

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1126

Amending MCC Chapter 37 Administration and Procedures, Chapter 29 Building Code, and Land Use Regulations Chapters 11.15, 33, 34, 35, 36, 38 Relating to Land Use Code Enforcement

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. The proposed revisions to the Code Enforcement provisions of Multnomah County Code Chapters 11.15, 29, 32, 33, 34, 35, 36, 37, and 38 would:
 - (1) Add a title for the code section, define *Violation*, and remove language that is inaccurate or inconsistent with the code enforcement program operations;
 - (2) Incorporate urban plan areas and land division regulations within the enforcement code authority;
 - (3) Provide Director Authority to settle a fine amount;
 - (4) Clarify the Notice of Violation Appeal process and fine limits;
 - (5) Delete the requirement to provide a Notice of Hearing to surrounding properties when a Notice of Violation is appealed; and
 - (6) Remove the code violation fine amounts in transportation and plumbing code regulations, and the enforcement related language in Chapters 11.15, 33, 34, 35, 36, 37, and 38 for consistency with the Chapter 37 enforcement code.
- b. The proposed code revisions are in the best interests of the County.

Multnomah County Ordains as follows:

Section 1. A new § 37.0905 is added as follows:

37.0905 Title

This subchapter, MCC 37.0905–MCC 37.0970, shall be known as the Enforcement Code and may be so cited and referred to.

Section 2. § 37.0910 is amended as follows:

37.0910 Definitions

As used in MCC 37.0910 – 37.0970, the following words mean:

* * *

Violation: Any act or failure to act that is prohibited or not allowed, including any failure to take any required action, under the goals, laws, rules, regulations or permits specified in MCC § 37.0915.

Section 3. **§ 37.0915 is amended as follows:**

37.0915 **Violations**

Any use of land, land division, adjustment to property boundaries, work within a County right-of-way, or other activity by a person in violation of any provision of:

(A) MCC Chapters 11.15, 11.45, 33, 34, 35, 36 and 38; §§ 29.001 through 29.365 and 29.500 through 29.611; Multnomah County Road Rules or the terms and conditions of any permit issued under those code provisions; or

(B) Any statute adopted by the Oregon Legislature and those land use planning goals and rules of the Land Conservation and Development Commission (LCDC) that apply directly to the County through ORS 197.646

may be subject to enforcement and fines as provided in this subchapter.

Section 4. **§ 37.0920 is repealed and §37.0925 is amended as follows:**

37.0920 Policy and Purpose

~~Multnomah County's policy shall be to seek voluntary compliance in addressing code violations and use an enforcement approach when voluntary compliance fails. The purpose of these code compliance provisions is to implement this policy and provide prompt, effective and efficient enforcement of the County's land use and transportation codes~~

37.0925 **Rules; Code Compliance Specialist Policy; Purpose; Powers of Director**

~~It is county policy and the Director shall be charged with the responsibility to:~~

~~(A) Seek voluntary compliance in addressing violations and to use an enforcement approach when voluntary compliance fails or is not practicable. The purpose of the Enforcement Code is to implement this policy in a prompt, effective and efficient manner.~~

~~(AB) The Director may adopt rules necessary for the administration of the code compliance Enforcement Program.~~

~~(BC) Exercise the county's authority under the Enforcement Code and all rules adopted under it. The Director may appoint one or more Code Compliance Specialists (CCS) for purposes of administering the program administering the county's authority under the Enforcement Code and all rules adopted under it. The Director may delegate the duties of the CCS to other staff of DBCS Department of Community Services. When an alleged violation is reported to, or discovered by the County, the CCS will evaluate the complaint and conduct a preliminary investigation to identify the priority level of the~~

~~violation. The CCS will not proceed further if it is determined that there is not sufficient evidence to support the allegation. If it is determined that a violation exists, the CCS will first seek voluntary compliance and may issue a Notice of Violation and fine when voluntary compliance fails.~~

Section 5. **§ 37.0930 is repealed as follows:**

37.0930 Enforcement Levels

- ~~(A) Voluntary compliance;~~
- ~~(B) Stop Work Order;~~
- ~~(C) Correction Notice;~~
- ~~(D) Notice of Violation and fine;~~
- ~~(E) Petition for injunction and other remedies in state court.~~

Section 6. **§ 37.0935 is amended as follows:**

37.0935 Voluntary Compliance Agreement

(A) The County may enter into a written voluntary compliance agreement with respondent, and the property owner, if different, before or after a Notice of Violation is issued. The agreement shall include the applicable code provision(s), required corrective action, time limits for compliance, fines if applicable and shall be binding.

(B) As part of a voluntary compliance agreement, the Director may agree to accept in full satisfaction of any fine, costs, fees or other debt due and owing to the County under the Enforcement Code payment in an amount less than the total amount due and owing and may agree to terms of payment. The Director shall establish factors to be considered prior to making the agreement authorized in this paragraph.

~~(B)~~ (C) The fact that a person alleged to have committed a violation enters into a voluntary compliance agreement shall not be considered an admission of having committed the violation.

~~(C)~~ (D) The CCS will delay further processing of the alleged violation during the time allowed in the voluntary compliance agreement for the completion of the required corrective action.

~~(D)~~ (E) Failure to comply with any term of the voluntary compliance agreement constitutes a separate violation, and shall be handled in accordance with the procedures established by these provisions, except no further notice after the voluntary compliance agreement has been signed need be given before further enforcement proceedings are initiated. The CCS may also proceed on the alleged violation that gave rise to the voluntary compliance agreement.

Section 7. § 37.0940 is amended as follows:

37.0940 Notice of Violation, Abatement, Fine and Right to Appeal

* * *

(C) ~~An appeal, if any, from a Notice of Violation~~ ~~If the violation is disputed, respondent or property owner may file~~ shall be made in accordance with MCC 37.0955(A) and by submitting to the CCS a written request for an appeal hearing together with the appeal fee indicated in the Notice of Violation ~~with the CCS~~ within 14 days of the date when of service of the Notice of Violation was served or mailed. Such appeal requests must be accompanied by the appeal fee as indicated in the Notice to help defray the cost of the appeal

* * *

Section 8. § 37.0955 is amended as follows:

37.0955 Appeal

* * *

(C) Appeal Hearing

* * *

(3) The Hearing Officer's order shall be in writing ~~or stated in the record~~ and may be accompanied by an opinion.

Section 9. § 37.0965 is amended as follows:

37.0965 Civil Fine

Violations as defined in MCC 37.0915 may be subject to fines and liens. Fines may be assessed for each violation each day.

(A) ~~The M~~ maximum fines per violation shall not exceed \$3,500 for each day of noncompliance, the minimum fine per violation shall not be less than \$45 for each day of noncompliance.

(B) The Director shall set criteria for determining the fines, appeal fees and administrative fees as appropriate.

Section 10. §§ 33.0915, 34.0915, 35.0915, 36.0915 and 38.0915, Penalties, are repealed as follows:

~~33.0915 Penalties~~

~~Violations as defined in MCC 33.0910 shall be subject to a fine of up to \$500.00 per day.~~

~~34.0915 Penalties~~

~~Violations as defined in MCC 34.0910 shall be subject to a fine of up to \$500.00 per day.~~

35.0915 Penalties

~~Violations as defined in MCC 35.0910 shall be subject to a fine of up to \$500.00 per day.~~

36.0915 Penalties.

~~Violations as defined in MCC 36.0910 shall be subject to a fine of up to \$500.00 per day.~~

38.0915 Penalties

~~Violations as defined in MCC 38.0910 shall be subject to a fine of up to \$500.00 per day.~~

Section 11. § 29.999 is amended as follows:

29.999 Penalty.

~~——— (A) ——— *Plumbing Code violations.* A person who violates § 29.206 of this chapter will be subject to a civil penalty of not to exceed \$100 per violation. In the case of a continuing violation, every day's continuance of the violation is a separate violation. (ORS 456.885) ('90 Code; § 9.30.090) (Ord. 362, passed 1983)~~

~~——— (B) ——— *Street standards violations.* No person shall violate any requirement of §§ 29.500 through 29.583 of this chapter or rule adopted under it. Each violation is subject to a civil penalty not to exceed \$500. It is a separate violation for each day during any portion of which a violation of any provision of this subchapter or rule adopted under it occurs.~~

~~——— (C) ——— *Bridge Special Events violations.* No person shall violate any requirement of Bridge Special Events §§ 29.700 et. seq. or rule adopted under it. Each violation is subject to a civil penalty not to exceed \$500.00. It is a separate violation for each day during any portion of which a violation of any provision of this subchapter or rule adopted under it occurs.~~

Section 12. § 11.15.9045 - .9055 are repealed as follows:

Interpretations, Prior Permits, Violations, Enforcement and Savings Clause

11.15.9045 Planning Commission Duty

~~It shall be the duty of the Planning Commission to interpret the Zoning Ordinance. These interpretations shall be in writing and shall be established as policy of the Planning Commission.~~

11.15.9050 Effect of Prior Permits

~~A building or structure for which a permit was issued prior to the effective date of this Chapter shall be permitted to be constructed or erected in accordance with such permit.~~

11.15.9052 Violations and Enforcement

Any use of land in violation of any provision of MCC 11.15, MCC 11.45, Chapter 29 or the terms and conditions of any permit issued under those code provisions by a person shall be subject to penalties as provided by MCC 11.15.9053.

(A) Definitions

(1) "County Ordinance" means all ordinances duly enacted by Multnomah County, including but not limited to zoning, planning, and building ordinances, as specified above.

(2) "Notice of Violation": A written notice given to a person or persons whose action, conduct or omission constitutes a violation of any provision of the Multnomah County Code or the terms and conditions of a development permit. A stop work order constitutes a Notice of Violation, notwithstanding any subsequent notice or letter given to a person or persons. A Notice of Violation does not constitute a "land use decision" under ORS Ch. 197.

(3) "Violator" means any person who has admitted violation of a County Ordinance or a person who has been found to have violated a County Ordinance.

(4) "Person" includes:

(a) The owner, title holder, contract seller, contract buyer, possessor or user of the land upon which the violation is occurring; or, the person taking the action, or responsible for the conduct or omission which constitutes a violation of any County Ordinance; and

(b) The United States or agencies thereof, any state, public or private corporation, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity, contractor, subcontractor or combination thereof. For the purposes of this ordinance, "person" also includes those residing in or conducting business or activities in the unincorporated areas of Multnomah County.

(5) "Decision of Appeal": The decision of the Planning Director in the appeal of the Notice of Violation. A Decision of Appeal does not constitute a land use decision under ORS Ch. 197.

(6) "Grace Period": Time allotted to a person by the Code Enforcement Planner to correct a violation without assessment of additional penalties, or legal action being taken for the cited violation during that assigned time period. A Grace Period begins from the date the written Notice of Violation is mailed or given. Unless otherwise specified by the Code Enforcement Planner, the grace period for a Notice of Violation shall be 30 days and the grace period for a stop work order shall be 15 days. If notice is mailed, the grace period shall be extended by an additional three days. A grace period for a noticed violation does not grant a property owner the right to continue a use for the time period specified or prevent inspection or citation of new or other land use violations.

(B) Compliance Required

No application for use or development of land shall be approved for a site which is subject to an enforcement action pursuant to the provisions of this section. A permit for the use or development of land may only be issued if it is necessary to correct the land use violation contained in the Notice of

Violation:

(C) Code Enforcement Planner

The Planning Director shall appoint one or more persons to act as the code enforcement planner(s) for purposes of issuing Notices of Violation, and for the enforcement of MCC 11.15, MCC 11.45, MCC 9.10 and MCC 9.40 or the terms and conditions of any permit issued under those code provisions.

(D) Enforcement Action

1. An enforcement action may be initiated by the Code Enforcement Planner(s) on their own action, when the Division of Transportation and Land Use Planning receives a complaint, known or anonymous or receives a directive from the Board of County Commissioners. All complaints are confidential, until such time as the violation is closed.
2. If the Code Enforcement Planner determines the existence of a violation, the Code Enforcement Planner shall provide a written Notice of Violation to the person(s) suspected of committing a violation and the property owner if different. The notice shall:
 - a. Outline the nature of the violation(s), including cites to the applicable county code sections, and set forth options to correct the violation(s);
 - b. Notify the property owner and the operator/tenant that failure to comply with the Ordinance within the grace period will result in enforcement under MCC 11.15.9052(D)(3) and that a penalty of up to \$500.00 per day may be assessed per MCC 11.15.9053; and
 - c. Notify the property owner and the operator/tenant of the right to appeal the determination of a land use violation and the time limits established by this section.
3. If the person(s) notified fails to correct the violation within the grace period, the Code Enforcement Planner may impose a penalty in accordance with MCC 11.15.9053. The penalty shall be recorded as a lien against real property in the Office of the County Recorder if not paid within sixty days of notification of the property owner and operator/tenant of the issuance of the penalty.
4. A person who receives a notice of violation may file a written appeal of the Notice of Violation with the Land Use Planning section to the Planning Director within the grace period as stipulated in the Notice of Violation. The following procedures apply to the appeal of the Planning Director:
 - a. The appellant has 45 days from the date of filing the written appeal to provide written documentation to the Planning Director in support of the appeal;
 - b. All enforcement actions, except for emergency actions taken under MCC .9052(E), shall be stayed until the Planning Director decides the appeal. In the event that the Planning Director finds in the favor of the appellant, the Notice of Violation will be rescinded.
 - c. Upon filing of an appeal by the property owner, written notice and opportunity to comment on the appeal of the Notice of Violation shall be provided to the complainant, if known, and the surrounding property owners within:
 - i. 100 feet of the subject property when inside the Urban Growth Boundary; or

- ii. ~~250 feet of the subject property where the subject property is outside the Urban Growth Boundary and not within a farm or forest resource zone; or~~
 - iii. ~~500 feet of the subject property where the subject property is within a farm or forest resource zone.~~
 - d. ~~The Planning Director shall consider any other written testimony submitted in support of and in opposition to the Notice of Violation;~~
 - e. ~~The Planning Director shall review all written evidence and determine by a preponderance of the evidence whether a violation has occurred;~~
 - f. ~~After review of the written testimony, the Planning Director shall serve the appellant and anyone who submitted evidence with a Decision of Appeal;~~
 - g. ~~If the Notice of Violation is upheld, penalties as provided in MCC.9053 shall be assessed by the Planning Director;~~
 - h. ~~The Planning Director may delay additional penalties at the time of the Decision of Appeal by specifying an additional grace period to allow the property owner to remove the violation from the property. If an additional grace period is granted, it shall not be less than five days; and~~
 - i. ~~The penalty shall be recorded as a lien against real property in the Office of the County Recorder if not paid within sixty days of notifying of the property owner and violator of the issuance of the penalty.~~
5. ~~If the property owner chooses to correct the violation by applying for a required permit, penalties shall accrue during the application process time period as provided in MCC.9053.~~
- a. ~~Penalties assessed from the date of application, not including any Pre-Initiation Conference, for a required permit to completion of the project, including final inspection, may be waived by the Planning Director provided the property owner completes the application process within 180 days of filing and complies with all timelines established as conditions of approval of the project and if no additional violations occur during the completion of the conditions of approval.~~
 - b. ~~Timelines for compliance with the land use permit shall be included as a condition of approval of the land use permit and, if possible, shall not extend past a single construction season.~~

~~(E) Emergency Enforcement~~

- 1. ~~If the Code Enforcement Planner determines, as a result of a site visit by the Code Enforcement Planner or Code Enforcement Inspector, that the violation is such that irreparable harm will result, will be difficult to correct if allowed to continue, or presents an immediate health and safety danger, the Code Enforcement Planner may, without notice, issue a Stop Work Order which shall also serve as the Notice of Violation.~~
- 2. ~~The Stop Work Order shall require the property owner to immediately discontinue the use and shall impose a fine as provided in MCC.9053 pursuant to which the property owner must~~

cease all uses listed in the Stop Work Order. Penalties may be imposed pursuant to MCC .9053 for each 24 hour period in which work continues in violation of the Stop Work Order. The penalty shall be recorded as a lien against real property in the Office of the County Recorder if not paid within sixty days of notifying the property owner and violator of the issuance of the penalty.

3. The property owner shall submit an application or correct the violation within the grace period. If the property owner fails to submit an application or correct the violation within the grace period, the Code Enforcement Planner may impose a penalty in accordance with MCC 11.15.9053. The penalty shall be recorded as a lien against real property in the Office of the County Recorder if not paid within sixty days of notifying the property owner and violator of the issuance of the penalty.

4. If the property owner files an appeal under MCC .9052(D)(4), the property owner shall not resume the use(s) subject to the stop work order until such time as a Decision of Appeal has been issued and the Stop Work Order is removed from the property by the Planning Director.

5. The Planning Director or Code Enforcement Planner may require the placement of erosion and sediment control devices and/or other health and safety corrections to occur at his discretion.

(F) Notice of Violation; Occurrence; Other Remedies

1. Except as otherwise specifically provided in this ordinance, a Notice of Violation shall be used for violation of MCC 11.15, 11.45, 9.10 and 9.40.

2. Each day (24 hour period) a violation exists shall be a separate citable offense.

3. The remedies and procedures provided in this ordinance shall be in addition to any other remedy or procedure provided by any applicable law. In addition to any other remedy provided by law to the County, the County shall be entitled to its reasonable administrative costs and attorney fees. *[Amended 1998, Ord. 908 § III]*

(G) Judicial Review

Review of the Decision of Appeal of the Planning Director under this section by any aggrieved party, including the County of Multnomah, shall be by writ of review as provided in ORS 34.010—34.100 *[1998]*.

(H) Comprehensive Framework Plan and Zoning or Land Division Ordinance Interpretations

If the Notice of Violation involves a Comprehensive Framework Plan, Zoning or Land Division Ordinance interpretation by the Planning Staff, not previously decided by the Planning Commission or the Board of County Commissioners, in order to appeal Planning staff's interpretation, the property owner must include the request for interpretation by the Planning Commission in the appeal of the Notice of Violation. The property owner shall deposit with the Land Use Planning section at the time of appeal, the fee established for a Planning Commission Interpretation. The Planning Director shall initiate an action for an interpretation per MCC 11.15.9045 prior to the Decision of the Appeal. An interpretation by the Planning Commission shall be rendered within 45 days of initial Planning Commission meeting in which the item was presented. The Planning Director shall utilize the Planning Commission's Interpretation in making the determination of the Decision of Appeal.

~~(1) Reporting to the Planning Commission~~

~~The Land Use Planning section shall report to the Planning Commission on code enforcement activities every six months.~~

11.15.9053 Penalties

~~Violations as defined in MCC .9052 shall be subject to a fine of up to \$500.00 per day.~~

11.15.9055 Savings Clause

~~If the article, section, subsection, subdivision, phrase, clause, sentence or work in the ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of this ordinance, but shall be confined to the article, section, subsection, subdivision, phrase, clause, sentence or work held invalid or unconstitutional.~~

Section 13. The amendments to Chapter 38 Columbia River Gorge National Scenic Area shall be effective upon notification of approval by the Columbia River Gorge Commission and, if necessary, concurrence by the Secretary of Agriculture.

FIRST READING:

December 4, 2008

SECOND READING AND ADOPTION:

December 11, 2008



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

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