

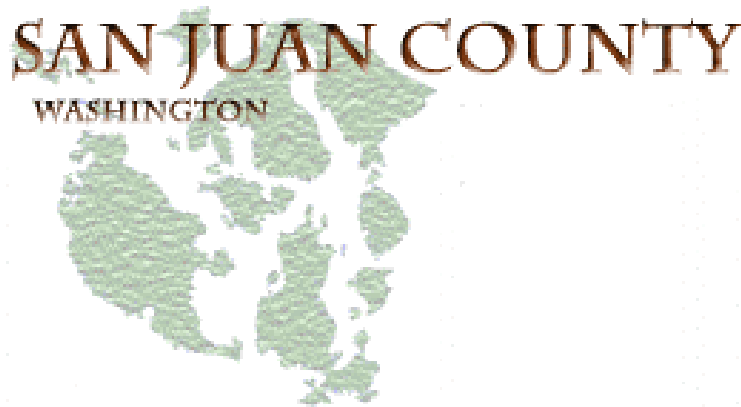
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# **Unified Development Code (UDC)**

## **Title 18 SJCC**

**including Land Use, Land Division,  
and Shoreline Master Program Regulations**

through December 31, 2002



first adopted December 20, 1998

Updated by the Code Reviser Sept. 24, 2002, incorporating adopted changes through  
Ord. 16–2002, July 9, 2002

This Jan. 6, 2003 edition also incorporates revisions adopted through Ord. 26–2002, Dec. 31, 2002,  
(except for Ord. 21–2002 which is not yet effective)

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**Chapter 18.100  
ENFORCEMENT**

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**18.100.010 Intent.**

The primary intent of all enforcement actions described in this chapter is to educate the public and to encourage the voluntary correction of violations. Civil and criminal penalties will be used only when necessary to ensure compliance with the provisions of this code. Criminal charges will be brought only when civil remedies have failed to ensure compliance. (Ord. 2–1998 Exh. B § 10.1)

**18.100.020 Violations.**

- A.** It is a violation of this code for any person to initiate or maintain, or to cause to be initiated or maintained, any use, alteration, construction, location, or demolition of any structure, land, or property within San Juan County without first obtaining permits or authorizations required by this code.
- B.** It is a violation of this code to remove or deface any sign, notice, complaint, or order required by or posted in accordance with this code.
- C.** It is a violation of this code to misrepresent any material fact in any application, plans, or other information submitted to obtain any land use authorization.
- D.** It is a violation of this code for any person to fail to comply with provisions of this code, to fail to comply with the terms or conditions of a permit issued pursuant to this code, or to fail to comply with notices or orders issued pursuant to this chapter.
- E.** Any activity, act, or conduct contrary to the provisions of this code is hereby declared to be a misdemeanor. The violation itself is an injury to the community and a public nuisance. (Ord. 2–1998 Exh. B § 10.2)

**18.100.030 Enforcement and duty to enforce.**

- A.** Provisions of this code will 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.

- B.** The administrator is authorized to enforce this code. The administrator may call upon law enforcement, fire, health, or other appropriate County departments to assist in enforcement.
- C.** The sheriff and all officers and officials charged with enforcement of the law are authorized to enforce provisions of this code.
- D.** The owner of any real or personal property subject to enforcement action and any person responsible for a violation are liable for failure to comply with this code or to comply with notices or orders issued pursuant to this code.
- E.** No provision or term used in this code is intended to impose any duty upon the County or any of its officers or employees which would subject them or the County to damages in a civil action.
- F.** No approval shall be granted for a land use permit, land division, building permit or sewage disposal permit for any lot, tract, or parcel of land on which there is a final determination of a violation of any state law or County ordinance, pertinent to use or development of the property, unless such violations are either corrected prior to application or are required to be corrected as a condition of approval. County approval granted on that basis may be revoked at any time if the then-owner, manager, tenant, employee, *etc.*, fails to comply with conditions of approval or violates any state law or County ordinance pertinent to use or development of the property. (Ord. 2–1998 Exh. B § 10.3)

**18.100.040 Investigation and service of notice of violation.**

- A.** The administrator shall investigate any facts which lead the administrator to reasonably believe that a person, use, or condition is in violation of this code.

- B.** Should the administrator be denied access to such property to carry out the purpose and provision of this section, the administrator may apply to any court of competent jurisdiction for a search warrant authorizing access.
1. The administrator or his or her designee may request the consent to enter property for the purpose of examining property, buildings, premises, records, or other physical evidence, or for conducting tests or taking samples.
  2. The administrator or designee may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. An administrative search warrant may be issued for the purposes described in subsection (B)(1) of this section. The warrant shall be issued upon probable cause. It is sufficient probable cause to show either of the following:
    - a. The inspection, examination, test, or sampling, is pursuant to a general administrative plan to determine compliance with this code; or
    - b. The administrator has reason to believe that a violation of this code or permit issued pursuant to this code has occurred or is occurring.
- C.** If after investigation, the administrator determines that any provision of this code has been violated, a notice of correction letter shall be the first attempt at obtaining compliance. If voluntary compliance is not obtained, the administrator shall serve a notice of violation upon the owner and person(s) responsible for the violation. The notice of violation shall state the following:
1. Description of the activity that is causing a violation;
  2. Each provision violated;
  3. Any civil penalty imposed;
  4. The corrective action, if any, necessary to comply with said provisions;
  5. A reasonable time for compliance according to provisions of this section; and
  6. That continued or subsequent violation may result in criminal prosecution as provided in SJCC 18.100.060(B).
- D.** Following a notice of violation, the administrator and person in violation may develop a mutually agreeable compliance plan. The compliance plan shall establish a reasonable and specific time frame for compliance. No further action will be taken if the terms of the compliance plan are met. If no compliance plan is established, enforcement of the violation will proceed.
- E.** When calculating a reasonable time for compliance, the administrator shall consider the following criteria:
1. The type and degree of violations cited in the notice;
  2. The stated intent, if any, of a person responsible to take steps to comply;
  3. Procedural requirements for obtaining a permit to carry out corrective action;
  4. The complexity of corrective action, including seasonal considerations, construction requirements, and the legal rights and responsibilities of landlords and tenants; or
  5. Any other circumstances beyond the control of the party responsible.
- F.** If the administrator believes that the requirements of this section are not being met, the administrator shall, in addition to the notice of violation, issue applicable stop work or emergency orders.
- G.** The notice of violation, stop work order, or emergency order shall be served upon the owner and person(s) responsible for the violation by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of each such person. If after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is still unknown, or service cannot be accomplished and the administrator makes an affidavit to that effect, then service of the notice of violation may be made by:
1. Publication of the notice once each week for two consecutive weeks in the official newspaper of the County;
  2. Mailing a copy of the notice or order to each person named on the notice or order by first class mail to the last known address if any, if known, or if unknown to the address of the property involved in the proceeding; and
  3. Mailing a copy to the taxpayer of record.
- H.** A copy of the notice or order shall be posted at a conspicuous place on the premises, unless posting the notice or order is not physically possible.
- I.** The administrator may mail or cause to be delivered to all residential and nonresidential units on the premises, or to be posted at a conspicuous place on the premises, a notice which informs each recipient or resident about any notice of violation, stop work order, or emergency order and the applicable requirements and procedures. Notices issued in this manner are sufficient for purposes of due process.
- J.** A notice of violation, a stop work order, or an emergency order may be amended at any time in order to:
1. Correct clerical errors; or

2. Cite additional authority for a stated violation.

- K. If the scope of the notice is to be expanded or decreased, then a new notice of violation, a stop work order, or an emergency order shall be issued in order to expand or decrease the scope of the notice or order as consistent with the intent of this section and new timelines may be established pursuant to subsection (D) of this section.
- L. Nothing in this chapter shall be deemed to limit or preclude any civil or criminal action or proceeding available under this section or otherwise.
- M. Nothing in this chapter shall be deemed to limit or preclude the administrator from seeking the most appropriate course of action deemed necessary in relationship to the severity of the violation. (Ord. 2–1998 Exh. B § 10.4)

#### **18.100.050 Stop work order, emergency, and abatement orders.**

- A. **Stop Work Order.** Whenever a continuing violation of this code will materially impair the administrator’s ability to secure compliance with this code, or when any person is proceeding in defiance of permit requirements, the administrator may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. The stop work order shall be served on the person(s) responsible pursuant to SJCC 18.100.040 and shall be posted in a conspicuous place on the premises, if posting is reasonable and practical. Failure to comply with a stop work order shall constitute a violation of this code.
- B. **Emergency Order.**
  - 1. Whenever any use or activity in violation of this code threatens the health or safety of occupants of the premises or any member of the public, the administrator may issue an emergency order directing that the use or activity be discontinued and the condition causing threat to health and safety be corrected. The emergency order shall be served on the person(s) responsible pursuant to SJCC 18.100.040, shall specify the time for compliance, and shall be posted in a conspicuous place on the premises, if posting is physically possible. Failure to comply with an emergency order shall constitute a violation of this code.
  - 2. Any condition described in an emergency order which is not corrected within the time specified in the order is a public nuisance. The administrator is authorized to abate said nuisance summarily by such means as the administrator finds reasonable. The cost of such abatement shall be recovered from the owner or the person responsible or both in any manner provided by law. (Ord. 2–1998 Exh. B § 10.5)

#### **18.100.060 Penalties.**

- A. **Civil Penalties.** 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 code may be subject to a cumulative penalty of up to \$1,000 per day for each active occurrence of violation. Such penalties shall be imposed by court after proper notice and hearing.
- B. **Criminal Penalties.** In addition to incurring civil penalties under this section, a violation of this code is a misdemeanor. Upon conviction of a violation, the violator shall be fined a sum up to \$5,000 for each such violation, shall be imprisoned for a term not exceeding one year, or shall be both fined and imprisoned. Each day of noncompliance with any of the provisions of this code shall constitute a separate offense.
- C. **Additional Penalties.**
  - 1. In addition to civil and criminal penalties, the administrator may seek injunctive relief to enjoin any acts or practices and abate any nuisance or other condition which constitutes or will constitute a violation of this code when other civil or criminal penalties are inadequate to effect compliance, or when otherwise appropriate. Owners of real or personal property adversely affected by a violation of this code may also seek injunctive relief.
  - 2. The administrator may issue a stop work order pursuant to SJCC 18.100.050 at any time during these proceedings.
  - 3. The administrator may issue an emergency order pursuant to SJCC 18.100.050 at any time during these proceedings.
  - 4. The fine for the third and subsequent violations in any five-year period shall be not less than \$500.00 nor more than the maximum allowed by law for gross misdemeanors. (Ord. 2–1998 Exh. B § 10.6)

#### **18.100.070 Enforcement and penalties – Shorelines.**

- A. **Court Actions – Civil Penalty – Review.**
  - 1. The attorney general and the prosecuting attorney may bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions of the Shoreline Management Act or of the master program and to otherwise enforce the provisions of both.
  - 2. Any person who shall fail to conform to the terms of a permit issued under the Shoreline Master Program or who shall undertake development on the shorelines of the state without first obtaining any permit required under

the master program shall also be subject to a civil penalty not to exceed \$1,000 for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

3. The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty. The notice shall describe the violation with reasonable particularity and order that the act or acts constituting the violation or violations cease and desist or, in appropriate cases, require necessary corrective action to be taken within a specific and reasonable time.
4. Within 30 days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty for good cause, upon whatever terms the County finds acceptable. Any penalty imposed pursuant to this action by the County shall be subject to review by the board of County commissioners. Any penalty jointly imposed by the state and County may be appealed to the Shorelines Hearings Board.

**B. General Penalty.**

1. In addition to incurring civil liability under this chapter and RCW 90.58.210, any person found to have willfully engaged in activities on the shorelines of the state in violation of the provisions of the Shoreline Management Act or of the master program or rules and regulations adopted pursuant thereto shall be guilty of a gross misdemeanor. A gross misdemeanor shall be punished by a fine of not less than \$25.00 nor more than \$1,000 or by imprisonment for not more than 90 days or by both such fine and imprisonment. The fine for the third and all subsequent violations in any five-year period shall not be less than \$500.00 nor more than \$10,000. Fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.
2. Any person who willfully violates any court order or injunction issued pursuant to the master program shall be subject to a fine of not more than \$5,000 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

**C. Violator's Liability For Damages.** Any person subject to the regulatory provisions of the Act or of this master program who violates any provisions or any permit issued under those laws 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 condition prior to violation. The prosecuting attorney may bring suit for damages under this section on behalf of the County. Private persons shall have the right to 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.

**D. Development and Building Permits.** No building permit, septic tank permit, or other development permit shall be issued for any parcel of land developed or divided in violation of the master program or of local regulations. This prohibition shall not apply to an innocent purchaser for value without actual notice. All purchasers or transferees of property must comply with provisions of this ordinance. Each purchaser or transferee may recover damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of this chapter, including any amount reasonably spent as a result of inability to obtain any development permit or spent to conform to the requirements of this code. Such purchaser, transferee, or lessor may, as an alternative to conforming his or her property to these requirements, rescind the sale, transfer, or lease. (Ord. 2-1998 Exh. B § 10.7)

**18.100.080 Enforcement and penalties – Land divisions.**

**A. Review of Sales.** The County assessor shall notify the administrator of any possible violations of this code. To prevent the recording of any instrument or conveyance for a parcel or parcels divided in violation of this code, an official declaration shall be signed by the seller or his or her agent at the time a real estate excise tax affidavit is completed. Forms shall be made available in the County treasurer's office and shall state that one of the following applies to the proposed land division:

1. This sale does not constitute a division of property;
2. This sale constitutes a division of property or a boundary line adjustment but is exempt from the requirements of the San Juan County land division regulations, under Chapter 18.70 SJCC; or
3. This sale constitutes a division of property or a boundary line adjustment which is regulated by and has been reviewed and approved in terms of this code.

**B.** A compliance form signed by the administrator shall be included with the affidavit if subsection (A)(3) of this section applies.

**C. Development of Illegally Divided Land.** No application for a building permit, septic tank permit, or other development permit for any lot, tract, or parcel of land divided in violation of state law or of this code will be granted without prior approval of the administrator. Approval will only be given if the applicant demonstrates the following:

1. The County sanitarian has certified that the proposed means of sewage disposal and water supply on and to the lot, tract, or parcel are adequate and that the water supply and sewage system do not interfere with existing or planned water or sewage facilities in the vicinity;
2. The County engineer has certified that the proposed lot, tract, or parcel of land is served with an adequately designed means of access, and with adequate drainage facilities, none of which interferes with existing or planned public or private road and drainage facilities in the vicinity;
3. The proposed development will not adversely affect the safety or health of adjacent property owners;
4. The planning director has certified that the proposed land division and development conform to the policies and directives of the Comprehensive Plan; and
5. The applicant did not know, and could not have known by exercising reasonable care in purchasing the land, that the lot, tract, or parcel had been part of a larger lot, tract, or parcel divided in violation of state law or this code.

**D. Penalties.**

1. Violation of or failure to comply with any of the provisions of Chapter 18.70 SJCC is a misdemeanor, punishable by a fine not to exceed \$250.00. Each and every day during which such violation continues may be deemed a separate offense. Each sale, offer for sale, lease, or transfer of each separate lot, tract, or parcel of land contrary to Chapter 18.70 SJCC constitutes

a separate offense. The prosecuting attorney shall have discretion for each violation to proceed with prosecution either criminally or civilly as provided in this chapter, unless a settlement and restitution satisfactory to the County is made.

2. Any division of land contrary to the provisions of this section is unlawful and a public nuisance. Compliance with this section may be enforced by mandatory injunction brought by the owner or owners of land lying within the County or residents of the County, or the prosecuting attorney may immediately commence action or actions, proceeding or proceedings for abatement and enjoinder thereof, in the manner provided by law. The prosecuting attorney may take such other steps and shall apply to any court that has jurisdiction to grant such relief as will abate, restrain, and enjoin any person from dividing or using any land contrary to the provisions of Chapter 18.70 SJCC.
3. In the enforcement of Chapter 18.70 SJCC, the prosecuting attorney may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in such act or practice. Any such assurance shall be in writing.

**E. Recovery of Damages.** All purchasers or transferees of property must comply with provisions of Chapter 18.70 SJCC. Each purchaser or transferee may recover his or her damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of this section, including any amount reasonably spent as a result of inability to obtain any development permit or spent to conform to the requirements of Chapter 18.70 SJCC. Such purchaser, transferee, or lessor may, as an alternative to conforming his or her property to these requirements, rescind the sale, transfer, or lease. (Ord. 2-1998 Exh. B § 10.8)

