

ORDINANCE No. 1990

An Ordinance Amending Title 15 (Buildings and Construction), Chapter 04 (Building Code) of the Hood River Municipal Code by Providing a Non-judicial Appeal Procedure for Deciding Appeals in Building Code Enforcement Actions as Required by SB 915 From the 2009 Legislative Session

BY [Signature] ✓
Date 10/11/10 CODIFIED

The City Council of the City of Hood River finds as follows:

WHEREAS, the city's adoption and implementation of the Building Code is codified in Title 15 (Buildings and Construction), Chapter 04 (Building Code) of the Hood River Municipal Code, including a judicial process for adjudicating building code enforcement actions; and

WHEREAS, the 2009 Legislature adopted SB 915, which requires a non-judicial process for resolving such actions; and

WHEREAS, the City Council desires to implement the requirements of SB 915, which requires the insertion of a specific enforcement procedure that does not rely on the judicial process provided for under the City's general code enforcement provisions; and

WHEREAS, the City Council considered the code amendment attached as Exhibit A to this Ordinance and incorporated herein by this reference, at its regular meeting of October __, 2010, at which time the Council accepted public testimony and comment on the proposal.

NOW THEREFORE, based on the foregoing Findings, the City Council Ordains as follows:

Section 1 – Repeal. Title 15 (Buildings and Construction), Chapter 04 (Building Code) of the Hood River Municipal Code sections 15.04.090 to 15.04.110 are hereby repealed in their entirety.

Section 2 – Adoption. Title 15 (Buildings and Construction), Chapter 04 (Building Code) of the Hood River Municipal Code sections 15.04.090 to 15.04.130, as set forth in Exhibit A attached to this Ordinance and incorporated herein by this reference, are hereby adopted and made a part of the Hood River Municipal Code.

Read for the First Time this 27 day of September 2010.

Read for the Second Time and approved this 12th day of October 2010. This Ordinance shall take effect on the 31st day following the second reading.

AYES: 6
NAYS: 0
ABSTAIN: 0
ABSENT: 1

[Signature]
Arthur Babitz, Mayor

ATTEST:


Jennifer Gray, City Recorder

Approved as to form:


Daniel Kearns, City Attorney

Exhibit A

15.04.090. Violations; Penalties; Remedies.

A. No person, firm, corporation or other entity however organized shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the City, or cause the same to be done, contrary to, or in violation of, this chapter.

B. All violations of any provision of this chapter shall be subject to an administrative civil penalty not to exceed \$500 and shall be processed in accordance with the procedures set forth in this chapter.

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

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

15.04.100. Building Official: Authority to Impose Administrative Civil Penalty.

A. 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 there under, 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 less than seven 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 the required 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 the 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 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.

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 the following information:

1. Reference to the particular code provision, permit requirement, ordinance number, or rule involved;
2. A short and plain statement of the violation or how the structure or property in question is a violation;
3. A statement of the amount of the penalty(ies) that are, or could in the future be, imposed;
4. The date on which the order to correct was issued and time by which correction was supposed 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; a description of the process the party is required to use to appeal the civil penalty; and the deadline by which such an appeal must be filed.

H. Any person, firm, corporation or other entity however organized to whom a notice of civil penalty is issued may appeal the penalty to the City Manager. The provisions of Section 15.04.110 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 pursuant to, and within the time limits established by, Section 15.04.110.

J. Each day the violator fails to remedy the code violation shall constitute a separate citable 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, provided that the City shall not issue a citation to Municipal Court for a violation of this Chapter.

15.04.110. Appeal Procedures.

A. A person, firm, corporation or other entity, however organized, that is aggrieved by an administrative action of the building official taken pursuant to any section of

this chapter 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 the appeal fee, set by resolution of the city council, and shall include the following information:

1. The appellant's name and address;
2. Identify the determination that is being appealed and describe it generally;
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 a civil penalty to the City Manager, the penalty shall become final, if at all, upon issuance of the City Manager's decision 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 a 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 within 30 days of the receipt of the notice of intent to appeal. At least 10 days prior to the appeal hearing, the City shall mail notice of the time and location thereof to the appellant.

D. The City Manager shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Manager deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or through an attorney. 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 shall issue a written decision within 10 days following the hearing. The City Manager's written decision shall be final.

F. Except as provided in this subsection, the appeal fee is not refundable. The City Manager may make a determination on the motion of the appellant that the appeal fee is refunded to the appellant upon a finding by the City Manager 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 15.04.120, other provision of this code or state law.

15.04.120. Unpaid Penalties.

A. Failure to pay an administrative penalty imposed pursuant to this code within ten 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 become final,

the building official shall assess the property the full amount of the unpaid fine and shall enter such an assessment as a lien in the city and/or county lien docket(s). 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 in the city and/or county lien docket(s). 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 a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

15.04.130. Notice of Violations and Stop Work Orders. Whenever any work on any building, structure, electrical, gas, mechanical or plumbing system is being done contrary to the provisions of this chapter or other ordinance of the city, the building official may order the work stopped by giving written notice of the violation. The building official shall give the written notice to the owner of the property or his agent or to any person doing the work or causing it to be done and shall also post the property. The notice shall state the specific violations and conditions under which work may be resumed. If the building official determines that an emergency exists or there is an imminent threat of harm to the public generally or individuals, the building official may order all work stopped without prior written notice by issuing a Stop Work Order. Upon issuance and posting of a Stop Work Order, all work shall immediately cease.