

ORDINANCE NO. 2302

AN ORDINANCE AMENDING CHAPTER 136 OF THE HERMISTON CODE OF ORDINANCES, ENTITLED “CODE HEARINGS OFFICER.”

Whereas, the staff of the City of Hermiston is conducting a major review of the City’s Code of Ordinances, now, therefore,

The City of Hermiston ordains as follows:

(New language is in red and underlined and repealed language has a line through it.)

Section 1. Section 136.01 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.01 ESTABLISHED.

The office of Code Hearings Officer is hereby created. The Code Hearings Officer is authorized ~~shall act on behalf of the Council in~~ to decide matters arising under this Code except citations to court or as expressly provided otherwise in this Code ~~considering and applying regulatory enactments and policies pertaining to the matters set forth in other sections of this chapter.~~ The Code Hearings Officer shall be appointed by the City Manager or designee. The appointment of a Code Hearings Officer may be for a specific term, for a particular proceeding, or for a group of proceedings. If the City elects not to fill the office of Code Enforcement Hearings Officer, the City Council shall serve as the decision-making authority. The City Council retains the right to designate a proceeding, or types of proceedings, to be heard by the City Council in lieu of the Code Hearings Officer.

Section 2. Section 136.02 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.02 JURISDICTION.

The Code Hearings Officer shall have jurisdiction over decisions and appeals as provided in this Code, including, but not limited to citations for code violations unless cited into court or as otherwise provided in this Code. Notwithstanding the foregoing, prior to issuance of the decision of the Code Hearings Officer, the City Manager or designee retains jurisdiction to informally resolve or settle any citation, enforcement matter or City appeal pending before the Code Hearings Officer, or to settle or resolve an appeal with the consent of the party who filed the appeal, in which case the matter shall be dismissed ~~all cases submitted in accordance with the procedures and under the conditions set forth in this code.~~

Section 3. Section 136.03 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.03 DEFINITIONS.

For the purposes of this Cchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CIVIL PENALTY. An amount imposed by the Code Hearings Officer pursuant to a citation for violation of this Code. It has the same meaning as the term ‘fine’ in Chapter 138.

CODE HEARINGS OFFICER. The Code Hearings Officer appointed pursuant to § 136.01.

COMPLAINT. A document initiating an action to enforce this Code other than a citation provided for in Chapter 138.

MONETARY OBLIGATION. An amount, other than a civil penalty, imposed by the Code Hearings Officer, including but not limited to reimbursement of City expenses in abating a nuisance.

PARTY. Unless expressly provided otherwise in this Code, a person subject to an enforcement complaint and a person entitled to appeal a decision of the City, including:

(1) The City of Hermiston;

~~(2) Any person named by the city as a respondent in the complaint.~~

(23) Any person requesting and entitled to an appeal hearing pursuant to § 136.10. The owner or occupant(s) of property alleged to constitute a nuisance, or who may be subject to an order to abate, close, demolish or vacate the property, including under Chapters 135 or 136 of the Code, if different from the respondent; and

(3) Any person entitled to notice of the decision of the City.

RESPONDENT. The party or parties who the Ceity alleges in the complaint, citation or City appeal to have committed a violation or other noncompliance with of the Ceity Ceode or to be responsible for such violation or noncompliance.

Section 4. Section 136.04 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.04 ENFORCEMENT.

(A) An order of the Code Hearings Officer, including on a citation, is a legally binding obligation to take such action, refrain from action or pay any civil penalty or monetary obligation. The Ceity may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce or collect on the provisions of any order of the Code Hearings Officer. ~~, including, but not limited to, a suit or action to obtain judgment for any civil penalty imposed by an order of the Code Hearings Officer pursuant to § 136.23(A)(5) and/or any assessment for costs or penalties imposed pursuant to § 136.24(C).~~

(B) Failure of a party to comply with an order of the Code Hearings Officer, other than for the payment of a civil penalty or monetary obligation is a Class 'C' violation of this Code. Each day of noncompliance shall constitute a separate violation. ~~Unless authorized by the Code Hearing Officer, it is unlawful for any person to knowingly enter or remain in any building or structure that the Code Hearings Officer has ordered vacated pursuant to § 136.23(C)(2). In addition to any civil penalties imposed pursuant to § 136.23(A)(5), any person knowingly entering or remaining in such building or structure shall upon conviction be punished by a fine of not more than \$500, or by imprisonment not exceeding six months, or both.~~

CODE ENFORCEMENT PROCEDURES

Section 5. Section 136.10 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.10 INITIATION OF PROCEEDING.

(A) A proceeding before the Code Hearings Officer, other than an appeal, shall be initiated as provided in this Section. The procedures for making a land use decision in Title XV or state law shall not apply except as required by state law may be initiated only as specifically authorized elsewhere in the code.

(B) In lieu of citing into municipal or circuit court, a violation of this Code may be cited to the Code Hearings Officer. The citation shall substantially conform with the requirements of Chapter 138. Except as provided below or otherwise provided by law, the Hearings Officer shall have the same authority as a judge and the provisions of Chapter 138 shall apply to a citation proceeding before the Code Hearings Officer:

(1) A citation may be issued on probable cause regardless of whether the violation was committed in the presence of the city officer or personally observed by the city officer.

(2) The City Attorney may elect to appear regardless of whether counsel for the defendant appears.

(3) The Hearings Officer may, but is not required to, apply the rules adopted by the Supreme Court for the conduct of violation proceedings in court.

(4) The rules of evidence do not apply. The Code Hearings Officer may consider any evidence that a person would reasonably rely on in the conduct of serious affairs, including out of court statements, affidavits and declarations. No person, however, shall be required to provide evidence that is privileged or have such refusal be the basis of an adverse determination.

(5) The Code Hearings Officer is not authorized to order restitution as that term is used in Chapter or ORS 137.103 - 137.109.

(6) The Code Hearings Officer is not authorized to hold any person in contempt. This does not preclude the Code Hearings Officer or City from making application to a court for contempt as provided by law.

(7) Failure to appear before the Hearings Officer on a citation may be prosecuted only by a new citation for a Class B violation.

(8) If the person does not appear, the Code Hearings Officer may decide the citation, complaint or appeal based on the record, including any additional evidence presented.

(BC) Any action to enforce the Code before the Code Hearings Officer, other than an appeal or citation, shall be Except as provided in § ~~136.32~~, a proceeding before the Code Hearings Officer shall be initiated only initiated by the City filing a complaint with the office of the Code Hearings Officer on forms provided by the City. Nothing, however, precludes the Code Hearings Officer from hearing a citation for a civil penalty in conjunction with an action to enforce the Code under this paragraph that office. The complaint shall contain:

- (1) The name of the respondent.
- (2) The address or location at which the violation is alleged to have occurred.
- (3) A short and plain statement of the alleged violations, including a reference to the particular statutes, rules, or regulations involved.
- (4) The nature of the relief sought by the City.
- (5) The name, title, and signature of the person initiating the proceeding on behalf of the City.

Section 6. Section 136.11 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.11 SETTING OF HEARINGS.

(A) Upon filing of a complaint, the Code Hearings Officer shall specify a time, date, and place for a ~~public~~ hearing on the complaint and the matters alleged therein.

(B) The date set for hearing shall be not less than 14 days nor more than 30 days after the date the complaint is filed, except that the Code Hearings Officer may specify a date for hearing less than 14 days after the complaint is filed where

it appears that the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person.

(C) The Code Hearings Officer may postpone, continue, set over, or reschedule any hearing on his or her their authority, with the consent of all parties or on the motion of any party for good cause shown.

Section 7. Section 136.12 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.12 NOTICE OF HEARING.

(A) The City shall give notice of the hearing, together with a copy of the complaint, to the respondent and all other parties not less than five calendar days prior to the date set for hearing except that the Code Hearings Officer may set a shorter period when it appears that the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or the life, health, safety, welfare, or property of any person.

(B) The notice of hearing shall specify the time, date, and place set for the hearing.

(C) ~~Notice may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing.~~ Notice may be served given by:

(1) Personally delivering the notice to the party. ~~or~~

(2) Mailing the notice by United States mail, postage prepaid, and addressed to the last known residence or business address of the party. Notice mailed shall be deemed served on the date that is three days (Sundays and City holidays not included) after the notice is deposited in the United States mail. ~~or~~

(3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons. ~~or~~

(4) If the party or address of the party is unknown or appears to be avoiding service, ~~A~~ any other method authorized in such circumstances by the Oregon Rules of Civil Procedure. ~~by the hearings officer, by rule or otherwise.~~ If notice is given by mail, such notice shall be deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail.

(5) If the property is alleged to constitute a nuisance, or may be subject to an order to abate, close, demolish or vacate the property, including under Chapters 135 or 136 of the Code, notice of the hearing shall be posted on the property.

(6) If the matter is a land use decision as defined by state law or this Code, notice as required for such land use decision.

(D) The Code Hearings Officer may require that ~~A~~ notice of the hearing and a copy of the complaint shall also be given to

~~(1) The tents, residents, and lessees of any building, property, or structure if the city has requested in the complaint the vacation, closure, or demolition of the building, property, or structure or if the Code Hearings Officer determines that such vacation, closure, or demolition is a reasonably possible outcome of the proceeding.~~

~~(2) A~~ any other person who reasonably appears to have an interest in the property involved or who reasonably appears may be adversely affected by any determination, decision, or order of the Code Hearings Officer.

(E) Except as otherwise provided by law, ~~t~~ The failure of any person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision, or order of the Code Hearings Officer.

Section 8. Section 136.13 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.13 NOTICE; RIGHTS; PROCEDURE.

(A) Prior to the commencement of a contested hearing, the Code Hearings Officer shall outline the following: inform each party to the hearing of the following matters:

(1) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens going forward with the evidence. In the case of a citation, that the person is not required to be a witness.

(2) That a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(3) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the Code Hearings Officer.

(4) Whether an aAttorney will represent the Ccity in the matters to be heard and whether the parties ordinarily and customarily are represented by an aAttorney.

(5) The title and function of the Code Hearings Officer, including the effect and authority of the Code Hearings Officer's determination.

(6) In the event a party is not represented by an attorney, whether the party may, during the course of proceedings, request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(7) Whether there exists an opportunity for an adjournment at the end of the case and the party then determines that additional evidence should be brought to the attention of the Code Hearings Officer and the hearing is reopened.

(8) Whether there exists an opportunity after the hearing and prior to the final determination or order of the Code Hearings Officer to review and object to any proposed findings of fact, conclusions of law, summary of evidence, or order of the Code Hearings Officer.

(9) A description of the appeal or judicial review process from the determination or order of the Code Hearings Officer.

(10) If the matter constitutes a land use decision under state law, any statement required by state law or Title XV.

(B) The information required to be given to a party to a hearing under division (A) of this section may be given in writing or orally before commencement of the hearing.

(C) The failure to give notice of any item specified in paragraph ~~division~~ (A) of this section, or other procedural irregularity, shall not invalidate any determination or order of the Code Hearings Officer unless on appeal from or review of the determination or order a court finds that the failure substantially prejudices the ~~affects the substantive rights of~~ the complaining party. In the event of such a finding, a reviewing court shall, at the request of the City or the court, may on its own authority, ~~the court shall~~ remand the matter to the Code Hearings Officer for a reopening of the hearing and shall direct the Code Hearings Officer as to what steps shall be taken to remedy the prejudice to the rights of the complaining party.

Section 9. Section 136.14 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.14 HEARINGS PROCEDURE.

- (A) Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing by stipulation, consent order, agreed settlement, or default. However, after issuance of notice of hearing, unless consented to by the occupants no building occupied as a residential structure may be vacated based on an informal disposition unless approved by the Code Hearings Officer.
- (B) Parties may elect to be represented by counsel and to respond to and present evidence and argument on all issues involved.
- (C) An order adverse to a party may be issued upon default only upon a prima facie case made on the record before the Code Hearings Officer.
- (D) Testimony shall be taken upon oath or affirmation of the witness from whom received. The Code Hearings Officer may administer oaths or affirmations to witnesses.
- (E) The Code Hearings Officer shall place on the record a statement of any conflicts of interest and the substance of any written or oral ex parte communications made to the Code Hearings Officer on a fact in issue during the pendency of the proceedings. The Code Hearings Officer shall notify the parties of the communication and of their right to rebut such communications.
- (F) The record in a proceeding before the Code Hearings Officer shall include:
- (1) All pleadings, motions, and intermediate rulings;
 - (2) Evidence received or considered;
 - (3) Stipulations;
 - (4) A statement of matters officially noticed;
 - (5) Questions and offers of proof, objections, and rulings thereon;
 - (6) A statement of any conflicts of interest or ex parte communications on a fact in issue made to the Code Hearings Officer during the pendency of the proceedings;
 - (7) Proposed findings and exceptions; and
 - (8) Any proposed, intermediate, or final order prepared by the Code Hearings Officer.
- (G) A verbatim, written, mechanical, or electronic record shall be made on all motions, rulings, and testimony. A party may request transcription of the record for the purposes of court review ~~pursuant to § 136.22~~ upon payment of the reasonable costs of preparing the transcript. If the party prevails on such review, the reasonable costs of preparing the transcript shall be allowed as a part of that party's costs in such action. ~~The City Council may determine the reasonable costs of preparing a transcript by Council resolution.~~

Section 10. Section 136.15 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.15 SUBPOENAS.

(A) The Code Hearings Officer may, in his or her discretion, ~~shall~~ issue subpoenas ~~to any party upon a~~ showing that issuance is necessary to obtain relevant testimony not otherwise available. ~~of general relevance and reasonable scope of the evidence sought.~~ Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the ~~C~~city, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(B) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which ~~he or she~~ they may be lawfully interrogated, the judge of the Circuit Court of any county, on the application of the Code Hearings Officer, or of a designated representative of the Code Hearings Officer, ~~,~~ or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.

Section 11. Section 136.16 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.16 DISCOVERY OF DOCUMENTS AND THINGS.

(A) In a prosecution of a citation, the City shall provide discovery as required by law.

~~(A B)~~ On petition of any party and a showing of the general relevance of the documents or things sought, the Code Hearings Officer may enter an order directing any party to produce and make available to the petitioning party to inspect and copy any documents or to inspect and copy, test, or sample any things which are in the possession of a party.

~~(CB)~~ The order directing a party to produce and make available documents or things may require the petitioning party to pay the party producing documents and things that party's reasonable costs associated with such production.

~~(DE)~~ The Code Hearings Officer shall not enter an order requiring a party to produce any document or thing which is privileged under the rules of privilege recognized by law or which is subject to an exemption ~~exempt~~ from disclosure under the Oregon Public Records Law.

Section 12. Section 136.17 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.17 EVIDENCE.

(A) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Erroneous rulings on evidence shall not preclude action by the Code Hearings Officer on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Code Hearings Officer shall give effect to the rules of privilege recognized by law. Objections to evidence may be received in written form.

(B) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in paragraph ~~division~~ (D) of this section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies of excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(C) In an enforcement proceeding, eEvery party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

(D) The Code Hearings Officer may take notice of judicially recognizable facts, and the Code Hearings Officer may take official notice of general, technical, or scientific facts within the specialized knowledge of ~~C~~city employees. Parties shall

be notified at any time during the proceeding, but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

(E) No sanction shall be imposed or order be issued except upon consideration of the whole record as supported by, and in accordance with reliable, probative, and substantial evidence.

Section 13. Section 136.18 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.18 CODE HEARINGS OFFICER AUTHORITY

In addition to any authority otherwise granted in the Code, the Code Hearings Officer may:

(A) Order a party found to not be in compliance with this Code or any applicable rule or regulation issued thereunder to comply with the provisions of the Code or the applicable rule or regulation within such time as the Code Hearings Officer may by order allow. The order may include but is not limited to requiring such party to do any and all of the following:

(1) Make any and all necessary repairs, modifications, or improvements to the structure, real property, or equipment involved.

(2) Abate or remove any nuisance.

(3) Change the use of the building, structure, or real property involved.

(4) Install any equipment necessary to achieve compliance.

(5) If the order is in conjunction with a citation, pay a civil penalty in the amount of the presumptive fine or fine provided for in the applicable Chapter or Chapter 138 for the class of violation.

(6) Pay costs and attorney fees if otherwise authorized by this Code.

(7) Take any other action reasonably necessary to correct the violation or mitigate the effects thereof.

(B) If the Code Hearings Officer determines that a party is unwilling, unable, ~~or~~ refuses, or fails to comply with an Order to abate or mitigate a nuisance, including, but not limited to vacating or demolishing a building or structure, the Code Hearings Officer may authorize the City to take such actions as the Code Hearings Officer determines are reasonably necessary, including abatement, and that the person found in violation pay the City's reasonable costs thereof.

(C) Where the Code Hearings Officer finds that there is noncompliance with the provisions of Chapters 134 or 135, the Code Hearings Officer, in addition to the powers set out in paragraphs (A) and (B) above, may:

(1) Authorize the City to act pursuant to Chapter §§135.05 to 135.053;

(2) Provided notice has been given to occupants as required by §136.12, order a building or structure vacated or demolished when it reasonably appears that such measures are reasonably required to protect the health, safety, or property of the general public, the occupants of the structure, or that of adjacent landowners and residents. Where vacation or demolition is ordered, the Code Hearings Officer may direct that the person found in violation of the Code undertake any and all interim measures as may be necessary and pay the reasonable costs of relocation. The Hearings Officer shall grant such reasonable time as appropriate to vacate in consideration of the immediacy of the risk of harm;

(3) Act as the Building Code Board of Appeals in a case already before the Hearings Code Officer and which requires application of Chapter 135; and

(4) Require the party found in noncompliance to prepare a cost estimate of the repairs made necessary to achieve compliance and the impact of these repairs will have on the cost of doing business and, if applicable, future rent levels. In assessing costs to repair under this section, the Code Hearings Officer may require the person found in violation to contact public and private agencies, institutions, and other sources of property improvement funds to determine the availability of funds needed for repairs.

Section 14. Section 136.19 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.19~~18~~ CONTINUANCE OF TENANCY.

After issuance of a notice of hearing, and until such time as the Code Hearings Officer issues a final decision, no person, including the City ~~neither the respondent nor the city~~ shall take any action that results in the vacation of a building used for residential occupancy without the consent of the occupant(s) or permission of the Code Hearings Officer, except that in cases where buildings are found to be imminently hazardous, the building official or Chief Fire Marshal may order the building vacated as provided by law if no other means are reasonably available to eliminate the imminent hazard.

Section 15. Section 136.20 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.20~~19~~ PROPOSED AND FINAL ORDERS.

The Code Hearings Officer shall prepare and mail to all parties, ~~a proposed an order. including findings of fact and conclusions of law.~~ The proposed order shall become final on the date mailed unless specified otherwise in the order. The Hearings Officer may issue a proposed order and provide the parties not less than 10 days to review and comment before issuance of a final order., which date shall not be less than 14 days after such mailing, unless the Code Hearings Officer finds that an existing violation is imminently dangerous to the health, safety, or property of any person or of the public, in which case the order may specify an earlier date.

Section 16. Section 136.21 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.21~~20~~ ORDERS.

(A) Every order ~~adverse to a party to the proceeding~~ shall be in writing or stated in the record and may be accompanied by an opinion.

(B) Unless otherwise stipulated, a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Code Hearings Officer's order.

~~(C) The Code Hearings Officer shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.~~

~~(D)~~ (C) Every final order shall include a citation of the ordinances under which the order may be judicially reviewed.

Section 17. Section 136.22 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.22~~21~~ PETITIONS FOR RECONSIDERATION, REHEARING.

- (A) A person subject party to an enforcement complaint, the person appealing a decision of the City or the City, may file a petition for reconsideration or rehearing on a final order with the Code Hearings Officer within 130 days after the order is mailed. The party filing the petition shall serve the petition on all parties.
- (B) The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by written argument.
- (C) The Code Hearings Officer may grant a request for reconsideration if good and sufficient reason therefor appears. If the petition is granted, an amended order shall be issued.
- (D) The Code Hearing Officer may order grant a rehearing petition if good and sufficient reason therefor appears. The rehearing may be limited by the Code Hearings Officer to specific matters. If a rehearing is held, an amended order may be issued.
- (E) Except as provided in paragraph (F), the filing of a petition for reconsideration or rehearing shall not stay the effectiveness of the Order. Prior to the filing of an appeal of the Code hearings Officer, tThe Code Hearings Officer, at any time, and upon a showing of due diligence, may set aside, modify, vacate, or stay any final order, or re-open any proceeding for additional hearing when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by such order.
- (F) Denial of a petition for reconsideration or rehearing is not separately appealable. The filing of a petition for reconsideration or rehearing shall toll the appear period on the original order. Upon issuance of a decision denying the reconsideration or rehearing petition, or an amended order, the appeal period shall resume but in no event shall a party have less than 10 days from the date of mailing to file an appeal.

Section 18. Section 136.23 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.23 JUDICIAL REVIEW.

Unless expressly provided otherwise in this Code, rReview of the final order of a Code Hearings Officer under this Cchapter by any aggrieved party, including the Ccity, shall be by writ of review to the Circuit Court of Umatilla County, Oregon, as provided in ORS 34.010 through 34.100, except that review of an order constituting a land use decision under state law shall be to the Land Use Board of Appeals as provided in ORS 197.830.

~~136.23 ORDER TO COMPLY; ABATEMENT, AND REPAIR.~~

~~(A) The Code Hearings Officer may order a party found in violation of the code of the city or any applicable rule or regulation issued thereunder to comply with the provisions of the code or the applicable rule or regulation within such time as the Code Hearings Officer may by order allow. The order may require such party to do any and all of the following:~~

- ~~(1) Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;~~
 - ~~(2) Abate or remove any nuisance;~~
 - ~~(3) Change the use of the building, structure, or real property involved;~~
 - ~~(4) Install any equipment necessary to achieve compliance;~~
 - ~~(5) Pay to the city a civil penalty of up to \$1,000 per day or such greater amount as may be authorized by this code or any resolutions adopted thereunder.~~
 - ~~(6) Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.~~
- ~~(B) In the event any party fails to comply with any provision of an order of the Code Hearings Officer, except a provision requiring the payment of a civil penalty only, the Code Hearings Officer may authorize the city to undertake such actions as the Code Hearings Officer may determine are reasonably necessary to correct the violation and/or eliminate or mitigate the effects thereof. The city's reasonable costs of such actions may be made a lien against the affected real property pursuant to § 136.24.~~

~~(C) Where the Code Hearings Officer finds that there is a violation of any of the provisions of Chapters 134 or 135, the Code Hearings Officer, in addition to the powers set out in divisions (A) and (B) above, may:~~

- ~~(1) Authorize the Code Enforcement Officer to act pursuant to §§ 135.050 to 135.053;~~

- (2) ~~Provided notice has been given to tenants, residents, and lessees as required by § 136.12(D), order a building or structure vacated or demolished when it reasonably appears that such measures are reasonably required to protect the health, safety, or property of the general public, the residents of the structure, or that of adjacent landowners and residents. Where vacation or demolition is ordered, the Code Hearings Officer may direct that the person found in violation of the code undertake any and all interim measures as may be necessary;~~
- (3) ~~Act as the Building Code Board of Appeals in a case already before him and which requires interpretation of Chapter 135;~~
- (4) ~~Require the party found in violation of this code to prepare a cost estimate of the repairs made necessary to achieve compliance with the code and the impact of these repairs will have on the cost of doing business and, if applicable, future rent levels. In assessing the cost estimate under this section the Code Hearings Officer may require the person found in violation to contact public and private agencies, institutions, and other sources of property improvement funds to determine the availability of funds needed for repairs.~~

Section 19. Section 136.24 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.24 ASSESSMENTS.

(A) Any unpaid monetary obligation or civil penalty imposed by ~~Costs incurred by the city for any actions authorized by the Code Hearings Officer, including, but not limited to: reimbursement of City costs of abatement, demolish a building or structure or relocate occupants is debt due and owing to the City and~~ pursuant to § 136.23(B) and (C) and any civil penalty imposed as a result of an order of the Code Hearings Officer shall, upon filing or recording as provided by law, be an assessment lien upon the property subject to the order.

~~(B) If a residential structure is ordered vacated pursuant to §§ 136.23(C)(2) or 135.076 and the city relocates the tenants of such property, then the cost incurred by the city for relocating the tenants as provided by ORS 90.450 shall be an assessment lien upon the property vacated and from which the tenants are relocated.~~

~~(B) The City shall furnish a statement of its such costs to the person responsible for payment on the owner, in person or by United States Mail, postage prepaid and addressed to the owner at the owner person's residence or place of business, and shall file a copy of such statement for the Code Hearings Officer with proof of service attached. If no objection to such statement is filed with the office of the Code Hearings Officer, within 15 10 days from the date of service or mailing, the Code Hearings Officer shall certify such statement and forward the same to the City Recorder/Finance Officer who shall forthwith, if not paid, enter the same in the City lien docket. (1) If an objection to the statement is received within the 15 10 day period, the Code Hearings Officer shall schedule and hold an appeal hearing pursuant to §§ 136.32 to 136.35. After the hearing, the Code Hearing Officer shall certify such statement, or so much of it as determined to be he determines is correct and proper, and forward it to the City Recorder/Finance Officer. who shall enter it into the city lien docket.~~

~~(1) If an objection to the statement is received within the 15 day period, the Code Hearings Officer shall schedule and hold an appeal hearing pursuant to §§ 136.32 to 136.35. After the hearing, the Code Hearing Officer shall certify such statement, or so much of it as he determines is correct and proper, and forward it to the City Recorder/Finance Officer who shall enter it into the city lien docket.~~

~~(2) The Code Hearings Officer shall certify to the City Recorder/Finance Officer the amount of any civil penalty imposed under any order of the Code Hearings Officer, and the City Recorder/Finance Officer shall enter it into the city lien docket. The lien imposed for the civil penalty shall be in addition to any lien imposed for costs actually incurred by the city.~~

~~(3) The city may file separate statements for the costs and services furnished as each is incurred or provided.~~

~~(4) Liens imposed pursuant to this chapter shall be collected in all respects as provided by law.~~

~~(D) In addition to the lien imposed under this section, any person found to be in violation of the code shall be personally liable for costs incurred by the city pursuant to § 136.23(B) and (C) and for any civil penalty imposed by order of the Code Hearings Officer. In cases of person found to be in violation of the code as owners of property, the persons~~

shall be personally liable hereunder only if they have control of the property, the legal authority to correct the violation, and knowingly have committed the violation.

APPEALS TO THE CODE HEARINGS OFFICER

Section 20. Section 136.30 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.30 DEFINITIONS. RESERVED

For the purpose of this chapter, the following definition will apply unless the context clearly indicates a different meaning:

~~DECISION or DETERMINATION. Any decision, determination, order, or other action of the city.~~

Section 21. Section 136.31 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.31 JURISDICTION.

(A) Whenever, pursuant to any portion of this Code or otherwise provided by law, a person has the right of appeal ~~to the Code Hearings Officer from any City decision or determination~~, such appeal shall be in accordance ~~with~~ with the procedures and under the conditions set forth in §§136.30 to 136.35 of this Chapter. If the City has elected not to appoint a Code Hearings Officer or City Council has retained authority to hear the appeal either as provided in this Code or by resolution, appeals shall be to the City Council, unless Council made the decision in which case the appeal shall be to a court by writ of review or, for a statutory land use decision, to the Land Use Board of Appeals. Appeals of decisions on annexations or land use applications and permits shall be as provided in Title XV.

(B) No person shall have a right of appeal ~~to the Code Hearings Officer~~ unless the right of appeal is expressly provided for in this Code or otherwise provided by law.

(C) Notwithstanding any other provision of this Code, prior to issuance of a decision on the appeal, the City Manager or designee retains jurisdiction and authority to settle or compromise any matter on appeal or withdraw any City appeal. Upon successful resolution, the City Manager or designee shall inform the Code Hearings Officer or Council and the appeal shall be dismissed.

Section 22. Section 136.32 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.32 INITIATION OF APPEAL.

(A) Unless otherwise specified in this Code, a request for an appeal hearing shall be filed within 10 ~~ten~~ days after the date of the decision or determination. The Code Hearings Officer may waive this requirement for good cause shown not to exceed 30 days.

(B) The request for an appeal hearing shall be in writing and shall contain either a copy of, or a full and complete description of, the decision or determination appealed from and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized, or otherwise improper, together with such other information as relevant ~~the Code Hearings Officer may by rule require~~. The City ~~Code Hearings Officer~~ may specify and provide hearing request forms to be used by persons requesting hearings.

(C) The appeal shall be de novo but shall be limited to the grounds stated in the appeal unless the Hearings Officer finds good cause to expand the scope of the appeal. The Hearings Officer shall grant a continuance as reasonably necessary to avoid prejudice to any party.

Section 23. Section 136.33 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.33 HEARINGS.

(A) Upon receipt of an appeal ~~request for hearing~~, the Code Hearings Officer shall schedule and hold an appeal hearing within 30 days after the receipt of such request.

(B) Notice of the time, date, and place of hearing shall be given to the person filing the appeal requesting the hearing and to the City whose decision or determination is being appealed. Notice shall also be given to any person who reasonably appears may be adversely affected by the decision being appealed should the decision or determination not be sustained after hearing. Notice shall be provided pursuant to § 136.12. ~~The Code Hearings Officer may provide by rule for the manner of providing notice to such persons.~~

(C) The time for hearing may be extended by the Code Hearings Officer for good cause shown, upon such terms and conditions as the Code Hearings Officer shall deem just and appropriate.

Section 24. Section 136.34 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.34 HEARINGS PROCEDURE.

(A) Hearings on appeal shall be subject to and conducted substantially in accordance with the ~~procedures set forth in §§ 136.13 through 136.21.~~

(B) With the consent of all ~~parties~~ persons entitled to notice, the Code Hearings Officer may determine the appeal ~~matter~~ without hearing upon the record.

(C) The Code Hearings Officer may sustain, modify, reverse, or annul the decision or determination appealed from or the Code Hearings Officer may remand the decision or determination to the City for such reconsideration, additional consideration, or further action as the Code Hearings Officer may direct.

(D) The decision or determination appealed from shall be reviewed de novo by the Code Hearings Officer.

Section 25. Section 136.35 of Chapter 136 of the Hermiston Code of Ordinances is amended to read:

136.35 NATURE OF DETERMINATION.

Unless provided otherwise in this Code or stipulated to by the parties, ~~The~~ the determination of the Code Hearings Officer is a quasi-judicial decision and is not appealable to Council; appeals from any determination by the Code Hearings Officer shall be by writ of review to the Circuit Court of Umatilla County, Oregon, as provided in ORS 34.010 through 34.100 or in the case of a land use decision, the Land Use Board of Appeals pursuant to ORS 179.830.

Section 26. Effective date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 27th day of April 2020.

SIGNED by the Mayor this 27th day of April 2020.

Dr. David Drotzmann, Mayor

ATTEST:

Lilly Alarcon-Strong, CMC, City Recorder