

KLAMATH COUNTY BOARD OF COMMISSIONERS

KLAMATH COUNTY, OREGON

**IN THE MATTER OF AMENDING THE)
KLAMATH COUNTY CODE, CHAPTER 700) ORDINANCE NO. 28.11
IN ACCORDANCE WITH SENATE BILL 915)
REGARDING ASSESSMENT OF CIVIL PENALTIES)
FOR BUILDING CODE VIOLATIONS)**

WHEREAS, In accordance with Oregon Senate Bill 915, enacted by the People of the State of Oregon and added to ORS Chapter 455, counties may not assess a civil penalty for a violation under a building inspection program unless the county provides an administrative process other than a judicial proceeding, and

WHEREAS, The Board of County Commissioners may appoint a Compliance Hearings Officer to serve at the pleasure of the Board to adjudicate civil penalties proceedings, and

WHEREAS, The Board of County Commissioners finds it is in the best interest of the County to revise the Klamath County Code, Chapter 700, *Building Code Regulations*, to appoint a Compliance Hearings Officer that will work through the dispute resolution process between the Klamath County Building Department and the public.

NOW, THEREFORE THE BOARD OF COUNTY COMMISSIONERS ORDAINS THAT THE CURRENT CHAPTER 700, BUILDING CODE REGULATIONS, IS HEREBY REVISED TO READ AS FOLLOWS:

**DIVISION 7
BUILDING**

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**CHAPTER 700
BUILDING CODE REGULATIONS**

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- Ordinance No. 28.05 - 02/21/90
- Ordinance No. 28.06 - 06/02/93
- Ordinance No. 28.07 - 06/04/97
- Ordinance No. 28.08 - 12/08/98
- Ordinance No. 28.10 - 04/05/2005
- Ordinance No. 28.11 - 10/25/2016

**CHAPTER 700
BUILDING CODE REGULATIONS**

ADMINISTRATION

700.001 Building Program. The County shall provide a program of building codes administration, including plan review, permit issuing, and inspection for structural, electrical, mechanical and plumbing work. The Building Official, under the supervision of the Community Development Director, or Board of County Commissioners in absence of Director, shall administer the program.

700.010 Designation of Building Official. In accordance with ORS 455.150, there is hereby appointed a Building Official for Klamath County to administer and enforce the building program.

700.020 Compliance Hearings Officer. In accordance with Oregon Senate Bill 915, enacted by the People of the State of Oregon and added to ORS Chapter 455, Klamath County may not assess a civil penalty for a violation under a building inspection program unless the County provides an administrative process other than a judicial proceeding in a court of law, that affords the party an opportunity to challenge the civil penalty assessment before an individual, department or body that is other than the municipality's building inspector or building official.

APPOINTMENT AND DUTIES

- A. The Board of County Commissioners may appoint the Compliance Hearings Officer to serve at the pleasure of the Board (ORS 215.406).
- B. The Compliance Hearings Officer shall be appointed solely with regard to their qualifications for the duties of the position and shall have such training and experience as will qualify him or her to conduct hearings on the building inspection program matters and other duties conferred upon him or her.
- C. The Compliance Hearings Officer may act on behalf of the Board of County Commissioners to adjudicate civil penalty proceedings under this chapter.

D. In the absence of a Compliance Hearings Officer the hearing must be rescheduled to the next available time and date.

BUILDING CODES

700.030 Codes Adopted. Except as otherwise provided in this chapter, the following codes, standards and rules are adopted and shall be in force and effect as part of the Klamath County Code:

- (1) Under the authority of ORS 455.153, those specialty codes and building requirements adopted by the state which the County is granted authority to administer, including:
 - a. The Oregon Structural Specialty Code;
 - b. The Oregon Mechanical Specialty Code;
 - c. The Oregon Plumbing Specialty Code;
 - d. The Oregon Electrical Specialty Code;
 - e. The Oregon Residential Specialty Code;
 - f. The Oregon Manufactured Dwelling and Park Specialty Code;
 - g. The recreational park and organization camp rules;
 - h. The Oregon Energy Efficiency Specialty Code;
 - i. The Oregon Solar Installation Specialty Code and Commentary;
 - j. The Oregon Reach Code;
 - k. The Oregon Fire Code.

- (2) Uniform codes as published by the International Conference of Building Officials including:
 - a. Uniform Housing Code - 1997;

b. Uniform Code for the Abatement of Dangerous Buildings
- 1997;

c. Uniform Code for Building Conservation - 1997.

- (3) At least one copy of each of these codes shall be kept by the Building Official and be available for inspection upon request.

700.040 Maintenance. All buildings and structures, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards that are required by this Code shall be maintained in conformance with the code edition under which installed. The owner or his designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the Building Official may cause any structure to be re-inspected.

PERMIT ISSUANCE

700.050 Permits Issuance. The Building Official shall check the application, plans, and specifications filed by an applicant for a permit. Prior to the issuance of any building permit, the Building Official shall require the applicant to obtain the approval of the County Planning Department and, where the building is to be served by a septic tank or similar system, by the On-Site Sanitation Department. The Building Official may also require the approval of such other County Departments or other agencies, as he deems appropriate.

If the Building Official is satisfied that the work described in an application for permit and the plans filed therewith conform to the requirements of this Code, sanitation and health requirements as stipulated by the controlling agencies, and other pertinent laws and ordinances then in effect, and that the fee requirements have been met, he shall issue a permit therefore to the applicant.

700.060 City Certification. Plans submitted for County review for building within a city shall contain a certificate or written approval showing they have been reviewed by the city for compliance with zoning and other land use or development regulations, including subdivision, partitioning and sanitary

regulations. The certification shall identify building requirement factors used by the city including occupancy.

FEES AND REFUNDS

700.070 Fees. Fees for plan review, permits, and inspections shall be determined periodically by Order of the Board of County Commissioners. The Building Official may from time to time recommend to the Board of Commissioners, reasonable permit surcharges for administration, operation, and technology expenses incurred by the Building Division. The Board of Commissioners may, after notice and public hearing, adopt reasonable fees to be charged, based upon costs of Building Division operations. The order setting such new fees shall specify the effective date of such charge. All fees and forms must follow the Consistent Forms and Fee Methodology set by the Consistent Forms and Fees Committee within the Oregon State Building Codes Division; in OAR 918-050.

700.080 Refunds. All fees are nonrefundable, except in cases when the processing of an application was terminated prior to the incurring of any substantial administrative expenses. The amount of refund shall be determined by the Building Official and shall be based upon the proportion of staff time allotted to processing the permit relative to complete processing of a permit.

VIOLATIONS

700.090 Violation-Penalty-Remedy. It is unlawful and a civil infraction for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy or maintain any building, structure or mobile home in the areas of the County under the jurisdiction of the County, or cause the same to be done, contrary to or in violation of any of the provisions of KCC 700 or any specialty code or building requirements administered by the County pursuant to ORS 455.153.

Violation of any provision of KCC 700 or any specialty code or building requirement administered by the County pursuant to ORS 455.153 shall be subject to an administrative civil penalty as a Class A violation.

A civil penalty imposed under this chapter shall become final upon expiration of the time for filing an appeal, unless the

responsible person appeals the penalty to the Compliance Hearings Officer pursuant to and within the time limits established by KCC 700.092.

The civil administrative penalty authorized by this section shall be in addition to:

- (A) Assessments or fees for any costs incurred by the County in remediation, cleanup, or abatement;
- (B) Any hourly investigative fees charged for initial investigation during site visit;

Failure to pay an administrative penalty imposed under this code within 15 days after the penalty becomes final is a violation of this code. The building official has authorization to assign the unpaid penalty to the collection agency as outline in 700.093 by proceeding authorized by KCC 700.090, other provisions of this code, or state statutes.

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

700.091 Building Official: Authority to Impose Administrative Civil Penalty. Upon a determination by the building official that a person, firm, or corporation has violated a provision of this chapter or a rule adopted under this chapter, 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 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 where the violation occurs, may include the owner.

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

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.

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 actions have 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.

Notwithstanding subsections in paragraph (1) and (2), the building official may issue a notice of civil violation and impose an administrative civil penalty without having issued an order to correct violation or made attempts to secure voluntary correction where the building official determines that the violation was knowing or intentional or a repeat of a similar violation.

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

- (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;
- (F) The violator's cooperativeness and efforts to correct the violation; and
- (G) Any relevant rule of the building official.

A 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. Every notice shall include:

- (A) Reference to the particular code provision, ordinance number, or rule involved;
- (B) A short and plain statement of the matters asserted or charged;
- (C) A statement of the amount of the penalty or penalties imposed;

- (D) The date on which the order to correct was issued and time by which correction was to be made, or
- (E) If the penalty is imposed under KCC 700.091 paragraph 6(E), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
- (F) A statement of the party's right to appeal the civil penalty to the Compliance Hearings Officer; a description of the process the party may use to appeal the civil penalty; and the deadline by which such an appeal must be filed.

700.092 Appeal Procedures. The purpose of the Hearings Officer Review Procedure is to conduct impartial administrative hearings and render decisions in the Building Inspection program under ORS Chapter 455. The Compliance Hearings Officer works through the dispute resolution process between the Building Department and the public. The Compliance Hearings Officer review procedure allows for an impartial tribunal, the opportunity to present evidence, assurance against ex parte contacts, and the means to create a record of hearings providing findings of fact and conclusions of law.

Any person, firm, or corporation who is issued a notice of civil penalty may appeal the penalty to the Compliance Hearings Officer. KCC 700.090 of this code shall govern any requested appeal.

- (A) A person, firm, or corporation aggrieved by an administrative action of the building official taken under 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 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, or corporation appeals a civil penalty to the Compliance Hearings Officer, and the civil penalty is upheld, the penalty shall become final upon issuance of the Compliance Hearings Officer's decision.

Unless the appellant and the County agree to a longer period, an appeal shall be heard by the Compliance Hearing's Officer within 45 days of the receipt of the notice of intent to appeal. At least 10 days prior to the hearing, the County shall mail notice of the time and location of the hearing to the appellant. The appellant may waive the 10-day notice by signing a waiver choosing to waive the ten-day-written notice of appeals hearing date, time and place.

The Compliance Hearings Officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Compliance Hearing's Officer deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The Compliance Hearings Officer will ask the appellant to come forward, be sworn in, and then testify. The building official may appear with or without counsel or through the building official's designee. The burden of proof shall be on the building official. The Rules of Evidence as used by courts of law do not apply.

The Compliance Hearings Officer will then provide an opportunity for appellant rebuttal. Generally, rebuttal to the appellant or appellant's rebuttal is allowed, at the discretion of the Compliance Hearings Officer, provided a final rebuttal opportunity is provided to the appellant in accordance with ORS 197.763.

The Compliance Hearings Officer shall issue a written decision within 30 days of the hearing date. All orders of the Compliance Hearings Officer shall contain findings of fact and conclusions of law addressing the allegations contained in a notice of civil penalty. Orders may also include findings of fact supporting the penalty, restrictions, conditions or other remedies as required by the Compliance Hearings Officer. The written decision of the Compliance Hearings Officer is final.

Failure to pay a penalty under this chapter within 30 days after the penalty becomes final is a violation of this code. The building official has authorization to assign the unpaid penalty to the collection agency as outline in 700.093 by proceeding authorized by KCC 700.090, other provisions of this code, or state statutes.

Review of an order of a Compliance Hearings Officer decision under this chapter by any aggrieved party, including Klamath County, shall be by writ of review before the Klamath County Circuit Court as provided in ORS 34.010-34.100.

700.093 Unpaid Penalties. If an administrative civil penalty is imposed on a responsible person because of a violation of this code resulting from prohibited use or activity on real property, and the penalty remains unpaid for 30 days after such penalty becomes final, the building official will assign the unpaid penalty, to the contracted, and duly registered collection agency. When such assignment is made, the building official shall notify the responsible person that the unpaid penalty will have an additional 35% collection fee added to the penalty, plus interest at 9% per annum at the time of assignment.

In addition, the building official shall withhold issuance of requested permits, or revocation or suspension of any issued permits or certificates of occupancy until the penalty, investigation fee, and related collection fee, including interest are paid in full.

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 a Compliance Hearings Officer, including an action to obtain judgment for any civil penalty imposed by an order of the Compliance Hearings Officer.


SEVERABILITY

700.100 Severability. The provisions of this Ordinance are severable, and any invalid section, subsection, sentence, clause, phrase or portion of this Ordinance if for any reason is held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions of the Ordinance.

This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this Ordinance takes effect upon its passage.

DONE and DATED this 5th day of October, 2016.

KLAMATH COUNTY BOARD OF COMMISSIONERS


Chairman


Commissioner


Commissioner

APPROVED FOR LEGAL SUFFICIENCY:

ATTEST:

 10/17/2016
David P. Groff
Klamath County Counsel


Recording Secretary