

**REGULAR**

**NUMBER: 65.141**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE II OF THE MILPITAS MUNICIPAL CODE RELATING TO BUILDING CODE ENFORCEMENT**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 17, 2011, upon motion by Councilmember Giordano and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, several property owners in the City of Milpitas have continued to violate the Building Code despite efforts of staff to maintain compliance; and

**WHEREAS**, the current Milpitas Municipal Code Title II Building Regulations contain no penalty provisions to discourage violators from continuing to violate the Code; and

**WHEREAS**, the City Council finds that the penalty provisions imposed by this Ordinance are intended to provide for the public safety and well being of the community; and

**WHEREAS**, the City Council finds that with the inclusion of the amendments listed below, the Municipal Code remains internally consistent; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II, CHAPTER 1**

Section II-1-14.02 is hereby added to Chapter 1 of Title II to read as follows:

II-1-14.02 Civil Penalties

Any person who intentionally, accidentally or negligently violates any provision of this Title, any written authority of the Chief Building Official or the City Manager or his or her duly authorized agents and representatives, or any provision of any permit issued pursuant to this Code may be civilly liable to the City in the sum of not less than one hundred dollars (\$100.00) but not to exceed one thousand dollars (\$1,000) per day for each day in which such violation occurs or continues. The City may petition the Superior Court to impose, assess, and recover such sums. The civil penalty provided in this Section excludes inspection costs and abatement costs, is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under state and federal law and local ordinances. Funds collected pursuant to this Section shall be paid to the City’s Building Code Training account which shall be a holding account to be used solely for Building Code enforcement training.

Section II-1-26.01 of Chapter 1 of Title II is hereby amended to read as follows:

II-1-26.01 Notice of Code Violation

Whenever the Chief Building Official has knowledge of a violation of the provisions of any Chapter of Title II of the Milpitas Municipal Code or any of the California Codes or appendices incorporated in any of the Chapters of said Title (including, but not limited to, the California Building Code, the California Residential Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, the California Energy Code, the California Green Building Standards Code) or the provisions of Chapter 300, Title V of the Milpitas Municipal Code, or of the California Fire Code, California Fire Code Appendices and California Fire Code Standards adopted therein, the Chief Building

Official may issue a Notice of Intent to record a Notice of Code Violation to the owner of the land where the violation is located. Notice shall be given to the owner at the address shown on the latest equalized assessment roll of the County of Santa Clara, California, or as is known to the City Manager of the City of Milpitas by posting on the property itself and by personal service or by certified mail, postage prepaid, and with return receipt requested.

Notice by mail may also be given (but shall not be required to be given) to any other owner of any interest in said land as may be known to the Chief Building Official. The notice shall state that within twenty (20) days of the date of notice, the owner may request a hearing with the Chief Building Official to present evidence that a violation does not exist.

### **SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.