

9.410. - Authority to Impose Civil Penalty.

- (1) In addition to, and not in lieu of, any other enforcement mechanism authorized by the Building Code or the City Code, upon a determination by the Building Official that a person has violated a provision of the Building Code 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 (12) 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.
- (2) The preferred enforcement of the Building Code is for the Building Official to first attempt, if possible, voluntary correction of any violations of the Building Code. Therefore, prior to imposing an administrative civil penalty under this Section, the Building Official may, in the Building Official's discretion, pursue reasonable attempts to secure voluntary correction. If the violator fails to correct the violation, the Building Official may issue a notice of civil violation to one or more of the persons responsible to correct the violation, as well as the owner of the site if the owner is not the violator. 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 from Receipt of the notice.
- (3) 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.
- (4) Notwithstanding subsection (2) 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.
- (5) In imposing a penalty authorized by this Section, the Building Official will 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 Code or the City Code.
- (6) The notice of civil penalty shall either be served by personal service or shall be mail by registered or certified mail, return receipt requested. A notice of civil penalty shall include:
- (a) Reference to the particular Building Code provision or rule involved;
 - (b) A short and plain statement of the matters asserted or charged;
 - (c) A statement of the amount of the penalty or penalties imposed;
 - (d) 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 (4), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
 - (e) A statement of the party's right to appeal the civil penalty to the City Manager.
- (7) Any person who is issued a notice of civil penalty may appeal the penalty to the City Manager pursuant to Section 9.420.
- (8) 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 City Manager pursuant to, and within the time limits established by, Section 9.420. If the responsible person appeals the civil penalty to the City Manager, the penalty shall become final, if at all, upon issuance of the City Manager's decision affirming the imposition of the administrative civil penalty.
- (9) Except as provided in subsection (10) below, failure to pay a penalty imposed hereunder within ten) calendar days after the penalty becomes final as provided in subsection (8) shall constitute a separate and additional violation of the Building Code. Each day the penalty is not paid thereafter 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 the City Code, or Oregon statutes. 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.
- (10) The City Manager may, in the City Manager's sole discretion, suspend the imposition of additional civil penalties pending the City Manager's decision of an appeal properly submitted pursuant to Section 9.420 herein.
- (11) If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of the Building Code resulting from prohibited use or activity on real property, and the penalty remains unpaid 30 calendar days after such penalty became final, the Building Official may assess the property the full amount of the unpaid fine and may enter such an assessment as a lien in the municipal lien docket pursuant to Section 9.430. At the time such an assessment is

made, the Building Official shall notify the responsible person and the owner, if different from the responsible person, that the penalty has been assessed against the real property upon which the violation occurred and has been entered in the municipal lien docket. The interest shall commence from the date of entry of the lien in the lien docket.

- (12) In addition to enforcement mechanisms authorized elsewhere in the Building Code and the City Code, failure to pay an administrative civil penalty imposed pursuant to this Section will be grounds for withholding issuance of requested Permits or licenses, for issuing a stop work order, if applicable, or revoking or suspending any issued Permits or certificates of occupancy.

(Ord. No. 839, § 2(Att. 1), 12-16-2019, eff. 1-1-2020)

9.420. - Appeal of Penalty.

- (1) A person aggrieved by an action of the Building Official taken pursuant to a section of the Building Code that authorizes an appeal under this Section may, within ten Business Days after the Receipt of notice of the action, appeal in writing to the Building Official. The appeal shall state:
- (a) The name and address of the appellant;
 - (b) The nature of the determination being appealed
 - (c) The reason the determination is incorrect; and
 - (d) What the correct determination of the appeal should be.
- (2) Dismissal.
- (a) An appellant who fails to file such a statement within the time permitted waives the objections, and the appeal shall be summarily dismissed by the City Manager not later than five Business Days after receipt of the appeal.
 - (b) If an appellant timely files an appeal, but fails to meet requirements (a) through (d) of subsection (1), the Building Official will notify the appellant in writing the defect(s) of the appeal and allow the appellant five Business Days from Receipt of the notification of defect(s) to correct the defect(s) and resubmit the appeal. If appellant fails to correct the defect(s) and resubmit the appeal within the five Business Days, the appeal shall be summarily dismissed by the City Manager not later than five Business Days after the date by which the appeal was resubmitted or had to be resubmitted, whichever is earlier.
- (3) Upon Receipt of a timely appeal that meets the requirements of subsection (1), the Building Official may prepare a written response brief and provide the response brief to the City Manager and the appellant no less than seven calendar days prior to the hearing date.
- (4) 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.

- (5) Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Manager within 30 calendar days of the Receipt of the appeal. No later than seven calendar days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.
- (6) The City Manager shall hear and determine the appeal on the basis of the appellant's written statement, the Building Official's response brief, if any, and any additional evidence the City Manager deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The Building Official may also present testimony and oral argument, and may have the City represented by the City Attorney's Office if the appellant is represented by counsel. The rules of evidence as used by courts of law do not apply.
- (7) The City Manager will issue a written decision within ten Business Days of the hearing date. The decision of the City Manager after the hearing is final.
- (8) Any legal action contesting the City Manager's decision on the appeal must be filed within 60 calendar days of the City Manager's decision. Review of the City Manager's decision shall be by writ of review pursuant to ORS 34.010 to 34.100.

(Ord. No. 839, § 2(Att. 1), 12-16-2019, eff. 1-1-2020)