

ORDINANCE NO. 839

AN ORDINANCE OF THE CITY OF WILSONVILLE REPEALING AND REPLACING WILSONVILLE CODE CHAPTER 9 – STRUCTURES; AND DECLARING AN EMERGENCY.

WHEREAS, the Oregon Building Codes Division (“BCD”) administers Oregon’s Statewide Building Code, which the City of Wilsonville has adopted as its local building code; and

WHEREAS, the BCD published its 2019 Oregon Structural Specialty Code, effective October 1, 2019, which governs building structures other than structures regulated under BCD’s Residential Specialty Code; and

WHEREAS, the City has the authority under ORS 455.020(4) and Section 101.2 of the 2019 Oregon Structural Specialty Code to enact certain building code regulations to supplement the Statewide Building Code; and

WHEREAS, 2019 Oregon Structural Specialty Code no longer regulates twenty-six (26) structures or equipment based on BCD’s new interpretation of ORS 455.020(1) relating to the scope of the statewide specialty codes; and

WHEREAS, for administering a local code program, the City has previously relied upon the Chapter 1 administrative provisions found in the statewide specialty codes; and

WHEREAS, having a consistent local administrative chapter is intended to provide for consistent application of all adopted specialty codes; and

WHEREAS, the City of Wilsonville desires to repeal and replace Wilsonville Code Chapter 9 – Structures, to adopt and supplement the 2019 Oregon Structural Specialty Code and to provide appropriate processes for administering and enforcing the City’s building regulations; and

WHEREAS, the BCD has provided a grace period until January 1, 2020 for local jurisdictions to adopt the 2019 Oregon Structural Specialty Code, thereby requiring the City to adopt and supplement the 2019 Oregon Structural Specialty Code by January 1, 2020; and

WHEREAS, BCD denied a request from the Oregon Building Officials Association to extend the grace period to July 1, 2020; and

WHEREAS, failure to adopt local regulations concerning the now-omitted structures and equipment prior to January 1, 2020 means the City cannot regulate or inspect those structures and equipment beginning on January 1, 2020; and

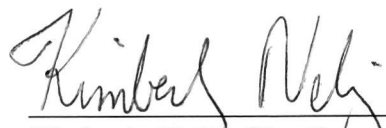
WHEREAS, House Bill 2001 (2019) (“HB 2001”) requires jurisdictions to establish a local appellate process for denials of applications to convert single-family dwellings into four or fewer residential dwelling units; and

WHEREAS, the City of Wilsonville does not currently have a local board of appeals to hear appeals regarding technical determinations by the Building Official or appeals as required under HB 2001.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The above recitals are incorporated by reference as if fully set forth herein.
2. Wilsonville Code Chapter 9 – Structures is repealed and replaced with Attachment 1, attached hereto and incorporated by reference as if fully set forth herein.
3. This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist and this Ordinance shall be in full force and effect on January 1, 2020.
4. The City Recorder shall conform these amendments to the City’s code format and correct any scrivener’s errors.


SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 2nd day of December, 2019, and scheduled for a second reading at a regular meeting of the Council on December 16, 2019 commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.



Kimberly Veliz, City Recorder

ENACTED by the City Council on the 16th day of December, 2019, by the following votes:

Yes: 4 No: 0



Kimberly Veliz, City Recorder

DATED and signed by the Mayor the 16th day of December, 2019.



TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Excused
Councilor Linville	Yes

ATTACHMENT:

1. Wilsonville Code Chapter 9 - Structures

WILSONVILLE CODE

CHAPTER 9 – STRUCTURES

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GENERAL

9.000 Title. These regulations shall be known as the “City of Wilsonville Building Code,” may be cited as such, and will be referred to herein as “the Building Code.”

9.010 Purpose. The purpose of the Building Code is to establish minimum uniform performance standards providing a reasonable level of safety, public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire, explosion and other hazards, and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.

9.020 Scope and Application.

(1) Except for buildings, structures, or appurtenances that are otherwise exempt or not included in the Building Code, the Building Code shall apply to the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures, except those located in a public way, or work associated with hydraulic flood control structures or public utility poles and towers.

(2) Where, in any specific case, different sections of the Building 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.

(3) Where, in any specific case, there is a conflict between the Building Code and any Oregon Revised Statute, the statute shall govern. The provisions of this Building Code shall not be deemed to nullify any provisions of local, state or federal law.

(4) If, in a specific case, there is a conflict between the administrative procedures of this chapter and a given code, the procedures within the Building Code shall govern. If, in a specific case, there is a conflict between the technical provisions of this chapter and a given code, the provisions within that code shall govern.

(5) When a particular Oregon state building code indicates the state requirements apply unless specifically amended by a local municipality under ORS 455.020, the City of Wilsonville’s Building Code will take precedence. Please refer to the City’s resolutions adopted in accordance with Sections 9.300 through 9.370 below.

9.030 Definitions. For purposes of this Chapter 9, the following terms are defined as follows:

(1) “Board of Appeals” means the Board of Appeals established under Section 9.500 through 9.520 herein.

(2) “Building Official” means the Building Official of the City of Wilsonville, or the

Building Official's duly authorized representative.

(3) "Business Days" means days of the week excluding Saturdays, Sundays, and legal holidays observed by the City.

(4) "City Council" means the City of Wilsonville City Council.

(5) "City Manager" means the City Manager of the City of Wilsonville, or the City Manager's duly authorized representative.

(6) "Community Development Director" means the Community Development Director of the City of Wilsonville, or the Community Development Director's duly authorized representative.

(7) "Construction Documents" means written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a project necessary for obtaining a Permit.

(8) "Demolition" means the complete destruction or removal of a structure (including garages), or the removal of more than 50% of the perimeter walls. Non-habitable non-historic accessory structures 200 square feet or less are exempt from this definition.

(9) "Permit" means a building, mechanical, plumbing, grading, demolition, or other associated permit issued by the Building Official for activities identified in the scope.

(10) "Receipt" means the earliest of the following:

(a) If served by personal delivery, the date of the letter, notice, or order

(b) If served by certified or registered mail, return receipt requested, three (3) days after the date of the letter, notice, or order;

(c) If served by first class mail, three (3) days after the date of the letter, notice, or order; or

(d) If served by email, the date of a response email to the letter, notice, or order.

POWERS AND DUTIES OF BUILDING OFFICIAL

9.100 In General.

(1) The Building Official is authorized to enforce all of the provisions of the Building Code.

(2) The Building Official has the power to render written and oral interpretations of

the Building Code and to adopt and enforce administrative procedures in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of the Building Code, and shall not have the effect of waiving requirements specifically provided for in the Building Code.

(3) **Liability.** The Building Official, members of the Board of Appeals, and/or any employee charged with the enforcement of this Building Code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this Building Code or other pertinent law or ordinance, shall not thereby be civilly or criminally rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties.

(4) **Legal Defense.** Any suit or criminal complaint instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Building Code shall be defended by legal representatives of the City until the final termination of the proceedings. The Building Official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this Building Code.

9.110 Deputies. The Building Official has the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the Building Official to carry out the functions of the Building Code and to enforce the Code.

9.120 Right of Entry. Where it is necessary to make an inspection to enforce the provisions of this Building Code, or where the Building Official has reasonable cause to believe that there exists in a structure or on a premises a condition that is contrary to or in violation of this Building Code that makes the structure or premises unsafe, dangerous or hazardous, the Building Official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this Building Code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure 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 structure or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry.

9.130 Stop Work Orders.

(1) Whenever any work is being done contrary to the provisions of the Building 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 of such work to be done. Such person(s) shall stop such work until specifically authorized by the Building Official to proceed thereafter.

(2) Any person who continues any work after having been served with a stop work

order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to the penalties of Sections 9.400 through 9.430 herein.

9.140 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 the Building 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 the occupant of the building, structure, or premises of the decision to disconnect prior to taking such action, and will notify such serving utility, owner and occupant of the building, structure or premises in writing of such disconnection within a reasonable time thereafter.

9.150 Authority to Abate Hazardous Equipment.

(1) When the Building Official ascertains that equipment, or any portion thereof, regulated by the Building Code has become hazardous to life, health, or property, the Building Official may order the equipment either removed from its location or restored to a safe and/or sanitary condition, as appropriate. The notice must be in writing and contain a fixed time limit for compliance. Any person who uses the defective equipment after receiving the notice is subject to the penalties of Sections 9.400 through 9.430 herein.

(2) When equipment or an installation is to be disconnected, written notice of the disconnection (and causes therefor) must be given within 24 hours to the involved utility and also the owner and/or occupant of the building, structure, or premises. When equipment is maintained in violation of the Building Code and in violation of a notice issued pursuant to the provisions of this section, the Building Official may institute such action as the Building Official deems necessary to prevent, restrain, correct or abate the violation, including, but not limited to issuing civil penalties; declaring the building, structure, or premises dangerous; and denying entry.

9.160 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 the Building 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.

9.170 Occupancy Violations. Whenever any building, structure or equipment therein regulated by the Building Code is used contrary to the provisions of the Building Code, the Building Official may order such use discontinued and the structure (or portion thereof) vacated and provide such order through written notice to the owner, occupant, and/or user of the building, structure, or equipment. 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 the Building Code. Structures that are altered, modified, or repaired without the benefit of Permits, for purposes of adding rooms for tenants, shall be considered as occupancy violations and subject to the penalties of Section 9.400 through 9.430 herein.

9.180 Unsafe Buildings. When the Building Official ascertains that a building, structure, or premises, or any portion thereof, regulated by the Building Code is a public nuisance or otherwise has become hazardous to life, health, or property, the Building Official may order abatement by repair, rehabilitation, Demolition, or removal in accordance with the procedures set forth in the Building Code or such alternate procedures as may have been or as may be adopted by the City or the Building Official. As an alternative, the Building Official may institute any other appropriate action to prevent, restrain, correct or abate the violation.

9.190 Appeal of Administrative Decision or Rule. Appeals of administrative decisions or administrative rules of the Building Official under this Section 9.100 through 9.180 are made to the City Manager pursuant to Sections 9.400 through 9.430.

CONSTRUCTION DOCUMENTS AND PERMITS

9.200 Issuance.

(1) The application, Construction Documents, and other data filed by an applicant for a Permit shall be reviewed by the Building Official. Such Construction Documents may be reviewed by other departments of the City to verify compliance with any applicable laws under their jurisdiction. If the Building Official finds that the work described in an application for a Permit and the Construction Documents and other data filed therewith conform to the requirements of the Building Code and other pertinent laws and ordinances, and that the fees have been paid, the Building Official shall issue a Permit therefore to the applicant.

(2) Approval. When the Building Official issues the Permit where Construction Documents are required, the Building Official shall endorse in writing or stamp the Construction Documents as “Reviewed for Code Compliance.” Such endorsement of Construction Documents shall not be changed, modified, and altered without authorizations from the Building Official, and all work regulated by the Building Code shall be done in accordance with the approved Construction Documents.

(3) Partial Permits. The Building Official is authorized to promulgate additional administrative rules and regulations related to the efficient administration and review of partial Permits. Elements for partial Permits shall include but not be limited to deferred submittals, temporary Permits, and phased construction.

(4) Design Professional of Responsible Charge. Where it is required that documents be prepared by a registered design professional, the Building Official shall be authorized to require the owner or the owner's authorized agent to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner or the owner's authorized agent shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The Building Official shall be notified in writing by the owner or the owner's authorized agent if the registered design professional in responsible charge is changed or is unable to continue to perform the duties. The registered design professional in responsible charge shall be responsible for reviewing

and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

(5) Modifications. Where there are practical difficulties involved in carrying out the provisions of this Building Code, the Building Official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's authorized agent, provided that the Building Official shall first find that special individual reason makes the strict letter of this Building Code impractical, the modification is in compliance with the intent and purpose of this Building Code and that such modification does not lessen health, accessibility, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department.

(6) Alternative Materials, Design, and Methods of Construction and Equipment. The City encourages innovative technology and design, and therefore, the provisions of this Building Code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this Building Code, provided that any such alternative has been approved by the Building Official. An alternative material, design or method of construction shall be approved where the Building Official finds that the proposed design is satisfactory and complies with the intent of the provisions of this Building Code, and that the material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this Building Code in quality, strength, effectiveness, fire resistance, sanitation, durability and safety. Where the alternative material, design or method of construction is not approved, the Building Official shall state the reasons why the alternative was not approved.

(7) Research Reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this Building Code, shall consist of valid research reports from approved sources.

(8) Tests. Whenever there is insufficient evidence of compliance with the provisions of this Building Code, or evidence that a material or method does not conform to the requirements of this Building Code, or in order to substantiate claims for alternative materials or methods, the Building Official shall have the authority to require tests as evidence of compliance to be made without expense to the municipality. Test methods shall be as specified in this Building Code or by other recognized test standards. In the absence of recognized and accepted test methods, the Building Official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the Building Official for the period required for retention of public records.

9.210 Retention of Construction Documents. One set of approved Construction Documents shall be retained by the Building Official for a minimum period specified by Oregon public records laws. One set of approved Construction Documents shall be returned to the applicant, and the set shall be kept on the site of the building, structure, or worksite at all times during which the work authorized thereby is in progress.

9.220 Validity of Permit.

(1) The issuance or granting of a Permit or approval of Construction Documents cannot be construed to be a Permit for, or an approval of, any violation of any of the provisions of the Building Code or of any other ordinance of the City or any other applicable federal, state, or local law, statute, rule, regulation, or ordinance.

(2) The issuance of a Permit based on Construction Documents and other data does not prevent the Building Official from thereafter requiring the correction of errors in the Construction Documents and other data, or from preventing building operations, such as building inspections, plan reviews, permit issuance, investigations, from being carried on thereunder when in violation of the Building Code or of any other ordinances of this jurisdiction.

(3) The legal occupancy of any structure existing on the date of adoption of the Building Code shall be permitted to continue without change, except as otherwise specifically provided in the Building Code.

(4) The Building Official may adopt administrative procedures regarding Permit and Permit application expirations, extensions, and/or reinstatements.

9.230 Work without a Permit; Investigation Fees.

(1) Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, change the character or use of the occupancy, or change the occupancy of a building or structure, which is regulated by this Building Code, or to cause any such work to be performed, shall first make application to the Building Official and obtain the required permit.

(2) Whenever any work for which a Permit is required by the Building Code has been commenced without first obtaining the Permit, a special investigation shall be made before a Permit may be issued for such work.

(3) An investigation 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 the Building Code nor from any penalty prescribed by law.

(4) Any person, firm or corporation performing, or found to have performed work, prior to obtaining a Permit where a Permit is required for such work, shall be subject to the penalties of Sections 9.400 through 9.430 herein.

(5) Exception to this Section. The person, firm or corporation is working under a pre-approved process as defined by a specific administrative policy of the Building Official may be excepted from this Section.

9.240 Permit Not Transferable. A Permit issued to one person or firm is not transferable and shall not authorize any other person or firm to perform any work thereunder.

9.250 Suspension or Revocation. The Building Official may, in writing, suspend or revoke a Permit issued under the provisions of the Building Code whenever the Permit is issued in error on the basis of incorrect, inaccurate, or incomplete information supplied, or if its issuance (or activity thereunder) is in violation of any ordinance or regulation of any other provisions of the City Code.

9.260 Inspections.

(1) 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, provide access to the site, and to provide all equipment as may be deemed necessary or appropriate by the Building Official. The Permit holder or applicant shall not proceed with construction activity prior to issuance of a Permit or until receiving specific written authorization 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 sole responsibility of the Permit holder.

(2) Work requiring a Permit shall not be commenced until the Permit holder or an agent of the Permit holder has made available on site, a copy of the Permit authorizing such work and supporting documents such as City-approved Construction Documents. The Permit and supporting documents shall be maintained available by the Permit holder until final approval has been granted by the Building Official.

(3) The Building Official shall make the required inspections, or the Building Official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Building Official is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise.

9.270 Demolition Permits. Unless otherwise exempt by the Building Official this section shall apply to Permit applications to demolish structures, and where timely and practicable, shall include the following:

(1) Photos. Electronic photos of each structure proposed for Demolition must be provided to the City at the time of Permit application and prior to any Demolition. The size, quantity, format, resolution, and context of photos shall be set by the Community Development Director. Unless otherwise exempt, photos shall be made available as part of the public record for the structure as required by law.

BUILDING CODES AND FEES

9.300 Purpose. The purpose of Sections 9.310 through 9.380 is to enable the City Council to adopt provisions of its Building Code through resolutions so that the City's Building Code remains current with state and federal requirements, new technologies, and best practices. Adoption of provisions of the Building Code by resolution will allow the City to remain nimble

and flexible to timely respond to changing state and federal laws and regulations.

9.310 Structural Specialty Code. The City’s adoption of a Structural Specialty Code will be by resolution and will be incorporated as part of the Building Code.

9.320 Zero Energy Ready Commercial Code. The City’s adoption of a Commercial Energy Specialty Code will be by resolution and will be incorporated as part of the Building Code.

9.330 Mechanical Specialty Code. The City’s adoption of a Mechanical Specialty Code will be by resolution and will be incorporated as part of the Building Code.

9.340 Residential Specialty Code. The City’s adoption of a Residential Specialty Code will be by resolution and will be incorporated as part of the Building Code.

9.350 Electrical Specialty Code. The City’s adoption of an Electrical Specialty Code will be by resolution and will be incorporated as part of the Building Code.

9.360 Plumbing Specialty Code. The City’s adoption of a Plumbing Specialty Code will be by resolution and will be incorporated as part of the Building Code.

9.370 Fire Code. The City’s adoption of a Fire Code will be by resolution and will be incorporated as part of the Building Code.

9.380 Fees. Permit fees will be adopted by resolution.

VIOLATIONS

9.400 Violations; Penalties; Remedies.

(1) Except for buildings and structures that are otherwise exempt or not included in the Building Code, no person may erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the City, or cause the same to be done, contrary to or in violation of the Building Code.

(2) Violation of a provision of the Building Code shall be subject to a civil penalty of no less than \$50.00 and not exceeding \$5,000.00 per offense, or in the case of a continuing offense, not more than \$1,000.00 for each day of the offense and shall be processed in accordance with the procedures set forth in Sections 9.410 through 9.430.

(3) Each day that a violation of a provision of the Building Code exists constitutes a separate violation.

(4) The penalties and remedies provided in Sections 9.400 through 9.430 are not exclusive and are in addition to other penalties and remedies available to the City under the City Code, other City ordinance, or Oregon or federal law.

9.410 Authority to Impose Civil Penalty.

(1) In addition to, and not in lieu of, any other enforcement mechanism authorized by the Building Code or the City Code, upon a determination by the Building Official that a person has violated a provision of the Building Code or a rule adopted thereunder, the Building Official may impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (1) to (12) 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.

(2) The preferred enforcement of the Building Code is for the Building Official to first attempt, if possible, voluntary correction of any violations of the Building Code. Therefore, prior to imposing an administrative civil penalty under this Section, the Building Official may, in the Building Official's discretion, pursue reasonable attempts to secure voluntary correction. If the violator fails to correct the violation, the Building Official may issue a notice of civil violation to one or more of the persons responsible to correct the violation, as well as the owner of the site if the owner is not the violator. 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 (5) calendar days from Receipt of the notice.

(3) 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 impose a civil penalty on each person to whom an order to correct was issued.

(4) Notwithstanding subsection (2) above, the Building Official may impose a civil penalty without having issued an order to correct violation or 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.

(5) In imposing a penalty authorized by this Section, the Building Official will consider:

- (a) The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
- (b) Any prior violations of statutes, rules, orders, and Permits;
- (c) The gravity and magnitude of the violation;
- (d) Whether the violation was repeated or continuous;
- (e) Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;

- (f) The violator's cooperativeness and efforts to correct the violation; and
- (g) Any relevant rule of the Building Code or the City Code.

(6) The notice of civil penalty shall either be served by personal service or shall be mail by registered or certified mail, return receipt requested. A notice of civil penalty shall include:

- (a) Reference to the particular Building Code provision or rule involved;
- (b) A short and plain statement of the matters asserted or charged;
- (c) A statement of the amount of the penalty or penalties imposed;
- (d) 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 (4), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
- (e) A statement of the party's right to appeal the civil penalty to the City Manager.

(7) Any person who is issued a notice of civil penalty may appeal the penalty to the City Manager pursuant to Section 9.420.

(8) A 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 Manager pursuant to, and within the time limits established by, Section 9.420. If the responsible person appeals the civil penalty to the City Manager, the penalty shall become final, if at all, upon issuance of the City Manager's decision affirming the imposition of the administrative civil penalty.

(9) Except as provided in subsection (10) below, failure to pay a penalty imposed hereunder within ten (10) calendar days after the penalty becomes final as provided in subsection (8) shall constitute a separate and additional violation of the Building Code. Each day the penalty is not paid thereafter shall constitute a separate violation. The Building Official also is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (11) below, other provisions of the City Code, or Oregon statutes. The civil administrative penalty authorized by this Section shall be in addition to:

- (a) Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement; and
- (b) Any other actions authorized by law.

(10) The City Manager may, in the City Manager's sole discretion, suspend the

imposition of additional civil penalties pending the City Manager’s decision of an appeal properly submitted pursuant to Section 9.420 herein.

(11) If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of the Building Code resulting from prohibited use or activity on real property, and the penalty remains unpaid thirty (30) calendar days after such penalty became final, the Building Official may assess the property the full amount of the unpaid fine and may enter such an assessment as a lien in the municipal lien docket pursuant to Section 9.430. At the time such an assessment is made, the Building Official shall notify the responsible person and the owner, if different from the responsible person, that the penalty has been assessed against the real property upon which the violation occurred and has been entered in the municipal lien docket. The interest shall commence from the date of entry of the lien in the lien docket.

(12) In addition to enforcement mechanisms authorized elsewhere in the Building Code and the City Code, failure to pay an administrative civil penalty imposed pursuant to this Section will be grounds for withholding issuance of requested Permits or licenses, for issuing a stop work order, if applicable, or revoking or suspending any issued Permits or certificates of occupancy.

9.420 Appeal of Penalty.

(1) A person aggrieved by an action of the Building Official taken pursuant to a section of the Building Code that authorizes an appeal under this Section may, within ten (10) Business Days after the Receipt of notice of the action, appeal in writing to the Building Official. The appeal shall state:

- (a) The name and address of the appellant;
- (b) The nature of the determination being appealed
- (c) The reason the determination is incorrect; and
- (d) What the correct determination of the appeal should be.

(2) Dismissal.

(a) An appellant who fails to file such a statement within the time permitted waives the objections, and the appeal shall be summarily dismissed by the City Manager not later than five (5) Business Days after receipt of the appeal.

(b) If an appellant timely files an appeal, but fails to meet requirements (a) through (d) of subsection (1), the Building Official will notify the appellant in writing the defect(s) of the appeal and allow the appellant five (5) Business Days from Receipt of the notification of defect(s) to correct the defect(s) and resubmit the appeal. If appellant fails to correct the defect(s) and resubmit the appeal within the five (5) Business Days, the appeal shall be summarily dismissed by the City Manager not later than five (5) Business

Days after the date by which the appeal was resubmitted or had to be resubmitted, whichever is earlier.

(3) Upon Receipt of a timely appeal that meets the requirements of subsection (1), the Building Official may prepare a written response brief and provide the response brief to the City Manager and the appellant no less than seven (7) calendar days prior to the hearing date.

(4) If a notice of revocation of a license or Permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

(5) Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Manager within thirty (30) calendar days of the Receipt of the appeal. No later than seven (7) calendar days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

(6) The City Manager shall hear and determine the appeal on the basis of the appellant's written statement, the Building Official's response brief, if any, and any additional evidence the City Manager deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The Building Official may also present testimony and oral argument, and may have the City represented by the City Attorney's Office if the appellant is represented by counsel. The rules of evidence as used by courts of law do not apply.

(7) The City Manager will issue a written decision within ten (10) Business Days of the hearing date. The decision of the City Manager after the hearing is final.

(8) Any legal action contesting the City Manager's decision on the appeal must be filed within sixty (60) calendar days of the City Manager's decision. Review of the City Manager's decision shall be by writ of review pursuant to ORS 34.010 to 34.100.

9.430 Lien.

(1) There shall be a lien created and it shall be done in accordance with this Section.

(2) Any fine, assessment, or civil penalty imposed pursuant to the Building Code that remains unpaid thirty (30) calendar days after the penalty is imposed (or after the fine, assessment, or civil penalty has been affirmed on appeal), may be filed as a lien against the lot, lots, or parcels of land involved in the municipal lien docket. Any costs incurred by the City in the abatement of any dangerous building and/or any other fine, assessment or administrative civil penalty not paid within thirty (30) days may be an assessment and lien against the property where the building is located.

(3) Notice. At the time of filing in the municipal lien docket, notice shall be provided to the responsible person. If the responsible person is not the owner of the property shown in the

electronic records of the applicable county assessor on that date, then notice shall also be sent to the owner of the property. Failure to provide notice shall not in any way effect the validity of the lien. The notice shall state that the amounts imposed as penalties shall be payable and due, and that the penalties shall be liens against the lots or parcels of land involved, respectively.

(4) Interest. All such liens remaining unpaid after thirty (30) calendar days from the date of recording on the municipal lien docket shall become delinquent and shall bear interest at the rate of ten (10) percent per annum from and after that date.

(5) Enforcement. The liens shall be enforced in the manner provided in Oregon Revised Statutes Chapter 223 and shall have priority over all such other liens and encumbrances of any character.

BOARD OF APPEALS

9.500 Establishment of Board of Appeals.

(1) In order to hear and decide appeals of orders, decisions or determinations made by the Building Official related to the application and interpretation of technical or scientific matters of the Building Code, there shall be and is hereby created a Board of Appeals consisting of three (3) members (not including the Building Official) who are qualified by experience and training to make determinations on matters pertaining to building construction and who are not employees of the City of Wilsonville. The Building Official is an ex officio member of, and shall act as secretary to, the Board of Appeals, but has no vote on any matter before the Board of Appeals. The three (3) members of the Board of Appeals shall be appointed by the Mayor with the consent of the City Council and may be removed by the Mayor with the consent of the City Council. The Board of Appeals will 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 does not have any authority related to interpretation of the administrative provisions of the Building Code, is not empowered to waive requirements of the Building Code, and has no authority to deliberate and make determinations on Development Review Board, Planning Commission, or City Council requirements or conditions of approval.

(3) Appeals of land use decisions are processed in accordance with the Wilsonville Code Chapter 4.

(4) Appeals of administrative decisions of the Building Official are made to the City Manager pursuant to Section 9.420.

(5) Appeals of civil penalties issued by the Building Official are made to the City Manager pursuant to Section 9.420.

(6) Any person aggrieved by the final decision of the Board of Appeals that pertains to a State of Oregon Building Code adopted by the City may appeal to the appropriate state

advisory board as provided by Oregon law.

9.510 Appeal Procedure.

(1) Decision to be Appealed; Filing Date. Any decision relating to the suitability of alternative materials, designs, and methods of construction or interpretation by the Building Official with regard to the Building Code may be appealed to the Board of Appeals within ten (10) calendar days of appellant's Receipt of the decision or interpretation being appealed, in conformance with procedures provided herein.

(2) The Community Development Director will determine if the appeal is timely and if the appellant qualifies as a filing party under Section 9.520 herein. If the appeal is not timely or if the appellant is not a qualified filing party, the Community Development Director, not later than five (5) Business Days after Receipt of the appeal, will summarily dismiss the appeal and provide to the appellant, in writing, the reason(s) for the dismissal.

(3) The Community Development Director will also determine if the appeal is complete. For purposes of this section, a complete appeal shall contain:

(a) The name and address of the appellant, under what provision of Section 9.520 appellant qualifies as a filing party, and the location of the property, if applicable; and

(b) A clear, concise written statement of the grounds for the appeal, identifying the specific decision being appealed, explaining the proposed alternative material, design, or method of construction and how it meets the intent of the relevant code, specifically identifying how the proposed alternative material, design or method will be at least as safe, and last as long, as the materials or methods described in the Building Code; and/or

(c) A clear, concise written statement of the grounds for the appeal, identifying the specific decision being appealed, setting out the specific interpretation made by the Building Official and setting out a concise explanation of how the interpretation is in error, citing to the specific provisions of the Building Code at issue.

If an appellant timely files an appeal, but fails to meet requirements (a) through (c) of this subsection, the Community Development Director will notify the appellant in writing the defect(s) of the appeal and allow the appellant five (5) Business Days from Receipt of the notification of defect(s) to correct the defect(s) and resubmit the appeal. If appellant fails to correct the defect(s) and resubmit the appeal within the five (5) Business Days, the appeal shall be summarily dismissed by the Community Development Director not later than five (5) Business Days after the date by which the appeal was resubmitted or had to be resubmitted, whichever is earlier.

(4) If the appeal is complete and timely, the Building Official will schedule a meeting of the Board of Appeals within twenty (20) Business Days of the filing of the appeal and provide

notice of the meeting of the Board of Appeals to the appellant and to the owner of the property, if different from the appellant and if applicable. The Building Official shall not schedule a meeting of the Board of Appeals to hear an appeal until an appeal is complete. If the appeal is untimely or fails to meet the requirements of subsection (3) above, or if the appellant does not qualify as a filing party, the appeal shall be automatically and summarily dismissed by the Community Development Director without a hearing as provided in subsections (2) and (3) above.

(5) The Board of Appeals shall hear timely and complete appeals in the following order of testimony: a brief staff report, the appellant's testimony in favor of the appeal, testimony in opposition to the appeal, testimony neutral to the appeal, rebuttal by the appellant and/or any person who testified in favor of the appeal, sur-rebuttal by the staff and/or any person who testified in opposition. The Board of Appeals may ask questions of any person who testifies during that person's testimony. The Board of Appeals will close the hearing at the end of testimony, deliberate and make a decision to uphold the appeal or deny the appeal.

(6) The maximum time for the Board of Appeals to render a decision from the date of a timely and complete appeal may not exceed thirty (30) Business Days. The Chair of the Board of Appeals may suspend this procedural time frame when the complexity of the issue merits additional decision time.

(7) An appellant may appeal the Board of Appeals' decision to the Oregon Department of Consumer and Business Services Building Codes Division.

9.520 Filing Parties.

(1) Appeals may only be filed by the following parties affected by a decision:

- (a) The permit applicant, owner or the owner's authorized representative; or
- (b) The violator or a responsible person who has received a notice of violation or civil penalty.

SEVERABILITY

9.600 Severability. The provisions of this Chapter 9 are severable, and it is the intention of the City Council to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this Chapter 9 is declared unconstitutional or invalid for any reason, the remaining portion of this Chapter 9 shall remain in full force and effect and be valid as if such invalid portion had not been incorporated. It is hereby declared that the City Council intends that this Chapter 9 would have been adopted had such an unconstitutional provision not been included.