

Chapter 9

CODE ENFORCEMENT AND ADMINISTRATION

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[HISTORY: Adopted by the Council of the Borough of Berwick 8-15-1977 by Ord. No. 1113. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention — See Ch. 70. Fees — See Ch. 94, Art. I.
Unfit buildings — See Ch. 73.
Electrical standards — See Ch. 88.

§ 9-1. Office established.

- A. Creation of Office of Code Enforcement. There is hereby created by the Council of the Borough of Berwick an office of the borough to be known as the "Office of Code Enforcement." Said office shall have the responsibility for administering and enforcing the provisions of this chapter and of those other codes and/or ordinances of the Borough of Berwick (herein referred to as the "applicable codes and ordinances") which designate said Office of Code Enforcement as their official administration and enforcement agency.
- B. Appointment of Code Enforcement Officer. There shall be appointed by the Council of the borough a Code Enforcement Officer, who shall be in charge of the Office of Code Enforcement of the borough. The Code Enforcement Officer shall supervise such other employees or assistants as shall be necessary for the administration and execution of the responsibilities of said Office, as appointed and approved by the Council of the borough. Said Code Enforcement Officer and other personnel may consist of employees directly hired and compensated by the borough.
- C. Fire Chief. In accordance with the Fire Prevention Code of the borough,¹ the Fire Chief of the borough has been established as the authorized representative of the Office of Code Enforcement of the borough having all of the duties for enforcement of the Fire Prevention Code of the borough provided for in this chapter. The Fire Chief shall continue to serve in this capacity until such time as Council declares otherwise.
- D. Relief from personal liability. The Code Enforcement Officer or other official or employee shall not, while acting for the borough, render himself liable personally because of any act or omission as required or permitted in the discharge of his official duties. Any suit

¹ Editor's Note: See Ch. 70, Building Construction and Fire Prevention.

instituted against such Code Enforcement Officer, official or employee because of any act performed by him in the lawful discharge of his duties shall be defended by the solicitor of the borough, and in no case will said officer, official or employee be liable for costs in any action, suit or proceeding.

- E. Official record. An official record shall be kept of all business and activities of the Office of Code Enforcement, and all such records shall be open to the public for inspection at all appropriate times, except that no individual, owner, operator, occupant or other person shall be subject to unwarranted invasion of privacy.

§ 9-2. Code Hearing Board of Appeals.

- A. Code Hearing Board of Appeals. There is hereby established a Code Hearing Board of Appeals, whose members shall be appointed by Council of the borough, consisting of three members, at least one of whom shall be qualified in the construction industry, who shall serve without compensation but may be reimbursed for necessary and reasonable expenses. Alternate members may serve at the discretion of Council. The term of office for members of this Board shall be for five years, except that for those first appointed, their terms shall be so fixed that the term of office of at least one member shall expire each year. Alternate members shall serve a five-year term no matter when appointed. Appointments to fill vacancies shall be only for the unexpired portion of the term. Each member of the Board, and any alternate members, shall be entitled to a stipend of \$25 for each hearing they attend. [Amended 10-17-1994 by Ord. No. 94-4; 1-23-1995 by Ord. No. 95-2]
- B. Powers of the Code Hearing Board of Appeals. The Code Hearing Board of Appeals shall have the following powers and duties:
- (1) Interpretation. On appeal from a determination of the Code Enforcement Officer or on request of the Borough Council, the Code Hearing Board of Appeals shall decide any questions involving the interpretation of any provision of this chapter or of those other applicable codes and ordinances.
 - (2) Variances. The Code Hearing Board of Appeals may grant a variance from the strict application of this chapter or of those other applicable codes and ordinances. Such variances may be granted only in those cases which would result in practical difficulty or unnecessary hardship and where the public health and safety shall not be jeopardized.
 - (3) Decide appeals. The Code Hearing Board of Appeals shall hear all appeals made to it and, depending on its findings, shall decide whether such appeals shall be granted.
- C. Requests for appeals or variances. Any person requesting a variance or aggrieved by a decision of the Code Enforcement Officer or by any other employee or official charged with the administration and enforcement of this chapter and of any other applicable codes and ordinances may take an appeal to the Code Hearing Board of Appeals. All appeals shall be made in writing, stating the grounds upon which the appeal is based, and shall be transmitted to the Office of Code Enforcement. An appeal must be taken within 15 days of notice of the action or of the receipt of written notice of any decision or ruling which is being appealed. The person requesting appeal shall deposit with the Borough Treasurer

\$125 at the time of filing the appeal to cover costs and transcript and may be required to pay additional reasonable and necessary costs of proceedings before the Code Hearing Board of Appeals, at the discretion of the Code Hearing Board of Appeals. [Amended 10-17-1994 by Ord. No. 94-4]

D. Appeals and variance procedure.

- (1) Public hearing. The Code Hearing Board of Appeals shall meet and conduct a hearing within 30 days of the receipt of an appeal or a request for a variance. All hearings shall be public and all persons whose interest may be affected shall be given an opportunity to be heard. A record shall be kept of all evidence and testimony presented at the hearing.
- (2) Decision of the Board. All decisions of the Board shall be in writing and a copy of each decision shall be sent to the applicant and to the Code Enforcement Officer. The Code Hearing Board of Appeals shall also retain in its files a copy of each decision, which files shall be available for inspection by the public. Each decision shall set forth fully the reasons for the decision of the Code Hearing Board of Appeals and the findings of fact on which the decision was based. The Code Hearing Board of Appeals shall make an order on its decision and the Code Enforcement Officer shall take immediate action to carry out said order.

E. Appeals from the decision of the Code Hearing Board of Appeals. Any person or persons aggrieved by any final order or decision of the Code Hearing Board of Appeals may appeal such order or decision within 30 days to the Court of Common Pleas or court of competent jurisdiction in accordance with, as far as practicable, the Rules of Civil Procedure of the Supreme Court regarding appeals from administrative agencies.

F. Reports by the Code Hearing Board of Appeals. The Code Hearing Board of Appeals shall report to the Council of the borough periodically, at intervals of not longer than three months. The report shall summarize all applications and appeals made to it since the last report and shall contain a summary of the Board's decision on each case. A copy of the report shall be filed with the Code Enforcement Officer. The Code Hearing Board of Appeals may also submit to the Council of the borough advisory reports recommending changes and modifications in this chapter or in those other applicable codes or ordinances.

§ 9-3. Administrative regulations; issuance of licenses; fees; administrative official.

A. Establishment of administrative regulations.

- (1) For the purposes of providing more orderly administration and regulation of the work to be performed under the various codes and ordinances of the borough related to building, plumbing, electrical, housing and property maintenance,² there is hereby established the Borough of Berwick contractor, subcontractor or materialman licensing regulations providing for the licensing of any person, association, associate, firm, partnership, corporation, fictitious entity or any other business entity engaged in

² Editor's Note: As to building, plumbing, electrical, housing and property maintenance, see Chs. 70, 137, 88 and 110, respectively.

the performance of the work described in said codes and acting in the capacity of contractor, subcontractor or materialman who performs supervisory contracting work within the boundaries of the Borough of Berwick, Columbia County, Pennsylvania.

- (2) Except for residential or commercial improvements, alterations or repairs completed totally and exclusively by the owner thereof, before any person, association, associate, firm, partnership, corporation, fictitious entity or any other entity engages in any work in the Borough of Berwick as hereinafter set forth, the person, association, associate, firm, partnership, corporation, fictitious entity or any other business entity must first obtain a license issued by the Borough of Berwick Licensing Official.

B. Activities requiring licenses. [Amended 3-16-1987 by Ord. No. 1197]

- (1) Except as hereinafter provided, the licensing requirements set forth herein shall apply to the following types of contractors, subcontractors or materialmen performing supervisory work:
 - (a) General contractors.
 - (b) Roofing and siding contractors.
 - (c) Electrical contractors.
 - (d) Plumbing and heating contractors.
 - (e) Refrigeration and air-conditioning contractors.
 - (f) Ceramic tile contractors.
 - (g) Wallpaper and painting contractors.
 - (h) Septic tank contractors.
 - (i) Fencing contractors.
 - (j) Masonry contractors.
 - (k) Cement and concrete contractors.
 - (l) Demolition contractors.
 - (m) Excavating contractors.
 - (n) Carpenters, painters, electricians and plumbers.
 - (o) Termite and rodent control contractors.
 - (p) All persons, firms, associations or any other entities operating as subcontractors or operating as materialmen providing supervisory work in the performance of the work described in the various Borough Building, Plumbing, Electrical and Housing and Property Maintenance Ordinances.³
- (2) Hereafter, except for residential or commercial improvements, alterations, demolition, razing or other activities enumerated which are performed totally by the owner of the

³ Editor's Note: See Chs. 70, 137, 88 and 110, respectively.

property thereof, it shall be unlawful for any person, association, associate, firm, partnership, corporation, fictitious entity or any other entity to contract, alter, repair, add to, subtract from, improve, wreck, raze or demolish any building or other structure or to excavate or to commence work described as part of construction, alterations, repairs, additions, improvements, wreckage, razing or demolition on any building, structure, project, development or improvement without first obtaining a contractor or subcontractor license from the Building Administration Official of the Borough of Berwick. The prohibition set forth herein shall be applicable both to the owner of the property causing the work to be performed and to the person, associate, association, firm, partnership, corporation or other entity attempting to perform the work.

(3) Exceptions.

- (a) Nothing in the foregoing subsection shall be construed to prevent individual property owners of the property or properties involved from performing the work described, exclusively, without a license, nor shall this section or any other section be construed to prohibit survey work, preparing preliminary drawings, obtaining or giving of estimates and plans or specifications for a proposed project.
- (b) Except for the performance of electrical, plumbing, heating and any other type of the enumerated activities involving structural repairs, alterations, construction, additions, removal or any other such construction activities, the other enumerated activities may be performed by an unlicensed person at the request of the owner, provided that the person or persons have not been regularly engaged in the performance of the enumerated activities requiring a license as a means of earning a livelihood, and provided further that the person or persons performing the permitted activities without a license may do so on no more than two occasions in any twelve-month period immediately preceding the date of the application, and provided further that the owner of the premises designates the person or persons to perform the work and grants the Borough of Berwick a hold-harmless agreement.

(4) Utility companies are exempt from licensing provisions and requirements.

C. License fees. [Amended 3-16-1987 by Ord. No. 1197; 4-6-1992 by Ord. No. 92-1]

- (1) Licenses shall be issued to a general contractor upon written application to the Administration Official, upon proof of qualifications as set forth herein and the payment of an annual fee of \$100, and to a subcontractor or materialman engaged in supervisory construction activities upon written application to the licensing official, upon proof of qualifications and the payment of an annual fee of \$50, for each specialty defined in the application and for which the applicant qualifies, subject to a maximum fee of \$150 for all specialties.
- (2) The license shall be valid for a period of 12 calendar months from the date of issue unless revoked prior thereto on cause and shall be subject to renewal for the next ensuing 12 calendar months upon filing of a written application to the licensing official and the payment of the annual fee as described by no later than 30 days from

the date of expiration without further qualification or examination after the initial license has been issued, unless a new or additional specialty is requested or unless the applicant's license has been revoked or suspended during the prior 12 months.

D. Qualifications for license; application.

- (1) General contractor qualifications. With the initial application for a license, an applicant for a general contractor license shall submit an affidavit of a minimum of three years' experience prior to the date of application or an affidavit of experience having performed services as a skilled mechanic, foreman, superintendent or architect's or engineer's assistant for five years; and, except in the case of an applicant with prior experience as a general contractor, he shall submit with the application at least one of the following:
 - (a) Two letters of certification from general contractors engaged in the contracting business within a radius of 25 miles of the Borough of Berwick, stating the applicant's employment, specific employment activities performed and their recommendations as to the reliability and qualifications of the applicant.
 - (b) Two letters from architects or engineers for whom the applicant performed services, stating length of services, type and quality of work performed and their recommendations relating to certification of the applicant.
 - (c) Two letters from a building official or licensing official of a borough, township or any other type of municipality where the applicant worked and which operated under a recognized building code, stating the nature and length of the applicant's employment therein, the type of services performed, the code they operated under and their recommendations relating to the applicant's qualifications.
 - (d) Any other experience, recommendations or qualifications which the Borough Administration Official deems acceptable.
- (2) Subcontractor or materialman qualifications. Applicants for subcontractor or materialman licenses, intending to do supervisory work in the case of materialmen, shall submit with their initial license application an affidavit of a minimum of three years' experience prior to application for a license as a subcontractor or materialman in any of the specialties that the applicant seeks the license for, or a minimum of two years' prior experience with a general contractor, either as foreman, superintendent, project engineer, project architect or assistant thereto, or two years' apprenticeship with general or other subcontractors in employment in the specialty sought by the applicant; and, except in the case of an applicant with a necessary experience record prior to the chapter, the applicant shall submit with the application at least one of the following:
 - (a) Two letters of certification from general contractors or subcontractors engaged in contracting business within a radius of 25 miles of the Borough of Berwick, stating the applicant's employment with the contractors or subcontractors, the length of employment, specific employment activities performed and their recommendations as to the reliability and qualifications of the applicant.

- (b) Two letters from architects or engineers for whom the applicant performed services, stating the length of services, type and quality of work performed and their recommendations relating to certification of the applicant.
- (c) Two letters from a building official or licensing official of a borough, township or any other type of municipality where the applicant worked and which operated under a recognized building code, stating the nature and length of the applicant's employment therein, the type of services performed, the code they operated under and their recommendations relating to the applicant's qualifications.
- (d) Any other experience, recommendations or qualifications which the Borough Administration Official deems acceptable.

E. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT — An individual, a partner or a corporation, provided that the person referred to is the owner-officer thereof, or any other entity with which the individual is associated.

GENERAL CONTRACTOR — One who generally performs part or all of the work through his employees or subcontractors and who engages in supervisory activities and control.

MATERIALMAN DOING SUPERVISORY WORK — Such term is intended to require the licensing of suppliers of said materials used in completion of the work described to be licensed when they in fact engage in providing and performing the supervisory work generally associated with the duties of a general contractor or subcontractor.

SUBCONTRACTOR — One who generally is self-employed or whose firm, through employees, specializes in the performance of one or more of the particular types of works described, under agreement, either oral or written, with the owners or with a general contractor or project director.

- F. In addition to the requirement of proof of qualifications as a condition of the granting of the license or renewal thereof, the Administration Official may require applicant or licensee to submit proof of adequate liability insurance, workmen's compensation coverage and insurability for performance bond to protect the workmen involved, the persons with whom the licensee or applicant might contract and the citizens of the Borough of Berwick and their property.
- G. Administration Official. For purposes of administration of this chapter and related ordinances, there is hereby created the office of Administration Official. The Borough Council shall appoint as said Administration Official, to perform the duties set forth in this section, a qualified citizen of the Borough of Berwick at the reorganizational meeting of Council every two years unless removed prior thereto.
 - (1) The Administration Official shall receive such reasonable compensation as Council may fix for services.⁴

⁴ Editor's Note: As to salaries and compensation generally, see Ch. 52.

- (2) The Code Enforcement Official may also act as the Administration Official.

§ 9-4. Powers and duties of Code Enforcement Officer.

- A. Enforcement by Code Enforcement Officer. The Code Enforcement Officer shall enforce and administer all of the provisions of this chapter and of those other applicable codes and ordinances which establish the Office of Code Enforcement as their official administration and enforcement agency.
- B. Duties of Code Enforcement Officer. The duties of the Code Enforcement Officer shall include the receipt of applications; the issuance of permits, notices, certificates and orders; the making of inspections to determine conformance with applicable codes and ordinances; the undertaking of systematic inspection programs; the undertaking of research and investigations; the recommendation of appropriate administrative rules for review and adoption by the Code Hearing Board of Appeals; the keeping of records; the issuance of written monthly reports and such other activities as may be required.
- C. Right of entry.
 - (1) In the discharge of his duties, the Code Enforcement Officer or his authorized representative, upon showing proper identification where requested, is hereby authorized to enter and inspect, between the hours of 8:00 a.m. and 5:00 p.m., any structure or premise in the borough to enforce the provisions of this chapter and of those other applicable codes and ordinances. The assistance and cooperation of all other borough officials, including Police and Fire Departments, shall be available to the Code Enforcement Officer to assist in the performance of his duties and in securing right of entry.
 - (2) The Code Enforcement Officer and the owner, operator or occupant or other person in charge of any structure or premises subject to the provisions of this chapter may agree to an inspection by appointment at a mutually convenient time.
 - (3) The owner, operator or occupant or other person in charge of any structure or premises shall give the Code Enforcement Officer entry and free access thereto and to every part of the structure or to the premises surrounding the structure.
 - (4) If any owner, operator or occupant or other person in charge fails or refuses to permit entry and free access to the structure or premises under his control or to any part thereof with respect to any authorized inspection, the Code Enforcement Officer may, upon a showing that probable cause exists for the inspection, file a complaint and may petition for and obtain an order directing compliance with the inspection requirements of this chapter from a court of competent jurisdiction. Any person who refuses to comply with such an order issued pursuant to this subsection shall be subject to such penalties as may be authorized by law for violation of a court order.

§ 9-5. Permits; certificates and fees.

- A. Permit required. An application for a permit shall be required as set forth in the provisions of those applicable codes and ordinances which the Office of Code Enforcement has the

responsibility to administer. Said application shall be submitted in such forms as may be prescribed by the Code Enforcement Officer and shall be accompanied by any required fee.

- B. Action on application. The Code Enforcement Officer shall examine said application to determine compliance with those other applicable codes and ordinances of the borough and shall, within 30 days after filing, either approve or reject said application. If said application is rejected, the Code Enforcement Officer shall inform the applicant in writing, stating the reasons for such rejection.
- C. Required fees. [Amended 3-16-1987 by Ord. No. 1197]
- (1) Applicants for permits required by the Borough of Berwick Building Code, Borough of Berwick Electrical Code, Borough of Berwick Plumbing Code, Borough of Berwick Housing and Property Maintenance Code, work defined in the Fire Prevention Code⁵ and any amendments or revisions thereto or any other building permit or fee requirements shall pay to the Borough of Berwick, at the time of application for permit, fees according to the schedule established by the Borough of Berwick by Ordinance No. 1196, which amends Ordinance No. 1100, setting forth the various permit fee requirements of the Borough of Berwick as now in effect or as may hereafter be amended, according to the schedule of value of work and material to be performed. Said payment should be made upon application to the Code Enforcement Officer of the Borough of Berwick.
 - (2) All permits granted under any of the applicable codes and/or ordinances shall be good for a period of six months, provided that extensions may be granted by the Code Enforcement Officer for good reason; except that any permit granted for demolition activities shall be valid for six months only, and if such demolition work is not completed within that time, any bond proposed by the applicant shall be forfeited.
- D. Certificates. The following certificates shall be required in accordance with the provisions of those other applicable codes or ordinances which the Office of Code Enforcement has the responsibility to administer. Said certificates may be issued separately or combined in the form of a single certificate.
- (1) Certificates of use and occupancy. In accordance with Section 120.0 of the BOCA Basic Building Code, a certificate of use and occupancy shall be required, and no new building or portion of an existing building which is enlarged or altered shall be used or occupied in whole or in part until such a certificate of use and occupancy shall have been issued by the Code Enforcement Officer.
 - (2) Certificate of approval. A certificate of approval shall be required for any electrical or plumbing work completed under the provisions of the applicable codes and ordinances. All applicants shall apply to the Office of Code Enforcement for such a certificate of approval within 30 days of the completion of the building, dwelling, structure, work or premises.
 - (3) Other certificates. Any other permits, certificates or licenses as required by the applicable codes and ordinances shall be obtained by the applicant in accordance with

⁵ Editor's Note: See Ch. 70, Building Construction; Ch. 88, Electrical Standards; Ch. 137, Plumbing; Ch. 110, Housing and Property Maintenance and Ch. 101, Fire Prevention.

the provisions of said applicable codes and ordinances. Application for such permits, certificates or licenses shall be made to the Code Enforcement Officer.

§ 9-6. Violations and penalties.

A. Procedure in case of violations. Whenever the Code Enforcement Officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter or of the other applicable codes and ordinances or of any rules and regulations adopted pursuant thereto, he shall proceed as follows:

- (1) Serve notice in writing of the alleged violation, which shall be signed by the Code Enforcement Officer or his authorized representative. Said notice shall be served personally to the responsible owner, occupant, operator or other person then in charge or served by registered or certified mail with a return receipt requested; or where such responsible person in charge cannot be found, service may be made by posting a notice in or about the structure or premises or by publishing such notice in a newspaper of general circulation for a period of three consecutive days; or notice may be served by any other method authorized under the laws of the Commonwealth of Pennsylvania.
- (2) Said notice shall include a statement of the reasons why the notice is being issued, the sections of the code and/or ordinances which have been violated and the remedial actions required.
- (3) Said notice shall allow a reasonable time, not to exceed 60 days, for the initiation and correction of the violation alleged or of the remedial actions required, except where emergency conditions exist which require immediate corrective action.
- (4) Said notice shall contain a statement indicating that the notice will become an order if no request and approval for an extension of time is made to the Code Enforcement Officer or if no petition for an appeal or hearing is requested before the Code Hearing Board of Appeals within 15 days from the receipt of said notice.
- (5) The Code Enforcement Officer may grant a request for a reasonable extension of time where he has evidence to believe that the responsible person is attempting to remove the alleged violation. However, no such extension of time may exceed a period of 90 days unless authorized by the Code Hearing Board of Appeals upon appeal of the responsible owner, operator, occupant or other person in charge.

B. Penalties.

- (1) Any person who fails to correct a violation or institute a remedial action as ordered by the Code Enforcement Officer, or who violates a provision or fails to comply with any requirements of this chapter or of any provision of the other applicable codes or ordinances, or who performs work without a license, shall be subject, for each violation, to a fine of not less than \$100 nor more than \$300 and costs of prosecution, and in default of payment of such fine and costs, to imprisonment not exceeding 30 days, and each day's failure to comply with any such provision or requirement or any such order shall constitute a separate offense.

- (2) The imposition of the penalties herein prescribed shall not preclude the Solicitor representing the borough from initiating, and he is hereby ordered to initiate, appropriate actions or proceedings at law or in equity to effect the purposes of this chapter.
- C. Dangerous and unsafe conditions and structures, and dwellings unfit for human habitation.⁶ Structures which contain dwellings which are unfit for human habitation, or structures which are dangerous or unsafe and structures which contain dangerous conditions or materials, as defined by the applicable codes and ordinances of the borough, are hereby declared to be a public nuisance.
- (1) General procedure. The Code Enforcement Officer shall order the responsible owner, operator, occupant or person in charge of the structure or premises which is dangerous, unsafe or unfit for human habitation to vacate, repair and/or demolish said structure and to remove the public nuisance as provided for in this chapter and in the applicable codes and ordinances of the borough in accordance with the laws of the Commonwealth of Pennsylvania.
- (2) Failure to comply. Whenever an order to vacate, repair and/or demolish a structure which is a public nuisance because it is unsafe, dangerous or unfit for human habitation has not been complied with, the Code Enforcement Officer may, in accordance with the laws of the Commonwealth of Pennsylvania, proceed to cause the structure to be vacated, repaired and/or demolished or take such other action as is necessary to abate the nuisance. Abatement under this subsection shall not commence until at least 10 days after the service of the order, except that the Code Enforcement Officer may determine that more immediate action is required because of the special emergency or dangerous conditions which exist.
- (3) Recovery of expenses.
- (a) The expenses incurred pursuant to Subsection C(2) of this section and the other applicable codes and ordinances shall be paid by the responsible owner, operator or occupant or by the persons who caused or maintained such a public nuisance.
- (b) The Code Enforcement Officer shall file on his records an affidavit stating with fairness and accuracy the items and date of the expenses incurred. The Council of the borough may institute a suit to recover such expenses, to be charged against the property as a lien.

⁶ Editor's Note: See also Ch. 73, Buildings, Unfit.

