

ORDINANCE BILL NO. 3 FOR 2010

ORDINANCE NO. 1214

AN ORDINANCE ESTABLISHING PROCEDURES TO FOLLOW WHEN ISSUING MONETARY PENALTIES FOR BUILDING CODE VIOLATIONS, AMENDING ORDINANCE 1204 RELATING TO BUILDING CODES AND DECLARING A NEED FOR AN EXPEDIENCY CLAUSE.

WHEREAS the City of Sweet Home administers a building inspection program under ORS 455.150, and

WHEREAS Oregon Senate Bill 915 establishes procedures for cities to follow when issuing monetary penalties for building code violations, and

WHEREAS the City of Sweet Home desires to set forth in Sweet Home Municipal Code the procedures for monetary penalties being assessed for building code violations in conformity with state law, and

WHEREAS it is deemed to be in the best interest of the City to have a process for the assessment of monetary penalties for building code violations.

NOW, THEREFORE, THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

Section 1. Sweet Home Municipal Code Section 15.01.150 is amended to read as follows:

15.01.150 VIOLATION--PENALTY.

- A. Except for violations of building codes as adopted in Sweet Home Municipal Code 15.03.010, failure to comply with any of the provisions and requirements of Sweet Home Municipal Code Title 15, shall constitute a violation and may be prosecuted under the provisions of Sweet Home Municipal Code Chapter 9.36.
- B. Abatement of a violation of this Title can be accomplished by any remedy open to the City, including using the procedures set out in Sweet Home Municipal Code Chapter 8.04 for the abatement of nuisances.
- C. Each day that a violation exists is a separate offense.

Section 2. Sweet Home Municipal Code Section 15.03.010 is amended to add the following:

- A. Failure to comply with any of the provisions and requirements of the codes adopted in this Section shall be subject to administrative civil penalties, set by City Council Resolution, and shall be processed in accordance with the procedures set forth in this Section.
 1. In addition to the civil penalties, a condition caused or permitted to exist in violation of the codes adopted in this Section is a public nuisance and may be abated by any of the procedures set forth under law.

2. The penalties and remedies provided in this Section are not exclusive and are in addition to other penalties and remedies available to the City under any ordinance, statute or law. However, the City shall not issue a citation to a court for a monetary penalty to be assessed for a violation of this Section.
3. Each day that a violation of a provision of this Section exists constitutes a separate violation.

B. Upon a determination by the Building Official that any person, firm, corporation or other entity however organized has violated a provision of this Section, or a rule adopted thereunder, the Building Official may cause issuance of a notice of civil violation and imposition of an administrative civil penalty to the violator and/or the owner of the property as per this Section.

1. Prior to issuing an order to correct a violation under this Section, the Building Official must pursue reasonable attempts to secure voluntary correction.
2. Prior to issuing a notice of civil violation and imposing an administrative civil penalty under this Section, the Building Official shall issue an order to correct a violation to the violator and owner.
 - a. Except where the Building Official determines that the violation poses an immediate threat to the health, safety, environment, or public welfare, the time for correction shall be not less than seven calendar days.
3. Following the date or time by which the correction must be completed as required by the order to correct a violation, the Building Official shall determine whether such correction has been completed.
 - a. If the required correction has not been completed by the date or time specified in the order, the Building Official may issue a notice of civil violation and impose an administrative civil penalty to the violator and/or the owner to whom an order to correct was issued as per this Section.
4. Any proposed administrative civil penalty must be reviewed by the City Manager prior to notice of civil penalty being served or sent as set forth herein.
5. In imposing an administrative civil penalty, the Building Official shall consider the following:
 - a. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
 - b. Any prior violations of statutes, rules, orders and permits;
 - c. The gravity and magnitude of the violation;
 - d. Whether the violation was repeated or continuous;
 - e. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act; and
 - f. The violator's cooperativeness and efforts to correct the violation.
6. A notice of civil violation under this Section must be served either by personal service or sent by Certified Mail and sent by first class mail. Notice will be deemed received for purposes of any time computations

under this Section three days after the date mailed for Oregon addresses and seven days after the date mailed for addresses outside of Oregon. Every notice shall include the following:

- a. Specific reference to the code provisions or other identifying references involved in the violation.
 - b. A statement of the matter asserted or charged.
 - c. A statement of the amount of the penalties imposed.
 - d. The date on which the order to correct was issued and time by which correction was to be made.
 - e. A statement of the basis for concluding that the violation was knowing, intentional, or repeated.
 - f. A statement of the right to appeal the civil penalty to the City Council, including a description of the process and the deadline by which such an appeal must be filed.
7. Whomever received a notice of civil penalty may appeal the penalty to the City Council.
 8. A civil penalty imposed shall become final upon expiration of the time for filing an appeal, unless a timely appeal of the penalty has been filed.
 9. Each day the violator fails to remedy the code violation shall constitute a separate violation.
 10. The civil administrative penalty authorized by this Section shall be in addition to the following:
 - a. Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement.
 - b. Any other actions authorized by law provided that the City shall not issue a citation to Municipal Court for a violation under SHMC 15.03.010 to assess monetary penalties.
 11. A person, firm, corporation or other entity however organized aggrieved by an administrative action of the Building Official taken pursuant to SHMC 15.03.010 may, within fourteen (14) days after the date of notice of civil penalty, appeal in writing to the Building Official.
 - a. The written appeal shall be accompanied by an appeal fee, as set by City Council Resolution and shall include at least the following:
 - (1) The name and address of the appellant.
 - (2) The nature of the determination being appealed.
 - (3) The reason the determination is incorrect.
 - (4) What the correct determination of the appeal should be.
 - b. The penalty shall become final, if at all, upon issuance of the City Council's decision affirming the imposition of the administrative civil penalty.
 - c. If a notice of revocation of a permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal.
 12. An appeal shall be heard by the City Council within thirty (30) days of the receipt of the written appeal.

13. At least ten (10) days prior to the hearing, the City shall mail notice of the time and location of the appeal hearing to the appellant.
14. The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Council deems appropriate.
 - a. At the hearing, the appellant may present testimony and oral argument personally or by counsel.
 - b. The burden of proof shall be on the Building Official.
 - c. The rules of evidence as used by courts of law do not apply.
15. The City Council shall issue a written decision within seven (7) days of the hearing date.
 - a. The written decision of the Council is final.
16. Other than as provided in this Section, the appeal fee is not refundable.
 - a. The Council may make a determination of the motion of the appellant that the appeal fee shall be refunded to the appellant upon a finding by the Council that the appeal was not frivolous.
17. Failure to pay a penalty imposed hereunder within ten (10) days after the penalty becomes final shall constitute a violation of this Section. Each day the penalty is not paid shall constitute a separate violation. The City shall collect the penalty by any administrative or judicial action or proceeding as allowed by the Section, or other provisions of City code or state statutes.
18. If the administrative civil penalty is not paid within 30 days, the City Manager shall cause a written notice to be given to the person in charge of the property, stating the amount of penalty and administrative costs and the amount shall be made a lien on the lot or parcel of land. The City Manager shall direct the City Finance Director to enter the charges in the City lien docket as a lien upon the lot or parcel of land so affected.
 - a. Each such lien shall be a lien upon the lot or parcel of land against which it is charged in the city lien docket and shall be subject to collection and foreclosure and shall bear interest at the rate of 9% per annum. Interest shall accrue 30 days from the date of the entry of the lien in the City lien docket.
 - b. As an additional remedy for the collection of the penalty, the City may proceed against the responsible party personally.
19. In addition to enforcement mechanisms authorized elsewhere in this Section, failure to pay an administrative civil penalty imposed pursuant to this Section shall be grounds for withholding issuance of requested permits, issuance of a stop work order, if applicable, or revocation or suspension of any permits or certificates of occupancy.

Section 3. Sweet Home Municipal Code Section 15.03.010 is amended by deleting therefrom the 1997 International Code Council Uniform Code for the Abatement of Dangerous Buildings.

Section 4. Sweet Home Ordinance 1204 is hereby amended to conform to the amendments as set forth herein.

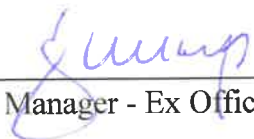
Section 5. Expediency Clause. Whereas it is in the interest of the residents of the City to ensure that Building Codes are enforced within the City and clear and objective standards for the processes used in the administration of civil penalties for violations of the Codes, it is hereby adjudged and declared that existing conditions are such that this ordinance is needed to be immediately enforced upon its passage. Therefore, this ordinance shall take effect and be in full force and effect from and after its passage and approval of the Mayor.

PASSED by the City Council and approved by the Mayor this 9th day of February, 2010.



Mayor

ATTEST:



City Manager - Ex Officio City Recorder