



## ORDINANCE 2008-014

### **AN ORDINANCE AMENDING TITLE 15, BUILDINGS AND CONSTRUCTION OF THE SHERWOOD MUNICIPAL CODE BY ADDING A NEW CHAPTER (15.28) RELATING TO ENFORCEMENT AND REMEDIES**

**WHEREAS**, the City of Sherwood has authority to adopt and enforce regulations to protect the public's health, safety and welfare; and

**WHEREAS**, the City has as a function of the above, developed, established and adopted standards for construction and related activities within the City; and

**WHEREAS**, the City wishes to ensure that construction and related activities taking place within the City conform to the City's policies, procedures and standards relevant thereto as well as those of other regulatory bodies along with which it has enforcement authority over said construction activities; and

**WHEREAS**, the City currently lacks explicit authority in its Municipal Code to effect compliance with such policies, procedures and standards; and

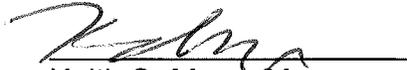
**WHEREAS**, the Council believes it appropriate and necessary to establish the explicit authority for the City Manager to effect compliance with the City's code and other standards affecting construction and related activities in the City (as well as other regulatory bodies along with which the City has enforcement responsibility) in addition to developing a review process using the Municipal Court whereby affected parties have the ability to challenge the City's enforcement and compliance actions.

### **NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:**

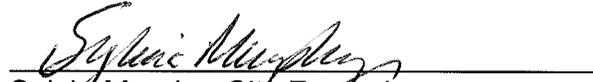
**Section 1:** The Sherwood Municipal Code (the "Code"), Title 15 (Buildings and Construction) is amended by adding a new Chapter 15.28 (Enforcement and Remedies) to read as set out in Exhibit "A" attached hereto.

**Section 2: Effective Date:** In order that the terms of this Ordinance are effective prior to the traditional start of the "rainy season" in Oregon – October 1<sup>st</sup> - an emergency is hereby declared and this Ordinance is and shall be effective upon passage by the City Council and approval by the Mayor.

Duly passed by the City Council this 16<sup>th</sup> day of September 2008.

  
Keith S. Mays, Mayor

Attest:

  
Sylvia Murphy, City Recorder

	AYE	NAY
Weislogel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Luman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
King	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heironimus	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Grant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mays	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## **EXHIBIT "A"**

### **Chapter 15.28 Enforcement and Remedies**

#### **15.28.010 Purpose**

#### **15.28.120 Definitions**

#### **15.28.030 Responsible Officer**

#### **15.28.040 Violation**

#### **15.28.050 Non Exclusivity**

#### **15.28.060 Separate Violations**

#### **15.28.070 Notice of Violation; Service**

#### **15.28.080 Stop Work Orders**

#### **15.28.090 Appeals**

#### **15.28.100 Penalties**

#### **15.28.010 Purpose**

This Chapter is to ensure all construction activity (including erosion control and demolition of structures) taking place in the City conforms to the applicable provisions of the Sherwood Municipal Code (SMC) as well as rules and regulations of Clean Water Services (CWS). It does this by providing the City Manager (or their designate) with authority to issue stop work and other orders, impose civil penalties and take such remedial action(s) as are deemed reasonable and necessary by the City Manager to effect compliance with the SMC or CWS rule or regulation.

#### **15.28.020 Definitions**

As used in this Chapter, the following terms shall, unless the context requires differently, shall mean as follows:

- A. "City" means the City of Sherwood, Oregon.
- B. "City Manager" means the Sherwood City Manager and includes any person(s) designated by the City Manager to enforce the terms of this Chapter.
- C. "CWS" means Clean Water Services.
- D. "Imminent Public Health Hazard" means any condition posing an immediate threat to the health or safety of the public at large or property in the City.
- E. "Person" includes any person or entity capable of or owning owning/controlling real property in the City, including (but not limited to) individuals, partnerships, corporations and unincorporated associations.
- F. "SMC" means Sherwood Municipal Code.
- G. "Structure" means an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

#### **15.28.030 Responsible Officer**

The City Manager or their designate is authorized to enforce the provisions of this Chapter. That person(s) has authority to investigate complaints and conduct inspection(s) deemed necessary to ensure compliance with the terms of the SMC, CWS rules and regulations and/or a permit lawfully issued by an appropriate authority.

#### **15.28.040 Violation**

No person shall allow, suffer or permit any activity associated with the construction, repair, reconstruction, demolition and/or maintenance of a structure located in the City to occur

without said activity conforming to the requirements imposed by the SMC and/or CWS rules and regulations on that activity and consistent with the terms of permit(s) lawfully issued by an appropriate authority for said activity.

#### **15.28.050 Non Exclusivity**

This Chapter is in addition to any other right or remedy afforded the City as may be provided elsewhere in the City Code or as allowed under state or federal law to enforce the terms of its Code and other regulation(s) including right(s) or remedy to summarily abate condition(s) on property within or without the City which threaten to or cause an imminent public health hazard in the City.

#### **15.28.060 Separate Violations**

Each violation of a separate provision of the SMC, CWS rule or regulation or permit term or condition over which the City has jurisdiction may be treated as a separate violation and each day a violation is committed, is allowed or suffered to continue may also be deemed a separate violation.

#### **15.28.070 Notice of Violation; Service**

- A. If a violation is determined to exist, the City Manager will deliver or cause to be delivered notice of the violation to the owner(s) of the property and/or such other person(s) as the City Manager reasonably believes is “a person in charge” of the property and/or violation. A “person in charge of the property” is one who has access to and/or control over the property and its use.
- B. Notice shall be accomplished by either personal service or by certified first class mail, return receipt requested. Notice may also be posted on the property or in any manner or combination of manners which under all the circumstances is most reasonably calculated to apprise the person(s) of the existence of the violation and pendency of the notice.
- C. The notice shall contain, at a minimum, the following:
  1. Location and nature of the violation;
  2. The provision or provision(s) of this Code or other regulation(s) or permit term(s) over which the City has jurisdiction that have been violated;
  3. Whether the Manager is seeking imposition of civil penalties and if so, the amount and the reasons supporting imposition thereof consistent with the reasons set out in SMC 15.28.100.
  4. The effective date of the notice;
  5. The existence of a right to appeal the notice of violation and, if applicable, the imposition and/or amount of any civil penalty or other cost sought by the City Manager consistent with SMC 15.28.090; and
  6. That failure to appeal any civil penalty or other cost sought by the City may result in the imposition of a lien on the property for the amount of said civil penalty or cost.
- D. A defect in the notice neither affects the validity thereof nor its enforceability.

#### **15.28.080 Stop Work Orders**

- A. The City Manager may order any or all work reasonably believed to contribute to the violation(s) to be immediately stopped, curtailed or adjusted so as to minimize or eliminate any adverse impact(s) to persons or property as a result of the violation(s).
- B. A stop work order will be in writing and delivered, in a manner consistent with the provisions set out in 15.28.070.
- C. Upon receipt of the stop work order, all work, conduct or activity identified in the stop

work order as being violative of the SMC, CWS rule or regulation or lawfully issued permit shall immediately cease and not thereafter recommence until authorized by the City Manager in writing, such other regulatory agency with jurisdiction over the work, the City's Municipal Court or other court of competent jurisdiction.

- D. Remedial work to abate or minimize the effects of the violation may occur while a stop work order is outstanding if approved in advance and in writing by the City Manager.
- E. The failure to stop work consistent with this provision shall constitute a separate violation of the Sherwood Municipal Code.
- F. In the event that the City Manager reasonably believes that condition(s) on property are such as to constitute an immediate threat to the health, safety and welfare of the City or nay of its residents, and the owner or person in charge thereof fails, refuses or neglects to effectively remediate the condition as required by the City Manager, the City manager may then take such actions as are deemed necessary and appropriate to remediate the condition and to thereafter make the City's costs for such actions a lien on the property.

### **15.28.090 Appeals**

- A. Any person entitled to notice under 15.28.070 or 15.28.080 may appeal the notice by filing an appeal with the Municipal Court. Any appeal must be filed not later than 10 working days after the effective date of the notice or order. The appeal must be in writing and contain, at a minimum information on the following:
  - 1. A heading entitled: "Before the Municipal Court for the City of Sherwood, Oregon."
  - 2. A listing of the names of all appellants participating in the appeal along with a brief statement setting forth the legal interest of each appellant in the property involved in the notice.
  - 3. A brief statement concerning the basis for the appeal together with any material fact(s) claimed to support those contentions and why the protested notice or action should be reversed, modified or otherwise set aside.
  - 4. The signatures of all parties named as appellants and their official mailing addresses and telephone numbers.
- B. The Municipal Court shall schedule a hearing on the appeal as soon as is reasonably possible, but in no event later than thirty (30) days after receipt of the appeal, unless otherwise agreed to by the City and appellants. At the time of the hearing on the appeal, the Court shall allow City and appellant to present evidence with the burden thereof supporting a fact or position resting on the proponent of the fact or position. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Municipal Court shall give effect to the rules of privilege recognized by law.
- C. After the close of the hearing, the Court shall issue a written order setting out the basis for its determination and may affirm, modify or reverse the decision of the City Manager and may also take or order such other action(s) as are deemed appropriate to effect the Court's determination, including the payment of any costs.
- D. The order of the Municipal Court is final and judicially reviewable only as provided by the terms of ORS 34.010 to ORS 34.100.

### **15.28.100 Penalties**

- A. Unless specifically limited elsewhere in the Sherwood Municipal Code, the City Manager is authorized to seek a civil penalty from any violator in an amount of up to \$1,000.00 for violation of any of the provision(s) of the SMC, CWS rules and regulations or a lawfully issued permit.

- B. When determining the amount of a civil penalty, the City Manager and, if appealed, the Municipal Court shall consider, at a minimum, the following factors and set out in the notice or determination those believed to apply to a situation:
1. Prior violations and whether those violations were remedied in a timely manner;
  2. The magnitude of the violation;
  3. Whether the violation was repeated or continuous; and
  4. Whether the violation was intentional or otherwise.