

Order 60-06/07

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JAMES I. COHEN (MAYOR)(5)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)
EDWARD J. SUSLOVIC (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, (BUILDINGS AND BUILDING REGULATIONS),
SECTION 1 (PENALTIES)
RE: FINES FOR SIGNIFICANT CODE VIOLATIONS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 6, section 1 of the Portland City Code is hereby amended as follows:*

Sec. 6-1. Penalties.

Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who violates any of the provisions set forth in Chapter 6 is liable for the penalties set forth in this section.

(a) *Penalties.* Except for paragraph g., monetary penalties shall be assessed on a per-day basis for each day on which a violation exists:

1. The minimum penalty for starting construction or undertaking a land use activity without a required permit is one hundred dollars (\$100.00) per day, and the maximum penalty is two thousand five hundred dollars (\$2,500.00) per day.

1-A. The minimum penalty for a significant code violation of which the owner was aware or should reasonably have been aware is two hundred dollars (\$200.00) per day, and the maximum penalty is two thousand five hundred dollars (\$2,500.00) per day. The minimum penalty for failure to correct such significant code violation after written notice by the city to do so is five hundred dollars (\$500.00) per day, and the maximum penalty is five thousand dollars (\$5,000.00) per day. The minimum penalty for failure to

correct such significant code violation after a second written notice by the city is one thousand five hundred dollars (\$1,500.00) per day, and the maximum penalty is ten thousand dollars (\$10,000.00) per day. As used in this section, "significant code violation" means any of the following: inadequate or blocked ingress or egress; overcrowded conditions as described in section 6-110; unsanitary conditions as described in section 6-109, including but not limited to vermin infestation; inadequate or defective smoke or fire detection systems; inadequate or defective plumbing or electrical systems; substantially damaged or defective structural elements; and intentional denial of heat or electricity to the legal occupant of a dwelling unit by the owner of the dwelling unit. As used in this section, the terms "occupant," "dwelling unit" and "owner" have the same meanings as provided in section 6-106.

2. The minimum penalty for a specific violation other than a violation described in paragraph 1-A is one hundred dollars (\$100.00) per day, and the maximum penalty is two thousand five hundred dollars (\$2,500.00) per day.
3. The violator may be ordered to correct or abate the violations. When the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction results in:
 - a. A threat or hazard to public health or safety;
 - b. Substantial environmental damage; or
 - c. A substantial injustice.

Notwithstanding paragraph 3, for violations of this chapter that occur in a shoreland area as defined in section 14-447, the violator shall be ordered to correct or

mitigate the violation unless the correction or mitigation results in:

- a. A threat or hazard to public health or safety;
 - b. Substantial environmental damage; or
 - c. A substantial injustice.
4. If the city is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.
5. In setting a penalty, the court shall consider, but is not limited to, the following:
- a. Prior violations by the same party;
 - b. The degree of environmental damage that cannot be abated or corrected;
 - c. The extent to which the violation continued following a city order to stop; and
 - d. The extent to which the city contributed to the violation by providing the violator with incorrect information or by failing to take timely action.
6. The maximum penalty may exceed ~~two thousand five hundred dollars (\$2,500.00) per day~~ the limits described in paragraphs 1, 1-A and 2, but may not exceed twenty-five thousand dollars (\$25,000.00) per day, when it is shown that there has been a previous ~~conviction~~ of judgment against the same party within the past two (2) years for a violation of the same law or ordinance.

7. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum penalties may be increased. The maximum penalty under this paragraph may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.
8. In addition to the other penalties in this section, the building authority may suspend a contractor's, owner's, or developer's right to obtain building permits or work on any project in the city if the building authority determines that a contractor's, owner's, or developer's violation or violations of any provision in articles II, III, or IV of this chapter create such a threat to life or safety that a structure must be posted against occupancy or that the violation or violations render a structure uninhabitable. The suspension authorized by this subparagraph 8 shall be lifted when the building authority determines that the violation or violations have been fixed.

(b) *Proceedings brought for benefit of municipality.* All fines resulting from these proceedings shall be paid to the city.