

ORDINANCE NO. 576-2021

**AN ORDINANCE RELATING TO BUILDING CODES AND AMENDING
THE DUNDEE MUNICIPAL CODE.**

THE CITY OF DUNDEE DOES ORDAIN AS FOLLOWS:

Chapter 15.04 of the Dundee Municipal Code is hereby amended, which is to read as set out in Exhibit "A" attached hereto.

ADOPTED by the Council this _____ day of _____, 2021.

Approved:

David Russ
Mayor

Attest:

Rob Daykin
City Administrator/Recorder

Chapter 15.04 Building Codes

Sections:

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15.04.010 Adoption of specialty codes.

The following specialty codes, rules, and standards are adopted and incorporated into this chapter by this reference:

A. Structural Code

The Oregon Structural Specialty Code (OSSC), as adopted by OAR 918-460-0010 through 918-460-0015, except as modified in this chapter, is enforced as part of this chapter.

1. In accordance with ORS 455.020(4) permits are required for the following and are governed by the OSSC as administered by the city:

- a. Retaining walls over four (4) feet in height or retaining a non-soil surcharge.
- b. Fences, other than required swimming pool barriers, over seven (7) feet in height.
- c. Tanks not attached to or supported by a regulated building.
- d. Radio, television and other telecommunication antennae and towers that are not attached to or supported by a regulated building.
- e. Ground mounted photovoltaic systems over ten (10) feet in height or where public access is allowed beneath the structure.
- f. Flagpoles over twenty-five (25) feet in height.
- g. In ground swimming pools.
- h. Signs as regulated by OSSC Appendix H.

B. Mechanical Code

The Oregon Mechanical Specialty Code, as adopted by OAR 918-440-0010 through 918-440-0012, except as modified in this chapter, is enforced as part of this chapter.

C. Plumbing Code

The Oregon Plumbing Specialty Code, as adopted by OAR 918-750-0100 through 918-750-0115, except as modified in this chapter, is enforced as part of this chapter.

D. Electrical Code

The Oregon Electrical Specialty Code, as adopted by OAR 918-305-0000 through 918-305-0105, except as modified in this chapter, is enforced as part of this chapter.

E. Residential Code

The Oregon Residential Specialty Code, as adopted by OAR 918-480-0005 through 918-480-0010, except as modified in this chapter, is enforced as part of this chapter.

1. In accordance with ORS 455.020(4) permits are required for the following and are governed by the ORSC as administered by the city:

- a. Fences, other than required swimming pool barriers, over seven (7) feet in height.
- b. Retaining over four (4) feet in height or retaining a non-soil surcharge.
- c. Tanks not attached to or supported by a regulated building.
- d. Radio, television and other telecommunication antennae and towers that are not attached to or supported by a regulated building.
- e. Ground mounted photovoltaic systems over ten (10) feet in height or where public accesses is allowed beneath the structure.
- f. In ground swimming pools.

F. Manufactured Dwelling and Parks Code

The Manufactured Dwelling and Park Specialty Code adopted by OAR 918-600-0005 through 918-600-0030 except as modified in this chapter, are enforced as part of this chapter.

G. Manufactured Dwelling Installation Rules

The Manufactured Dwelling Installation Specialty Code adopted by OAR 918-500-0000 through 918-500-0590 except as modified in this chapter, are enforced as part of this chapter.

H. Recreational Park and Organizational Camp Rules

The Recreational Park and Organizational Camp Rules adopted by OAR 918-650-0000 through 918-650-0080, except as modified in this chapter, are enforced as part of this chapter.

I. Appendix J of the OSSC is enforced as part of this chapter.

J. Energy Efficiency Specialty Code

The Oregon Energy Efficiency Specialty Code, as adopted by 918-460-0500, except as modified in this chapter, is enforced as part of this chapter.

These codes and the regulations contained in this chapter shall be known as the city of Dundee, Oregon, building code, may be cited as such and will be referred to herein as the “code.”

15.04.015 Building permit issuance – Payment of fees.

The city’s building official has the authority to condition issuance of, or revoke or stop work under, any building permit required by the code upon proof of payment of all appropriate building permit fees as well as proof of payment of any or all of the following fees, liens, and taxes:

- A. Payment of business license fees imposed under the terms of DMC Title 5 on any contractor or subcontractor working on a structure in the city of Dundee;
- B. Payment of all system development charges that may be due as a result of the building activity requiring the permit;
- C. Payment of any outstanding nuisance or other liens levied on the property for which the building permit is issued; and
- D. Payment of the construction excise tax imposed by the Newberg School District No. 29J.

15.04.020 Purpose.

The purpose of this code is to establish uniform performance standards providing reasonable safeguards for health, safety, welfare, comfort, and security of those who dwell, work, or visit the city and for the use of modern methods, devices, materials, techniques and practicable efforts to maximize energy conservation.

15.04.030 Scope.

This code shall apply to the construction, alteration, moving, demolition, repair, maintenance, and work associated with any building or structure except those located in a public way.

Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Where, in any specific case, there is a conflict between this code and Oregon Revised Statute, the statute shall govern.

15.04.040 Definitions.

For the purpose of the code, the following definition shall apply:

“Building official” shall mean the duly appointed official for the city of Dundee empowered to regulate and enforce all provisions of this chapter pursuant to ORS 455.150 and who possesses a State Building Official Certification.

“OAR” means Oregon Administrative Rules.

“ORS” means Oregon Revised Statutes.

15.04.050 Alternate materials and methods.

The provisions of this code are not intended to prevent the use of any alternate material, design or method of construction not specifically proscribed by this code, provided such alternate has been approved and its use authorized by the building official.

The building official may approve any such alternate material, design, or method, provided the building official finds that the proposed material, design, or method complies with the provisions of this code and that it is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The building official shall require that evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any approval of any alternate material, design or method shall be recorded and entered in the files of the building official.

15.04.060 Modifications.

When there are practical difficulties in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner’s agent, provided the building official shall first find that special individual reason makes compliance with the strict letter of this code impractical, the proposed modification is in conformance with the intent and purpose of this code, and that proposed modification does not lessen health, accessibility, life and fire safety or structural requirements. Details of action granting modification shall be recorded in the files of the building department.

15.04.070 Tests.

Whenever there is insufficient evidence of compliance with the provisions of this code or evidence that a material, method, or design does not conform to the requirements of this code,

or in order to substantiate claims for alternative materials or methods, the building official shall have authority to require tests as evidence of compliance to be made at no expense to the city of Dundee.

Test methods shall be as specified by this code or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.

All tests shall be made by an approved testing agency. Reports of such tests shall be retained by the building official for the period required for the retention of public records.

15.04.080 Powers and duties of building official.

The building official is authorized and directed to enforce all the provisions of this code.

The building official shall have the authority to render written and oral interpretations of this code and to adopt and enforce administrative procedures in order to clarify the applications of its provisions. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of this code.

15.04.090 Appeal procedure other than civil penalty.

Any party aggrieved by an order, decision or determination made by the building official relative to the application or interpretation of this code may appeal that decision as follows:

A. The party shall first appeal to the building official and request a written determination. The building official will establish the form for making such an appeal. The building official shall consider the appeal and all information submitted and shall return a decision to the party.

B. If the party disagrees with the building official's written determination, the party may appeal the decision to the State of Oregon Department of Consumer and Business Services, Building Codes Division, in accordance with ORS 455.475.

15.04.100 Right of entry.

When it may be necessary to inspect a building to enforce the provisions of this code, or the building official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this code or which otherwise makes the building or premises unsafe, dangerous or hazardous, the building official may enter said building or premises at reasonable times to inspect or to perform the duties imposed by this code; provided, that if such building or premises is occupied that credentials be presented to the occupant and entry requested. If such building or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by Oregon laws to secure entry.

15.04.110 Stop work orders.

Whenever any work is being done contrary to the provisions of this code (or other pertinent laws or ordinances implemented through its enforcement), the building official may order the work stopped by notice in writing served on any person(s) engaged in the doing or causing such work to be done. Such person(s) shall stop such work until specifically authorized by the building official to proceed thereafter.

15.04.120 Authority to disconnect utilities in emergencies.

The building official or the building official's authorized representative shall have the authority to disconnect fuel-gas utility service, and/or other energy supplies to a building, structure, premises, or equipment regulated by this code when necessary to eliminate an immediate hazard to life or property. The building official shall, whenever possible, notify the serving utility, the owner, and occupant of the building, structure, or premises of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner, and occupant of the building, structure, or premises in writing of such disconnection within a reasonable time thereafter.

15.04.130 Authority to abate hazardous equipment.

When the building official ascertains that equipment, or any portion thereof, regulated by this code has become hazardous to life, health or property, the building official shall order the equipment either removed from its location or restored to a safe and/or sanitary condition, as deemed appropriate by the building official. The order shall be in writing and contain a fixed time for compliance. Defective equipment shall not be used after the order is issued and before compliance with the order is approved by the building official.

When equipment or an installation is to be disconnected, written notice of the disconnection (and causes therefor) shall be given within 24 hours to the involved utility, the owner and/or occupant of the building, structure, or premises. When equipment is maintained in violation of this code and in violation of a notice issued pursuant to the provisions of this section, the building official may take any necessary action authorized by law to prevent, correct, or abate the violation.

15.04.140 Connection after order to disconnect.

No person shall make a connection to or from an energy, fuel or power supply to any equipment regulated by this code which has been disconnected or ordered disconnected or discontinued by the building official until the building official specifically authorizes the reconnection and/or use of such equipment.

15.04.150 Maintenance.

All buildings and structures, and all equipment, systems, devices, and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered, or repaired must be maintained in good working order. All devices or safeguards that are required must be maintained in conformance with this code. The owner or the owner's designated agent will be responsible for the maintenance of buildings and structures. To determined compliance with this section, the building official may cause a structure to be reinspected.

15.04.160 Occupancy violations.

Whenever any building, structure or equipment therein regulated by this code is used contrary to the provisions of this code, the building official may order any or all of the following: (A) such use discontinued, (B) the structure (or portion thereof) vacated, or (C) the suspension of the certificate of occupancy. All persons using the structure (or portion thereof) shall discontinue the use within the time prescribed by the building official in the notice and make the structure, or portion thereof, comply with the requirements of this code. Use or occupancy of any structure, plumbing, or mechanical system without approval of the building official is a violation of this chapter.

15.04.170 Plans and permits.

The applications, plans, specifications, computations, and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees have been paid, the building official shall issue a permit therefor to the applicant.

When the building official issues a permit where plans are required, the building official shall endorse in writing or stamp the plans and specifications "APPROVED." Such approved plans and specifications shall not be changed, modified, and altered without authorization from the building official, and all work regulated by this code shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information, and detailed statements have been filed complying with all pertinent requirements of this code. The issuance of a partial permit will not constitute or be construed as an assurance that the permit for the entire building or structure will be granted. The holder of a partial permit proceeds at the holder's own risk.

15.04.180 Retention of plans.

One set of approved plans, specifications and computations of the work covered therein shall be retained by the building official in accordance with OAR 166-200-0250 and one set of approved plans and specifications shall be returned to the applicant. The set returned to the applicant shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

15.04.190 Validity of permit.

The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction or any other federal, state, or local law, statute, rule, regulation, or ordinance.

The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications, and other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.

The issuance of a permit based on plans, specifications, and other data shall not be a guarantee by the city or the building official of the soundness of the plans or specifications and shall not be a basis for imposing liability upon the city, the building official, or any of its agents or employees.

15.04.200 Expiration of plan reviews.

Applications for which no permit is issued within 180 days following the date of the application shall expire and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken by the applicant to obtain a permit. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

15.04.210 Permit expiration and extension.

Every permit issued by the building official shall expire and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days after the suspension or abandonment. The work shall not be considered suspended or abandoned where the permittee has pursued activities deemed by the building official to indicate the intent to start and complete the project. The building official may require the permittee to document these activities.

Every permit issued by the building official shall expire and become null and void 24 months after the date of permit issuance. If the building or work authorized by such permit has not received final inspection approval prior to the permit expiration date, all work shall stop until a new permit is obtained for the value of the work remaining unfinished.

EXCEPTION: At the time of permit issuance the building official may approve a period exceeding 24 months for completion of work when the permittee can demonstrate that the complexity or size of the project makes completing the project within 24 months unreasonable.

Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and satisfactory reasons. The city may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. No permit shall be extended more than once.

15.04.220 Work without a permit – Investigation fees.

Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

An investigation fee, in addition to the permit fee, may be collected whether or not a permit is then or subsequently issued. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

15.04.230 Not transferable.

A permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work thereunder.

15.04.240 Suspension – Revocation.

The building official may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error on the basis of incorrect information supplied, or if its issuance (or activity thereunder) is in violation of any ordinance or regulation of any other provisions of the Dundee Municipal Code. All permit fees will remain property of the city and will not be refunded.

15.04.250 Inspections.

It shall be the duty of the permit holder or authorized agent to request all inspections that may be necessary or otherwise required in a timely manner, to provide access to the site, and to provide all equipment as may be deemed necessary or appropriate by the building official. All corrections required by the building official must be made within a reasonable time and before covering. The permit holder shall not proceed with construction activity until authorized to do so by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permit holder to remove or replace any material required for proper inspection shall be the responsibility of the permit holder or his agent.

Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder has made available the approved plans on site for inspection by the building official.

15.04.260 Structural code.

All buildings within the city limits shall comply with the adopted specialty codes and the city, state and/or federal standards in effect at the time the permit is issued.

15.04.270 Fees.

Fees charged under this chapter will be established by resolution of the city council.

Building permit valuation will be determined as outlined in OAR 918-050-0100 through 918-050-0855.

15.04.280 Severability.

If any section, paragraph, subdivision, clause, sentence, or provision of this code shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this code, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this code notwithstanding the parts to be declared unconstitutional and invalid.

15.04.290 Violations, penalties, and remedies.

A. No person, firm, corporation, or other entity, however organized, shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, occupy, or maintain a building or structure in the city, or cause the same to be done contrary to or in violation of this chapter.

B. Violation of a provision of this chapter shall be subject to an administrative civil penalty not to exceed \$1,000 per violation or \$1,000 per day for continuing violation and shall be processed in accordance with the procedures set forth in DMC 15.04.300.

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

D. In addition to the above penalties, a condition caused or permitted to exist in violation of this chapter is a public nuisance and may be abated by any of the procedures set forth under law.

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.

15.04.300 Authority to impose administrative civil penalty.

In addition to, and not in lieu of, any other enforcement mechanism authorized by the Dundee Municipal Code, upon a determination by the building official that any person, firm, corporation or other entity, however organized, has violated a provision of this chapter or a rule adopted thereunder, the building official may issue a notice of civil violation and impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (A) through (J) 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.

A. Prior to issuing an order to correct a violation under this section, the building official may pursue reasonable attempts to secure voluntary correction.

B. Prior to issuing a notice of civil violation and imposing an administrative civil penalty under this section, the building official shall issue an order to correct a violation to one or more of the responsible persons. 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 issue a notice of civil violation and impose an administrative civil penalty to each responsible persons to whom an order to correct was issued.

D. Notwithstanding subsections (A) and (B) of this section, the building official may issue a notice of civil violation and impose an administrative civil penalty without having issued an order to correct 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.

E. In imposing an administrative civil 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 official.

F. Any notice of a civil violation that imposes an administrative civil penalty under this section 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. Every notice shall include:

1. A description of the alleged violation and a 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 (E) of this section, a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated;

5. A statement of the party's right to appeal the civil penalty to the city council; and
6. The method and deadline by which an aggrieved person must file an appeal.

G. Any person, firm, corporation, or other entity, however organized, who is issued a notice of civil penalty may appeal the penalty to the city council. The provisions of DMC 15.04.310 shall govern any requested appeal.

H. 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 council pursuant to, and within the time limits established by, DMC 15.04.310.

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

J. The administrative civil 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.

15.04.310 Appeal of imposition of administrative civil penalty.

A. A person, firm, corporation, or other entity, however organized, that is aggrieved by the imposition of an administrative civil penalty may, within 15 days after the date of notice of the action, appeal the administrative civil penalty to the city council by delivering to the city recorder a written notice of appeal, accompanied by the appeal fee established by council resolution. The notice of appeal shall include:

1. The name and address of the appellant;
2. Reference to the penalty being appealed;
3. The reason the appellant feels the penalty was not appropriately assessed; and
4. What the correct determination of the appeal should be.

B. An appellant who fails to file an appeal within the time permitted waives the objection.

C. If a person, firm, corporation or other entity, however organized, appeals an administrative civil penalty to the city council, the penalty shall become final, if at all, upon issuance of the city council's decision.

D. Unless the appellant and the city agree to a longer period, an appeal shall be heard by the city council within 30 days of the receipt of the notice of appeal. At least 10 days prior to the hearing, the city shall mail notice of the time and location thereof to the appellant.

E. The city council shall hear and determine the appeal on the basis of any evidence the city council deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The burden of proof shall be on the building official. The rules of evidence as used by courts of law do not apply.

F. The city council shall issue a written decision within 30 days of the hearing date. The written decision of the city council is final.

15.04.320 Unpaid penalties.

A. Failure to pay an administrative civil penalty imposed within 10 days after the penalty becomes final shall constitute a violation of this chapter. Each day the penalty is not paid shall constitute a separate violation. The building official is authorized to collect the penalty by administrative action, judicial action, proceeding authorized by DMC 15.04.320(B), any other provision of this code, or by any other means provided by law.

B. If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this chapter resulting from prohibited use or activity on real property, and the penalty remains unpaid 30 days after such penalty becomes final, the city administrator shall direct that the full amount of the unpaid fine be entered as a lien in the city lien docket. At the time such an assessment is made, the city administrator shall notify the responsible person that the penalty has been assessed against the real property and that a lien has been entered in the city lien docket. The lien shall be enforced in the same manner as all city liens. Interest at the rate authorized by ORS 82.010 shall commence from the date of entry of the lien in the lien docket.

C. In addition to any other enforcement mechanisms authorized elsewhere in the Dundee Municipal Code, failure to pay an administrative civil penalty imposed pursuant to this chapter 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.