquiries regarding potential violations of Tenino Municipal Code. The purpose of code enforcement investigations are to ensure compliance with minimum standards of various municipal codes such as Sign Codes, Zoning Regulations (except discretionary land use permits), Nuisance Regulations, and Critical Areas regulations. Functions of the Code Enforcement Officer include:
  - 1. Final inspections of signs for size, placement, and other conformance standards;
  - 2. Current and historical records research from citizens, County and State agencies;
  - 3. Conduct investigations and inspections of possible violations of Tenino Municipal Codes, such as but not limited to:
    - a. Critical Areas violations (Title 18D)
    - b. Setbacks (Title 18B);
    - c. Occupied RVs (Title 8);
    - d. Home occupations (Title 18B);
    - e. Animals (number, setbacks of pens, structures, etc.) (Title 6);
    - f. Junk, salvage, and wrecking yards (Title 8 and 18B);
    - g. Illegal businesses, e.g., contractors yards, manufacturing uses in non-industrial zones, etc. (Title 18B);
    - h. Illegal signs (Title 18B);
    - i. Expansion of nonconforming uses (Title 18B);
    - j. Other Tenino Municipal Code violations; and
    - k. Coordination with County, State, and/or Federal agencies to seek assistance in code enforcement matters (i.e., Thurston County Environmental Health Department, Department of Ecology, and/or Corps of Engineers).
- B. Corrective actions necessary to remedy Building Code (TMC Title 15) violations are under the authority of the City of Tenino Building Official. Actions may include Notice and Orders to Correct, Stop Work, or any other written order to correct building code violation infractions. However, the Building Official is empowered to refer a building code violation to the Code Enforcement Officer, citing appropriate code violation(s), and may recommend that a Civil Infraction citation be issued by the Code Enforcement Officer.
- C. Appointment. The Code Enforcement Officer is appointed by the Mayor and a limited commission is conveyed by the Chief of Police, to allow issuance of civil infraction citations.

**2.25.030 Jurisdiction of the Tenino Municipal Court.** The Court has the authority to hear and determine civil infractions that are established by municipal ordinance and that are committed within the jurisdiction of Tenino pursuant to chapter 7.80 RCW.

**2.25.040 Issuance of Process.** Notwithstanding any other provision of law governing service of process in civil cases, the Tenino Municipal Court having jurisdiction over an alleged civil infraction, may issue process anywhere within the state.

**2.25.050 Training of Judicial Officers.** All judges and court commissioners adjudicating civil infractions shall complete such training requirements as are promulgated by the Supreme Court.

### **2.25.060 Definitions:**

City - City of Tenino

Court - Tenino Municipal Court (a Court of Limited Jurisdiction)

Code Enforcement Officer - The person authorized to enforce Municipal Codes and Ordinances in which civil infractions are established.

### **2.25.070 Notice of Infraction - Issuance, Service, Filing.**

- A. A civil infraction proceeding is initiated by the issuance, service, and filing of a notice of civil infraction.
- B. A notice of civil infraction may be issued by the Code Enforcement Officer when the civil infraction occurs in the officer's presence.
- C. The Court may issue a notice of civil infraction if a Code Enforcement Officer files with the Court a written statement that the civil infraction was committed in the officer's presence or that the officer has reasonable cause to believe that a civil infraction was committed.
- D. Service of a notice of civil infraction issued under paragraph B or C of this section shall be as provided by Court rule. Until such a rule is adopted, service shall be as provided in Infraction Rules for Courts of Limited Jurisdiction (IRLJ) as applicable.
- E. A notice of infraction shall be filed with a Court having jurisdiction within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. A notice of infraction not filed within the time limits prescribed in this section may be dismissed without prejudice.

### **2.25.080 Person Receiving Notice - Identification and Detention.**

- A. A person who is to receive a notice of civil infraction under RCW 7.80.050 is required to identify him/herself to the Code Enforcement Officer by giving his/her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license or identicard.
- B. A person who is unable or unwilling to reasonably identify him/herself to the Code Enforcement Officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction.

### **2.25.090 Notice - Determination Final Unless Contested - Form.**

- A. A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in this Chapter.
- B. The form for the notice of civil infraction shall be prescribed by rule of the Supreme Court and shall include a statement:
  - a. That the notice represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;
  - b. That a civil infraction is a non-criminal offense for which imprisonment may not be imposed as a sanction;
  - c. Of the specific civil infraction for which the notice was issued;
  - d. Of the monetary penalty established for the civil infraction;
  - e. Of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

- f. That at any hearing to contest the determination the City has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that the person may subpoena witnesses including the Code Enforcement Officer who issued the notice of civil infraction;
- g. That at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the person will be deemed to have committed the civil infraction and may not subpoena witnesses;
- h. That the person must respond to the notice as provided in this chapter within fifteen days;
- i. That failure to respond to the notice or a failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in a default judgment against the person in the amount of the penalty and that this failure may be referred to the prosecuting attorney for criminal prosecution for failure to respond or appear;
- j. That the person promises to respond to the notice of civil infraction in one of the ways provided in this chapter, which the person shall sign;
- k. That failure to respond to a notice of civil infraction as promised or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail.

**2.25.100 Response to Notice - Contesting Determination - Mitigating Circumstances - Hearing - Failure to Respond or Appear.**

- A. Any person who receives a notice of civil infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.
- B. If the person determined to have committed the civil infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of civil infraction and submitting it, either by mail or in person, to the Tenino Municipal Court as specified on the notice. A check or money order in the amount of the penalty prescribed for the civil infraction must be submitted with the response. The Court Clerk may accept cash in payment for an infraction. When a response, which does not contest the determination, is received, an appropriate order shall be entered in the Court's records.
- C. If the person determined to have committed the civil infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing and submitting it, either by mail or in person, to the Tenino Municipal Court, which is 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 ninety days from the date of the notice of 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 ninety days from the date of the notice of 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 civil infraction fails to:
  - a. Respond to the notice of civil infraction as provided in 2.25.100B; or
  - b. Appear at a hearing requested pursuant to 2.25.100C or 2.25.100D.

**2.25.110 Hearings - Rules of Procedure - Counsel.**

- A. Procedures for the conduct of all hearings provided in this Chapter may be established by rule of the Supreme Court.
- B. Any person subject to proceedings under this Chapter may be represented by counsel.
- C. The attorney representing the City may appear in any proceedings under this Chapter but need not appear, notwithstanding any statute or rule of Court to the contrary.

**2.25.120 Hearings - Contesting Determination that Infraction Committed - Appeal.**

- A. A hearing held for the purpose of contesting the determination that a civil infraction has been committed shall be without a jury and shall be recorded in the manner provided by the Tenino Municipal Court.
- B. The Court may consider the notice of civil infraction and any other written report made under oath submitted by the Code Enforcement Officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may request the Court for issuance of subpoena of witnesses, including the Code Enforcement Officer who issued the notice, and has the right to present evidence and examine witnesses present in Court.
- C. The burden of proof is upon the City to establish the commission of the civil infraction by a preponderance of the evidence.
- D. After consideration of the evidence and argument, the Court shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice shall be entered in the Court's records. Where it has been established that the civil infraction was 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.

**2.25.130 Hearings - Explanation of Mitigating Circumstances.**

- A. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a civil 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 is no appeal from the Court's determination or order.

**2.25.140 Monetary Penalties - Restitution.**

- A. A person found to have committed a civil infraction shall be assessed a monetary penalty as follows:
  - 1. The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments, except for an infraction of state law involving potentially dangerous litter as specified in RCW 70.93.060(4) and an infraction of state law involving violent video or computer games under RCW 9.91.180, in which case the maximum penalty and default amount is five hundred dollars;
  - 2. The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars, not including statutory assessments;
  - 3. The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars, not including statutory assessments; and
  - 4. The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars, not including statutory assessments.
- B. The Supreme Court shall prescribe by rule the conditions under which the Tenino Municipal Court may exercise discretion in assessing fines for civil infractions.
- C. Whenever a monetary penalty is imposed by the 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 authority of the failure to pay.
- D. The Court may also order a person found to have committed a civil infraction to make restitution.

**2.25.150 Order of Court - Civil Nature - Modification of Penalty - Community Restitution.**

- 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 restitution in lieu of a monetary penalty, at the State minimum wage per hour rate.

**2.25.160 Costs and Attorney Fees.** Each party to a civil infraction case is responsible for costs incurred by that party, but the Court may assess witness fees against a non-prevailing respondent. Attorney fees may be awarded to either party in a civil infraction case.

**2.25.170 Notices - Record of - Cancellation Prohibited, Penalty - Audit.**

- A. The Code Enforcement Officer authorized to issue notices of civil infractions shall provide, in appropriate form, notices of civil infractions, which shall be issued in books with notices in quadruplicate and meeting the requirements of this section, or issued by

an electronic device capable of producing a printed copy and electronic copies of the citations.

- B. The Tenino Police Chief shall be responsible for the issuance of such books or electronic devices, and shall maintain a record of every such book or electronic device and each notice contained therein issued to the Code Enforcement Officer, and shall require and retain a receipt for every book or electronic device so issued.
- C. The Code Enforcement Officer, upon issuing a notice of civil infraction to an alleged perpetrator of a civil infraction under the laws of this state, or of any ordinance of the City, shall deposit the original or a printed or electronic copy of such notice of civil infraction with the Court, as provided in RCW 7.80.050.
- D. Upon the deposit of the original or a printed or electronic copy of such notice of civil infraction with the Court, the original or copy may be disposed of only as provided in this Chapter.
- E. It is unlawful and is official misconduct for the Code Enforcement Officer, other officer, or public employee to dispose of a notice of civil infraction, or copies thereof, or of the record of the issuance of the same, in a manner other than as required in this section.
- F. The Tenino Police Chief shall require the return of a copy of every notice issued by the Code Enforcement Officer to an alleged perpetrator of a civil infraction under any law or ordinance and of all copies of every notice which has been spoiled or upon which any entry has been made and not issued to an alleged perpetrator.
- G. The Tenino Police Chief shall also maintain, or cause to be maintained, in connection with every notice issued by the Code Enforcement Officer, a record of the disposition of the charge by the Court in which the original or copy of the notice was deposited.
- H. Any person who cancels or solicits the cancellation of any notice of civil infraction, in any manner other than as provided in this section, is guilty of a misdemeanor.
- I. Every record of notices required in this section shall be audited monthly by the Tenino Police Chief to which the Code Enforcement Officer authorized to issue notices of civil infractions is responsible.

**2.25.180 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. A written promise to appear in Court or a written promise to respond to a notice of civil infraction may be complied with by an appearance by counsel.
- C. A person who willfully fails to pay a monetary penalty or to perform community restitution as required by Court under this Chapter may be found in contempt of Court as provided in chapter 7.21 RCW.

**2.25.190 Decriminalization of Certain Municipal Ordinances.** Any City of Tenino criminal ordinance in existence on January 1, 1989, which is the same as, or substantially similar to a statute which is decriminalized by sections 25 through 30 and 32, chapter 456, Laws of 1987 is deemed to be civil in nature, and shall be punished as provided in this chapter.