

CITY OF SALEM
DEPARTMENT OF PUBLIC WORKS
ADMINISTRATIVE RULE
CHAPTER 109
DIVISION 100-1
ENFORCEMENT OF PUBLIC WORKS REGULATIONS

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1.1 Purpose

The purpose of this administrative rule is to provide a clear and consistent methodology for determining the amount of a civil penalty to be imposed by the City of Salem on persons violating provisions of the *Salem Revised Code* for which the Public Works Director is responsible. This administrative rule provides criteria and a penalty matrix and is based on *Salem Revised Code* 20J.150.

1.2 Applicability

This administrative rule applies to any section of the following chapters of *Salem Revised Code* that the Director has responsibility for administering, implementing, or enforcing: SRC Chapter 65 (Excavations and Fills), SRC Chapter 68 (Preservation of Trees and Vegetation), SRC Chapter 70 (Utilities General), SRC Chapter 71 (Stormwater), SRC Chapter 72 (Water), SRC Chapter 73 (Sewers), SRC Chapter 74 (Pretreatment Provisions), SRC Chapter 75 (Erosion Prevention and Sediment Control), SRC Chapter 76 (Permits, Streets, and Public Ways), SRC Chapter 77 (Permits and Street Improvements), SRC Chapter 78 (Sidewalks), SRC Chapter 79 (Paving of Parking Areas), SRC Chapter 81 (Excavations), SRC Chapter 82 (Sidewalk Benches), SRC Chapter 83 (Moving Buildings), SRC Chapter 86 (Trees and Shrubs), SRC Chapter 94 (Offenses in Parks), SRC Chapter 110 (Administration), SRC Chapter 601 (Floodplain Overlay Zones), SRC Chapter 805 (Vision Clearance), and SRC Chapter 808 (Preservation of Trees and Vegetation).

1.3 Definitions

(a) Unless the context otherwise specifically requires, as used in this administrative rule the following terms mean:

- (1) Director means the Director of Public Works or the Director's designee.
- (2) Knowing means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.
- (4) Major violation means any violation that created a significant risk to public health and safety, caused significant damage to the environment, or had a significant adverse impact to public infrastructure.
- (5) Minor violation means any violation that did not create risk to public health and safety, caused no damage to the environment, and did not adversely impact public infrastructure.
- (6) Moderate violation means any violation that may, or is likely to have created a risk to public health and safety, damaged the environment, or adversely impacted public infrastructure, to a degree determined to be less than significant.
- (7) Willful means that a person acts with a conscious objective to cause the result, or to engage in the conduct, so described.

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(b) Words and phrases shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning. Words used in the present tense include the future, the singular number includes the plural, and the word "shall" is mandatory and not directory.

1.4 Determination of Civil Penalty

(a) To calculate the amount of a civil penalty for a single violation, the Director shall:

(1) Establish the gravity and magnitude of the violation as minor, moderate, or major based on the degree to which the violation created a risk to public health or safety, caused damage to the environment, or adversely impacted public infrastructure, as defined in Section 1.3.

(2) Use the matrix provided in Table 1 to determine the total criteria score, using the criteria rating guidance provided in Section 1.5.

(3) Calculate the civil penalty based on the total criteria score and the gravity and magnitude of the violation as provided in Table 2.

(b) The amounts of any civil penalty calculated shall be approved by the Director before being imposed.

(c) The notice of civil penalty and all enforcement proceedings shall be in accordance with *Salem Revised Code* Chapter 20J.

Table 1. Enforcement Penalty Matrix

Enforcement Evaluation Criterion	0 points	1 point	2 points	3 points
1. Was the violation the result of events or circumstances not reasonably within the person's control?				
2. Was the person negligent by failing to obtain or comply with the necessary permits and approvals?				
3. Was the action a willful and knowing violation?				
4. Was the person unresponsive in correcting the violation?				
5. Is this a repeat violation of the same or related provisions of the <i>Salem Revised Code</i> ?				

Total Criteria Score: _____

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Table 2. Assessment of Penalty Based on Gravity or Magnitude of Violation

Total Criteria Score	Gravity or Magnitude of Violation		
	Minor	Moderate	Major
1 – 4 points	\$50	\$100	\$200
5 – 6 points	\$150	\$300	\$600
7 – 8 points	\$250	\$500	\$1,000
9 – 10 points	\$375	\$750	\$1,500
Over 10 points	\$500	\$1,000	\$2,000

Assessed Penalty: _____

1.5 Criteria Rating Guidance

(a) The guidance below is to be used by the Director as considerations when rating each criterion of the enforcement penalty matrix.

- (1) Was the violation the result of events or circumstances not reasonably within the person's control?

Points = 0 If the person had no control over the events or circumstances contributing to the violation.

Points = 1 If the person is likely to have had some control over the events or circumstances contributing to the violation.

Points = 2 If the person had, or should have had some discernible control over the events or circumstances contributing to the violation.

Points = 3 If the person clearly had control over the events or circumstances contributing to the violation.

- (2) Was the person negligent by failing to obtain or comply with the necessary permits and approvals?

Points = 0 If no permits or approvals were required or if the documentation was complete and appropriate for the job or task that caused the violation.

Points = 1 If the person obtained and received approval for some but not all of the required permits and approvals.

Points = 2 If the person obtained some but not all of the required permits and approvals and did not receive approvals for the job or task that caused the violation.

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Points = 3 If the person either did not obtain the necessary permits and approvals or did obtain permits and approvals but did not comply with their conditions.

(3) Was the action a willful and knowing violation?

Points = 0 If the person did not know and had no way of knowing that the action or inaction constituted a violation.

Points = 1 If the person should have known the action or inaction constituted a violation.

Points = 2 If it is likely the person knew the action or inaction constituted a violation.

Points = 3 If the person clearly knew the action or inaction constituted a violation or if the violator had been previously informed by the Director that the action or inaction constituted a violation.

(4) Was the person unresponsive in correcting the violation?

Points = 0 If steps were taken to correct the cause of the violation as soon as the person learned of it.

Points = 1 If the cause of the violation was eventually corrected, but not in timely or cooperative fashion.

Points = 2 If the person made little effort or was ineffective in attempts to correct the cause of the violation and the cause of the violation was not corrected.

Points = 3 If the person made no attempt to correct the cause of the violation.

(5) Is this a repeat violation of the same or related provisions of the *Salem Revised Code*?

Points = 0 If there have been no prior violations by the same person or at the same site within the preceding five years.

Points = 1 If there has been one prior violation by the same person or at the same site that became a final order or decision of the Director or a court within the preceding five years.

Points = 2 If there have been two prior violations by the same person or at the same site that became a final order or decision of the Director or a court within the preceding five years.

Points = 3 If there have been three or more prior violations by the same person or at the same site that became a final order or decision of the Director or a court within the preceding five years.