

Ordinance 815

An ordinance amending Clallam County Code, Chapter 27.12, Critical Areas Code, in conjunction with the adoption of a new Clallam County Code Compliance Title

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

**Section 1. Section .055, Enforcement, is amended to read as follows:**

- (1) A violation is:
  - (a) Any action or omission that violates any of the provisions of this chapter; or
  - (b) Any action or omission that violates any of the provisions of any mitigation plan, habitat management plan, certificate of compliance, or other special report prepared pursuant to this chapter and approved by the review authority as part of any certificate of compliance, variance, reasonable use exception approval, or as a part of any Type I, II, or III permit issued under Chapter 26.10 CCC.
- (2) A violation of the provisions of this chapter shall constitute a civil violation subject to a monetary penalty as well as prosecution as a misdemeanor. Conviction of a violation or payment of a penalty does not relieve a violator from compliance with this chapter.
- (3) A violation of the provisions of this chapter is hereby determined to be detrimental to the public health, safety, and environment and is hereby declared to be a public nuisance, subject to prevention, removal, or abatement at the expenses of the person(s) creating, causing, or committing such violation, and subject to the recording of a lien for such expenses against the property where the public nuisance is located, with such lien to be of equal rank with the state, county, and municipal taxes.
- (4) Violations of the provisions of this chapter are subject to the enforcement and penalty provisions contained in CCC Title <>, Code Compliance, except to the extent preempted by state or federal law or by any contrary enforcement and penalty provisions contained in this chapter.
- ~~— (1) Any person found to have willfully engaged in activities within critical areas or critical area buffers of the county in violation of this chapter shall be subject to civil penalties of not less than \$100 nor more than \$5,000 for the first or second offense; provided, that the fine for the third and all subsequent violations in any five (5) year period shall not be less than \$500 nor more than \$25,000. The severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of repeat violations of the person(s) subject to the enforcement action.~~
- ~~— (2) Any person who fails to conform to the terms of a permit or approval issued pursuant to this chapter, or who unknowingly engaged in activities within critical areas or critical area buffers without compliance with this chapter, or who fails to comply with a cease and desist order, may be subject to civil penalties not to exceed \$1,000. The severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of repeat violations of the person(s) subject to the enforcement action.~~
- ~~— (3) The Administrator shall serve in writing by personal service or registered mail, including notification to the owner of record, if different, upon a person a cease and desist order if an activity being undertaken is in violation of this chapter. The order shall set forth a description of the specific nature, extent, and time of violation and the damage or potential damage; and a notice that the violation or the potential violation cease and desist. The order shall also include provisions for immediate stabilization of the site in such circumstances where the critical area is being impacted from continued violation of this chapter. The cease and desist order shall become effective immediately upon delivery. Failure to comply with the terms of a cease and desist order shall be considered further violation of this chapter.~~

~~— (4) Any civil penalty imposed shall be provided to the person who violated the provisions of this chapter. Such penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and in appropriate cases, require necessary corrective action within a specific time including, but not limited to, a mitigation plan required under Part Eight of this chapter. Any person incurring a penalty may apply in writing within thirty days of receipt of penalty to the Board of Commissioners for remission or mitigation of such penalty. The Board of Commissioners may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. Any penalties imposed under this section shall become due and payable thirty (30) days after receipt of notice imposing the same unless application for remission or mitigation is made. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty (30) days after the Board of Commissioners decision regarding the remission or mitigation.~~

~~— (5) All penalties assessed by this chapter shall be payable to Clallam County and shall be placed in a special account for the enhancement of shorelines and critical areas.~~

~~— (6) If the person subject to the civil penalty fails to remit payment when due, the Board of Clallam County Commissioners may order that such penalty be assessed against the property and cause the same to be recorded on the assessment roll. Thereafter, said assessment shall constitute a special assessment against and a lien upon the property. All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of seven (7) percent per annum from and after said date. Certified copies of the assessment shall be given to the assessor, who shall add the amount of the assessment to the next regular tax bill levied against the parcel.~~

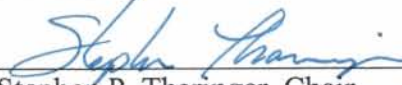
~~— (7) The Administrator shall determine whether violations exist and issue such civil penalty as deemed necessary to ensure compliance with the provisions of this chapter. The Clallam County Prosecuting Attorney shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made within critical areas or adjacent to critical areas in conflict with the provisions of this chapter.~~


~~— (8)(5) Any person subject to this chapter who violates any provision of this chapter or the provisions of a permit or approval issued pursuant to this chapter shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation.~~

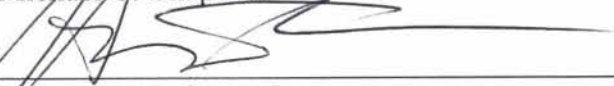
~~(9)(6) Clallam County shall not issue any permit, license or other development approval on a development proposal site subject to an enforcement order under this section; provided that Clallam County may issue such permits to rectify or correct enforcement orders.~~

ADOPTED this third day of April 2007

BOARD OF CLALLAM COUNTY COMMISSIONERS

  
Stephen P. Tharinger, Chair

  
Michael C. Chapman

  
Howard V. Doherty, Jr.

ATTEST:

  
Trish Holden, CMC, Clerk of the Board