

A BILL FOR AN ORDINANCE AMENDING LEBANON MUNICIPAL CODE, ADDING PROVISIONS FOR THE PROCESSING OF VIOLATIONS, PENALTIES AND APPEALS OF DECISIONS CONCERNING THE BUILDING CODE AND DECLARING AN EMERGENCY)))))))	ORDINANCE BILL NO. 3 for 2010 ORDINANCE NO. 2786
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WHEREAS, the Oregon legislature has enacted Senate Bill 915 concerning the imposition of civil penalties for violations of the building code; and

WHEREAS, SB 915 forbids the processing of such violations in the Municipal Court and, instead, requires that violations be processed by the Building Official, with an appeal to other designated officials, except the court or the Building Official or a member of the Building Official's department; and

WHEREAS, SB 915 becomes effective on January 1, 2010 for all violations of the Building Code.

NOW, THEREFORE, THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Section 1. There is hereby added to Chapter 15.04 the following sections of the Lebanon Municipal Code:

15.04.150 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 code.
- B. Violation of a provision of this ordinance shall be subject to an administrative civil penalty not to exceed \$5,000 for a single violation or \$1,000 for continuing violations and shall be processed in accordance with the procedures set forth in this code.
- 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.

15.04.160 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 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 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:
 - 1. Reference to the particular code provision, ordinance number, 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; 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.

- 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 15.04.170 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 15.04.170.
- 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 provided that the City shall not issue a citation to Municipal Court for a violation of this Chapter.

15.04.170. 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 as determined by a Resolution of the City Council 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 a civil penalty to the City Manager or the Manager's designee, the penalty shall become final, if at all, upon issuance of the City Manager or the Manager's designee 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 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 deems 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 ten 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 5.04.180, other provisions of this code, or state statutes.

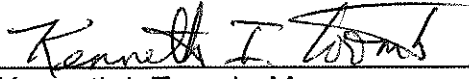
Sec. 5.04.180. Unpaid Penalties

- 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 docket of City liens. 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 docket of City liens. 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.

Section 2. Inasmuch as this ordinance pertains to the health, safety and welfare of the citizens of the City of Lebanon, an emergency is declared to exist and this ordinance shall be effective immediately upon its passage.

Passed by the Lebanon City Council by a vote of 4 in favor and 0 against and approved by the Mayor on this 10th day of February, 2010.

CITY COUNCIL OF LEBANON, OREGON


Kenneth I. Toomb, Mayor
Bob Elliott, Council President

ATTEST:


Linda Kaser, City Clerk/Recorder