

ORDINANCE NO. 808

AN ORDINANCE RELATING TO THE BUILDING CODE AND AMENDING SCAPPOOSE CODE SECTION 15.04.030 AND CREATING NEW SECTIONS 15.04.033 AND 15.04.035 AND 15.04.037 AND DECLARING AN EMERGENCY

The City of Scappoose ordains as follows:

Section 1. Section 15.04.030 of the Scappoose Code is amended by the addition of the following to read as follows:

15.04.030 Violation – Penalty.

A. It is unlawful for any person, firm, corporation or other entity to erect, construct, enlarge, alter, repair, move, improve, remove, convert to, demolish, equip, use, occupy or maintain any building or structure in the city, or cause the same to be done, contrary to or in violation of any of the provision of this chapter.

B. Violation of a provision of this chapter shall be subject to an administrative civil penalty not to exceed \$5,000 or \$1,000 per day for a continuous violation.

C. Each day that a violation of a provision of this ordinance exists constitutes a separate violation.

D. In addition to the above penalties, a condition caused or permitted to exist in violation of this ordinance is a public nuisance and may be abated by any of the procedures set forth under law.

E. 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.

F. Stop Work Order. Whenever any work is being done contrary to the provisions of the Oregon Structural Specialty Code, One and Two Family Dwelling Specialty Code, Oregon Mechanical Specialty Code, Oregon State Plumbing Specialty Code, and the Oregon Manufactured Dwelling Standard, or other pertinent laws or ordinances implemented through the enforcement of these codes, the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done. Any such person(s) shall forthwith stop such work until authorized by the building official to continue or proceed with the work.

Section 2. The Scappoose Code is amended to add a new Section 15.04.033 which shall read as follows:

Section 15.04.033 Building Official - Authority to Impose Administrative Civil Penalty.

A. In addition to, and not in lieu of, any other enforcement mechanism authorized by this chapter, upon a determination by the building official that any person, firm, corporation or other

entity however organized has violated a provision of this chapter or a rule adopted thereunder, the building official may issue a notice of civil violation and impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (A) to (K) of this section. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.

B. Prior to issuing an order to correct a violation under this section, the building official may pursue reasonable attempts to secure voluntary correction.

C. 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 one or more of the responsible persons. Except where the building official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five calendar days.

D. Following the date or time by which the correction must be completed as required by an order to correct a violation, the building official shall determine whether such correction has been completed. 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 each responsible persons to whom an order to correct was issued.

E. Notwithstanding subsections (B) and (C), the building official may issue a notice of civil violation and impose an administrative civil penalty without having issued an order to correct the violation or made attempts to secure voluntary correction where the building official determines that the violation was knowing or intentional or a repeat of similar violation.

F. In imposing an administrative civil penalty authorized by this section, the building official shall consider:

1. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
2. Any prior violations of statutes, rules, orders, and permits;
3. The gravity and magnitude of the violation;
4. Whether the violation was repeated or continuous;
5. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
6. The violator's cooperativeness and efforts to correct the violation; and
7. Any relevant rule of the building official.

G. Any notice of a civil violation that imposes an administrative civil penalty under this section shall either be served by personal service or shall be sent by registered or certified mail

and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside this state. Every notice shall include:

1. Reference to the particular code provision or rule involved;
2. A short and plain statement of the matters asserted or charged;
3. A statement of the amount of the penalty or penalties imposed;
4. The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection (E), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
5. A statement of the party's right to appeal the civil penalty to the City Manager or the Manager's designee.

H. Any person, firm, corporation or other entity however organized who is issued a notice of civil penalty may appeal the penalty to the City Manager or the Manager's designee. The City Manager's designee shall not be the building official or building inspector. The provisions of Section 15.04.035 of this code shall govern any requested appeal.

I. A civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the City Manager or the Manager's designee pursuant to, and within the time limits established by, Section 15.04.035A.

J. Each day the violator fails to remedy the code violation shall constitute a separate violation.

K. The civil administrative penalty authorized by this section shall be in addition to:
(1) Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement, and
(2) Any other actions authorized by law.

Section 3. The Scappoose Code is amended to add a new section 15.04.035 which shall read as follows:

Section 15.04.035 – Appeal Procedures.

A. A person, firm, corporation or other entity however organized aggrieved by an administrative action of the building official taken pursuant to any section of this code that authorizes an appeal under this section may, within 15 days after the date of notice of the action, appeal in writing to the building official. The written appeal shall be accompanied by an appeal fee and shall include:

1. The name and address of the appellant;

2. The nature of the determination being appealed;
3. The reason the determination is incorrect; and
4. What the correct determination of the appeal should be.

If a person, firm, corporation or other entity however organized appeals an administrative civil penalty to the City Manager or to the Manager's designee, the penalty shall become final, if at all upon issuance of the decision of the City Manager or the Manager's designee affirming the imposition of the administrative civil penalty.

B. If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

C. Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Manager or the Manager's designee within 30 days of the receipt of the notice of intent to appeal. At least 10 days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

D. The City Manager or the Manager's designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Manager or the Manager's designee deem appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The burden of proof shall be on the building official. The rules of evidence as used by courts of law do not apply.

E. The City Manager or the Manager's designee shall issue a written decision within 10 days of the hearing date. The written decision of the City Manager or the Manager's designee is final.

F. Other than as provided in this subsection, the appeal fee is not refundable. The City Manager or the Manager's designee may make a determination on the motion of the appellant that the appeal fee shall be refunded to the appellant upon a finding by the City Manager or the Manager's designee that the appeal was not frivolous.

G. Failure to pay a penalty imposed hereunder within 10 days after the penalty becomes final as provided in subsection (A) shall constitute a violation of this code.

Each day the penalty is not paid shall constitute a separate violation. The building official is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by Section 15.04.037, other provisions of this code, or state statutes.

Section 4. The Scappoose Code is amended to add a new Section 15.04.037 which shall read as follows:

Sec. 15.04.037 – Unpaid Penalties

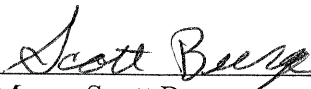
A. Failure to pay an administrative penalty imposed pursuant to this code within 10 days after the penalty becomes final shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The building official is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (B) below, other provisions of this code, or state statutes.

B. If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this code resulting from prohibited use or activity on real property, and the penalty remains unpaid 30 days after such penalty becomes final, the building official shall assess the property the full amount of the unpaid fine and shall enter such assessment as a lien. At the time such an assessment is made, the building official shall notify the responsible person that the penalty has been assessed against the real property upon which the violation occurred and has been entered. The lien shall be enforced in the same manner as all City liens. Interest shall commence from the date of entry of the lien in the lien docket.

C. In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to this code shall be grounds for withholding issuance of requested permits or licenses, issuance of stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

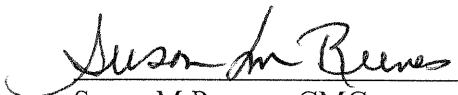
Section 5. It is necessary for the public health, safety and general welfare that this ordinance take effect immediately; therefore, an emergency is declared to exist and this ordinance shall be effective upon the date of its adoption.

Passed and adopted by the City Council this 21st day of December, 2009 and signed by the Mayor and City Recorder in authentication of its passage.



Mayor Scott Burge

Attest:



Susan M Reeves, CMC
City Recorder

