

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 11/09/15

AGENDA ITEM: Utility Service Ordinance	
PREPARED BY: Dave Koenig/Jon Walker	DIRECTOR APPROVAL:
DEPARTMENT: Community Development/Legal	
ATTACHMENTS: Proposed Ordinance	
BUDGET CODE:	AMOUNT:
SUMMARY:	

Following the economic downturn there has been an increase in foreclosed and vacant properties within the City which are sometimes occupied without proper water and sewer service. The proposed ordinance prohibits occupying a residence that does not have water or sewer service. This can be either a lawful connection to the City’s systems or lawful and functioning private systems such as wells and on-site sewage disposal systems. Where a residence does not have water or sewer service for fourteen consecutive days, the city can require the residence be vacated until water and sewer service is restored. A property owner may appeal the “do not occupy” order to the Hearing Examiner. Occupying a residence in violation of a “do not occupy” order is a misdemeanor. An owner who fails to secure a residence may be issued a civil infraction.

RECOMMENDED ACTION: Staff recommends that the City Council adopt the proposed ordinance requiring occupied properties have adequate water and sewer service.
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CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE, CREATING A NEW CHAPTER 16.24 OF THE MARYSVILLE MUNICIPAL CODE (MMC) PROHIBITING OCCUPYING PROPERTIES THAT LACK ADEQUATE WATER OR SEWER SERVICE.

WHEREAS, adequate water and sewer service are necessary to assure proper sanitation, maintenance, and hospitable living conditions; and

WHEREAS, persons residing in conditions without proper sanitation or hospitable living conditions presents a risk to those persons' health, safety, and welfare, thereby creating a risk of harm to the public health, safety, and welfare; and

WHEREAS, properties which are not adequately maintained due to inadequate water or sewer facilities present a risk of harm to the public health, safety, and welfare; and

WHEREAS, since the economic downturn and recession there have been an increase in the number of vacant, abandoned, and foreclosed properties within the City; and

WHEREAS, many of these vacant, abandoned, and foreclosed structures have had water or sewer services discontinued but are occupied despite the lack of adequate water or sewer service resulting in a danger to the occupants and to the public health; and

WHEREAS, the City desires to assure that occupied properties have adequate water and sewer service to protect the public health, safety, and welfare, to require responsible parties to secure properties from occupancy until adequate water and sewer service is resumed, and to punish violations;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter 16.24 MMC, Utility Service for Occupancy, is hereby created, as set forth in Exhibit "A."

Section 2. **Severability.** If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent

jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 3. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of November, 2015.

CITY OF MARYSVILLE

By: _____
MAYOR JON NEHRING

Attest:

By: _____
April O'Brien, Deputy City Clerk

Approved as to from:

By: _____
Jon Walker, City Attorney

Date of publication: _____

Effective Date (5 days after publication): _____

EXHIBIT A

16.24.010 Purpose.

The purpose of this chapter is to protect the public health, safety, and welfare by assuring that people reside in conditions with adequate utilities and facilities to provide for proper sanitation, maintenance, and hospitable living conditions.

16.24.020 Definitions.

- (1) “Building Official” means the Building Official of the City of Marysville or the Building Official’s designee.
- (2) “Civil Infraction” means a class one civil infraction as defined by chapter 7.80 RCW, the Infraction Rules for Courts of Limited Jurisdiction (“IRLJ”) and any local rule adopted by the Marysville Municipal Court. Civil Infractions shall be heard by the Marysville Municipal Court.
- (3) “Occupy” means (a) residing on the Premises or (b) being present on the Premises for any purposes other than actively maintaining or improving the Premises.
- (4) “Person” means any natural person, legal entity, association, organization, corporation, or partnership and any agents, representatives, fiduciaries, or assigns.
- (5) “Premises” means any land, real estate, tax parcel, or lot and any portion thereof whether improved or unimproved, including adjacent sidewalks and parking strips.
- (6) “Responsible Person” means any Person having legal or equitable title or any interest in a Premises, including but not limited to owners, borrowers, and lenders. When there is more than one Responsible Person, both or all are responsible for performing any act required by this chapter and each may be charged with a violation of this chapter. However, it is a complete defense to any violation that the violation was remedied by another Responsible Persons.
- (7) “Sewer Service” means either (a) a lawful, active, and functioning connection to the City’s sanitary sewer system in conformance with Title 14 MMC or (b) a lawful, functioning, and adequately maintained “on-site sewage disposal system” (as defined in RCW 70.118.020(6)).
- (8) “Water Service” means either (a) a lawful, active, and functioning connection to the City’s water system in conformance with Title 14 MMC, (b) a lawful, functioning, and adequately maintained private well, or (c) a lawful, active, and functioning connection to a lawful, functioning, and adequately maintained “public water system” (as defined in RCW 70.116.030(3)).

16.24.030 Water and Sewer Required.

Any Premises within the City may only be Occupied by a person if the Premises has Sewer Service and Water Service.

16.24.040 Unlawful Occupancy.

- (1) Occupying any Premises within the City which does not have Sewer Service and Water Service, as required by MMC 16.24.030, or which is posted “Unfit for Occupancy – No Trespassing” is a nuisance and a violation of this section.
- (2) Removing or defacing a posted notice that a Premises is “Unfit for Occupancy – No Trespassing” is a violation of this section.
- (3) A violation of this section is a misdemeanor.

16.24.050 Investigation and Enforcement Procedure.

- (1) Investigation. Where the Building Official reasonably believes that a Premise does not have Sewer Service or Water Service for fourteen consecutive calendar days, the Building Official may issue and post a Notice of Violation. Unless appealed pursuant to MMC 16.24.060, the Notice of Violation becomes a final determination on the eleventh business day after the posting of the Notice at which time the Building Official shall post the Premises “Unfit for Occupancy – No Trespassing.”
- (2) Violation Notice. An enforcement action is commenced by a Notice of Violation. The Building Official shall post a copy of the Notice of Violation on the Premises and shall mail a copy of the Notice of Violation to the owner identified in the records of the Snohomish County Assessor and to the street address of the Premises. The Notice of Violation shall contain:
 - (a) Information identifying the Premises including the address and tax parcel number.
 - (b) A concise description of the basis for the Notice of Violation.
 - (c) A statement that the Premises must be vacated unless Sewer Service and Water Service are functioning within ten business days of posting the Notice of Violation.
 - (d) A statement that a Responsible Person may appeal the Building Official’s determination to the Hearing Examiner by filing a written appeal setting forth the grounds for the appeal no later than ten business days after the Notice of Violation was posted.
 - (e) A statement that if the Building Official’s determination is not appealed within ten business days of posting the Notice of Violation:
 - (i) The Notice of Violation will become a final determination;
 - (ii) That the Premises must be vacated and secured as provided in this chapter;
 - (iii) That any person Occupying the Premises will be liable as provided in this chapter; and
 - (iv) That any Responsible Person failing to secure the Premises will be liable as provided in this chapter.
 - (f) The date the Notice of Violation was posted on the Premises.
 - (g) The address where an appeal may be delivered to the City Clerk.
 - (h) A copy of this chapter must be attached to the Notice of Violation that is mailed to the Owner and the street address, but need not be attached to the Notice of Violation that is posted on the Premises.

16.24.060 Appeal.

A Responsible Person may appeal the Building Official's determination contained in a Notice of Violation by delivering a written appeal to the City Clerk. The written appeal must be received no later than ten business days after the Notice of Violation was posted on the Premises. If the City Clerk receives a timely written appeal, the Hearing Examiner shall set a hearing to be held within ten business days of receipt of the appeal.

- (1) At any such hearing, the Responsible Person bears the burden, by a preponderance of the evidence, of establishing their standing as a Responsible Person.
- (2) At any such hearing, the City bears the burden, by a preponderance of the evidence, of establishing that the Premises does not have adequate Sewer Service or Water Service as required by MMC 16.24.030 and that a person was Occupying the Premises as of the date of the Notice of Violation.
- (3) Any such hearing does not need to comply with the rules of evidence and the Hearing Examiner may consider evidence which the Hearing Examiner determines is reasonably reliable.
- (4) The Hearing Examiner shall issue a written decision within five business days of any such hearing. The written decision shall make findings of fact and conclusions of law. If the Hearing Examiner determines that the Premises does not have Sewer Service or Water Service as required by MMC 16.24.030 and that a person was Occupying the Premises as of the date of the Notice of Violation, then the Premises must be vacated and secured within five business days of the Hearing Examiner's decision. The Hearing Examiner's decision is a final determination upon being signed and mailed.
- (5) The decision of the Hearing Examiner may be appealed to the Snohomish County Superior Court within 21 calendar days.

16.24.070 Vacant Structure Must be Secured Upon Violation.

- (1) Upon a final determination that a Premises has been Occupied in violation of MMC 16.24.040, every structure on the Premises must be secured from unlawful Occupancy as specified in MMC 16.24.080 within five business days.
- (2) It is a nuisance and is a violation of this section for any Responsible Person for any Premises within the City to fail to secure every structure on the Premises from unlawful Occupancy as specified in MMC 16.24.080 within five business days of a final determination that the Premises has been Occupied in violation of MMC 16.24.040.
- (3) Violation of this section is a Civil Infraction and upon a finding that a violation has been committed, the person committing the act shall be assessed an amount not to exceed \$250 plus applicable statutory assessments. Such penalty is in addition to any other remedies or penalties specifically provided by law. For each act herein prohibited of a continuing nature, each day shall be considered a separate offense.
- (4) Each day that a structure on the Premises is not secured as specified in MMC 16.24.080 is a separate violation and the Building Official may issue a Civil Infraction to any Responsible Person who had notice that the structure was required to be secured.

16.24.080 Standards for Securing Structures.

All structures which must be secured under this chapter shall meet the following standards.

- (1) Exterior openings shall be properly secured with doors, shutters, grills, and window glazing. Where the normal structural amenities are damaged, destroyed or significantly deteriorated such that the structure becomes unsecure the amenities shall be replaced or the openings may be secured with structural paneling or medium density overlay. At a minimum, all exterior openings accessible from grade shall be properly secured to prevent unauthorized third party entry.
- (2) Personal property and miscellaneous debris which may constitute a fire hazard must be removed from the structure prior to securing the structure.
- (3) If the structure has automatic fire sprinkler systems or fire alarm systems, the systems shall be maintained in an operable condition at all times.
- (4) Sewer lines shall be capped or closed with an appropriate plug.
- (5) All structures on the Premises shall be posted “Unfit for Occupancy – No Trespassing.”
- (6) The Responsible Person shall periodically assure that the Premises is inspected and timely take any actions necessary to assure compliance with these standards.

16.24.090 Abatement.

- (1) If a Responsible Person fails to secure every structure on the Premises from unlawful Occupancy as specified in MMC 16.24.080 within five business days after a final determination, the Building Official may take immediate action to cause the building to be secured in a manner consistent with this chapter.
- (2) In the event that the City secures the building, all costs incurred shall be assessed to the owner of the Premises as provided in Chapter 4.02 MMC.
- (3) In securing a structure, the Building Official is not required to satisfy all the conditions of MMC 16.24.080 and in the Building Official’s sole discretion may determine what measures are appropriate.
- (4) If the City secures a structure pursuant to this chapter, the Responsible Person shall remain responsible for the inspection, maintenance, and protection of the Premises and any structures on the Premises.

16.24.100 Re-Occupancy.

Following a final determination that the Premises has been Occupied in violation of this chapter, the Premises may only be Occupied after a Responsible Person provides the Building Official with satisfactory evidence that the Premises complies with the requirements of MMC 16.24.030 and receives written approval from the Building Official that Occupancy of the Premises is allowed.