SPU DPD	Joint Ruling DPD Director's Rule 2011-05 SPU Director's Rule 2011-005

Applicant:	Page	Supersedes:
CITY OF SEATTLE Seattle Public Utilities Department of Planning and Development	1 of 6	N/A
	Publication:	**Effective:**

Subject:	Code and Section Reference:
Side Sewer Code Enforcement	SMC Chapter 21.16
	Type of Rule: Code Interpretation
	Ordinance Authority: SMC 3.06.040
	Approved *Date* _____ Ray Hoffman, Director, Seattle Public Utilities
Index: Side Sewer Code	*Approved* *Date* _____ Diane M. Sugimura, Director, DPD

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I. Introduction

A. Background

The City of Seattle Department of Planning and Development (DPD) and Seattle Public Utilities (SPU) produced this document as a joint Directors' Rule (DR) to meet the requirements of the enforcement provisions that are described in the Seattle Municipal Code (SMC) 21.16 *Side Sewer Code*. This Code was revised in 2010 in part to improve side sewer construction and maintenance enforcement, as well as water and wastewater quality enforcement. This technical document is designed to help clarify the application of enforcement for businesses, developers, the general public, and the public agencies in Seattle.

B. Definitions

The following terms are defined exclusively for this DR. Refer to the Seattle Municipal Code 21.16 (*Side Sewer Code*) for additional definitions of terms that govern this rule.

1. **"Adversely Impacting Infrastructure" –** means damage to or effect on publicly owned infrastructure that contributes towards its impairment.
2. **"Code" –** means Chapter 21.16 of the Seattle Municipal Code, commonly referred to as *The Side Sewer Code.*
3. **"Departments" –** means Seattle Public Utilities (SPU) and the Department of Planning and Development (DPD).
4. **"Economic Benefit"** – means gain and/or no loss in resources.
5. **"Public Health Risk" –** means risk involving the physical or social well-being of a community or environment.
6. "**Repeat Violation**" means a prior violation of this chapter within the preceding five years that became a final order or decision of the Director or a court. The violation does not need to be the same nor occur on one site to be considered repeat.

II. Penalty Assessment Matrix

A. Notice of Violation

If the Director finds that a violation of the Code has occurred or is occurring, a Notice of Violation (NOV) or an Order is given to the responsible party of that violation. If a civil penalty is attached with the NOV or Order it will be determined using the enforcement penalty matrix described below.

B. Enforcement Penalty Matrix

The enforcement penalty matrix (Table 1) is comprised of a set of criteria formulated as questions for the Director to evaluate and answer. The Director uses the guidelines of Section III to determine the total points to be assessed according to the violation. Once the total amount of penalty points is determined, a rating and a corresponding penalty amount is established (Table 2).

Table 1, Enforcement Penalty Matrix

ENFORCEMENT EVALUATION CRITERION	NO (0 POINTS)	POSSIBLY (1 POINT)	PROBABLY (2 POINTS)	DEFINITELY (3 POINTS)
Public Health Risk?				
Environmental Damage or Adversely Impacting Infrastructure?				
Willful or Knowing Violation?				
Unresponsive in Correcting Action?				
Improper Use or Maintenance?				
Failure to Obtain Necessary Permits and Approval?				
Economic Benefit to Non-Compliance?				
Repeat Violation?				

Table 2, Penalty Points Ratings and Corresponding Penalty Amounts

RATING	1-2	3-4	5-8	9-11	12-14	15
Penalty	$250	$500	$1,000	$1,500	$2,000	$2,500

RATING	16	17	18	19	20+
Penalty	$3,000	$3,500	$4,000	$4,500	$5,000

III. Application of Penalty Criteria

The framework below provides guidance on how to rate each criterion of the enforcement penalty matrix. The civil penalty is determined by the total score of the matrix.

1. Did the violation result in a public health risk?

    a. Answer "no" if there is no evidence to support a claim of public health risk or adverse health effects.
    b. Answer "possibly" if evidence supports a claim of public health risk and there is a plausible connection between this violation and health effect.
    c. Answer "probably" if evidence supports a claim of public health risk and there is a likely connection between this violation and health effect.
    d. Answer "definitely" if there is direct evidence linking public health risk or adverse effects with the violation.

2. Did the violation result in environmental damage or adversely impact infrastructure?

    a. Answer "no" if there is no evidence to support a claim of environmental or infrastructure damage.
    b. Answer "possibly" if environmental or infrastructure damage can be inferred from evidence or knowledge of the effects of the violation.
    c. Answer "probably" if there is evidence to support a claim of environmental or infrastructure damage and there is a likely connection between the violation and the damage/impairment.
    d. Answer "definitely" if there is direct evidence linking environmental or infrastructure damage with the violation.

3. Was the action a willful and knowing violation?

    a. Answer "no" if the violator obviously did not know that the action or inaction constituted a violation.
    b. Answer "possibly" if the violator should have known.
    c. Answer "probably" if it is likely the violator knew.
    d. Answer "definitely" if the violator clearly knew or was previously informed by the probing inspectors.

4. Was the responsible party unresponsive in correcting the violation?

    a. Answer "no" if the violation was corrected as soon as the responsible party learned of it.
    b. Answer "possibly" if the violation was corrected in a less timely and cooperative fashion.
    c. Answer "probably" if the responsible person made some attempt to correct the problem, but did not correct it.
    d. Answer "definitely" if the responsible party made no attempt to correct the violation.

5. Was the violation a result of improper use or maintenance?

    a. Answer "no" if the violation was not the result of improper use or maintenance.
    b. Answer "possibly" if improper use or maintenance can be inferred from evidence or knowledge of the effects of the violation.
    c. Answer "probably" if there is evidence of improper use or maintenance and there is a likely connection between the violation and the improper use or maintenance. .
    d. Answer "definitely" if there is direct evidence linking improper use or maintenance with the violation.

6. Did the responsible party fail to obtain and comply with the necessary permits, certifications and approvals from the department or agency with jurisdiction to operate at the time of the violation?

    a. Answer "no" if the paperwork was complete and appropriate for the job or task that caused the violation.
    b. Answer "possibly" if the responsible party obtain and received approval for some but not all of the required permit(s).
    c. Answer "probably" if the responsible party obtained some but not all of the required permit(s) and did not receive approvals for the job or task that caused the violation.

d. Answer "definitely" if the responsible party either did not obtain the necessary permits or did obtain permits but did not comply with their conditions.

7. Did anyone benefit economically from non-compliance?

   a. Answer "no" if it is clear that no one gained an economic benefit.
   b. Answer "possibly" if someone might have benefited.
   c. Answer "probably" if anyone benefited, but the benefit is not quantifiable.
   d. Answer "definitely" if the economic benefit is quantifiable.

8. Is this violation a repeat violation?

   a. Answer "no" to indicate that there have been no prior violations.
   b. Answer "possibly" to indicate that there has been one prior violation.
   c. Answer "probably" to indicate that there have been two prior violations.
   d. Answer "definitely" to indicate that there have been three or more prior violations.