

ORDINANCE No.

Amend Portland City Code Chapter 3.30 to Clarify BDS Authority to Adopt Administrative Rules and Assess Liens for Noncompliance, Adopt Administrative Rulemaking Procedures and Authorize a Stop Work Order Penalty (Ordinance; amend Sections 3.30.040 and 3.30.080 and add new Section 3.30.045.)

The City of Portland Ordains:

Section 1. The City Council Finds:

1. The Portland Bureau of Development Services (BDS) administers and enforces the Oregon State Building Codes throughout the City.
2. The City Council has delegated authority to the Director of BDS to “[a]dopt written policies and procedures for the enforcement of applicable code provisions and laws.” (Portland City Code (PCC) 3.30.040(A).)
3. Although this language implies BDS authority to adopt administrative rules, such authority is not specifically articulated in Chapter 3.30, nor are the procedures for adopting administrative rules included in the City Code. Similarly, BDS authority to assess liens for fees and penalties charged for non-compliance with the codes BDS administers and enforces is not specifically articulated in Chapter 3.30.
4. BDS has the authority to issue stop work orders to assist in gaining compliance with violations of the codes it administers and enforces (PCC 3.30.080). But Chapter 3.30 does not specifically authorize BDS to impose a penalty when a stop work order is issued for commencing work without a required permit.

NOW, THEREFORE, the Council Directs:

- a. Chapter 3.30, Bureau of Development Services, is amended as follows:

3.30.005 Organization.

3.30.010 Duties of the Bureau of Development Services.

3.30.020 Responsibility for the Development Services Center and Development Review.

3.30.030 Development Review Advisory Committee.

3.30.040 ~~Establishment of Administration and Enforcement Priorities and~~

~~Remedies.~~

3.30.050 Special Jurisdiction.

3.30.060 Nuisance Abatement Contracts.

3.30.070 Inspections

3.30.080 Stop Work Orders.

- b. Section 3.30.040, Establishment of Enforcement Priorities and Remedies, is amended as follows:

3.30.040 ~~Establishment of Administration and Enforcement Priorities and Remedies.~~

In order to carry out the duties as set forth in Section 3.30.010, the Director of the Bureau of Development Services may:

A. ~~Adopt, amend and repeal administrative rules, written policies, and procedures~~ and forms for the enforcement of applicable Code provisions and laws.

B. Establish enforcement fees or penalties for non-compliance.

C. Establish enforcement priorities based on the number of budgeted enforcement personnel, public safety and welfare factors, and any priorities established by City Council.

BD. Gain compliance by:

1. Instituting an action before the Code Hearings Officer in the manner provided for by Title 22 of this Code; or
2. Causing appropriate action to be instituted in a court of competent jurisdiction; or
3. Issuing a code violation citation directly to the contractor or person responsible for carrying out the work. Any person receiving a citation for violating the provisions of the City Code administered by the Bureau of Development Services shall be subject to a fine of up to \$1,000 for each citation issued.
4. Taking other lawful action.
5. Revoking a Type B home occupation permit for failure to comply with the regulations of City Code Chapter 33.203 by using the following procedures:
 - a. If the Director determines that cause for revocation of a permit exists, the Director shall provide written notice thereof to the permittee. The notice shall contain a brief description of the facts supporting the revocation, the date the revocation shall become final and a notice of the permittee's right to appeal the revocation.

- b. The notice shall be mailed by certified mail, return receipt requested, and regular mail to the permittee. The notice shall be effective upon three days after mailing.
- c. The revocation shall become final and effective ten days after the notice is effective, unless an appeal is filed.
- d. Any permittee whose permit has been revoked may appeal the revocation to the Code Hearings Officer pursuant to the provisions of City Code Chapter 22.10. The filing of an appeal shall stay the effective date of the revocation until the appeal is determined in a final decision by the Code Hearings Officer.

EE. Impose fees or penalties for non-compliance, provide notification, and allow for appeals by:

- 1. Initiating the notification procedures provided in Section 29.60.050.
- 2. Imposing monthly enforcement fees or penalties for each property that meets the following conditions:
 - a. The property is the subject of a notice of violation by the Bureau of Development Services; and
 - b. A response period of 30 days has passed since the effective date of the initial notice of violation; and
 - c. The property remains out of compliance with the initial notice of violation or any subsequent notice of violation.
- 3. Doubling the penalties if the violations are not corrected within three months from the initial notice of violation.
- 4. Imposing an additional penalty as set forth in the Enforcement Fee and Penalty Schedule against any property for which a code enforcement proceeding is initiated before the Code Hearings Officer pursuant to the provisions of Title 22 of this Code.
- 5. All required fees or penalties are listed in the Enforcement Fee and Penalty Schedule adopted by City Council. Fees or penalties may be updated annually or on an as needed basis. The approved Enforcement Fee and Penalty Schedule will be available at the Bureau of Development Services Center and on the bureau's Web site.

- 6. When a property meets the conditions for charging any Council approved fee or penalty for noncompliance, the Director shall file a statement with the City Auditor identifying the property, the amount of the fee or penalty and the date upon which the charge should be assessed. The City Auditor shall notify the property owner of the amount of the assessed fees and penalties, and a 10 percent City Auditor charge. The City Auditor shall record the total amount as a lien in the Docket of City Liens. The City Auditor shall maintain the lien record until the lien and all associated interest and costs are paid in full, and the Director certifies that all violations listed in the original or subsequent notice of violation have been corrected.
- 67. Providing for administrative procedures as set forth in Subsections 29.70.010 C. through E.
- 78. Providing for administrative review and the opportunity for appeal to the Code Hearings Officer as set forth in Section 29.80.010.
- 89. Allowing exceptions as provided in Section 29.60.100.

c. City Code Chapter 3.30 is amended by **adding** a new section as follows:

3.30.045 Administrative Rulemaking Procedures.

- A. The Director has been delegated the authority to adopt and administer administrative rules appropriate to perform the duties set forth in Section 3.30.010 of this Title. Such administrative rules shall be adopted according to the procedures in this section.
- B. Permanent rules.
 - 1. Prior to the adoption of a permanent rule, the Director shall:
 - a. Publish a notice in a newspaper of general circulation in the City. The notice must be published not less than thirty days before adoption of the administrative rule. The notice shall include the place and time of a proposed public hearing; a brief description of the subjects covered by the proposed rule; the final date for acceptance of written comments; the location to submit comments; and the location where copies of the full set of the proposed rules may be obtained. A copy of the notice will be provided to the Office of Neighborhood Involvement at least thirty days before adoption. The Director is only required to hold the

public hearing if a written request is filed seeking a hearing.

- b. During the public review process, the Director shall hear testimony and receive written comments regarding the proposed rules.
- c. The Director will review the testimony and comments and may either adopt the proposed rule, modify it or reject it.
- d. If the Director makes a substantial modification to the proposed rule, the Director may provide additional time for public review and comment prior to adoption.

2. Unless otherwise stated, all rules will be effective upon adoption by the Director.

C. Interim rules.

- 1. The Director may adopt an interim rule without prior notice upon a finding that a failure to act promptly will result in prejudice to the public interest.
- 2. Interim rules will be effective for a period of not longer than 180 days.
- 3. The Bureau of Development Services shall post public notice of the interim rule not more than 30 days after adoption by posting on its website and shall send notice to the Office of Neighborhood Involvement. Such notice shall identify the location at which copies of the full set of the interim rules may be obtained.

D. All final and interim rules shall be filed in the office of the Director. Copies of all final and interim rules will be made available to the public at the Development Services Center.

d. Section 3.30.080, Stop Work Orders, is amended by adding a new section (F) as follows:

F. Stop work orders for work commenced without a permit.

- 1. The Director may issue a stop work order for work commenced without a required permit.
- 2. The Director may impose a penalty as set forth in the Enforcement Fee and Penalty Schedule adopted by the City Council when a stop

work order is issued for commencing work without a required permit.

Passed by the Council:

Commissioner Amanda Fritz
Prepared by: Nancy B. Thorington, BDS
Date Prepared: April ____, 2014

LaVonne Griffin-Valade
Auditor of the City of Portland
By

Deputy