

ORDINANCE NO. 238

AN ORDINANCE AMENDING CHAPTER 36 OF THE DUNES CITY CODE OF ORDINANCES; ADDING A NEW SECTION ADDRESSING APPEALS OF DECISIONS MADE BY THE CITY CODE ENFORCEMENT OFFICER; AMENDING SECTION 36.110 TO ADD CLARIFYING LANGUAGE; AMENDING SECTION 36.090(E) TO ADD CLARIFYING LANGUAGE; AND AMENDING SECTION 36.090(G) TO ADD A SPECIFIC INTEREST RATE; REPEALING ORDINANCE NUMBERS 219 AND 232; AND OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, Ordinance No. 219, amending the provisions of Chapter 36 of the Dunes City Code, entitled “Code Enforcement”, was duly adopted and passed by the Dunes City Council on January 10, 2013; and

WHEREAS, Ordinance No. 232, adding provisions to Chapter 36 of the Dunes City Code relating to the imposition of fines and penalties as additional remedies available for use by the Dunes City Code Enforcement Officer was duly adopted and passed by the Dunes City Council on January 14, 2016; and

WHEREAS, at the request of the City Administrator, the City Attorney has reviewed the provisions of Chapter 36 as contained in Ordinances 219 and 232 and has made recommendations for language changes that will enable the City Code Enforcement Officer to do certain duties without having to file legal action in the court in Lane County Courts; and

WHEREAS, the Dunes City Council believes it is in the best interests of the citizens of Dunes City to have provisions by which the Code Enforcement Officer may enforce the provisions of Dunes City Code in a manner that does not require the additional expense of filing legal action in Lane County Courts.

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

Section 1: Title III, Administration, Chapter 36, Code Enforcement, of the Dunes City Code of Ordinances is here by amended to read as follows:

CHAPTER 36: CODE ENFORCEMENT

§36.010 DEFINITIONS

CODE ENFORCEMENT OFFICER. The City Recorder or the City Recorder’s designee, including the Code Violation Investigator.

PERSON. An individual, corporation, association, partnership, trust, firm, or other legal entity.

PERSON IN CHARGE. An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property.

PERSON RESPONSIBLE. Any or all of the following:

- (a) The owner of the property on which a Code violation exists.
- (b) The person in charge of the property on which a Code violation exists.
- (c) The person who causes the Code violation to come into or continue in existence.

36.020 AUTHORITY

Any condition caused, maintained or permitted to exist in violation of any provisions of this Code may be abated by the City pursuant to the procedures set forth herein, except those where any other individual or body has been expressly deemed responsible for such enforcement activity.

§ 36.030 ADMINISTRATIVE ENFORCEMENT AUTHORITY

A. The Code Enforcement Officer has the authority to make the determination in the first instance whether a violation of this Code has occurred or exists, and has the authority to take appropriate action to gain compliance with the provisions of this Code. The Code Enforcement Officer further has the authority to issue notices of violation, findings, and orders, the power to inspect public and private property pursuant to this Chapter, and the power to utilize the administrative remedies available under this Code.

B. The City Recorder, with approval of the City Council, may hire individuals with the skills, knowledge and expertise to serve as Code Violation Investigators. The Code Violation Investigator will conduct investigations or inspections or accompany the Code Enforcement Officer on any investigations or inspections conducted pursuant to this Chapter, and will have the same power as the Code Enforcement Officer to inspect public and private property. The Code Violation Investigator will report and make recommendation to the Code Enforcement Officer to aid the Code Enforcement Officer in making a determination as to whether a violation of this Code has occurred or exists.

C. The Dunes City Code Enforcement Officer is responsible for the enforcement of all provisions of the Dunes City Code except those where any other individual or body has been expressly deemed responsible for such enforcement activity.

§36.040 AUTHORITY TO INSPECT AND ABATE; EMERGENCY

A. Entrance on Property with Permission of the Person in Charge.

With the permission of the Person in Charge of the property, the Code Enforcement Officer and/or a Code Violation Investigator is authorized to enter upon any property or premises at a reasonable time in order to ascertain if a Code violation exists on the property, and to make any

investigations, examinations, and surveys as may be necessary in the performance of his enforcement duties. This may include, but is not limited to, taking of photographs, taking measurements, or collecting samples of other physical evidence. With the permission of the Person in Charge, the Code Enforcement Officer is further authorized to enter onto property to abate a Code violation in accordance with requirements of this Code.

B. Entrance on Property without Permission of Person in Charge.

In the event that the Code Enforcement Officer cannot gain permission from the Person in Charge to enter onto property when such entry is sought pursuant to this section, the Code Enforcement Officer may seek entry through any legal means including, without limitation, making application to any court of competent jurisdiction for issuance of a warrant. The warrant application will identify the premises upon which entry is sought, the purpose for which entry is desired, and the facts giving rise to the belief that a condition which is a violation of this Code exists on such premises, and if applicable any abatement actions that will be taken.

C. Emergency.

In cases where a violation of this Code unmistakably exists and the violation imminently endangers human life or property, the Code Enforcement Officer will immediately notify the appropriate county, state or federal office having oversight and jurisdiction over the subject matter of the violation and the Code Enforcement Officer may proceed summarily to abate the violation.

§36.050 RECOVERY OF ADMINISTRATIVE COSTS; PURPOSE

The Dunes City Council finds there is a need to recover costs incurred by the City in its Code enforcement efforts. These costs will be referred to as administrative costs, and will include time spent by City personnel re-inspecting properties throughout the City in an effort to ensure compliance with this Code, and costs incurred in the investigation, inspection, re-inspection, recording of notices, title search, and any other costs associated with violations specified on any notice.

§ 36.060 WRITTEN COMPLAINT; EXCEPTIONS

A. Any person may submit to the Code Enforcement Officer a signed, written complaint alleging that a violation of the Dunes City Code of Ordinances has occurred. The complaint must contain: the contact information, including name, address, telephone number and email address, if any, of the complainant; a full description of the alleged violation; and the Dunes City Code section which has allegedly been violated. If the Code Enforcement Officer finds the complaint to be credible, the Code Enforcement Officer may investigate the complaint.

B. The City may undertake investigations of possible code violations in the absence of a written complaint if a potential Code violation is reported by an employee or contractor for the City, or the state or federal governments.

§36.065 COMPLAINANT’S RIGHT OF APPEAL.

A. In the event the Code Enforcement Officer finds a complaint is not credible, the Complainant has the right to appeal that decision to the City Council by submitting written notice of appeal, together with appeal administration fees, within Ten (10) calendar days of the date of notification of finding that the complaint is not credible. Upon receipt of a timely filed notice of appeal, the matter will be placed on the agenda for consideration at the next regularly scheduled City Council meeting. The Council’s decision on appeal shall be final.

B. The City Council will, by resolution, set the amount to be collected for filing of a notice of appeal. All appeal administration fees shall be paid at the time of filing of the notice of appeal. In the event of a finding by the City Council in favor of the Complainant, the City will assume all costs associated with processing the appeal. In the event the finding of the City Council upholds the decision of the Code Enforcement Officer, the Complainant will reimburse the City for any and all costs associated with processing the appeal. Collection of such fees shall be made in the same manner as provided in Section 36.090 hereof.

§ 36.070 CODE OF ORDINANCES VIOLATIONS.

In the event of a finding of a violation of the Code, the Code Enforcement Officer may take the following actions:

- A. Seek voluntary compliance to abate the violation without any further action taken;
- B. Summarily abate the violation if the violation is an immediate threat to public health and safety or endangers property;
- C. Impose administrative costs against the person found to be responsible for the violation;
- D. Issue a notice of violation;
- E. Issue a cease and desist order;
- F. Abate;
- G. Fine;
- H. Execute a stipulation agreement; and/or
- I. Commence civil proceedings.

§ 36.080 NOTICE OF VIOLATION.

A. If the Code Enforcement Officer determines that a code violation exists, the Code Enforcement Officer will serve a notice of violation on the property owner and the Person Responsible. The notice of violation will be served by certified mail, return receipt requested, or by personal service. Service by certified mail will be deemed complete upon mailing. If the property owner is unknown or absent and has no known representative upon whom notice can be served, the Code Enforcement Officer will post a copy of the notice of violation on the property.

The notice of violation will contain:

1. Findings of fact with corresponding conclusions of law, which describe the code violation(s) and the corresponding code section(s), and/or rule(s) which have been violated;

2. Order for corrective action, which describes specifically how each violation must be corrected and the timeframes within which the corrections are required to be made. The order for corrective action shall include a statement that if the violation is not appealed or corrected within Ten (10) days of the date of service of the notice of violation, the City will abate or correct the violation and charge the costs of abatement or correction to the Person Responsible. The order for corrective action shall also include a statement that failure to correct or abate the code violation may result in the imposition of a fine.

3. A description of the additional administrative and judicial enforcement actions that could be pursued by the Code Enforcement Officer if the violations are not satisfactorily corrected.

4. A statement that the Person Responsible or the property owner may appeal the order for corrective action to the City Council by delivering a written request for review to the City Recorder within Ten (10) calendar days after the date of issuance of the notice of violation. If the Person Responsible or the property owner fails to timely file a written request for review, the Code Enforcement Officer's finding that a violation has occurred will be final.

B. An error in the name or address of the property owner or Person Responsible will not void the notice of violation.

C. Upon receipt of a timely filed written request for review, the matter will be placed on the agenda for consideration at the next regularly scheduled City Council meeting. If the Council determines that a code violation exists the property owner or Person Responsible shall abate or correct the code violation within Five (5) days of the date of the Council's decision, unless the Council allows a longer time for abatement or correction. The Council's decision on the appeal shall be final.

**§ 36.090 ABATEMENT OR CORRECTION; ASSESSMENT OF COSTS;
LIEN**

A. If the violation has not been abated or corrected by the Person Responsible within the required timeframe, the Code Enforcement Officer may abate or correct the violation, provided that the estimated cost of the abatement or correction does not exceed TWO THOUSAND DOLLARS (\$2,000.00). If the estimated cost of the abatement or correction exceeds TWO THOUSAND DOLLARS (\$2,000.00), the Code Enforcement Officer will seek approval of the expenditure of said amounts from the City Council at the City Council's next regularly scheduled meeting. In addition to abating or correcting the violation, the Code Enforcement Officer may assess a penalty against the Person Responsible, and recover the costs of the abatement from the Person Responsible.

B. The Code Enforcement Officer will keep a record of the abatement or correction costs incurred by the City, including administrative expenses and costs of appeal, and report all work

done for which assessments are to be made, stating and certifying the description of the real property, lots or parcels involved and the amount assessable to each.

C. The Code Enforcement Officer shall forward a notice of costs to the property owner and Person Responsible stating:

1. The total cost of the abatement or correction;
2. The amount of any penalty for violation of the code;
3. That the costs and any penalties will be assessed to and become a lien against the real property if not paid within Thirty (30) days of the date of the notice;
4. That the amount of costs and penalties may be appealed to the City Council by submitting a written notice of appeal to the City Recorder within Ten (10) calendar days of the date of the notice.

D. Upon receipt of a timely filed written request for review, the matter will be placed on the agenda for consideration at the next regularly scheduled City Council meeting. The Council's decision on the appeal shall be final.

E. Unless prior arrangements have been made with the City Recorder, if the costs of abatement or correction and any penalties assessed are not paid within Thirty (30) calendar days of the date of the notice of costs, or the from the date of entry of decision by the City Council in the event of appeal, the amount owed will be entered into the docket of city liens and will constitute a lien on the property where the violation took place. This lien will be recorded with Lane County Deeds and Records.

F. The lien may be enforced in the same manner as liens for street improvements are enforced, and will bear interest at the rate of Nine Percent (9%) per annum. Interest will begin to run on the date of entry in the lien docket or date of recordation in the Lane County public records.

G. An error in the name or address of the property owner or Person Responsible for a failure to receive the notice of costs will not void the assessment and it will remain a valid lien on the property.

H. Abatement or correction of a code violation is not a penalty, but is an additional remedy. Imposition of a penalty for a code violation does not relieve the Person Responsible of the duty to abate or correct the violation.

§36.095. FINE ASSESSMENT AND LIEN

A. Any person found to be in violation of any section or provision of this City Code, where no other penalty is set forth, shall be punished by a fine not to exceed FIVE HUNDRED DOLLARS (\$500.00) for any one offense, each day constituting a separate offense.

B. In all cases where the same violation is made punishable or is created by different clauses or sections of this City Code, the Code Enforcement Officer may elect under which to proceed;

but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

C. Whenever the doing any act or the omission to do any act constitutes a breach of any section or provision of this City Code and there shall be no fine or penalty specifically declared for such breach, the provisions of this Chapter shall apply.

D. No provisions of this City Code designating the duties of the Code Enforcement Officer, or designated Code Enforcement Officer, shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intent of the City Council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

E. The Code Enforcement Officer shall forward a notice of imposition of penalty to the property owner and Person Responsible stating:

1. The amount of any penalty for violation of the Code;
2. That the penalty will be assessed to and become a lien against the real property if not paid within Thirty (30) calendar days of the date of the notice;
3. That the penalty may be appealed to the City Council by submitting a written notice of appeal to the City Recorder within Ten (10) calendar days of the date of the notice and paying any fees associated with the filing of notice of appeal;

F. Upon receipt of a timely filed written request for review, the matter will be placed on the agenda for consideration at the next regularly scheduled City Council meeting. The Council's decision on the appeal shall be final.

G. Unless prior arrangements have been made with the City Recorder, if the penalties assessed are not paid within Thirty (30) calendar days of the date of the notice of imposition of penalty, the amount owed will be entered into the docket of city liens and will constitute a lien on the property where the violation took place. This lien will be recorded with Lane County Deeds and Records.

H. The lien may be enforced in the same manner as liens for street improvements are enforced, and will bear interest at a legal rate of interest. Interest will begin to run on the date of entry in the lien docket.

I. An error in the name or address of the property owner or Person Responsible for a failure to receive the notice of imposition of penalty will not void the imposition and it will remain a valid lien on the property.

J. Abatement or correction of a code violation is not a penalty, but is an additional remedy. Imposition of a penalty for a code violation does not relieve the Person Responsible of the duty to abate or correct the violation.

§36.100 PROHIBITION AGAINST ISSUANCE OF CITY PERMITS

For properties where a notice of violation has been issued, the City may withhold permits for repair, construction and/or alteration, other than those necessary to achieve compliance with the provisions of this Code, on the affected property until a notice of compliance has been issued by the Code Enforcement Officer.

§ 36.110 CEASE AND DESIST ORDERS

Cease and desist orders may be issued when the Code Enforcement Officer has probable cause to believe that an activity regulated by this Code is being or has been conducted without a permit or in violation of this Code. When activity has been stopped by a cease and desist order, it may not be resumed until the reason for the activity stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

§ 36.120 STIPULATION AGREEMENT

The Code Enforcement Officer, with the approval of the City Council, and a person alleged to have violated provisions of this Code may voluntarily enter into a stipulation agreement whereby the parties to the agreement: Identify conditions on the property that require corrective action; agree on the corrective actions that must be performed by the person; agree on the timeframes in which the corrective actions must be completed; and any other necessary information. If the person fails to fulfill the requirements of the agreement, the Code Enforcement Officer may seek compliance with the terms of the agreement through a court of competent jurisdiction or pursue other enforcement action allowed by this Code.

§ 36.130 COMMENCEMENT OF CIVIL COURT ACTION

In the event of a violation or threat of violation of this Code, the City Council or the Code Enforcement Officer may institute appropriate civil actions or proceedings in any court of competent jurisdiction requesting injunctive relief to prevent, restrain, correct or abate such violations or threatened violations. The City may recover all costs, including reasonable attorney's fees, incurred for the enforcement of this Code.

§ 36.140 JOINT RESPONSIBILITY

If more than one person is a Person Responsible, they will be jointly and severally liable for abating or correcting the violation and for the costs incurred by the City in abating or correcting the violation, and for any and all penalties assessed for violation of this Code.

Section 2: Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is judicially declared to be invalid, unenforceable, and/or void by a court of competent jurisdiction, such decision shall not have the effect of invalidating or voiding the remainder of this Ordinance, and the part(s) of this Ordinances so held to be invalid,

unenforceable and/or void shall be deemed stricken, and the remainder of this Ordinance shall have the same force and effect as if such stricken part(s) had never been included.

Section 3. Repeal. The repeal of Ordinance Numbers 219 and 232 shall not affect any action occurring before the repeal takes effect. Ordinance Numbers 219 and 232 are hereby repealed.

The first reading of this Ordinance No. 238 was conducted in a regular meeting of the City Council of Dunes City, Oregon, on the 9th day of June, 2016.

The second reading of this Ordinance No. 238 was conducted in a regular meeting and adopted by the City Council of Dunes City, Oregon on this 9th day of June, 2016.

Ayes: 3 Nays: 0 Abstain: 0 Absent: 3 Vacant: 0

ADOPTED BY THE DUNES CITY COUNCIL THIS 9th DAY OF June, 2016.

Rebecca Ruede, Mayor
Rebecca Ruede, Mayor

ATTEST:

Jamie Mills
Jamie Mills, City Administrator/Recorder