

1                   BEFORE THE BOARD OF COUNTY COMMISSIONERS  
2                   FOR MULTNOMAH COUNTY, OREGON  
3                   **ORDINANCE NO. 905**

4  
5           An Ordinance deleting Enforcement Proceeding regulations contained in  
6 MCC 11.15.8135 and amending the Violation and Enforcement regulations  
7 contained in MCC 11.15.9052 for land use violations to increase the capability of  
8 the County to gain compliance with land use regulations.

9           (Underlined sections are new replacements; [~~bracketed~~] sections are deleted.)

10  
11 Multnomah County ordains as follows:

12  
13 Section I. Findings.

14  
15           (A) The current ordinance procedures contained in MCC 11.15.9052  
16 (Violations and Enforcement) contain two processes for land use violations.  
17 The Director of the Department of Environmental Services may enforce land  
18 use violations through a hearing with a County Hearings Officer pursuant to  
19 MCC .8135 (Enforcement Proceedings); or County Counsel may institute  
20 appropriate legal proceedings on behalf of the County at the request of the  
21 Director of Environmental Services. The current practice utilizes County  
22 Counsel.

23           (B) The result of the proposed ordinance amendment is to repeal MCC  
24 11.15.8135 and amend MCC 11.15.9052 to allow penalties to be assessed by  
25 the Land Use Planning section. The amendment of the procedures should  
26 reduce the backlog and dependence on County Counsel for unresolved zoning  
27 violations. In addition, the time period required to gain compliance for most

1 land use violations should be greatly reduced.

2 (C) On September 8, 1997 the Planning Commission held a public hearing  
3 pursuant to MCC 11.15. 8410 and recommended approval of the proposed  
4 ordinance amendment. Hearings before the Board of County Commissioners  
5 followed on April 2 and April 9, 1998. All interested persons were given an  
6 opportunity to appear and be heard at the hearings.

7  
8 Multnomah County Code Chapter 11.15 is amended to read as follows:

9  
10 Section II. Deletion of Enforcement Proceedings ordinance section MCC  
11 11.15.8135.

12  
13 A. Repeal section [MCC 11.15.8135 Enforcement Proceedings].

14 Section III. Amendment of the Violations and Enforcement ordinance section MCC  
15 11.15.9052.

16  
17 B. MCC 11.15.9052 Violations and Enforcement

18  
19 ~~[Any use of land in violation of any provision of MCC 11.15, or the terms and~~  
20 ~~conditions of any development permit by an operator, shall be punishable as~~  
21 ~~provided in MCC .9053.~~

22  
23 ~~(A) The Department of Environmental Services must give written notice of any~~  
24 ~~violation to the operator of the violation. Failure of the operator to receive the~~  
25 ~~notice of violation does not invalidate any enforcement actions taken by the~~  
26 ~~County.~~

27 ~~(B) The provisions of MCC 11.15, or a land use decision made or conditions of a~~

land use approval applied thereunder may be enforced in one or more of the following ways:

(1) By the Director of the Department of Environmental Services pursuant to MCC .8135; or

(2) County Counsel may institute appropriate legal proceedings on behalf of the County at the request of the Director of Environmental Services.

~~(C) — 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 acting under the provisions of MCC .8135, including, but not limited to, its suit or action to obtain judgment for any civil penalty imposed by an order of the Hearings Officer.]~~

Any use of land in violation of any provision of MCC 11.15, MCC 11.45, MCC 9.10 and MCC 9.40 or the terms and conditions of any development permit by a person shall be punishable as provided by MCC 11.15.9052(D)(E) & (F).

(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": written notice mailed to operator /or property owner when the Code Enforcement Planner identifies violations of any provision of the Multnomah County Code or the terms and conditions of a development permit.
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

1           Ordinance.

2           4. "Person" includes:

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

10              b) The owner, title holder, contract seller, or contract buyer of the land  
11              upon which the violation is occurring, is equally responsible for the  
12              violation of County Ordinance, as is the possessor of the land, user  
13              of the land, or the person who is taking the action, conduct or  
14              omission which constitutes a violation of any County Ordinance.

15           5. "Decision of Appeal": The decision of the Planning Director in the appeal  
16           of the Notice of Violation.

17           6. "Grace Period": Time allotted to a property owner to correct a zoning  
18           violation without assessment of penalties, additional code enforcement  
19           inspections or legal action being taken for the cited violation during that  
20           assigned time period. A Grace Period begins from the date the Notice of  
21           Violation is sent or posted. A grace period for a noticed violation does not  
22           grant a property owner the right to continue a use for the time period  
23           specified or prevent inspection or citation of new or other land use  
24           violations.

25  
26           (B) Compliance Required

1 No application for a land use permit or division of land shall be approved for a site,  
2 which is subject to an enforcement action pursuant to the provisions of this section.  
3 A land use permit or division of land may only be issued if it corrects the land use  
4 violation contained in the Notice of Violation.

5  
6 (C) Code Enforcement Planner  
7

8 The Planning Director shall appoint one or more persons to act as the code  
9 enforcement planner(s) for purposes of issuing Notice of Violation(s), and for the  
10 enforcement of MCC 11.15, MCC 11.45, MCC 9.10 and MCC 9.40 or the terms  
11 and conditions of any development permit by an operator or property owner.  
12

13 (D) Enforcement Action  
14

15 (1) An enforcement action may be initiated by the Land Use Planning staff on  
16 its own action, when the Division of Transportation and Land Use  
17 Planning Division receives a complaint, known or anonymous or receives  
18 a directive from the Board of County Commissioners. All complaints are  
19 to be kept confidential, until such time as the violation is closed.  
20

21 (2) If the Code Enforcement Planner determines the existence of a violation,  
22 the Code Enforcement Planner shall send a Notice of Violation to the  
23 property owner and if known, the operator/tenant.  
24

25 a) The notice shall outline the nature of the violation(s) and set forth  
26 options to correct the violation(s).

27 b) The notice shall notify the property owner and the operator/tenant

1 that failure to comply with the Ordinance within thirty days of the  
2 date of the Notice of Violation will result in enforcement under  
3 MCC 11.15.9052(D)(3) and that a penalty of up to \$500.00 per day  
4 may be assessed per MCC 11.15.9053.

5 c) A statement shall also notify the property owner and the  
6 operator/tenant of the right to appeal the determination of a land use  
7 violation and the time limits established by this section.

8 d) If notice is mailed, the compliance time shall be extended by an  
9 additional three days.

10  
11 (3) If the property owner and operator/tenant fails to correct the violation  
12 within the time given, the Code Enforcement Planner may issue a penalty  
13 in accordance with MCC 11.15.9053. Said penalty shall be recorded as a  
14 lien against real property in the Office of the County Recorder if not paid  
15 within sixty days of notification of the property owner and operator/tenant  
16 of the issuance of the penalty.

17  
18 (4) The property owner or his representative may file an appeal of the Notice  
19 of Violation with the Land Use Planning section within the initial 30-day  
20 grace period as stipulated in the Notice of Violation. The appellant has 45  
21 days from the date of filing the appeal to provide written documentation to  
22 the Code Enforcement Planner in support of the appeal. All enforcement  
23 actions, except for actions taken under .9052(E), will be stayed until the  
24 Planning Director reviews the written testimony and determines by a  
25 preponderance of the evidence that a violation has occurred. In the event  
26 that the Planning Director finds in the favor of the appellant, the Notice of  
27 Violation will be rescinded.

1 (a) Upon filing of an appeal by the property owner, written notice and  
2 opportunity to comment on the appeal of the Notice of Violation shall  
3 be provided to the complainant, if known, and the surrounding property  
4 owners within:

5 (1) 100 feet of the subject property when inside the Urban Growth  
6 Boundary; or

7 (2) 250 feet of the subject property where the subject property is  
8 outside the Urban Growth Boundary and not within a farm or forest  
9 resource zone; or

10 (3) 500 feet of the subject property where the subject property is within  
11 a farm or forest resource zone.

12 (b) The Planning Director may consider any other written testimony  
13 submitted in support of and in opposition to the Notice of Violation.

14 (c) After review of the written testimony, the Planning Director shall serve  
15 the property owner with a Decision of Appeal; and

16 (d) If the Notice of Violation is upheld, penalties as provided in .9053 shall  
17 be assessed by the Planning Director;

18 (e) The Planning Director may delay additional penalties at the time of the  
19 Decision of Appeal by specifying an additional grace period to allow  
20 the property owner to remove the violation from the property. If an  
21 additional grace period is granted, it shall not be less than five days.

22 (f) Said penalty shall be recorded as a lien against real property in the  
23 Office of the County Recorder if not paid within sixty days of  
24 notification of the property owner and operator/tenant of the issuance  
25 of the penalty.

26  
27 (5) If the property owner chooses to correct the violation by applying for a

1 land use permit, penalties shall accrue during the application process time  
2 period as provided in MCC .9053.

3  
4 (a) Penalties assessed from the date of formal application for a land use  
5 permit to completion of the project through final inspection may be  
6 waived by the Planning Director provided the property owner  
7 completes the application process within 180 days of filing and  
8 complies with the timeline established as a condition of approval of the  
9 project and if no additional violations occur during the completion of  
10 the conditions of approval.

11 (b) A timeline for compliance with the land use permit shall be included as  
12 a condition of approval of the land use permit and, if possible, shall not  
13 extend past a single construction season.

14  
15 (E) Emergency Enforcement

16  
17 (1) If the Code Enforcement Planner determines, as a result of a site visit  
18 by the Code Enforcement Planner or Code Enforcement Inspector, that  
19 the violation is such that irreparable harm will result, will be difficult to  
20 correct if allowed to continue, or presents an immediate health and  
21 safety danger, the Code Enforcement Planner may, without notice,  
22 issue a Stop Work Order which shall also serve as the Notice of  
23 Violation.

24  
25 (2) The Stop Work Order shall require the property owner to immediately  
26 discontinue the use and shall impose a fine as provided in MCC .9053  
27 pursuant to which the property owner must cease all uses listed in the

1 Stop Work Order. Penalties may be imposed pursuant to MCC .9053  
2 for each 24-hour period in which work continues in violation of the  
3 Stop Work Order. Said penalty shall be recorded as a lien against real  
4 property in the Office of the County Recorder if not paid within sixty  
5 days of notification of the property owner and operator/tenant of the  
6 issuance of the penalty.

7  
8 (3) The property owner shall make land use application or correct the  
9 violation within 15 days of the Stop Work Order being issued. If the  
10 property owner fails to make land use application or correct the  
11 violation within the 15-day time period, the Code Enforcement Planner  
12 may issue a penalty in accordance with MCC 11.15.9053. Said  
13 penalty shall be recorded as a lien against real property in the Office of  
14 the County Recorder if not paid within sixty days of notification of the  
15 property owner and operator/tenant of the issuance of the penalty.

16  
17 (4) If the property owner files an appeal under .9052(D)(4), the property  
18 owner shall not resume the discontinued use(s) until such time as a  
19 Decision of Appeal has been issued and the Planning Director removes  
20 the Stop Work Order from the property.

21  
22 (5) The Planning Director or Code Enforcement Planner may require the  
23 placement of erosion and sediment control devices and/or other health  
24 and safety corrections to occur at his discretion.

25  
26 (F) Notice of Violation; Occurrence; Other Remedies  
27

- 1       1. Except as otherwise specifically provided in this ordinance, a Notice of  
2       Violation shall be used for violation of MCC 11.15, 11.45, 9.10 and 9.40.  
3
- 4       2. Each day (24-hour period) a violation exists shall be a separate citable  
5       offense.  
6
- 7       3. The remedies and procedures provided in this ordinance shall be in  
8       addition to any other remedy or procedure provided by any applicable law.  
9       (a) In addition to any other remedy provided by law to the County, the  
10      County shall be entitled to its reasonable attorney fees and costs.  
11

12 (G) Judicial Review  
13

14 Review of the Decision of Appeal of the Planning Director under this section by any  
15 aggrieved party, including the County of Multnomah, shall be by writ of review as  
16 provided in ORS 34.010 - 34.100.  
17

18 (H) Comprehensive Framework Plan and Zoning or Land Division Ordinance  
19 Interpretations  
20

21 If the Notice of Violation involves a Comprehensive Framework Plan, Zoning or  
22 Land Division Ordinance interpretation by the Planning Staff, not previously  
23 decided by the Planning Commission or the Board of County Commissioners, in  
24 order to appeal Planning staff's interpretation, the property owner must include the  
25 request for interpretation by the Planning Commission in the appeal of the Notice of  
26 Violation. The property owner shall deposit with the Land Use Planning section at  
27 the time of appeal, the fee established under MCC 11.15.9010 for a Planning  
28 Commission Interpretation. The Planning Director shall initiate an action for an

1 interpretation per MCC 11.15.9045 prior to the Decision of the Appeal. An  
2 interpretation by the Planning Commission shall be rendered within 45 days of  
3 initial Planning Commission meeting in which the item was presented. The Planning  
4 Director shall utilize the Planning Commission's Interpretation in making the  
5 determination of the Decision of Appeal.

6  
7 (I) Reporting to the Planning Commission

8  
9 The Land Use Planning section shall report to the Planning Commission on code  
10 enforcement activities every six months.

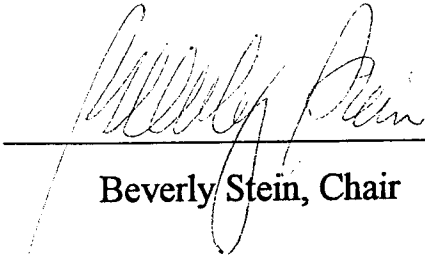
11  
12 ADOPTED this 23rd day of April, 1998, being the date its second reading before  
13 the Board of County Commissioners of Multnomah County.



20  
21  
22  
23  
24  
25

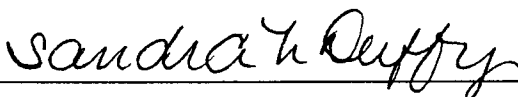
BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

26  
27  
28

  
Beverly Stein, Chair

REVIEWED.

THOMAS SPONSER, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra Duffy, Chief Assistant Counsel