

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Jeff Griffin	JG	08/29/97	<div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">RECEIVED</div> <div style="font-size: 1.5em; font-weight: bold; margin-top: 10px;">SEP 3 1997</div> <div style="font-size: 1.2em; font-weight: bold; margin-top: 10px;">WHATCOM COUNTY COUNCIL</div>	9/9/97	Council introduction
Division Head: Sylvia Goodwin	SG	9/3/97		9/23/97	Hearing
Dept. Head: Michael T. Knapp	MK	9/3/97			
Prosecutor: Karen Frakes	KRF	9/3/97			
Purchasing/Budget:					
Executive: Pete Kremen	PK	9-3-97			

**SUBJECT: AN ORDINANCE AMENDING THE WHATCOM COUNTY SHORELINE MANAGEMENT PROGRAM TO ALLOW CIVIL PENALTIES**

**ATTACHMENTS:** Proposed Ordinance  
Request letter from Forestry Forum

**SUMMARY STATEMENT:** *Please complete sections of box as appropriate & explain the item below.*

Related County contract #: n/a	Should Clerk schedule a hearing? NO // YES /X/ Requested date: 9/23/97
Amount budgeted for this item/project: \$ n/a	Is it (or will it be) within budget? YES /X/ NO /_/ (Please explain below) n/a
Budget line item number(s): n/a	

The proposed ordinance amends the Whatcom County Shoreline Program by adding provisions to allow the County to issue civil penalties.

**ORIGINATOR'S RECOMMENDED ACTION:** The Director of Planning & Development Services recommends the Council adopt the proposed ordinance.

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

1: 1997 - 316 9/9/97: Introduced  
9/23/97: Adopted 7 - 0. Ord. #97-052

**Related File Numbers:**

**Ordinance or Resolution Number (this item only):**

Ord. # 97-052

ORDINANCE NO. 97-052

**AN ORDINANCE AMENDING THE WHATCOM COUNTY SHORELINE MANAGEMENT PROGRAM TO ALLOW CIVIL PENALTIES**

WHEREAS, the Lake Whatcom Forestry Forum has recommended amending the text of the Whatcom County Shoreline Management, Title 23, to establish a civil penalty system; and,

WHEREAS, enforcement is a problem for Whatcom County with the present system under the shoreline code treating minor offenses as criminal, which requires the county to eventually press criminal charges in order to fully enforce the letter of the law; and,

WHEREAS, RCW 90.58.210 and Chapter 173-27 WAC, Shoreline Management Permit and Enforcement Procedures, Section 280 permits the use of civil penalties by local governments; and

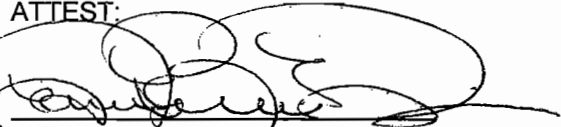
WHEREAS, the amendments will bring the County into further compliance with the recently adopted Washington Administrative Code, Chapter 173-27; and

**NOW THEREFORE BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:**

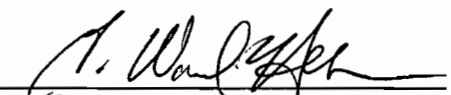
1. Title 23, the Official Whatcom County Shoreline Program, is hereby amended as shown in the attached Exhibit A.
2. The Council finds the public health, safety and general welfare are promoted by this change.
3. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

PASSED this 23 day of September, 1997

ATTEST:

  
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
L. Ward Nelson, Chairperson

APPROVED as to form:

  
Karen Frakes, Civil Deputy Prosecutor

Approved     Denied

  
Pete Kremen, Executive

Date: 9-25-97

EXHIBIT A

**TITLE 23 - THE WHATCOM COUNTY SHORELINE PROGRAM**

23.80.20 VIOLATIONS AND PENALTIES

- .21 In addition to incurring civil liability under Section 23.80.30 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or of this Program, or other regulations adopted pursuant thereto shall be punished by a fine of not less than 25 or more than \$1,000 or by imprisonment in the County jail for not more than 90 days, or by both such fine and imprisonment; PROVIDED that, the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000.
- .22 Any person who willfully violates any court order, regulatory order of injunction issued pursuant to this Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

23.80.30 REMEDIES

- .31 The Whatcom County Prosecuting Attorney, or Administrator, where authorized, shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within Whatcom County in conflict with the provisions of this Program, the act, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this Program.
- .32 Any person subject to the regulatory provisions of this Program or the act who violates any provision thereof, or permit or permit condition issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its conditions prior to violation. The Whatcom County Prosecuting Attorney shall bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.
- .33 Pursuant to WAC 173-17-040, the Administrator shall have the right to serve a cease and desist order upon a person if the Administrator has cause to believe the person is knowingly or unknowingly violating provisions of the Act, this Program, or of any permit issued pursuant thereto. Failure to comply with this order within a reasonable period of time as determined by the Administrator shall constitute sufficient grounds for the issuance of a civil penalty or other enforcement actions pursuant to WAC 173-17-050 or as may be provided by other ordinance.

The Administrator shall have the authority to serve upon a person a cease and desist order if an activity being undertaken on shorelines of the state is in violation of Chapter 90.58 RCW or this Program, or of any permit issued pursuant thereto. The Administrator shall follow the procedure set forth in WAC 173-27-270 in issuing a cease and desist order.

- .34 A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order may be subject to a civil penalty. The penalty shall be imposed pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth in WAC 173-27-290 (3) and (4). Persons incurring a penalty may appeal the same to the County Council pursuant to WAC 173-27-290 (1) and (2).