

**ORDINANCE NO. 4521**

**AN ORDINANCE RELATING TO THE BUILDING CODE AMENDING  
BEAVERTON CODE SECTION 8.02.120 AND ADDING SECTIONS 8.02.125  
AND 8.02.126**

**WHEREAS**, Current Beaverton Code Section 8.02.120 establishes that violations of any provision of the State Building Code constitutes a Class I Civil Infraction and shall be processed through a judicial proceeding; and

**WHEREAS**, The 2009 Legislature passed Senate Bill 915 requiring violations of the State Building Code to be processed through a Civil Penalty with an administrative appeal process that is by a non-judicial proceeding; and

**WHEREAS**, Amending Beaverton Code Section 8.02.120 and adding Beaverton Code Sections 8.02.125 and 8.02.126 is necessary to comply with State law; now, therefore:

**THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:**

**Section 1.** BC 8.02.120 is amended to read as follows:

**8.02.120 Violations; Penalties; Remedies.**

A. No person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the City, or cause the same to be done, contrary to or in violation of this ordinance.

B. Violation of a provision of this ordinance shall be subject to a Civil Penalty not exceeding \$250.00 and shall be processed in accordance with the procedures set forth in BC 8.02.125 through 8.02.126.

C. Each day that a violation of a provision of this ordinance exists constitutes a separate violation.

D. In addition to the above penalties, a condition caused or permitted to exist in violation of this ordinance is a public nuisance and may be abated by any of the procedures set forth in BC 5.05.200 through 5.05.260. The city attorney is authorized to institute any legal proceedings necessary to abate the public nuisance.

E. The penalties and remedies provided in this section are not exclusive and are in addition to other penalties and remedies available to the City under the Beaverton Code, or other City ordinance, or law.

**Section 2.** BC 8.02.125 is added as follows:

**8.02.125 Building Official - Authority to Impose Administrative Civil Penalty.**

A. In addition to, and not in lieu of, any other enforcement mechanism authorized by this code, upon a determination by the building official that a person has violated a provision of this chapter or a rule adopted thereunder, the building official may impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (A) to (L) of this section. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.

B. Prior to imposing an administrative civil penalty under this section, the building official shall pursue reasonable attempts to secure voluntary correction, failing which the building official may issue a notice of civil violation to one or more of the responsible persons to correct the violation. Except where the building official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five calendar days.

C. Following the date or time by which the correction must be completed as required by an order to correct a violation, the building official shall determine whether such correction has been completed. If the required correction has not been completed by the date or time specified in the order, the building official may impose a civil penalty on each person to whom an order to correct was issued.

D. Notwithstanding subsection (B) above, the building official may impose a civil penalty without having issued an order to correct violation or made attempts to secure voluntary correction where the building official determines that the violation was knowing or intentional or a repeat of a similar violation.

E. In imposing a penalty authorized by this section, the building official shall consider:

1. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
2. Any prior violations of statutes, rules, orders, and permits;
3. The gravity and magnitude of the violation;
4. Whether the violation was repeated or continuous;
5. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
6. The violator's cooperativeness and efforts to correct the violation; and
7. Any relevant rule of the building code or the City code.

F. The notice of civil penalty shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside this state. A notice of civil penalty shall include:

1. Reference to the particular code provision or rule involved;
2. A short and plain statement of the matters asserted or charged;
3. A statement of the amount of the penalty or penalties imposed;
4. The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection (D), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
5. A statement of the party's right to appeal the civil penalty to the Mayor or Mayor's designee.

G. Any person who is issued a notice of civil penalty may appeal the penalty to the Mayor or Mayor's designee. The Mayor's designee shall not be the building official or building inspector. The provisions of Section 8.02.126 of this code shall govern any requested hearing, except that the burden of proof shall be on the building official.

H. A civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the Mayor or Mayor's designee pursuant to, and within the time limits established by, Section 8.02.126. If the responsible person appeals the civil penalty to the Mayor or Mayor's designee, the penalty shall become final, if at all; upon issuance of the Mayor or Mayor's designee's decision affirming the imposition of the administrative civil penalty.

I. Each day the violator fails to remedy the code violation shall constitute a separate violation.

J. Failure to pay a penalty imposed hereunder within ten days after the penalty becomes final as provided in subsection (H) shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The building official also is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (K) below, other provisions of this code, or state statutes.

The civil administrative penalty authorized by this section shall be in addition to:

1. Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement, and
2. Any other actions authorized by law.

K. If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this code resulting from prohibited use or activity on real property, and the penalty remains unpaid 30 days after such penalty become final, the building official shall assess the property the full amount of the unpaid fine and shall enter such an assessment as a lien in the docket of City liens. At the time such an assessment is made, the building official shall notify the responsible person that the penalty has been assessed against the real property upon which the violation occurred and has been entered in the docket of City liens. The lien shall be enforced in the same manner as liens established by Council resolution pursuant to BC 1.01.020. The interest shall commence from the date of entry of the lien in the lien docket.

L. In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to subsection (A) of this section shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

### **8.02.126 Appeal Procedures.**

A. A person aggrieved by an administrative action of the building official taken pursuant to a section of this code authorizing an appeal under this section may, within 15 days after the date of notice of the action, appeal in writing to the building official. The appeal shall be accompanied by a \$250 appeal fee as established by the City and shall state:

1. The name and address of the appellant;
2. The nature of the determination being appealed;
3. The reason the determination is incorrect; and
4. What the correct determination of the appeal should be.

An appellant who fails to file such a statement within the time permitted waives the objections, and the appeal shall be dismissed. Except as provided in subsection (E) of this section, the appeal fee is not refundable.

B. If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

C. Unless the appellant and the City agree to a longer period, an appeal shall be heard by the Mayor or Mayor's designee within 30 days of the receipt of the notice of intent to appeal. At least 10 days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

D. The Mayor or Mayor's designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Mayor or Mayor's designee deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

E. The Mayor or Mayor's designee shall issue a written decision within 10 days of the hearing date. The decision of the Mayor or Mayor's designee after the hearing is final and may include a determination that the appeal fee be refunded to the applicant upon a finding by the Mayor or Mayor's designee that the appeal was not frivolous.

First reading this 16th day of November, 2009.

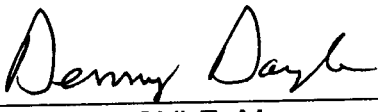
Passed by the Council this 30th day of November, 2009.

Approved by the Mayor this 1st day of December, 2009.

ATTEST:

  
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SUE NELSON, City Recorder

APPROVED:

  
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DENNY DOYLE, Mayor