

ORDINANCE NO. 5877

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) TITLE 18 BUILDING CODE ADMINISTRATION AND PROPERTY MAINTENANCE.

WHEREAS, from time to time it is appropriate to amend the Albany Municipal Code based on changing conditions; and

WHEREAS, the City Council believes that it is timely to update, revise, and clarify Title 18 of the Municipal Code; and

WHEREAS, ORS 455.058 implemented changes to the investigation fees that can be charged for work being performed without building permits; and

WHEREAS, OAR 918-008-0120 clarifies the process by which a person aggrieved by the Building Official's decision on the application of the State Building Code may appeal to either the local jurisdiction's appeals board or the state specialty code chief; and

WHEREAS, OAR 918-480-0140 changed the method of issuance and clarified requirements for issuing a certificate of occupancy for residential dwellings and townhouses; and

WHEREAS, all of these requirements have been put in practice and the AMC should be amended to reflect State requirements and common practice.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: AMC Title 18, Building Code Administration and Property Maintenance, is hereby amended as follows:

**18.06.100: Investigation.**

(1) Whenever any work for which a permit is required by this title or the technical codes has been commenced without first obtaining said permit, an investigation shall be made before a permit may be issued for such work. This investigation is subject to the fees described below, and may or may not result in a penalty.

(2) The Building Official may require an investigation in order to ascertain whether a party is in possession of a state license, and/or is in compliance with other state-mandated requirements.

(3) Unless waived by the Building Official, an investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. **The amount of the investigation fee shall be equal to the amount of the permit fee required by this title. the average or actual additional cost of ensuring that a building, structure, or system is in conformance with state building code requirements that results from the person not obtaining a required permit before work for which the permit is required commences.** A party aggrieved by the imposition of a special investigation fee may appeal the imposition of the special investigation fee to the Albany Building Board of Appeals in the manner prescribed in Chapter 18.14 AMC. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this title or the technical codes, nor from any penalty prescribed by law. (Ord. 5647 § 1 (Exh. A), 2006).

Section 2:

**18.08.090: Certificate of occupancy.**

(1) ~~Upon approval for occupancy, the Building Official shall issue a certificate of occupancy. Except for work exempt from permits and residential accessory buildings, no building or structure shall be used or occupied, and no change in the existing character, use, or occupancy classification of a building or structure or portion thereof shall be made, until the Building Official has issued a certificate of occupancy.~~

~~(2) In Group R-3 (one and two family dwelling) and U occupancies, the final approval and sign-off of the permit shall serve as the certificate of occupancy.~~

~~(3)~~(2) The certificate of occupancy for buildings other than single-family dwellings and U occupancies shall be posted in a conspicuous place and shall not be removed except by the Building Official.

(4)(3) In cases where there are outstanding corrections and/or deficiencies that do not present a hazard or immediate public concern, the building official may grant a temporary certificate of occupancy. When granting a temporary certificate of occupancy, the Building Official shall provide the permit holder with conditions and time restrictions for compliance and final approval.

(5)(4) Upon failure to obtain final approval and a certificate of occupancy, when applicable, and/or upon the expiration of the permit, the Building Official, in addition to other remedies, may file a notice of noncompliance with the County Recorder. To remove the notice, proof of compliance must be provided and all enforcement costs, recording costs, and filing costs determined by the Building Official must be paid by the permit holder.

(6)(5) Changes in the character or use of a building shall not be made except as specified in the Building Code.

(7)(6) **Issuance of a certificate of occupancy shall not be construed as an approval of a violation to the provisions of this code or of other City ordinances.** The Building Official may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this title when the certificate is issued in error, or on the basis of incorrect information, or when it is determined that the building or structure, or portion thereof, is in violation of an ordinance, regulation, or the provisions of this title. (Ord. 5647 § 1 (Exh. A), 2006).

### Section 3:

#### **18.14.005: State Building Code appeal process.**

- (1) **A person aggrieved by a decision by the Building Official's decision on the application of the State Building Code may appeal to either the local jurisdiction's appeals board or the state specialty code chief. The appeals process selected may not change once initiated.**

### Section 4:

#### **18.14.010: Appeal to the state.**

(1) A person aggrieved by a decision made by the Building Official relating to the State Building Code shall first appeal to the appropriate ~~State Specialty Code Chief Inspector~~ **state specialty code chief inspector** of the Oregon Department of Consumer and Business Services, as required in ~~OCAR 918-008 0120~~**ORS 455.475.**

The decision of the Department Chief Inspector may be appealed to the appropriate state advisory board. The decision of the advisory board may only be appealed to the Director of the Department of Consumer and Business Services if state-mandated codes, in addition to the applicable specialty code, are at issue.

(2) Citations or penalties issued by the State Building Codes Division are entitled to judicial review in accordance with ORS 183.482. A person aggrieved by such a citation or penalty may request a judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date of the order. Such citations and penalties are not appealable through this section. (Ord. 5647 § 1 (Exh. A), 2006).

### Section 5:

#### **18.14.030: Creation of Building Board of Appeals.**

(1) In order to hear and decide appeals of orders, decisions, or determinations made by the Building Official relative to the application, enforcement, and interpretation of provisions of this title which are not governed by the State Building Code, **and to review appeals of technical and scientific determinations regarding any provision of the specialty codes regulated by the municipality,** there shall be and hereby is created a Board of Appeals consisting of five members who are qualified by experience and training to pass on matters pertaining to building construction and who are not employees of the

jurisdiction. The Building Official shall be an ex officio member of and shall act as secretary to said board, but shall have no vote on any matter before the board. The Board of Appeals shall be appointed by the City Council of the City of Albany and shall hold office at the Council's pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the Building Official.

(2) The Board of Appeals makes determinations on a case-by-case basis, and shall have no authority relative to interpretation of the administrative provisions of this title, nor shall the board be empowered to waive requirements of this title. For example, the Board of Appeals may review the Building Official's discretionary determination that a structure is dangerous, but not the ensuing remedy. (Ord. 5647 § 1 (Exh. A), 2006).

Section 6:

**18.14.040: Appeal procedure.**

(1) An appeal shall be in writing, shall describe the basis for the appeal, and shall first be filed with the Building Official. No appeal shall be timely unless it is actually received at the office of the Building Official within 14 days of the Building Official's determination which is the subject of the appeal.

(2) Following receipt of such an appeal, the Board of Appeals shall convene and an opportunity for hearing shall be granted both to the appellant and to the Building Official or designee. The Building Board of Appeals shall notify all parties of the hearing date and time at least 10 days prior thereto. The Building Board of Appeals shall operate under such rules of procedure as it may, from time to time, promulgate.

(3) The decision of the Building Board of Appeals shall be rendered within 60 days of the Building Official's receipt of the appeal, unless both parties stipulate to an extension of time. The Building Board of Appeals' decision shall be in writing and shall be final upon receipt. All notices given by the Board shall be given to the appellant by first-class mail at the address indicated by the appellant on the notice of appeal and shall be deemed received three days after mailing.

(4) An appeal of the Building Board of Appeals' decision **relative to the application, enforcement, and interpretation of provisions of this title which are not governed by the State Building Code, shall be made in writing to the Albany City Council within 14 days of the Board's notice of said decision. An appeal of the Building Board of Appeal's decision relating to technical and scientific determinations regarding any provision of the state specialty codes regulated by the municipality shall be appealed to the appropriate advisory board within 30 days of the appeal's board decision per OAR 918-080-0120 (6).**

(5) All work which is the subject of a permit, interpretation, or other matter under appeal shall be suspended pending resolution of the appeal. (Ord. 5647 § 1 (Exh. A), 2006).

Passed by the Council: Nov 9, 2016

Approved by the Mayor: Nov 9, 2016

Effective Date: Dec 9, 2016

  
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Mayor

ATTEST:

  
  
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City Clerk