

ENFORCEMENT ORDER/NOTICE AND ASSESSMENT OF CIVIL PENALTY

CITY OF SALEM)	
)	CASE/PENALTY NO. 21-122759-00-CC
COUNTY OF MARION)	
)	INVOICE NO. 4110797
STATE OF OREGON)	

CITY OF SALEM
CODE COMPLIANCE DIVISION
COMMUNITY DEVELOPMENT DEPARTMENT
555 LIBERTY STREET SE, ROOM 305
SALEM, OR 97301-3513

DATE: January 27, 2022

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSONS:		
NAME: KATHY CLARK	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51ST ST		
CITY: BELLEVUE	STATE: WASHINGTON	ZIP: 98006

AS WELL AS:

NAME: KENNETH CLARK	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51ST ST		
CITY: BELLEVUE	STATE: WASHINGTON	ZIP: 98006

AS WELL AS:

NAME: CAROL PLAIN	TELEPHONE NO: UNKNOWN	
MAILING ADDRESS: 14860 SE 51ST ST		
CITY: BELLEVUE	STATE: WASHINGTON	ZIP: 98006

As Well as:

NAME: CHUCK SIDES	TELEPHONE NO: 503-588-7099	
MAILING ADDRESS: PO BOX 2087		
CITY: SALEM	STATE: OR	ZIP: 97308

As Well as:

NAME: WILLAMETTE TREE SERVICE ATTN: FRANCISCO TOLENTO	TELEPHONE NO: 503-931-4653	
MAILING ADDRESS: 2292 65TH AV SE		
CITY: SALEM	STATE: OREGON	ZIP: 97317

AT THE FOLLOWING PLACE WITHIN THE CORPORATE LIMITS OF THE CITY OF SALEM AND IN THE ABOVE-MENTIONED STATE AND COUNTY:

ON OR ABOUT: December 3, 2021 – December 5, 2021	AT OR NEAR LOCATION: 2792 MARIETTA ST SE (Tax Lot#083W12C000301 only) TAXLOT# 083W12C002200
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DID THEN AND THERE:

<p>1. Violate SRC 110.110(c),(d): Civil Enforcement</p> <p>Any person who undertakes an activity regulated by the UDC (Unified Development Code) without first obtaining a permit shall be subject to an administrative civil penalty.</p> <p>Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.</p>	<p>Description of Violation: Pursuant to SRC 808.015 (Significant Trees), No person shall remove a significant tree, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC 808.030, undertaken pursuant to a tree conservation plan approved under SRC 808.035, or undertaken pursuant to a tree variance granted under SRC 808.045.</p> <p>48 significant trees (Oregon white oak 24 inches dbh or greater) were removed from the properties without any permits to do so. These are cited at \$2,000.00 per tree.</p>	<p>Amount of Civil Penalty: \$96,000.00</p>
<p>2. Violate SRC 110.110(c),(d): Civil Enforcement</p> <p>Any person who undertakes an activity regulated by the UDC (Unified Development Code) without first obtaining a permit shall be subject to an administrative civil penalty.</p> <p>Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.</p>	<p>Description of Violation: Pursuant to SRC 808.025, No trees may be removed on a lot or parcel that is 20,000 square feet or greater or on contiguous lots or parcels 20,000 square feet or greater which are under the same ownership, without approval. SRC 808.030(a)(2)(n) provides an exception if the removal of trees does not result in:</p> <ul style="list-style-type: none"> (i)Removal of more than five trees or 15 percent of the trees, whichever is greater, within a single calendar year; (ii)Removal of more than 50 percent of the trees within any five consecutive calendar years; and (iii)Removal of heritage trees, significant trees, and trees in riparian corridors; <p>There were 189 total trees on the two contiguous properties. Pursuant to SRC 808.030(N) a permit would not have been required had no more than 28 non-significant trees to been removed. 111 trees were removed from these properties, 48 of which were significant trees as defined by SRC 808.005. As such, each tree removed is subject to a civil penalty. However, at this time the City is not seeking a civil penalty for 28 of the non-significant trees removed from these properties. The City is imposing civil penalties for the removal of 35 non-significant trees removed from these properties at \$1,125.00 per tree.</p>	<p>Amount of Civil Penalty: \$39,375.00</p>

DUE TO THE FACT THAT THE TREE(S) HAS ALREADY BEEN REMOVED IN VIOLATION SRC CHAPTER 808, IT IS OBJECTIVELY IMPOSSIBLE TO REMEDY THIS VIOLATION, THEREFORE A CIVIL PENALTY HAS BEEN ASSESSED AS PART OF AN ENFORCEMENT ORDER PURSUANT TO SALEM REVISED CODE 20J.140(c).

THIS PENALTY IS FOR THE UNPERMITTED REMOVAL OF TREES IN VIOLATION OF SRC AS LISTED ABOVE. **THIS PENALTY IS IN ADDITION TO ALL OTHER LEGAL REMEDIES WHICH THE CITY MAY SEEK.** SRC 808.065(C) PROVIDES FOR ADDITIONAL FEES FOR RESTORATION TO BE DETERMINED BY THE CITY’S PLANNING DEPARTMENT AND INDEPENDENT FROM THIS PENALTY. AS STATED IN 808.065(C):

“Persons violating this chapter, or any permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Planning Administrator...” “Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees and/or native vegetation removed in violation of this chapter...”

I SWEAR/AFFIRM UNDER APPLICABLE LAW AND UNDER PENALTIES FOR FALSE SWEARING THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED PERSON COMMITTED THE ABOVE VIOLATION(S), AND I HAVE SERVED THE PERSON WITH THIS ENFORCEMENT ORDER / NOTICE AND ASSESSMENT OF CIVIL PENALTY.

TOTAL AMOUNT OF CIVIL PENALTIES, BASED ON THE ATTACHED MATRIX, AND ASSESSED BY THIS NOTICE AND ASSESSMENT OF CIVIL PENALTY ARE: \$135,375.00.

I SWEAR/AFFIRM UNDER PENALTIES FOR FALSE SWEARING THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED PERSON COMMITTED THE ABOVE VIOLATION(S) AND FAILED TO CORRECT SAID VIOLATIONS WITHIN THE TIME LIMITS SET FORTH IN THE ENFORCEMENT ORDER ISSUED PREVIOUSLY AS SET FORTH ABOVE.

1/27/2022
DATE ISSUED



Anthony Hinkle, Code Compliance Officer
ENFORCEMENT OFFICER OF THE CITY OF SALEM

YOU HAVE THE RIGHT TO APPEAL THIS NOTICE AND ASSESSMENT OF CIVIL PENALTY TO THE CITY’S HEARINGS OFFICER

PAYMENT PROCEDURE / RIGHT TO APPEAL

1. PAYMENT: PAYMENT IS DUE WITHIN THIRTY (30) DAYS.

Payment in full of the total amount of all civil penalties assessed must be made by delivering payment, within thirty (30) business days of the date this Notice and Assessment of Civil Penalty was issued, to the following address:

**CITY OF SALEM
ADMINISTRATIVE SERVICES
FINANCE DIVISION
555 LIBERTY STREET SE, ROOM 230
SALEM, OR 97301-3503**

2. APPEAL RIGHTS AND PROCEDURE:

You have the right to appeal this Notice of Civil Penalty to the City of Salem’s Hearings Officer. A notice of appeal must be filed with the City Recorder **within fifteen (15) business days** after receiving this Notice. The notice of appeal shall be delivered or mailed to:

**CITY OF SALEM
LEGAL DEPARTMENT
ATTN: CITY RECORDER
555 LIBERTY STREET SE, ROOM 225
SALEM, OR 97301-3503**

The notice of appeal must contain:

- (1) The name and address of the appellant;
- (2) A copy of this Notice and Assessment of Civil Penalty; and
- (3) The basis for the appeal, stating with specificity:
 - (A) Why the imposition of the civil penalty is in error as the violation(s) were corrected within the time stated in the enforcement order; or
 - (B) Why the amount of the civil penalty is not supported by a factual basis based on the criteria set forth in SRC 20J.150.

The notice of appeal SHALL be accompanied by an appeal fee of \$270, as established by resolution of the Salem City Council. The appeal fee is not refundable unless the Hearings Officer finds that this Notice and Assessment of Civil Penalty was not well founded in law or fact, in which case the appeal fee shall be refunded in full.

This dropped off in person or mailed to t

ANY NOTICE OF APPEAL FILED AFTER THE TIME PERIOD SET FORTH ABOVE SHALL BE DISMISSED BY THE HEARINGS OFFICER AS UNTIMELY. FAILURE TO FILE A NOTICE OF APPEAL SHALL BE A WAIVER OF ALL RIGHT TO REVIEW THE IMPOSITION OR AMOUNT OF THE CIVIL PENALTY.

3. HEARING ON APPEAL:

Upon the filing of a notice of appeal, the Hearings Officer shall set a time, date, and place for a hearing. The hearing date shall be set not less than twenty (20) business days nor more than sixty (60) business days after the date the notice of appeal is filed, unless continued with the consent of all parties or upon the motion of any party for good cause shown.

4. FINALITY OF CIVIL PENALTY:

This Notice and Assessment of Civil Penalty shall become final upon the expiration of the time for filing an appeal. If a notice of appeal is timely filed, the civil penalty shall become final upon the issuance of the Hearing Officer's decision affirming the civil penalty.

5. QUESTIONS:

If you have any questions about this Notice and Assessment of Civil Penalty, you may contact the Community Development Department at following address or telephone number:

**DEPARTMENT OF COMMUNITY DEVELOPMENT
CODE COMPLIANCE DIVISION
555 LIBERTY STREET SE, ROOM 305
SALEM, OREGON 97301-3503
TELEPHONE NUMBER: (503) 588-6421**

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TREE AND NATIVE VEGETATION VIOLATION:

Number of "non-significant/riparian" trees/native veg removed?	35
Number of significant/heritage/riparian trees/native veg removed?	48
Approved TCP/TRP violation?	No
At least 25% trees remaining?	Yes
Number of Prior violations?	0

TOTAL POINTS	BASE PENALTY
1	\$250
2	\$500
3	\$750
4	\$1,000
5	\$1,500
6	\$2,000

BASE PENALTY: A = Gravity and Magnitude

A	BASE PENALTY: A = Gravity and Magnitude	Points	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian
	1-10 trees removed- Not significant, heritage, riparian	+1	-	
	10+ trees removed - Not significant, heritage, riparian	+2	2	
	Significant, heritage, riparian tree/native veg. removed	+4		4
	Approved TCP/TRP violation	+1	-	-
	<25% total trees retained	+1	-	-
	Total Score		2	4
	A = Base Penalty (see table above right)		\$500	\$1000

AGGRAVATING AND MITIGATING FACTORS = (B+C+D+E)

	(B+C+D+E): SEE ATTACHED SHEET	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian
B	Unavoidable Accident?	2	2
C	Prior Violations?	-	-
D	Cooperation in compliance?	.25	.25
E	Steps to prevent further violation?	-	-
	Total B+C+D+E	2.25	2.25

CIVIL PENALTY = A x (B+C+D+E)

A x (B+C+D+E)	Non-Significant/ Heritage/Riparian	Significant/ Heritage/Riparian	Total Civil Penalty
Base Penalty =	\$500	\$1000	
B+C+D+E =	2.25	2.25	
* A x (B+C+D+E) =	\$1125	\$2250 (\$2000 MAX)	
Total # Trees/Native Veg.	35	48	
TOTAL CIVIL PENALTY	\$39,375	\$96,000	

*If B + C + D + E = 0 skip this step and only use base penalty and number of trees.

TREE AND NATIVE VEGETATION VIOLATION CIVIL PENALTY CRITERIA

- A. Gravity and magnitude?
- B. Unavoidable accident?
- C. Prior violation?
- D. Cooperation in compliance?
- E. Steps taken by developer to prevent further violation?

$$\text{Penalty} = A \times (B+C+D+E)$$

BASE PENALTY

A = GRAVITY AND MAGNITUDE?

See Worksheet (attached)

AGGRAVATING AND MITIGATING FACTORS

B = UNAVOIDABLE ACCIDENT?

- 0 = If the respondent's conduct was purely **accidental** or there is insufficient information
- +1 = If respondent's conduct was **negligent** or the respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation. Holding a permit that prohibits or requires conduct is presumed to constitute at least constructive knowledge and may be actual knowledge depending on the specific facts of the case
- +2 = If the respondent's conduct was **reckless** or **flagrant**, or the respondent had actual knowledge that its conduct would be a violation and respondent's conduct was intentional. A respondent that previously received a similar violation is presumed to have actual knowledge. Holding a permit that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case.

C = PRIOR VIOLATIONS?

- 0 = No prior violations
- +0.5 = 1 prior violation – Not significant, heritage or riparian tree
- +1 = 1 prior violation – Significant, heritage or riparian tree
- +0.5 = Each additional violation

D = COOPERATION IN COMPLIANCE?

- 0 = Immediate response and correction
- +0.25 = No response/correction for 7-28 days after deadline
- +0.5 = No response/correction for more than 28 days after deadline

E = Steps taken to prevent further violations?

- +0.5 = No effort or not enough information
- 0 = Reasonable effort or not enough information
- 0.5 = Extraordinary effort