ORDINANCE NO. 2014-1868

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO ZONING AND SUBDIVISION CODE ENFORCEMENT, REPEALING CURRENT CODE ENFORCEMENT PROCEDURES AND PENALTY PROVISIONS AND ADOPTING NEW, COMPREHENSIVE ZONING AND SUBDIVISION ENFORCEMENT PROCEDURES, DESCRIBING VIOLATIONS, EXPLAINING THE PROCESS FOR INVESTIGATIONS AND ENFORCEMENT, LISTING THE ELEMENTS OF A NOTICE OF VIOLATION, DESCRIBING THE PROCEDURES FOR NOTICE, ISSUANCE AND SERVICE OF NOTICES OF VIOLATION, STOP WORK ORDERS AND EMERGENCY ORDERS, PROVIDING FOR HEARINGS ON APPEALS, DESCRIBING THE HEARING PROCESS, LISTING PENALTIES, REPEALING CHAPTER 20.82 OF THE PACIFIC MUNICIPAL CODE AND ADDING A NEW CHAPTER 20.82 TO THE PACIFIC MUNICIPAL CODE.

WHEREAS, the City has no Subdivision Code enforcement procedures; and

WHEREAS, the City has decided to update its Zoning Code enforcement procedures because they are inconsistent; and

WHEREAS, the City State Environmental Policy Act (SEPA) Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, the City Council considered this Ordinance during their regular meeting on August 11, 2014, Now, Therefore,

THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 20.82 of the Pacific Municipal Code is hereby repealed.

Section 2. A new Chapter 20.82 is hereby added to the Pacific Municipal Code, which shall read as follows:
Chapter 20.82
ENFORCEMENT

Sections:

20.82.001 Intent.
20.82.002 Violations.
20.82.003 Responsibility to Enforce.
20.82.004 Investigation and Notice of Violation.
20.82.005 Time to Comply.
20.82.006 Stop Work Order.
20.82.007 Emergency Order
20.82.008 Appeals.
20.82.009 Appeal Hearing.
20.82.010 Civil Penalty.
20.82.011 Criminal Penalties.
20.82.012 Additional Relief.
20.82.013 Penalties for Subdivision Violations.

20.82.001 Intent. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of the Zoning Code, Title 20 and the Subdivision Code, Title 19. No provision of, or any term used in this chapter, is intended to impose any duty to enforce, or any other duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

20.82.002 Violations.

A. It is a violation of the Zoning Code, Title 20 and the Subdivision Code, Title 19, for any person to initiate, maintain or cause to be initiated or maintained, the use of any structure, land or property within the City, in a manner inconsistent with the underlying zone, or without first obtaining the permits or authorizations required for the use by the aforementioned codes.

B. It is a violation of the Zoning Code, Title 20 and the Subdivision Code, Title 19, for any person to 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 pursuant to the aforementioned Titles; provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

C. In addition to the above, it is a violation of Titles 20 and 19 of the Pacific Municipal Code to:

1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with the aforementioned Titles; and

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2. To misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization.

20.82.003 Responsibility to enforce.

A. The Community Development Director shall have the responsibility to enforce this Chapter. The Director may call upon the police, fire, building, public works or other appropriate City departments to assist in enforcement. As used in this chapter, “Community Development Director” or “Director” shall also mean his or her duly authorized representative.

B. Upon presentation of proper credentials, the Director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the responsibilities imposed by this Chapter.

20.82.004 Investigation and Notice of Violation.

A. Investigation. The Director is authorized to investigate any structure or use which he/she reasonably believes does not comply with the standards and requirements of the Zoning Code, Title 20 or the Subdivision Code, Title 19.

B. Notice of Correction. If, after investigation, the Director determines that the standards or requirements of the Zoning Code, Title 20, and the Subdivision Code, Title 19 or the provisions of this chapter have been violated, the Director may serve a Notice of Correction upon the owner, tenant or other person responsible for the condition using the service procedure set forth in subsection G herein. The Notice of Correction shall contain the following information:

1. The name and address of the person to whom it is directed;

2. The location and specific description of the violation;

3. A specific identification of each standard, code provision or requirement violated;

4. A specific description of the actions required to correct, remedy or avoid the violation or to comply with the standards, code provision or requirements, including but not limited to, replacement, repair, supplementation, re-vegetation or restoration;

5. The date by which compliance is required in order to avoid the imposition of monetary penalties. This date will be no less than 24 hours from the date and time that the notice is posted on the property or no less than three business days from the date that the Notice of Correction is placed in the U.S. Mail addressed to the person identified in subsection (B)(1) above; and

6. A statement that failure to comply with the Notice of Correction may result in further enforcement actions, including the issuance of a Notice of Violation, civil fines and criminal penalties.
C. Notice of Violation. After issuance of the Notice of Correction and expiration of the deadline established therein, the Director shall investigate to determine whether a violation still exists. If so, the Director may serve a Notice of Violation upon the owner, tenant or other person responsible for the condition of the property, using the service procedure set forth in subsection G herein. The Notice of Violation shall contain the following information:

1. The name and address of the person to whom it is directed;

2. The location and specific description of the violation;

3. A statement that the Notice (or Order, in the case of a Stop Work or Emergency Order) is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;

4. The Notice of Violation may include or reference a Stop Work Order or Emergency Order requiring that the violation immediately cease, or that the potential violation be avoided;

5. The Notice of Violation may include or reference a Stop Work or Emergency Order requiring that the person cease all work on the premises until correction and/or remediation of the violation as specified in the Order;

6. A specific identification of each standard, code provision or requirement violated;

7. A specific description of the actions required to correct, remedy or avoid the violation or to comply with the standards, code provision or requirements, including but not limited to, replacement, repair, supplementation, re-vegetation or restoration;

8. A reasonable time for compliance;

9. A statement that the violation may result in the imposition of penalties, and if the violation is not already subject to criminal prosecution, that any subsequent violations may result in criminal prosecution as provided in Section 20.82.011 (or 20.82.013 for subdivision violations);

10. A statement that failure to comply with the Notice of Violation may result in further enforcement actions, including issuance of additional Notices of Violation, civil fines and criminal penalties; and

11. A statement that the Notice of Violation represents a determination that a violation has been committed by the person named in the Notice of Violation, and that the determination shall be final unless appealed as provided in Section 20.82.008, and that the appeal must be timely filed under the procedures set forth in 20.82.008(E) (within 15 calendar days of service of the Notice of Violation).

D. Each Day a Separate Violation. Each day a person or entity fails to comply with the code provision cited in the Notice of Violation may be considered a separate violation for which a penalty may be imposed. However, no additional penalty for a continuing violation may
be assessed without the provision of an additional Notice of Violation and an opportunity for an appeal.

E. Service. The Notice of Violation shall be served on the owner, tenant or other person responsible for the condition in the manner set forth in RCW 4.28.080 for service of a summons, or personally, as set forth in RCW 4.28.080(15). In lieu of service under RCW 4.28.080(15), where the person cannot with reasonable diligence be served as described, the Notice of Violation may be served as provided in RCW 4.28.080(16).

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

G. Other Actions May Be Taken. Nothing in this chapter shall be deemed to limit or preclude any action or proceeding pursuant to Sections 20.82.006 (Stop Work Order), 20.82.007 (Emergency Order), 20.82.010 (Civil Penalty), 20.82.011 (Criminal Penalties), 20.82.012 (Additional Relief), or 20.82.013 (Subdivision Violations).

H. Additional Notice to Others. The Director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure, or post at a conspicuous place on the property, a notice which informs each recipient or resident about the Notice of Violation, Stop Work Order or Emergency Order and the applicable requirements and procedures.

I. Recording. A copy of the Notice of Violation may be filed with the County Auditor when the responsible party fails to correct the violation and no appeal is filed, or the Director requests that the City Attorney take appropriate enforcement action. The Director may choose not to file a copy of the Notice or Order if the Notice or Order is directed only to a responsible person other than the owner of the property.

J. Amendment. A Notice or Order may be amended at any time in order to;

1. Correct clerical errors; or

2. Cite additional authority for a stated violation.

20.82.005 Time to comply. When calculating a reasonable time for compliance in the Notice of Correction or Notice of Violation, the Director shall consider the following criteria:

A. The type and degree of violation cited in the Notice;

B. The stated intent, if any, of a responsible party to take steps to comply;

C. The procedural requirements for obtaining a permit to carry out corrective action;

D. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and

E. Any other circumstances beyond the control of the responsible party.
20.82.006 Stop Work Order.

A. Whenever a continuing violation of Titles 20 or 19 will materially impair the Director's ability to secure compliance, or when the continuing violation threatens the health or safety of the public, the Director has the authority to issue a Stop Work Order prohibiting any work or other activity at the site. The Stop Work Order shall be in writing and served upon persons engaged in doing such work or causing such work to be done. The Stop Work Order shall be immediately posted on the property. Failure to comply with a Stop Work Order shall constitute a violation of this chapter.

B. The Stop Work Order shall include the information in Section 20.82.004(B)(1) through (6). In addition, the Stop Work Order shall include a statement that the person to whom the Stop Work Order is directed or the property owner may file an appeal and request an expedited hearing with the Hearing Examiner within seven (7) business days after service of the Stop Work Order. If no appeal is filed and compliance is not achieved within the compliance date, the Director may ask the City Attorney to seek additional relief under Section 20.82.012 and/or the Director may file a Notice of Violation for the violation pursuant to 20.82.004, seeking compliance and describing penalties.

C. Expedited appeal. The Hearing Examiner shall hold the expedited appeal hearing on a Stop Work Order according to the applicable procedures in Section 20.82.009. If the Hearing Examiner finds that a violation has occurred which has not been corrected by the deadline established for compliance, the Director may ask the City Attorney to seek additional relief under Section 20.82.012 and/or the Director may issue a Notice of Violation for the violation pursuant to 20.82.004, describing penalties.

20.82.007 Emergency order.

A. Whenever any use or activity in violation of Title 20 or Title 19 threatens the health and safety of the occupants of the premises or any member of the public, the Director has the authority to issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall be immediately posted on the property and served on the person(s) responsible. Failure to comply with an Emergency Order shall constitute a violation of this Chapter.

B. The Emergency Order shall include all of the information in Section 20.82.004(B)(1) through (6). In addition, the Emergency Order shall include a statement that the person to whom the Emergency Order is directed may file an appeal and request an expedited hearing with the Hearing Examiner within seven (7) business days after service or posting of the Emergency Order. If no appeal is filed and compliance is not achieved, the Director may ask the City Attorney to seek additional relief under Section 20.82.012 and/or the Director may issue a Notice of Violation pursuant to 20.82.004, seeking compliance and penalties.

C. Expedited appeal. The Hearing Examiner shall hold the expedited appeal hearing on an Emergency Order according to the applicable procedures in 20.82.009. If the Hearing Examiner finds that the violation described in the Emergency Order occurred or exists, any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Director may ask that the City Attorney take
action to obtain a warrant of abatement for the property in Superior Court. The owner or person responsible (or both) shall be responsible for the costs associated with the abatement, in the manner provided by law.

20.82.008 Appeals and Mediation.

A. No appeal of a Notice of Violation citing criminal penalties. There is no administrative appeal of a Notice of Violation issued pursuant to 20.82.004 for violations which would subject the violator to criminal prosecution and/or the imposition of criminal penalties. A Notice of Violation or citation for a violation that subjects the violator to criminal penalties is enforced in municipal court.

B. Expedited Appeal Hearings on Stop Work and Emergency Orders. An expedited public hearing shall be held by the Hearing Examiner, according to the procedures in this Section, on an appeal of a Stop Work or Emergency Order, regardless of whether the violations described in the Stop Work Order or Emergency Order would eventually subject the violator to civil or criminal prosecution and/or the imposition of civil or criminal penalties. The expedited appeal hearing shall be for the sole purpose of determining whether the Stop Work or Emergency Order was correctly issued and/or whether a violation occurred.

C. Appeal Hearings on Notices of Violations Citing Civil Penalties. Unless an appeal of a Notice of Violation is filed with the Director in accordance with this Section, or an appeal involving an expedited hearing is filed, the Notice of Violation shall become the Final Order of the Director. The Final Order, including the collection of penalties, may be enforced by the City Attorney in Superior Court.

D. Standing to file appeal.

1. Notice of Violation. Only parties of record have standing to file an appeal of a Notice of Violation. Parties of record are defined to mean:
   a. The property owner or the person responsible for the condition of the property;
   b. Any person who can demonstrate that he/she is aggrieved by the decision; and
   c. The City Council.

2. Stop Work Order and Emergency Order. Only the property owner or the person responsible for the condition of the property may request an expedited appeal hearing for a Stop Work Order or Emergency order.

E. Time to file appeal.

1. Notice of Violation under 20.82.004. The party of record must file an appeal with the Director within fifteen (15) business days of service of the Notice of Violation.
2. Stop Work or Emergency Orders under 20.82.006 or 20.82.007. The property owner or the person responsible for the condition of the property may request an expedited appeal hearing within seven (7) business days after service of the Stop Work or Emergency Order.

3. Computing deadline for filing appeal. For purposes of computing the time for filing an appeal, the day the decision issued shall not be counted. If the last day of the deadline for filing the appeal is a Saturday, Sunday or holiday designated by RCW 1.16.050 or city ordinance, then the appeal must be filed on the next business day. Appeals shall be delivered to the Director by mail, by personal delivery or by fax before 5:00 p.m. on the last business day of the appeal period. Appeals received by mail after 5:00 p.m. on the last day of the appeal period will not be accepted, no matter when such appeals were mailed or postmarked.

E. Content of appeal. Appeals shall be in writing, be accompanied by the required appeal fee, and contain the following information:

1. Appellant’s name, address and phone number;

2. A statement describing appellant’s standing to appeal;

3. Appellant’s statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;

4. The specific relief sought;

5. A statement that the appellant has read the appeal and believe the contents to be true, followed by the appellant’s signature.

F. Effect. The timely filing of an appeal shall stay any enforcement action based on a Stop Work Order, Emergency Order or Notice of Violation until the Hearing Examiner’s decision issues unless the Director finds that the violation causes an immediate threat to public health or safety.

G. Mediation. After an appeal is filed, either party (the appellant or the City) may contact the other party to request mediation. If mediation is desired by both parties, and they are in agreement on all mediation issues (whether a mediator will be hired to mediate the dispute, who will pay the cost of the mediator, when mediation will take place, where mediation will occur, etc.) scheduling of the appeal hearing shall be held in abeyance. The appellant’s willful or negligent failure to appear at the mediation will terminate the mediation procedure, and the City will proceed to schedule the appeal hearing.

20.82.009 Appeal Hearing.

A. The public hearing on an appeal shall include the following elements and be conducted as follows:

1. The Hearing Examiner shall set the time and place of the hearing, and arrange for notice of the public hearing to be provided, except in cases involving an expedited
haring. For expedited hearings, notice of the hearing shall be provided to the appellant and every reasonable effort shall be made to schedule the hearing within one week after receipt of the appeal.

2. A party to the appeal may participate personally or by an attorney.

4. The Hearing Examiner shall, at the appropriate stage in the proceeding, give all parties full opportunity to submit and respond to motions and file briefs and objections.

5. If the person requesting the hearing fails to attend or participate in the hearing (other than filing the timely request for an appeal hearing as provided in this chapter), the Hearing Examiner may issue a default order of dismissal.

6. To the extent necessary for full disclosure of all relevant facts and issues, the Hearing Examiner shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence.

7. The Hearing Examiner shall cause the hearing to be recorded by a method chosen by the City, which shall allow preparation of a verbatim transcript.

8. The hearing shall be open to public observation.

9. All testimony of parties and witnesses shall be made under oath or affirmation.

10. Ex parte communications shall be addressed as set forth in chapter 42.36 RCW.

11. The scope and standard of review shall be de novo. The City shall have the initial burden of proof in cases involving notices of violation, stop work orders, emergency orders or penalties, to demonstrate by a preponderance of the evidence the existence of a violation or that the legal standard for imposing the penalty has been met. The Examiner shall grant substantial weight or otherwise accord deference whenever directed by ordinance or statute.

12. After the conclusion of the public hearing, the Hearing Examiner may allow the parties a designated time for the submission of memos, briefs or proposed findings, as long as the Hearing Examiner can still issue his/her final decision according to any applicable deadline established by this chapter.

13. At or after the appeal hearing on a Notice of Violation, the Hearing Examiner may:

(a) Sustain the notice of violation;

(b) Withdraw the notice of violation;

(c) Continue the review to a date certain for receipt of additional information;
(d) Modify the notice of violation, which may include an extension of the compliance date.

D. Except with regard to expedited hearings, the Hearing Examiner shall issue written findings of fact and conclusions of law within 10 business days of the date of the completion of the hearing and shall cause the same to be mailed by regular first class mail to the person(s) named on the notice of violation, mailed to the complainant, if possible. A copy of the final decision may be recorded against the property in the County Auditor’s office. The decision on expedited hearings shall issue within five (5) business days after the completion of the hearing.

E. The decision of the Hearing Examiner shall be final on a Notice of Violation, and no further administrative appeal may be filed. In order to appeal the decision of the Hearing Examiner on a Notice of Violation, a person with standing to appeal must file an appeal of the decision to superior court as provided under Chapter 36.70C RCW within the deadline set forth in RCW 36.70C.040. Following a finding of the Hearing Examiner of the existence of a violation at the appeal hearing, continuing penalties may be imposed by the provision of additional Notices of Violation and an opportunity for an appeal hearing. No additional penalty for a continuing violation may be imposed without the provision of additional Notices and opportunity for a hearing.

20.82.010 Civil Penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this chapter relating to the Zoning Code (Title 20), shall be subject to a penalty in the amount of two hundred fifty dollars ($250.00).

B. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Director shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty. Each day of noncompliance with any of the provisions of the Zoning Code (Title 20) shall constitute a separate offense.

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

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

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

20.82.011 Criminal penalties.

A. Any person violating or failing to comply with any of the provisions of this chapter or the Zoning Code (Title 20) who has had a judgment entered against him or her pursuant to 20.82.010 or 20.82.011 for the same violation within the past five years shall be
subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding five thousand dollars ($5,000) or be imprisoned for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this chapter or the Zoning Code, Title 20, shall constitute a separate offense.

B. The above criminal penalty may also be imposed:

1. For any other violation of the Zoning Code, Title 20, for which corrective action is not possible; and

2. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of the Zoning Code, Title 20.

20.82.012 Additional relief.

The Director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the Zoning Code, Title 20 or Title 19, the Subdivision Code, when civil or criminal penalties are inadequate to effect compliance.

20.82.013 Penalties for Subdivision Violations.

A. Any person, firm, corporation or association or any agency or any person, firm, corporation or association who violates any provision of Subdivisions, Title 19, relating to the sale, offer for sale, lease or transfer of any lot, tract, or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract or parcel of land in violation of any provision of Subdivisions, Title 19, shall be deemed a separate and distinct offense and subject to a separate citation. Continuing fines may be imposed by the provision of additional Notice of Violations and an opportunity for hearing. No additional fine for a continuing violation may be imposed without the provision of notice and the opportunity for hearing.

B. Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of Subdivisions, Title 19, or any condition of plat approval prescribed for the plat by the city, the City Attorney may commence an action to restrain and enjoin such use and compel compliance with the provisions of Subdivisions, Title 19, or with such terms and conditions. The costs of such action shall be taxed against the violator.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or
unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This Ordinance shall become effective within five days after publication as provided by law.

ADOPTED by the City Council of the City of Pacific, signed by the Mayor and attested by the City Clerk in authentication of such passage on this 25th day of August, 2014.

Leanne Guier, Mayor

ATTEST/AUTHENTICATED:

Amy Stevenson-Ness, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney

FILED WITH THE CITY CLERK: 08/01/14
PASSED BY THE CITY COUNCIL: 08/25/14
PUBLISHED: 08/29/14
EFFECTIVE DATE: 09/03/14
ORDINANCE NO: 2014-1868