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Ordinance 946

An ordinance amending Clallam County Code Chapter 20.08,
General Provisions, Suspension or revocation of permit

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Section 1. Section 20.08.010, Definitions, to read as follows:

The words and phrases designated in this section shall be defined for the purposes of this title as follows:

- (1) "Abate" means to take whatever steps are deemed necessary by Clallam County to remove, stop, rehabilitate, demolish, or repair a condition which constitutes a public nuisance.
- (2) "Appellant" means the party appealing a citation, notice and order, order to stop work, or Director's decision on a request for certificate of correction.
- (3) "Civil code violation" means and includes one or more of the following:
 - (a) An act or omission contrary to an ordinance of Clallam County that regulates or protects the public health, safety, environment, or use and development of land or water, whether or not the ordinance is codified; and
 - (b) An act or omission contrary to the conditions of any permit issued pursuant to any such ordinance, or a notice and order or stop work order issued pursuant to this title.
- (4) "Department" means:
 - (a) The Clallam County Department of Community Development; or
 - (b) Such other department as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title.
- (5) "Director" means, depending on the code violated:
 - (a) The Director of the Department of Community Development, and authorized representatives of the Director, including, but not limited to, enforcement officers and inspectors whose responsibility includes the detection and reporting of civil code violations;
 - (b) The Director and authorized representatives of such other department as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title; or
 - (c) Such other person as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title.
- (6) "Hearing Examiner" means the Clallam County Hearing Examiner, as provided in Chapter 26.04 CCC, Hearing Examiner.
- (7) "Mitigate" means to take measures, subject to Clallam County approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome.
- (8) "Permit" means any form of written certificate, approval, registration, license, or any other written permission issued by Clallam County.
- (9) "Permit conditions" means the conditions of permit approval including but not limited to:
 - (a) The provisions of any mitigation plans, habitat management plans, and other special reports submitted and approved as part of the permit approval process;
 - (b) The easement and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public.
- (10) "Person" means any individual, association, partnership, corporation, or legal entity, public or private, and the agents and assigns of the individual, association, partnership, corporation, or legal entity.
- (11) "Person responsible for code compliance" means either the person who caused the violation, if that can be determined, or the owner, lessor, lessee, tenant, or other person entitled to control, use or occupy, or any combination of control, use or occupy, of the subject property, or both.
- (12) "Remediate" means to restore a site to a condition that complies with regulatory requirements as they existed when the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition that does not pose a threat to public health, safety, or environment.

(13) "Subject property" means the real property where the civil code violation has occurred or is occurring.

Section 2. Section 20.08.020, Declaration of public nuisance, misdemeanor to read as follows:

(1) All civil code violations are hereby determined to be detrimental to the public health, safety, and environment and are hereby declared public nuisances, which may be subject to abatement and recovery of abatement costs pursuant to RCW 36.32.120(10), as now enacted or hereafter amended.

(2) Any person who knowingly causes, aids, or abets a civil code violation by any act of commission or omission is guilty of a misdemeanor, punishable by a fine of not more than \$1,000 and/or imprisonment in a County jail for not more than 90 days. Each calendar week (seven days) such violation continues shall be considered a separate misdemeanor offense.

(3) The Prosecuting Attorney may at any time bring such additional injunctive, declaratory, criminal, or other actions as are necessary to enforce the provisions of the Clallam County Code.

(4) Nothing in this title shall be interpreted to mean that civil and criminal remedies for the same violations may not be brought simultaneously.

Section 3. Section 20.08.030, Enforcement authority and administration to read as follows:

(1) All conditions determined to be civil code violations may be enforced pursuant to the provisions of this title except to the extent preempted by State or federal law, and except to the extent preempted by any contrary enforcement and penalty provisions contained in the ordinance being enforced.

(2) The procedures set forth in this title shall not in any manner limit or restrict the Director or the Prosecuting Attorney from remedying civil code violations or abating public nuisances in any other manner authorized by law.

(3) If the Director establishes, based on the provisions of CCC 20.08.060, that a civil code violation exists, the Director may:

(a) Enter into voluntary compliance agreements with persons responsible for code compliance as authorized in this title, and waive a portion of unpaid penalties and associated interest according to the provisions of this title;

(b) Issue citations and assess civil penalties ("penalties") as authorized by this title;

(c) Issue notice and orders and order remediation or mitigation of the civil code violation, assess penalties and costs of code compliance ("costs"), and/or suspend or revoke any permit previously issued by the Director, as authorized by this title; and/or

(d) Issue stop work orders to order work stopped at a site, as authorized by this title.

(4) The Director shall send out regular bills for penalties and costs owing under this title. If penalties and/or costs remain unpaid 90 calendar days after they have been imposed (or, if appealed, 90 calendar days after final resolution of the appeal), the Director is authorized to:

(a) Impose interest at six percent per annum;

(b) Record a lien against the subject property if owned by the person responsible for code compliance;

(c) Use the services of a collection agency according to the provisions of RCW 19.60.500.

(5) In administering the provisions for code enforcement, the Director is authorized to waive any one or more such provisions so as to avoid substantial injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a code violation and any necessary remediation is being promptly provided. For purposes of this provision, substantial injustice cannot be based on economic hardship.

(6) The provisions of this title detailing departmental administration of code compliance procedures are intended only for the purpose of providing guidance to Clallam County employees and are not to be construed as creating a basis for appeal or a defense of any kind to an alleged violation.

(7) The provisions of this title authorizing the enforcement of noncodified ordinances are intended to assure compliance with conditions of approval on permits or approvals which may have been granted

pursuant to ordinances which have not been codified, and to enforce new regulatory ordinances which are not yet codified. Departments should be sensitive to the possibility that citizens may not be aware of these ordinances, and should give warnings prior to enforcing such ordinances, except that a stop work order may be issued any time when a civil code violation is found to be in progress.

Section 4. Section 20.08.040, Conference to read as follows:

An informal conference may be conducted at any time by the Director at his discretion and subject to available resources for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

Section 5. Section 20.08.050, Guidelines regarding responses to potential violations to read as follows:

It is the County's policy to investigate and to attempt to resolve all potential code violations. At the discretion of the Director, potential violations may be processed in any order that maximizes the efficiency of enforcement. However, at times when not all potential code violations can be investigated due to lack of resources or otherwise, the most serious potential violations should be addressed before less serious potential violations. The following guidelines should be applied by the Director in prioritizing responses to potential violations:

- (1) Violations that present an imminent threat to public health or safety.
 - (2) Violations that present a high risk of damage to public resources and/or facilities.
 - (3) Violations involving a regulated use or activity under Chapter 27.12 CCC, Clallam County Critical Areas Code, or CCC Title 32, Floodplain Management, or involving shorelines or shorelands under Chapter 35.01 CCC, Shoreline Management.
 - (4) Violations that may result in damage to real or personal property.
 - (5) Violations that do not fit within any of the previous categories, and have only minor public impacts.
- These potential violations should be processed in the order in which they are received, and as resources allow.

As a guideline and if resources allow, all potential violations should be investigated within 60 calendar days and enforcement actions should be initiated within 120 calendar days of coming to the Department's attention. Failure to meet these guideline response dates does not in any way prevent the Director from investigating and enforcing potential violations outside of these response dates.

Section 6. Section 20.08.060, Investigating potential violations to read as follows:

The Director shall determine, based on information derived from such sources as field observations, the statements of witnesses, relevant documents, and available data systems, if the following elements have been established. All elements must be established to determine that a civil code violation has occurred or is occurring.

- (1) The Director shall identify the person responsible for code compliance as defined in this title.
- (2) The Director shall identify the specific provision of the relevant ordinance, permit condition, notice and order, or stop work order that has been or is being violated.
- (3) The Director shall determine whether there are reasonable grounds to believe that the acts or omissions that constitute the violation did occur or are occurring. Such grounds may be established either by personal observation or by reliable evidence from witnesses.

Section 7. Section 20.08.070, Enforcing civil code violations to read as follows:

When a civil code violation has been established according to the provisions of CCC 20.08.060, the Director may use the following guidelines in enforcing the violation. Failure to meet the following guidelines does not in any way prevent the Director from enforcing the violation.

- (1) Stop work orders should be issued promptly upon discovering a violation in progress.
- (2) Except as provided in subsections (1) and (3) of this section, the Director may issue a written warning to the person determined to be responsible for code compliance. Warnings may be mailed by regular mail, hand-delivered in person, or posted on the subject property. The warning shall inform the person determined to be responsible for code compliance of the violation and allow the person an opportunity to correct it or enter into a voluntary compliance agreement as provided for by this title. The site shall be reinspected as identified in the warning.
- (3) No warning need be issued in emergencies, repeat violation cases, cases that are already subject to a voluntary compliance agreement, cases in which the violation creates a situation or condition that is not likely to be corrected within a short period of time, cases in which a stop work order is necessary, or if the person responsible for code compliance knows or reasonably should have known that the action was a civil code violation.
- (4) Notice and orders may be issued in cases where corrective action, such as remediation and/or mitigation, is necessary to bring about compliance.
- (5) Citations may be issued in cases where corrective action is not necessary or already ordered in a previous enforcement action.

Any complainant who provides a mailing address and requests to be kept advised of enforcement efforts shall be mailed copies of all written warnings, voluntary compliance agreements, citations, notice and orders, stop work orders, decisions on requests for certificate of correction, notices of hearings, and orders of Hearing Examiner with regard to the alleged violation. Unless otherwise served as a person responsible for code compliance, the landowner of the subject property, and the applicant of the underlying permit shall also be mailed copies of all written warnings, voluntary compliance agreements, citations, notice and orders, stop work orders, decisions on requests for certificate of correction, notices of hearings, and orders of Hearing Examiner with regard to the alleged violation.

Section 8. Section 20.08.080, Service of citation, notice and order, and stop work order to read as follows:

- (1) Service shall be made on a person responsible for code compliance by one or more of the following methods:
 - (a) Service in person may be made by leaving a copy of the citation or notice and order with the person, or at the person's house of usual abode with a person of suitable age and discretion who resides there.
 - (b) Service directed to the landowner and/or occupant of the subject property may be made by posting the citation or notice and order in a conspicuous place on the subject property and concurrently mailing a copy of the same as provided for below, if a mailing address is available.
 - (c) Service by mail may be made by mailing two copies of the citation or notice and order, postage prepaid, one by ordinary first class mail and the other by certified mail, to the person's last known address. The taxpayer's address as shown on the tax records of Clallam County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the subject property. Service by mail shall be deemed effective upon the third business day following the day of mailing.
 - (d) For notice and orders only, when the address of the person responsible for code compliance cannot reasonably be determined, service may be made by publication once in a local newspaper with general circulation and, in addition, the notice and order should be posted in a conspicuous place on the subject property.
 - (e) Service of a stop work order may be made by posting the stop work order in a conspicuous place on the subject property or by serving the stop work order in any other manner permitted by this section.

(2) The person effecting the service shall make proof of service by a written declaration stating the date and time of service and the manner by which service was made.

(3) The failure of the Director to make or attempt service on any person named in the citation, notice and order, or stop work order shall not invalidate any proceedings as to any other person duly served.

Section 9. Section 20.08.090, Right of entry and warrants to read as follows:

(1) Any entry made to private property for the purpose of inspection for code violations shall be accomplished in strict conformity with Constitutional and statutory constraints on entry. The Director (or his designee) is authorized to enter upon any property for the purpose of administering this title provided the Director shall make entry only if such entry is consistent with the Constitutions and laws of the United States and the State of Washington.

(2) The Director is authorized to enter upon property or premises to determine whether Clallam County codes are being obeyed, and to make any examinations, surveys, and studies as may be necessary in the performance of his or her duties. These may include but are not limited to the taking of photographs, digital images, videotapes, video images, audio recordings, samples, or other physical evidence. All inspections, entries, examinations, studies, and surveys shall be done in a reasonable manner. If the property is occupied, the Director shall ask permission of the occupants before entering the property. If an owner, occupant, or agent refuses permission to enter or inspect, the Director may seek an administrative or criminal search warrant.

(3) The Prosecuting Attorney may request that a District Court or Superior Court of competent jurisdiction issue an administrative search warrant. The request shall be supported by an affidavit of a person having knowledge of the facts sworn to before the judge and establishing the grounds for issuing the warrant.

(a) If the judge finds that the affidavit given upon proper oath or affirmation shows probable cause to believe that a Clallam County code has been violated, the judge may issue an administrative warrant for the purpose of conducting administrative inspections or gathering of evidence. The warrant shall:

(i) State the grounds for its issuance and the name of each person whose affidavit has been taken in support of the warrant;

(ii) Be directed to the Director (or his designee) or a person authorized by the relevant code to execute it;

(iii) Command the person to whom it is directed to inspect the area, premises, or building identified for the purpose specified and the evidence that may be gathered;

(iv) Direct that it be served during normal business hours.

(b) When executed, a copy of the warrant shall be left on the property or the premises searched.

(c) A warrant issued under this section shall be executed and returned, accompanied by a written inventory of any evidence taken, within 10 calendar days of its date unless, upon a showing of a need for additional time, the court orders otherwise.

(d) If evidence is seized pursuant to a warrant, a copy of the written inventory of any evidence taken shall be provided to the person from whom or from whose premises the evidence was taken, together with a receipt for the evidence taken.

(e) The judge who has issued a warrant shall attach thereto a copy of the return (the endorsement made by the person executing the warrant, stating what (s)he has done under it, the time and mode of service, etc.) and all papers returnable in connection therewith and file them with the Clerk of the Court in which the inspection was made.

(4) Any search warrant obtained pursuant to criminal sections authorized under this title shall be governed by appropriate Washington State statutes and court rules.

Section 10. Section 20.08.100, Certificate of correction to read as follows:

(1) It shall be the responsibility of any person identified as a person responsible for code compliance to bring the subject property into compliance with Clallam County Code. Payment of penalties and costs, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not

substitute for performing the corrective work required to bring the subject property into compliance with Clallam County Code.

(2) A violation shall be considered ongoing and daily penalties continue to accrue up to the date that the subject property has been brought into compliance with Clallam County Code, as determined by the Director, and as evidenced by a written certificate of correction in the form of a letter issued by the Director.

(3) A request for a certificate of correction shall be in writing on a form made available by the Director and shall be submitted to the Director. This request shall include the following:

(a) The address, legal description, and/or Clallam County tax parcel number of the subject property;

(b) A declaration of corrective actions performed;

(c) Authorization for the Director or his designee to enter and remain upon the subject property, during normal Clallam County business hours, to verify whether the subject property has been brought into compliance, in the form of written permission of the occupant or, if not occupied, the landowner; and

(d) Name, mailing address, and phone number of the person requesting the certificate of correction.

(4) The Director shall issue a decision on a request for a certificate of correction in writing within 10 calendar days of receipt of the written request and shall serve the same on the person responsible for code compliance, the party requesting the certificate of correction, the landowner of the subject property, the complainant, and the applicant of the underlying permit, if any, by mailing a copy of the same to the last known address of each party. The person effecting the mailing shall declare in writing the date and address the mailing was made. Service by mail shall be deemed effective upon the third business day following the day of mailing. The decision of the Director on a request for a certificate of correction may be appealed pursuant to the appeal provisions of this title.

(5) The certificate shall include a legal description of the subject property, shall indicate the date on which daily penalties ceased to accrue (the date the request for a certificate of correction was received), and shall state if any unpaid penalties and costs for which liens have been recorded are still outstanding and continue as liens on the subject property.

(6) A certificate of correction shall not constitute nor be considered a warranty, guarantee, or certification of any kind, express or implied, by Clallam County as to the physical condition of the subject property.

Section 11. Section 20.08.110, Limitation of liability to read as follows:

Any person determined to be responsible for code compliance pursuant to a citation or notice and order shall be liable, jointly and severally with all persons responsible for code compliance, for the payment of any and all penalties and costs. However, if the landowner of the subject property affirmatively demonstrates that the action which resulted in the violation was taken without the landowner's knowledge, that landowner shall be liable, jointly and severally with the person responsible for code compliance, only for the costs of bringing the subject property into compliance with Clallam County Code.

Section 12. Section 20.08.120, Denial of permits to read as follows:

The Director shall not issue any permit or other development approval on a property subject to a stop work order, notice and order, citation, or voluntary compliance agreement as long as the civil code violation that is the subject of the stop work order, notice and order, citation, or voluntary compliance agreement remains uncorrected, except that the Director may issue such permits necessary to correct the violation.

Section 13. Section 20.08.130, Suspension of revocation of permit is created to read as follows:

(1) The Director may suspend or revoke any permit issued by that Director whenever:

(a) The permit holder has committed a code violation in the course of performing activities subject to that permit;

(b) The permit holder has failed to comply with the provisions of a notice and order, stop work order, or voluntary compliance agreement; or

(c) For a permit or approval that is subject to critical areas review, the permit holder has failed to disclose a change of circumstances on the development proposal site which materially affects a permit

holder's ability to meet the permit or approval conditions or which makes inaccurate the critical areas study that was the basis for establishing permit or approval conditions.

(2) A suspension or revocation authorized by subsection (1) of this section shall be carried out through the notice and order provisions of this chapter and shall be effective upon a written decision of the Hearing Examiner made in accordance with Chapter 20.33 of this Code.

(3) Notwithstanding any other provision of this title, the Director may immediately suspend operations under any permit by issuing a stop work order pursuant to the provisions of this title.

ADOPTED this 10 day of July 2018

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias
Mark Ozias, Chair

Randy Johnson
Randy Johnson

Bill Peach
Bill Peach

ATTEST:

L. Gores
Loni Gores, Clerk of the Board