

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1032

Amending MCC Land Use Chapters 33 through 38 with Respect to Violations and Enforcement, and Declaring an Emergency

The Multnomah County Board of Commissioners Finds:

- a. The Multnomah County Land Use and Transportation Program propose amendments to Multnomah County Code Chapters 33 through 38 with respect to code compliance.
- b. The current enforcement procedures contained in MCC 33.0910, 34.0910, 35.0910, 36.0910, and 38.0910 provide for code enforcement planners to serve in an enforcement capacity and the Planning Director to hear appeals.
- c. Under the existing program framework there is a substantial backlog of unresolved zoning cases.
- d. The Planning Commission conducted two work sessions and two public hearings in consideration of the form of a new code compliance program with emphasis on voluntary compliance followed by increasingly vigorous enforcement mechanisms.
- e. The proposed amendment provides for a dedicated code compliance specialist to administer the code compliance program and a hearings officer to hear appeals and impose fines set by the Director. These amendments should reduce the backlog and dependence on planning staff for unresolved zoning violations.
- f. It is the County's intent to work with all property owners to investigate and attempt to resolve all code violations. However, code enforcement resources are sometimes limited and this code may be enforced on a priority system regardless of the order in which complaints are received. The following violations shall receive priority as resources allow:
 - violations that present an imminent threat to public health and safety;
 - violations affecting the environment;
 - violations within the National Scenic Area;
 - violations creating irreparable damage;
 - violations involving ongoing unpermitted construction;
 - violations for failure to comply with permits;
 - violations affecting a neighboring property;
 - a violation within a site that is considered a critical area, including, but not limited to a view-shed, habitat or landslide area; and
 - any court ordered enforcement action.

g. The Director of Business and Community Services will set criteria for determining fines and appeal and administrative fees as appropriate. The Director may adjust the fine depending on the nature of the violation, the violator's history of violations and the violator's cooperation in correcting the violation. The Director may choose from the following options:

- (1) A single fine; or
- (2) A single grace period with no fine assessed unless the violation continues past the expiration of that grace period; or
- (3) A daily fine until the violation has been corrected; or
- (4) A fine schedule established as part of the Hearing Officer's order.

Multnomah County Ordains as follows:

Section 1. MCC §§ 33.0910, 34.0910, 35.0910, 36.0605, 36.0910 and 38.0910 are amended to read as follows and MCC §§ 33.0915, 34.0915, 35.0915, 36.0915 and 38.0915 are repealed:

§ 33.0910 Violations, Enforcement Procedures and Fines

Multnomah County Code Chapter 37 provides the enforcement procedures and fines for violation of any provision of this chapter, state law; LCDC goals and rules applicable to the County under ORS 197.646 or the terms and conditions of any permit issued under any County code.

§ 34.0910 Violations, Enforcement Procedures and Fines

Multnomah County Code Chapter 37 provides the enforcement procedures and fines for violation of any provision of this chapter, state law; LCDC goals and rules applicable to the County under ORS 197.646 or the terms and conditions of any permit issued under any County code.

§ 35.0910 Violations, Enforcement Procedures and Fines

Multnomah County Code Chapter 37 provides the enforcement procedures and fines for violation of any provision of this chapter, state law; LCDC goals and rules applicable to the County under ORS 197.646 or the terms and conditions of any permit issued under any County code.

§ 36.0605 Enforcement

The Director of the Department of Business and Community Services (DBCS) and the Director's delegates shall be responsible for securing the enforcement of the provision of this Ordinance.

§ 36.0910 Violations, Enforcement Procedures and Fines

Multnomah County Code Chapter 37 provides the enforcement procedures and fines for violation of any provision of this chapter, state law; LCDC goals and rules applicable to the

County under ORS 197.646 or the terms and conditions of any permit issued under any County code.

§ 38.0910 Violations, Enforcement Procedures and Fines

Multnomah County Code Chapter 37 provides the enforcement procedures and fines for violation of any provision of this chapter, state law; LCDC goals and rules applicable to the County under ORS 197.646 or the terms and conditions of any permit issued under any County code.

Section 2. MCC Chapter 37 is amended to add §§ 37.0910 – 37.09XX as follows:

§ 37.0900* VIOLATIONS, ENFORCEMENT AND FINES

§ 37.0910 Definitions

As used in MCC 37.0910 – 37.09XX, the following words mean:

Days - Calendar days, not business days unless specifically provided otherwise.

Director - The Director of the Department of Business and Community Services or her/his delegates.

Hearings Officer Order - The imposition of a fine according to criteria set by the Director or a decision in the appeal of a Notice of Violation, which shall be signed by the respondent and property owner, if different.

Notice of Violation - A written notice given to a person whose action or failure to act constitutes a violation under MCC §§ 37.0915 and the property owner, if different. The Notice shall include assessed fines for such violation and the appeal rights and requirements.

Person means:

- (1) The owner, title holder, contract seller, contract buyer, possessor or user of the land upon which the violation is occurring; and/or, the person taking the action, or responsible for the conduct or omission which constitutes a violation under MCC § 37.0915;
- (2) The United States or agencies thereof, any state or state agency, 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; or
- (3) For the purposes of this ordinance, "person" also includes individuals who reside or conduct business or other activities in the unincorporated areas of Multnomah County.

Respondent means: The person alleged to have committed a violation or to be responsible for such violation.

§37.0915 Violations

Any use of land, land division or adjustment to property boundaries or other activity by a person in violation of any provision of:

(A) MCC Chapters 33, 34, 35, 36 and 38; §§ 29.001 – 29.011, 29.300 through 29.325 and 29.500 through 29.630; 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.

§ 37.920 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

The Director may adopt rules for the administration of the code compliance program.

The Director may appoint one or more Code Compliance Specialists (CCS) for purposes of administering the program. The Director may delegate the duties of the CCS to other staff of DBCS. 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.

§ 37.0930 Enforcement Levels

The levels of enforcement are:

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

§ 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) 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) 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) 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.

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

(A) The CCS may issue respondent, and property owner, if different, a Notice of Violation and may require the respondent and property owner, if different, to abate the violation and/or enter into a voluntary compliance agreement within a specified time period. The Notice of Violation shall contain: name and address of the person committing the violation and property owner, if different; address or location of the alleged violation; nature of violation, including, County Code provisions, statute or administrative rules section violated; relief sought; department initiating procedure, and the fine to be paid as a result of committing the violation.

(B) Respondent or property owner, if different, may admit the existence of a violation by paying the fine and correcting the violation. Payment of the fine does not relieve respondent or property owner of the requirement to correct the violation.

(C) If the violation is disputed, respondent or property owner may file a written request for an appeal hearing with the CCS within 14 days of the date when 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

(D) Notice of Violation may be served by personal service on respondent and property owner, if different. Notice of Violations may also be served by certified mail, return receipt requested through the United States Postal Service.

(E) The CCS may proceed directly into the state court system in any matter to secure compliance with the requirements of this Code if efforts to secure voluntary compliance have failed.

§ 37.0945 Emergency Enforcement

If the CCS determines that the violation presents an immediate danger to the public health, safety, welfare or substantial evidence of environmental harm including but not limited to, any discharge of pollutants to waters of the state that cause or contribute to a violation of applicable water quality standards, the CCS may require immediate remedial action. If the CCS is unable to serve a Notice of Violation on the respondent and property owner, if different, or, if after such service, the respondent or property owner refuse or are unable to remedy the violation, the CCS may proceed to remedy the violation by any means available under law, and the County shall be entitled to its reasonable administrative costs and attorney fees.

§ 37.0950 Failure to Appeal

If the respondent or property owner does not file a written appeal of the violation within 14 days of the date when the Notice of Violation is served or mailed, the CCS shall forward the Notice of Violation to the Compliance Hearings Officer for review and issuance of a final order imposing the fine assessed in the Notice and any administrative fees and costs.

§ 37.0955 Appeal

(A) Persons Authorized to Appeal Notice of Violation

(1) The Notice of Violation may be appealed by the respondent, property owner, the property owner's representative or other person who has been included as part of the Notice of Violation.

(2) A representative of the property owner must have documentation demonstrating that they are an authorized agent of the property owner.

(B) Notice of Hearing

(1) The notice shall contain the time, date, and place of the hearing. A copy of the Notice of Violation and a description of the appeal process and associated rights shall be attached to the notice.

(2) Notice shall be served on the respondent and property owner, if different, by personal service or certified mailed, return receipt requested at least 15 days prior to the hearing date. Notice is considered complete on the date of personal delivery or upon deposit in the U.S. mail. Notice will also be provided to surrounding properties within 750 feet of the subject property, complainant if known and other known interested parties.

(3) Failure of any person to receive notice properly given shall not invalidate or otherwise affect the proceedings under this subchapter.

(C) Appeal Hearing

(1) Hearings to determine whether a violation has occurred shall be held before the Hearings Officer. The County must prove the violation alleged by a preponderance of the evidence.

(2) The Hearings Officer shall order a person found in violation to comply within such time as the Compliance Hearings Officer may by order allow. The order may require such person to do any of the following:

- (a) Obtain any and all necessary permits, inspections and approvals;
- (b) Install any equipment necessary to achieve compliance;
- (c) Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
- (d) Reimburse the County for actual costs incurred in conjunction with the enforcement action;
- (e) Pay a civil fine for the violation and any fees and costs to the County;
- (f) Pay a reduced fine;
- (g) Undertake any other action reasonably necessary to correct the violation.

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

§ 37.0960 Enforcement of Hearing Officer Order

(A) Fines, fees and costs are payable on the effective date of the order and are a debt owed to the County, under ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If fines, fees or costs are not paid within 60 days after payment is ordered, the County may file and record the order in the County Clerk Lien Record.

(B) The County may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any order of the Hearings Officer, including, an action to obtain judgment for any civil fine, fees or costs imposed by such order.

§ 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) Maximum fines shall not exceed \$3,500 for each day of noncompliance; minimum fine 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.

§ 37.0970 Judicial Review.

Review of the final order of a Hearings Officer under this subchapter by any aggrieved party, including Multnomah County, shall be by writ of review as provided in ORS 34.010 through 34.100, unless the Hearings Officer makes a land use decision, in which case the land use decision may be reviewed by the Land Use Board of Appeals pursuant to ORS Chapter 197.

Any appeal of a Hearing Officer decision in the National Scenic Area may be reviewed by the Columbia River Gorge Commission.

Section 3 This ordinance, being necessary to implement new policies and process for outstanding enforcement of land use code violations and for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the ordinance shall take effect on May 6, 2004, pursuant to section 5.50 of the Charter of Multnomah County.

FIRST READING AND ADOPTION:

May 6, 2004

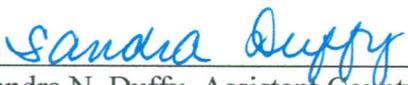


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney