



City Council Agenda Bill

20116

Bill Number

Subject: Ordinance amending various sections of the Bellingham Municipal Code to classify, clarify, and standardize penalties, and to make civil infraction the default penalty

Summary Statement: This ordinance amends several penalty provisions of the BMC. The ordinance establishes a clear classification for penalties which include misdemeanor, gross misdemeanor, and civil infraction. The ordinance operates to: (1) standardize and classify misdemeanor and gross misdemeanor penalties to be consistent with state definitions; (2) update language regarding continuing violations; (3) adopt state statutes regarding culpability, complicity and corporate liability; (4) remove ambiguity regarding the penalty for certain violations; and (5) make civil infraction the default penalty where the code lacks an explicit penalty. A table is attached to provide further context and explanation for specific provisions.

Previous Council Action: Affected code sections were originally adopted at various times.

Fiscal Impact: None.

Funding Source:

Attachments: Proposed Ordinance
Table Re Specific Provisions

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Consent Agenda	16-Sep-2013	Pass Ordinance		0:00

Council Committee:

Agenda Bill Contact:
Peter Ruffatto, City Attorney

Committee Actions:

Reviewed By	Initials	Date
Legal	<i>PMR</i>	9-10-13
Linda Storck, Mun. Court Dir.	<i>LS</i>	9-10-13
Cliff Cook, Police Chief	<i>CC</i>	9-10-13
Mayor	<i>KL/BA</i>	9/10/13

Council Action:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON AMENDING VARIOUS SECTIONS OF THE BELLINGHAM MUNICIPAL CODE IN ORDER TO CLASSIFY PENALTIES, MAKE CIVIL INFRACTION THE DEFAULT PENALTY, CLARIFY PENALTY PROVISIONS, AND STANDARDIZE PENALTY PROVISIONS.

WHEREAS, the recent recodification process for the municipal code also included a comprehensive legal review of the entire municipal code; and

WHEREAS, the legal review recommended a provision that expressly classified and defined penalties; and

WHEREAS, the legal review indicated that when there is no express penalty for a given violation of the code, the appropriate default penalty should be a civil infraction rather than a misdemeanor; and

WHEREAS, the legal review identified several penalty provision in the municipal code that should be standardized and clarified; and

WHEREAS, the recommended updates include modifications to standardize misdemeanor, gross misdemeanor and civil infraction penalties throughout the municipal code ; and

WHEREAS, these changes are technical in nature.

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1: BMC 1.28 is hereby amended as follows:

1.28.010 Designated.

~~A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ordinances of the city of Bellingham shall be guilty of a misdemeanor. Except in cases where a different punishment is prescribed by any ordinance of the city of Bellingham, any person convicted of a misdemeanor under the ordinances of the city shall be punished by a fine of not more than \$1,000, or imprisonment not to exceed 90 days, or both such fine and imprisonment.~~

~~B. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the city is committed, continued or permitted by any such person, and he shall be punished accordingly.~~

1.28.010 Classification of penalties.

Penalties are classified as follows:

A. General Penalty. Whenever the performance of any act is specifically prohibited or required by any law or section within this code and no penalty for violating such law or section is imposed, the penalty for performance of such required act or omission shall be a civil infraction.

B. Gross Misdemeanor. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine (RCW 9.92.020).

C. Misdemeanor. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000.00 or by both such imprisonment and fine (RCW 9.92.030).

D. Civil Infraction. Unless otherwise provided by law or this code a person found guilty of committing a civil infraction under this code shall be subject to a monetary fine of not more than \$250.00. Statutory assessments shall be imposed in addition to any monetary fine for a civil infraction.

-1.28.020 Continuing offenses.

Each day during any portion of which a violation of any provision of this code is committed or is permitted is deemed to be the commission of a separate offense.

1.28.030 Principles of liability.

The following statutes of the State of Washington are adopted by reference and made a part of this code:

RCW 9A.08.010 General requirements of culpability.

RCW 9A.08.020 Liability of conduct of another, complicity.

RCW 9A.08.030 Criminal liability of corporations and persons acting under a duty to act in their behalf.

Section 2: BMC 4.62.050 is hereby amended as follows:

4.62.050 Violation – Penalty

It is unlawful for any person, firm, or corporation to violate or fail to comply with any of the provisions of this chapter. Every person convicted of a violation of any provision of this chapter shall be guilty of a misdemeanor and punished by a fine of not more than \$31,000.00 or by imprisonment for not more than 90 days, or by both such fine and imprisonment. Every firm or corporation convicted of a violation of any provision of this chapter shall be guilty of a misdemeanor and punished by a fine of not more than \$31,000.00

Section 3: BMC 4.64.080 is hereby amended as follows:

4.64.080 Violation – Penalty.

A. It shall be unlawful for ~~Any~~ governmental entity leasing publicly owned real or personal property within the corporate limits of the city; ~~which fails to properly~~

1. To fail to disclose the nature and extent of such nonexempted taxable rent; or

2. To fail to thereafter ~~remits~~ such tax as is required.

B. Any governmental agency convicted of violating any provision of this section shall be guilty of a civil infraction and shall, upon being found guilty thereof, be fined or assessed a penal sum of no more than \$500.00; provided, that each day of noncompliance shall constitute a distinct and separate violation of this section.

Section 4: BMC 4.69.060 is hereby amended as follows:

4.69.060 Penalties.

Any seller who fails or refuses to collect the tax as required, with the intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined no more than \$51,000.00 or by imprisoned ~~ed~~ for not more than ~~six 90 days~~ months, or be subject to both such fine and imprisonment.

Section 5: BMC 4.74.150 is hereby amended as follows:

4.74.150 Violations – Penalty.

Each violation of or failure to comply with the provisions of this chapter constitutes a separate offense and subjects the offender to a civil infraction with a fine not to exceed \$500.00.

Section 6: BMC 6.05.220 is hereby amended as follows:

6.05.220 Unlawful actions – Violation – Penalties.

- A. It shall be unlawful for any person under this code:
1. To violate or fail to comply with any of the provisions of this chapter or any other lawful rule or regulation adopted by the director; or
 2. To make any false statement on any license application or tax return; or
 3. To aid or abet any person in any attempt to evade payment of a fee or tax; or
 4. To fail to appear or testify in response to a subpoena issued pursuant to Chapter 2.56 BMC; or
 5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter; or
 6. To continue to engage in business after the revocation of a business registration certificate.
- B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$15,000, imprisonment not to exceed 364 days, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

Section 7: BMC 6.17.490 is hereby amended as follows:

6.17.490 Landlord/tenant relations.

- A. [No Change]
- B. [No Change]
- C. Penalties and Charges to Tenants for Service Prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall knowingly penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a company operating under a valid and existing cable communication franchise issued by the city. Any person convicted of violating any provision of this section shall be guilty of an infraction and is subject to a fine of not less than \$50.00 nor more than \$500.00 for each offense.

D. through F. [No Change]

Section 8: BMC 6.70.080 is hereby amended as follows:

6.70.080 Penalties and remedies.

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be guilty of an infraction and fined not less than \$100.00, nor more than \$750.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

Section 9: BMC 8.12.220 is hereby amended as follows:

8.12.220 Violations – Penalty.

Any person who violates or fails to comply with any provision of this chapter or any lawful order or direction of the chief of police or any person or officer charged with the enforcement thereof shall, on conviction thereof, be guilty of a misdemeanor and shall be punished by a fine in any sum not exceeding \$~~31~~1,000.00, or by imprisonment ~~in the city jail for a term~~ not to exceed 90 days, or both such fine and imprisonment.

Section 10: BMC 9.04.180 is hereby amended as follows:

9.04.180 Violation – Penalty.

Any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not exceeding \$1,000.00 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

Section 11: BMC 9.10.070 is hereby amended as follows:

9.10.070 Violation – Penalty.

Failure to comply with any of the provisions of this chapter shall constitute a violation of the Bellingham Municipal Code and shall be a misdemeanor punishable by a fine not to exceed \$1,000.00 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

Section 12: BMC 9.12.080 is hereby amended as follows:

9.12.080 Violation – Penalty.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$1,000.00, or by imprisonment of not more than ~~390~~ 90 days, or by both such fine and imprisonment.

Section 13: BMC 9.24.050 is hereby amended as follows:

9.24.050 Violation – Penalty.

Any person who fails to perform any duty specified in this chapter or who violates or fails to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed \$1,000.00, or imprisoned ~~in the city jail~~ not to exceed 390 days, or by both such fine and imprisonment.

Section 14: BMC 9.28.060 is hereby amended as follows:

9.28.060 Violation – Penalty.

Any person found guilty of violating any of the provisions of this chapter or failing to comply with the requirements thereof shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$1,000.00 or imprisonment ~~in the city jail~~ for a term not exceeding 390 days, or both fined and imprisoned.

Section 15: BMC 10.08.030 is hereby amended as follows:

10.08.030 ~~Glue sniffing prohibited~~ Unlawful Inhalation.

A. It is unlawful to intentionally smell or inhale the fumes from any glue, cement, or other product containing one or more of the following chemical compounds: acetone, an acetate, benzene, butyl, alcohol, ethyl alcohol, ethylene, dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentochlorophenol, petroleum ether or toluene for the purpose of becoming intoxicated, inebriated, excited, or stupefied, provided this section shall not be construed as applying to the inhalation of any anesthesia for medical or dental purposes.

B. Any person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not more than 390 days, or by both.

Section 16: BMC 10.12.120 is hereby amended as follows:

10.12.120 Laying poison for animals.

A. It is unlawful for any person to lay out or expose any kind of poison, or to leave exposed any poisoned food or drink, for any animal; or any substance or fluid whatever whereon or wherein there is or shall be deposited or mingled any kind of poison or deadly substance or fluid whatsoever, on the premises of another, or in any enclosed place, or to aid or abet any person in so doing.

B. Poisoning animals shall be considered a ~~Class C~~ misdemeanor unless an animal is actually affected by the subject poison in which case the offense shall be considered a gross misdemeanor.

Section 17: BMC 10.24.070 is hereby amended as follows:

10.24.070 Sitting or lying on public sidewalks prohibited.

A. through D. [Unchanged]

E. Notwithstanding and in lieu of the penalties provided under subsection (D) of this section, a person violating this section shall, upon conviction for a third or subsequent offense, be guilty of having committed a criminal misdemeanor and shall be punished by a fine not to exceed \$51,000.00 or imprisonment not to exceed 90 days, or by both such fine and imprisonment.

Section 18: BMC 10.24.120 is hereby amended as follows:

10.24.120 Public disturbance noise.

A. through C. [Unchanged]

D. Penalties.

1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction, and shall be punished by a fine not to exceed \$250.00.

2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a criminal misdemeanor and shall be punished by a fine not to exceed \$51,000.00 or imprisonment not to exceed 90 days, or by both such fine and imprisonment.

Section 19: BMC 11.33.100 is hereby amended as follows:

11.33.100 Permit tags or signs – Where parking permitted – Display of tag – Violation and penalty.

A. [Unchanged]

B. A violation of the provisions of this section and BMC 11.33.090 shall be considered a violation of the provisions of this title on stopping, standing, or parking; provided, that use of the card, tag, or sign on a motor vehicle other than one complying with BMC 11.33.090 shall be a misdemeanor, and, upon conviction, the violator shall be punished by a fine not to exceed \$51,000.00 and in addition to said fine upon the first conviction of the latter violation, the card, tag, or sign involved shall be surrendered to the parking services division and the subject permit shall be suspended for a period of 30 days. Upon a second or subsequent conviction of the latter offense within a two-year period, the period of suspension and surrender shall be for a period of 90 days.

Section 20: BMC 11.38.100 is hereby amended as follows:

11.38.100 Violation - Penalty

It shall be unlawful for any person to do any of the following:

- A. To make any false or misleading statement in application for a permit.
- B. To transfer a permit to another person or to a vehicle not authorized by the permit.
- C. To alter a permit in any respect in order to gain privileges not authorized by the permit.
- D. To display on a vehicle a permit which has been suspended or revoked.
- E. Except for permit fees received by the city of Bellingham, to sell or receive anything of value in exchange for a permit.

~~The penalty for a~~ A violation of this section is a civil infraction and shall be punished by a fine not to exceed \$500.00.

Section 21: BMC 12.04.090 is hereby amended as follows:

12.04.090 Penalty for Violation.

A violation of any provision of this title, unless otherwise specified is a misdemeanor, and is punishable as provided by Chapter 1.28 BMC.

Section 22: BMC 12.12.270 is hereby amended as follows:

12.12.270 Violation - Penalty

Unless otherwise provided, ~~Any~~ person who is convicted of violating or who is convicted of aiding or abetting a violation of any of the provisions of this chapter dealing with waters other than the harbor shall be guilty of a civil infraction and punished by a fine not to exceed \$500.00 ~~and shall not be punished by confinement in any jail or correctional institution~~; provided, that violations of BMC 12.12.280 shall be punishable as provided in that section; and provided further, that offenses described in the following sections are classified as misdemeanors and punishable by imprisonment ~~in the city jail~~ for a maximum term of 90 days ~~six months or~~ and a fine of not more than \$51,000.00 or by both such imprisonment and fine:

- A. BMC 12.12.160;
- B. BMC 12.12.170(A);
- C. BMC 12.12.200.

Section 23: BMC 13.32.050 is hereby amended as follows:

13.32.050 Violation - Penalty

Any person, firm, or corporation violating any of the provisions of this chapter is guilty of a misdemeanor and shall be subject to a fine of not more than \$~~21,000.00~~1,000.00, and each day of violation shall be a separate offense.

Section 24: BMC 14.16.040 is hereby amended as follows:

14.16.040 Violation - Penalty

Any contractor, subcontractor, or agent of contractor, foreman, employer, or any city official within whose jurisdiction work is being done, or deputy agent, or other person acting for such official, who knowingly violates the provisions of this chapter or permits their violation is guilty of a misdemeanor, ~~and, upon conviction, shall be fined in a sum not less than \$25.00, nor more than \$100.00, or by imprisonment in the city jail for a period of not less than 10 days nor more than 30 days, or both such fine and imprisonment, at the discretion of the court.~~

Section 25: BMC 15.04.050 is hereby amended as follows:

15.04.050 Violation - Penalty

A. The commission of an act prohibited by BMC 15.04.040(A), (B), (C), (D), (E) or (I) shall be considered a misdemeanor, punishable by a fine of not more than \$~~51,000.00~~1,000.00 per violation. Each and every day that such prohibited act continues shall be considered a separate violation.

B. Before any person(s) is/are charged with a violation of BMC 15.04.040(E), (F), (G), or (H), an attempt shall be made to give such person a written notice of such violation, either by personal service or by certified mail, return receipt requested, advising that the city is contemplating a criminal complaint against that person(s) and that such person(s) shall have seven days from the date of such notice to discontinue the prohibited activity, except for violations on water usage imposed by the department pursuant to BMC 15.04.040(E), and 15.04.060(A) and (D) for which the prohibited activity shall be discontinued immediately. If such person(s) fails to permanently cease such activity within the foregoing appropriate time period, such person(s) shall be charged with a misdemeanor, punishable by a fine of not more than \$~~51,000.00~~1,000.00 per

violation. Each and every day that such prohibited activity continues beyond the notice period shall be considered a separate violation.

C. This section does not apply to specific civil penalty amounts set out for the late payment of water, sewer and storm and surface water bills as such penalties are civil debts, collected in the same manner as delinquent payments.

Section 26: BMC 17.60.270 is hereby amended as follows:

17.60.270 Violation - Penalty

Any violation of any of the provisions of this chapter is declared to be a misdemeanor and each day or part of a day that such violation continues shall be punishable by a fine in any sum not exceeding \$1,000.00, or by imprisonment ~~in the city jail~~ for a period not exceeding 390 days, or by both such fine and imprisonment.

Section 27: BMC 17.76.040 is hereby amended as follows:

17.76.040 Penalties for noncompliance.

A. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor subject to a maximum fine of \$51,000.00.

PASSED by the Council this _____ day of _____, 2013.

Council President

APPROVED by me this _____ day of _____, 2013.

Mayor

Attest: _____
Finance Director

Approved as to form:

Office of the City Attorney

Published: _____

Table of Code Sections Referenced In Ordinance Classifying, Clarifying, and Standardizing Penalty Provisions and Making Civil Infraction the Default Penalty

ORDINANCE SECTION AND IMPACTED BMC PROVISION	EFFECT OF AMENDMENT
Section 1 - BMC 1.28: General Code Penalty	Provides clear classification of penalties and makes civil infraction the default penalty in the absence of an explicit penalty
Section 1 - BMC 1.28.020: Continuing Offenses	Makes clear that "continuing violation" principle applies throughout BMC
Section 1 - BMC 1.28.030: Principles of Liability	Adopts standard state law principles regarding criminal liability
Section 2 - BMC 4.62.050: Penalty for Violation of Lodging Tax	Clarifies that penalty is misdemeanor
Section 3 - BMC 4.64.080: Penalty for Violation of Leasehold Excise Tax	Clarifies that penalty is civil infraction
Section 4 - BMC 4.69.060: Penalty for Violation of Sales Tax	Standardizes misdemeanor penalty
Section 5 - BMC 4.74.150: Penalty for Violation of Admission Tax	Clarifies that penalty is civil infraction
Section 6 - BMC 6.05.220: Penalty for Violation of Business Taxes, Licenses, and Regulations	Standardizes gross misdemeanor penalty
Section 7 - BMC 6.17.490: Penalty for Violation of Rights of Tenants Regarding Cable Television	Clarifies that penalty is civil infraction
Section 8 - BMC 6.70.080: Penalty for Violation of Utility and Telecommunications Provisions	Clarifies that penalty is civil infraction
Section 9 - BMC 8.12.220: Penalty for Violation of Lake Whatcom Water Safety Rules	Clarifies that penalty is misdemeanor
Section 10 - BMC 9.04.180: Penalty for Violation of General Health Regulations	Standardizes misdemeanor penalty
Section 11 - BMC 9.10.070: Penalty for Violation of Food Service Regulations	Standardizes misdemeanor penalty
Section 12 - BMC 9.12.080: Penalty for Violation of Garbage Collection Regulations	Standardizes misdemeanor penalty
Section 13 - BMC 9.24.050: Penalty for Violation of Plant Disease and Pest Control Regulations	Standardizes misdemeanor penalty
Section 14 - BMC 9.28.060: Penalty for Violation of Rodent Control Regulations	Clarifies that penalty is misdemeanor and standardizes penalty
Section 15 - BMC 10.08.030: Unlawful Inhalation	Clarifies nature of offense and standardizes misdemeanor penalty
Section 16 - BMC10.12.120: Laying Poison for Animals	Standardizes misdemeanor penalty
Section 17 - BMC 10.24.070: Sitting or Lying On Public Sidewalk	Standardizes misdemeanor penalty
Section 18 - BMC 10.24.120: Penalty for Public Noise Disturbance	Standardizes misdemeanor penalty

Section 19 - BMC 11.33.100: Penalty for Violation of Mechanical Vehicle Permit Requirements	Standardizes misdemeanor penalty
Section 20 - BMC 11.38.100: Penalty for Violation of Residential Parking Zone Regulations	Clarifies that penalty is civil infraction
Section 21 - BMC 12.04.090: General Penalty for Violation of Harbor and Lake Regulations	Recognizes that Aquatic Invasive Species violation is a civil infraction, not misdemeanor
Section 22 - BMC 12.12.270: Penalty for Violation of Regulations Regarding Lakes	Clarifies that civil infraction applies to certain violations and misdemeanor applies to others
Section 23 - BMC 13.32.050: Penalty for Violation of Railroad Equipment Maintenance Regulations	Standardizes misdemeanor penalty
Section 24 - BMC 14.16.040: Penalty for Violation of Contract Working Hours Regulations	Standardizes misdemeanor penalty
Section 25 - BMC 15.04.050: Penalty for Violation of Water and Sewer Service Regulations	Standardizes misdemeanor penalty
Section 26 - BMC 17.60.270: Penalty for Violation of Building and Construction Regulations	Standardizes misdemeanor penalty
Section 27 - BMC 17.76.040: Penalty for Violation of Regulations Regarding Building in Floodplains	Standardizes misdemeanor penalty