

ORDINANCE NO. 2011

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 15.04 OF THE MILWAUKIE MUNICIPAL CODE TO PROVIDE FOR ADMINISTRATIVE CIVIL PENALTIES FOR VIOLATIONS OF THE SPECIALTY CODES AND BUILDING REQUIREMENTS AND APPEAL THEREFROM, AMENDING §§ 15.04.030, 15.04.070, 15.04.220 AND 15.04.240 AND ADOPTING NEW SECTION 15.04.215.**

**WHEREAS**, the City of Milwaukie, Oregon, administers specialty codes and building requirements adopted by the state; and

**WHEREAS**, Senate Bill 915, passed by the state legislature in 2009, amends provisions with respect to the enforcement of the state building code; and

**WHEREAS**, the legislature found that enforcement of the state building code in a fair, equitable and uniform manner throughout the state was a matter of statewide concern. Now, Therefore,

**THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

Section 1. The Municipal Code of Milwaukie Section 15.04.030 is amended to read as follows: (underlined words added and stricken through deleted)

Chapter 15.04.030 Appeals.

A. Any person aggrieved by a decision of the building official, other than a decision to impose an administrative civil penalty pursuant to Section 15.04.070C, shall first appeal the decision in writing to the building official and request a written determination.

B. In the case of an appeal of a decision of the building official to impose an administrative civil penalty pursuant to Section 15.04.070C, an aggrieved person may appeal the decision to the city manager or his or her designee.

~~C.~~ B. If the person disagrees with the written determination of the building official, he or she may file an appeal with the appropriate State of Oregon Building Codes Division Program Chief.

~~D.~~ C. An appeal shall be solely on the basis of an interpretation of the code and shall not be used as a request for a waiver or modification.

Section 2. The Municipal Code of Milwaukie Section 15.040.070 is amended to read as follows: (underlined words added and stricken through deleted)

A. The building official is authorized to enforce all the provisions of this chapter. The building official shall have the power to render written and oral interpretations of this chapter and to adopt and enforce administrative procedures in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of this chapter.

B. In accordance with prescribed procedures and with the approval of the appointing authority, the building official may appoint technical officers, inspectors and other employees to carry out the functions of this chapter, including enforcement.

C. In addition to any other enforcement mechanism authorized by this code, other than those set forth in Chapter 1.08, 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 (1) to (11) of this subsection. 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.

1. 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 (5) calendar days.

2. 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 and time specified in the order, the building official may issue a notice of administrative civil penalty to each person to whom an order to correct was issued.

3. Notwithstanding subsection (1) above, the building official may impose an administrative civil penalty without having issued an order to correct the violation or having 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.

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

a. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;

b. Any prior violations of statutes, rules, orders, and permits;

c. The gravity and magnitude of the violation;

- d. Whether the violation was repeated or continuous;
- e. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
- f. The violator's cooperativeness and efforts to correct the violation; and
- g. Any relevant rule of the building official.

5. The notice of administrative 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 administrative civil penalty shall include:

- a. A description of the alleged violation and a reference to the particular code provision or rule involved;
- b. A statement that the City intends to assess an administrative civil penalty for this violation and sets forth the amount of the penalty or penalties imposed;
- c. 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 (3), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated;
- d. A statement of the party's right to appeal the assessment of the administrative civil penalty to the City Manager or City Manager's designee, and
- e. The means and deadline by which an aggrieved person must file such appeal.

6. Any person who is issued a notice of administrative civil penalty may appeal the penalty to the City Manager or City Manager's designee. The City Manager's designee shall not be the building official or building inspector. The provisions of Section 15.04.215 of this code shall govern any requested hearing, except that the burden of proof shall be on the building official.

7. An administrative 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 City Manager or City Manager's designee within fifteen (15) days of the issuance of the notice of administrative civil penalty. If the responsible person appeals the administrative civil penalty to the City Manager or City Manager's designee, the penalty shall become final, if at all, upon issuance of the City Manager or City Manager's

designee's decision affirming the imposition of the administrative civil penalty.

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

9. Failure to pay a penalty imposed hereunder within ten days after the penalty becomes final as provided in subsection (7) 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 (11) below, other provisions of this code, or state statutes.

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

a. Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement, and

b. Any other actions authorized by law.

11. 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 thirty (30) days after such penalty becomes 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 Municipal Court judgment pursuant to Code Section 1.08.300. The interest shall commence from the date of entry of the lien in the City's lien docket.

12. In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to subsection (3) 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.

Section 3. The Municipal Code of Milwaukie is amended to add a new Section 15.04.215 which shall read as follows:

**15.04.215 Appeal of Notice of Administrative Civil Penalty for Violation of the Structural Specialty Code.**

A. A person aggrieved by a Notice of Administrative Civil Penalty issued by the building official for violation of this Chapter may, within fifteen (15) days after the date of notice of the action, appeal in writing to the City Manager or his or her designee. 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.

B. An appellant who fails to file such an appeal within the time permitted waives the objection. Except as provided in subsection (F) of this section, the appeal fee is not refundable.

C. 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.

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

E. The City Manager or City Manager's designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Manager or City Manager'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.

F. The City Manager or City Manager's designee shall issue a written decision within ten (10) days of the hearing date. The decision of the City Manager or City Manager'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 City Manager or City Manager's designee that the appeal was not frivolous.

Section 4. The Municipal Code of Milwaukie Section 15.04.220 is amended to read as follows: (underlined words added and stricken through deleted)

15.04.220 Appeal procedure.

A. Any person aggrieved by a decision of the building official other than the imposition of an administrative civil penalty, made pursuant to the following specialty codes may appeal that decision to the following:

1. Electrical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division, Chief Electrical Inspector.

2. Structural Specialty Code. Appeals may be made to the State of Oregon, Building Codes Structures Board.

3. Mechanical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.

4. Plumbing Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division.

5. One and Two Family Dwelling Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.

6. Manufactured Dwelling Code. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.

7. Recreational Park and Organizational Camp Regulations. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.

8. All other appeals may be made to the appropriate board or agency.

B. An appeal shall be in writing, shall describe the basis for the appeal and shall first be filed with the building official.

Section 5. The Municipal Code of Milwaukie Section 15.04.240 is amended to read as follows: (underlined words added and stricken through deleted)

15.04.240 Penalties.

A. Any person violating any of the provisions of this chapter for which a special penalty has not been expressly provided shall, upon conviction thereof, be punished by a fine not to exceed one thousand dollars per violation. Each day that a violation exists is a separate offense.

B. The administrative civil penalty referred to in subsection (C) of section 15.04.070 shall be an amount set by the building official not to exceed \$5,000.00 or \$1,000.00 per day for continuous violation.

Section 6. Severability.

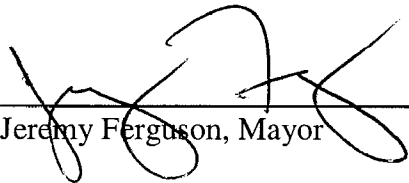
If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the

invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Read the first time on 2/2/10, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 2/2/10.

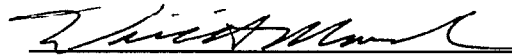
Signed by the Mayor on 2/2/10.

  
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Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis, PC

  
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Pat DuVal, City Recorder

  
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