

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~~

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

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

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

7 ~~(C) — The County may institute appropriate suit or legal action, in law or equity,~~
8 ~~in any court of competent jurisdiction to enforce the provisions of any order of the~~
9 ~~Hearings Officer acting under the provisions of MCC .8135, including, but not~~
10 ~~limited to, its suit or action to obtain judgment for any civil penalty imposed by an~~
11 ~~order of the Hearings Officer.]~~

12
13 Any use of land in violation of any provision of MCC 11.15, MCC 11.45, MCC
14 9.10 and MCC 9.40 or the terms and conditions of any development permit by a
15 person shall be punishable as provided by MCC 11.15.9052(D)(E) & (F).

16
17 (A) Definitions

- 18
19 1. "County Ordinance" means all ordinances duly enacted by Multnomah
20 County, including but not limited to zoning, planning, and building
21 ordinances, as specified above.
- 22 2. "Notice of Violation": written notice mailed to operator /or property
23 owner when the Code Enforcement Planner identifies violations of any
24 provision of the Multnomah County Code or the terms and conditions of a
25 development permit.
- 26 3. "Violator" means any person who has admitted violation of a County
27 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

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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.

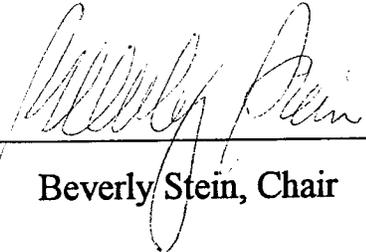
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7 (I) Reporting to the Planning Commission

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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.



14
15 BOARD OF COUNTY COMMISSIONERS
16 FOR MULTNOMAH COUNTY, OREGON

17
18 
19 _____
20 Beverly Stein, Chair

21 REVIEWED.

22
23 THOMAS SPONSLER, COUNTY COUNSEL
24 FOR MULTNOMAH COUNTY, OREGON

25
26 By 
27 _____
28 Sandra Duffy, Chief Assistant Counsel