

Chapter 1 GENERAL

1.005. Code Designated.

All ordinances included in this and the following chapters shall constitute and be designated "The Wilsonville Code, 1981" and will hereafter be referred to as "Code." When referring to specific sections of the Wilsonville Code, the letters "WC" should precede the numerical designation.

CIVIL ENFORCEMENT OF CODE VIOLATIONS

1.007. Purpose and Applicability

- (1) The purpose of the civil enforcement provisions in this Chapter is to establish civil procedures for the enforcement of certain provisions of the Wilsonville Code.
- (2) The procedures for the administrative enforcement established herein are for the purposes of providing an efficient, convenient, and practical forum for the hearing and determination of cases of violations of the Wilsonville Code.
- (3) The civil enforcement of Wilsonville Code violations are intended to be used for all violations of the Wilsonville Code, as well as to all plans, permits, and licenses adopted or issued pursuant to said provisions, except as follows:
 - (a) Chapter 5 Vehicles and Traffic;
 - (b) WC 8.300-8.318 Stormwater;
 - (c) WC 8.500-8.502 Enforcement of Industrial Wastewater Regulations;
 - (d) WC 8.600-8.608 Industrial Pretreatment Program Enforcement Response Plan;
 - (e) Chapter 9 Building Code;
 - (f) WC 10.000-10.530 Oregon Criminal Code, Providing for Welfare of Minors, Animals, Miscellaneous, and General violations;
 - (g) WC 10.540 Civil Exclusion; and
 - (h) WC 10.600-10.680 Transit Rider Rules.
- (4) Acts or omissions to act which are designated as a violation in the Wilsonville Code do not require a culpable mental state as an element of the violation.

1.010. Definitions and Rules of Construction.

- (1) The following definitions and rules of construction shall be observed, unless inconsistent with the intent of the Council or the context clearly requires otherwise:

City. Wilsonville, Oregon.

City Manager. The City Manager or any other employee designated by the City Manager.

Compliance Officer. Any person designated by the City Manager, or by another person having explicit authority under the Wilsonville Code, as responsible for enforcing provisions of the Wilsonville Code.

Computation of Time. The time within which an act is to be done, including the giving of advance notice of a general or special election of the City, is computed by excluding the first day and including the last, unless the last falls on a legal holiday as defined in ORS 187.010 or 187.020 or on Saturday, in which case the last day is also excluded.

Council. City Council of the City.

County. Clackamas or Washington County, Oregon.

Day. The period of time between any midnight and the midnight following.

Daytime; Nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

Department, board, commission, office, offices or employee. A department, board commission, office, offices or employee of the City.

Gender. The masculine gender includes the feminine and neuter.

In the City. All territory over which the City now has or shall hereafter acquire jurisdiction for the exercise of its regulatory powers.

Joint authority. All words giving joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Minor. A person under the age of 18 years, unless otherwise stated.

Number. The singular number includes the plural, and the plural the singular.

Oath. "Oath" includes affirmation.

Official time. Whenever certain hours are named herein, they shall mean the standard of time as set out in ORS 187.110.

Or, and. "Or" may be read "and" and "and" may be read "or," if the sense requires it.

Owner. A part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of the building or land, or vendee in possession under a land sales contract.

Peace officer. A City police officer or other officer specified in ORS 133.170.

Person. Individuals, corporations, associations, firms, partnerships and joint stock companies.

Personal property. Every species of property, except real property, as herein defined.

Process. A writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

Property. Both real and personal property.

Real property. Lands, tenements and hereditaments.

Responsible party. At least one of the following: (a) an owner; (b) a person acting as an agent of the Owner by agreement that has the authority over the property, is responsible for the property's maintenance or management, or is responsible for curing or abating a violation; (c) any person occupying the property, including, but not limited to, a lessee, tenant, or other having possession; or (d) the person who is alleged to have caused a violation of the Wilsonville Code or who has the authority to direct and control the person causing the violation.

Shall, may. "Shall" is mandatory and "may" is permissive.

Signature or subscription by mark. "Signature" or "subscription" includes mark when the signer or subscriber cannot write, the signer's or subscriber's name being written near the mark by a witness who writes his/her

own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

State. Oregon.

Tenant or occupant. A person holding a written or an oral lease of or who occupies, the whole or a part of the building or land, either alone or with others.

Tenses. The present tense includes the past and future tenses, and the future includes the present.

To. "To" means "to and including" when used in reference to a series of sections of this Code or when reference is made to the Oregon Revised Statutes.

Week. Seven consecutive days.

Writing. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code, it shall be made in writing in the English language unless it is expressly provided otherwise.

Year. A calendar year, except where otherwise provided.

1.011. Identification and Investigation of Code Violation

- (1) Upon receipt of a complaint, or upon the proactive observance of any City employee, a Compliance Officer is authorized to investigate and determine whether a Code violation exists by gathering and documenting evidence, as appropriate to the nature of the alleged violation.
- (2) When entry on private property is necessary or desirable for the identification or investigation of a Code violation, a Compliance Officer is authorized as follows:
 - (a) A Compliance Officer may enter onto a public or private property that is open to the public at reasonable times to determine whether a Code violation exists.
 - (b) A Compliance Officer may enter onto a private property that is not open to the public at reasonable times to determine whether a Code violation exists when the Compliance Officer:
 - (i) Has received permission from any person in charge of the property;
 - (ii) Has an administrative warrant issued pursuant to the provisions of this Chapter authorizing entry for inspection of the property; or
 - (iii) Determines that an emergency or other exigent circumstance exists requiring immediate entry.
- (3) An administrative warrant may be issued by the Municipal Judge pursuant to the procedures provided in this Chapter.
- (4) A person must not interfere with or attempt to prevent a Compliance Officer from entering onto any property when such entry is authorized by the provisions of this Section.

1.012. Notice of Code Violation

- (1) If the Compliance Officer is satisfied that a Code Violation exists, the Compliance Officer will cause a Notice of Code Violation to be posted on the property, or at the site of the Code violation, directing the responsible party to correct the Code violation.
- (2) On the same day of the posting, the Compliance Officer must also cause a copy of the Notice of Code Violation to be mailed by certified mail to the owner of the property (or registered agent), and, as applicable, to any person in charge of the property and to the responsible party, at the last known address of such

person(s) as shown on the tax rolls of Washington or Clackamas County. If the mailed Notice of Code Violation is returned as undeliverable or is unclaimed, it will not preclude the City from taking enforcement or corrective actions as described in this Chapter.

- (3) The Notice of Code Violation must contain:
 - (a) A description of the real property, by street address or otherwise, on which the Code violation exists;
 - (b) A description of the Code violation found to exist by the Compliance Officer;
 - (c) A determination of whether the Code violation presents an immediate threat to the public health, welfare or safety;
 - (d) A direction to correct the Code violation within 30 days from the date of notice, or a shorter duration if the Compliance Officer determines a shorter duration is necessary and appropriate;
 - (e) A statement that failure to correct a Code violation may warrant imposition of a civil penalty upon all persons responsible for the Code violation;
 - (f) Instructions describing the process of submitting a voluntary compliance plan as outlined in this Chapter; and
 - (g) A statement that the owner or any responsible party may protest the Notice of Code Violation by giving written notice as described in WC 1.019 to the City Manager not later than 14 days after the date of the notice.
- (4) Upon completion of the posting and mailing of the Notice of Code Violation, the Compliance Officer must execute and place on file with the City Manager a certificate stating the date and place of the mailing and posting.
- (5) If the Compliance Officer meets all requirements for posting and mailing the Notice of Code Violation set forth in this Section, then the failure of any person to receive actual notice will not void any Code enforcement process set forth in this Chapter. An error in the name of the property owner or responsible party shall not render void a Notice of Code Violation.
- (6) If the owner or other responsible party fails to timely appeal the Notice of Code Violation in compliance with the procedures set forth in this Chapter, then the violation will be deemed proven, and no further appeal of the Notice of Code Violation will be allowed.

1.013. Corrective Action by Responsible Party

- (1) All responsible parties must correct all violations described in the Notice of Code Violation not later than the date set forth in the notice, or the date set forth in any final order or decision issued on appeal.
- (2) The complete correction of a Code violation within the time prescribed in the Notice of Code Violation or the final order issued upon any appeal of the notice, will relieve a responsible party from the imposition of any civil penalty under this Chapter.
- (3) If a responsible party admits responsibility for the violation, they may submit a voluntary compliance plan for correcting the violation to the Compliance Officer within the time prescribed in the Notice of Code Violation. The compliance plan must contain the following:
 - (a) The responsible party's name, mailing address, telephone number and email address;
 - (b) A detailed plan for correction of the violation(s) over a reasonable period of time;
 - (c) Written consent for the Compliance Officer or their designee to enter the property for the purpose of:
 - (i) Verifying compliance with the terms of the compliance plan; or

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- (ii) Taking actions to correct the violation upon determining that the terms of the compliance plan have not been met;
 - (d) An agreement to pay the costs related to City plan review, meetings, inspections, and other City-incurred costs to review and ensure completion of the voluntary compliance plan.
 - (4) The City Manager will review the voluntary compliance plan and may approve the plan as presented, approve a modified plan, or reject the plan, at their discretion. The decision of the City Manager regarding whether to accept, reject, or modify a voluntary compliance plan is final and not subject to appeal. If the responsible party does not agree with the City-approved compliance plan, the City may proceed to enforce the violation that gave rise to the voluntary compliance plan, including, but not limited to, engaging in City-led corrective action and/or assessing a civil penalty.
 - (5) If the voluntary compliance plan is accepted, the City shall suspend further processing of the alleged violation during the time allowed in the voluntary compliance plan for completion of the necessary corrective action. The City shall take no further action concerning the alleged violation if all terms of the voluntary compliance plan are satisfied, other than steps necessary to terminate the enforcement action.
 - (6) Failure to comply with any term of a voluntary compliance plan constitutes an additional and separate violation which shall be penalized in accordance with the procedures established by this Chapter. After the voluntary compliance plan has been signed, the City may issue a civil penalty, and may proceed to enforce the violation that gave rise to the voluntary compliance plan.

1.014. Corrective Action by City

- (1) The City may enter a property as provided in this Section and may take all necessary actions to correct a Code violation, whenever a responsible party or owner fails to take corrective action, or upon the determination by a Compliance Officer that a person has failed to comply with the terms of a voluntary compliance plan. Except when the Compliance Officer has received consent from a responsible party or owner or as provided in subsection (3) of this Section, an administrative warrant is required before a Compliance Officer may enter the property.
- (2) If the City determines that the violation for which a Notice of Code Violation has been issued is an immediate threat to the public health, welfare or safety, or that any continuance of the violation would allow the responsible party or owner to profit from the violation or would otherwise be offensive to the public at large, the City Manager or designee may require immediate remedial action as provided in subsection (3) of this Section.
- (3) In the case of an immediate danger to the public health, safety or welfare determined under subsection (2) of this Section, the City may abate the violation and charge the abatement cost back, and an additional charge of 20 percent for administrative overhead, to the responsible party or owner, after obtaining an administrative warrant to enter the property and abate the violation. If the immediate danger constitutes an emergency threatening immediate death or physical injury to persons, the City may abate the violation without obtaining an administrative warrant if the delay associated with obtaining the administrative warrant would result in increased risk of death or injury, and may charge the abatement costs back to the responsible party or owner.

1.015. Notice and Collection of Corrective Action Costs

- (1) The owner, all persons in charge of the property, and all other responsible parties are jointly and severally liable for all costs associated with corrective actions taken by the City, including administrative costs, warrant costs, and attorney fees.
- (2) The City Manager must keep an accurate record of the expense incurred by the City for all corrective actions.

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- (3) After the Code violations have been determined by the City to be corrected, the City Manager must cause a Notice of Corrective Action Costs to be posted on the property, or at the site of the Code violation.
 - (4) On the same day of the posting, the City Manager must also cause a copy of the Notice of Corrective Action Costs to be forwarded by certified mail to the owner of the property (or registered agent), and, as applicable, to any person in charge of the property and to the responsible party, at the last known address of such person(s) as shown on the tax rolls of Washington or Clackamas County.
 - (5) The Notice of Corrective Action Costs must contain:
 - (a) A copy of the Notice of Code Violation and any final orders issued in the matter;
 - (b) The total costs of corrective actions, and an additional charge of 20 percent for administrative overhead, due and payable within 30 days of the notice of corrective action costs;
 - (c) Notification that the costs of corrective actions may be assessed on the municipal utility bill associated with the property and may become a lien against the property if not paid when due; and
 - (d) Notification that if any owner or other responsible party objects to the Notice of Corrective Action Costs, a written protest must be filed with the City Manager within 14 days from the date of the notice.
 - (6) Collection and Abatement Costs.
 - (a) The costs listed in the Notice of Corrective Action Costs will become delinquent if not paid within 30 days of the date of the notice or within 14 days of the date set forth in any final order or judgment issued on appeal of the notice, whichever comes later.
 - (b) Assessment of the delinquent corrective action costs must be made by City Council resolution to be entered in the docket of City liens or recorded in the Official Records of Clackamas or Washington County. When the entry is made, it will constitute a lien on all real property on which the corrective action occurred.
 - (c) The lien will be enforced in accordance with the Wilsonville Code and Oregon law.
 - (7) If the Compliance Officer meets all requirements for posting and mailing the Notice of Corrective Action Costs set forth in this Section, then the failure of any person to receive actual notice will not void the assessment of any corrective action costs.
 - (8) If the owner or other responsible party fails to appeal the Notice of Corrective Action Costs in compliance with the procedures set forth in this Chapter, then the cost assessment shall be deemed proven and no further appeal of the Notice of Corrective Action Costs will be allowed.

1.016. Imposition of Civil Penalty

- (1) Upon a determination by the Compliance Officer that a person engaged in a Code violation, the Compliance Officer may impose upon the violator and/or any other responsible person an administrative civil penalty of no less than \$25 and not greater than \$5,000, per violation per day the violation is occurring and per tax lot upon which the violation is occurring, as provided by this Section.
- (2) Prior to imposing a civil penalty, the Compliance Officer must pursue reasonable attempts to secure voluntary correction as provided by this Chapter.
- (3) In imposing a penalty authorized by this Section, the Compliance Officer will consider:
 - (a) The responsible party's past history in taking all feasible steps necessary or appropriate to correct the violation;
 - (b) Any prior violations of statutes, rules, orders, and permits on the property or by the responsible party;
 - (c) The gravity and magnitude of the violation;

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- (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 responsible party's cooperativeness and efforts to correct the violation; and
 - (g) Any relevant rule of the Wilsonville Code.
- (4) The City Manager and Compliance Officer are also authorized to take other enforcement actions including, but not limited to, issuing stop-work orders, including the civil penalty on a property owner's municipal utility bill, recording a lien against the property of the assessed civil penalty, and/or revoking or withholding permits, certificates of occupancy, plat approvals, and any other City approval, license, permit, or certificate sought by the property owner or responsible party.

1.017. Notice of Civil Penalty

- (1) Upon finding that a Code violation exists and has not been voluntarily corrected within the time specified in the Notice of Code Violation or the final order issued upon appeal of the notice, the City Manager may impose a civil penalty.
- (2) Each day that a Code violation continues to exist will constitute a separate violation and a new civil penalty may be assessed for each consecutive day the violation continues without correction.
- (3) The Compliance Officer shall cause a Notice of Civil Penalty to be posted on the property and forwarded by certified mail, postage prepaid, to any person in charge of the property and the owner of the property (or registered agent) at the last known address of such person(s) as shown on the tax rolls of Washington or Clackamas County.
- (4) If the certified Notice of Civil Penalty is returned as undeliverable or is unclaimed by any person, it will not preclude the City from imposing a civil penalty as described in this Chapter.
- (5) The Notice of Civil Penalty must contain the following:
 - (a) A description of the real property, by street address or otherwise, on which the Code violation exists;
 - (b) A description of the Code violation found to exist by the Compliance Officer;
 - (c) A copy of the Notice of Code Violation and any final orders issued in the matter;
 - (d) A statement indicating whether the Code violation has been corrected or is considered a continuing violation subject to the imposition of a daily civil penalty;
 - (e) A calculation of the total amount of the civil penalty or, or in the case of a continuing violation, the amount of civil penalty that has accrued as of the date of the notice;
 - (f) A statement that the amount of the civil penalty may become a lien on the property if not paid in full within 30 days of invoicing;
 - (g) A statement that the owner or any responsible party may protest the Notice of Civil Penalty by giving written notice to the City Manager within 14 days from the date of the notice, together with a written statement as to why the civil penalty should be modified or not assessed.
- (6) If the Compliance Officer meets all requirements for posting and mailing the Notice of Civil Penalty set forth in this Section, then the failure of any person to receive actual notice will not void the assessment of any civil penalty.
- (7) If the owner or other responsible person fails to appeal the Notice of Civil Penalty in compliance with the procedures set forth in this Chapter, the amount of the civil penalty shall be deemed final and no further appeal of the Notice of Civil Penalty will be allowed.

1.018. Civil Penalties Not Exclusive

- (1) The imposition of a civil penalty does not relieve a responsible party of the duty to correct a Code violation or pay all corrective action costs assessed by the City.
- (2) The procedures described by this Chapter shall be the exclusive procedures for imposing civil penalties; however, this Chapter shall not be read to prohibit in any way alternative remedies set out in the Wilsonville Code which are intended to abate or alleviate Code violations, nor shall the City be prevented from recovering, in any manner prescribed by law, any costs incurred by it in abating or removing Code violations pursuant to any Code provision.
- (3) The remedies and procedures for abatement of civil violations provided in this Chapter are in addition to all other remedies and procedures provided by law. Nothing in this Chapter shall limit or restrict in any way the City's right to obtain abatement by means of a judicial action, an administrative enforcement action, a criminal action, a civil lawsuit or any other form of procedure to obtain abatement.

1.019. Protests and Appeals

- (1) Protest to the City Manager.
 - (a) An owner or other responsible party of a property may protest a Notice of Code Violation issued pursuant to Section 1.012, a Notice of Corrective Action Costs issued pursuant to Section 1.015, or a Notice of Civil Penalty issued pursuant to Section 1.017 by submitting a written protest to the City Manager within 14 days of the date of the relevant notice.
 - (b) The written protest must, at a minimum, contain the following information:
 - (I) The name, mailing address, telephone number and email address of the person submitting the protest;
 - (II) A description of the real property, by street address or otherwise, on which the Code violation is alleged to exist;
 - (III) A written statement, and all supporting evidence, specifying the basis for the protest.
 - (c) The City Manager will review the notice and the protest, together with all supporting evidence in the record, and will issue a final order that either upholds, amends, or dismisses the findings and determination set forth in the notice.
 - (d) If the City Manager issues a final order that upholds or amends the notice, the owner or responsible party must comply with the terms of the order within 30 days from the date of the order, or a shorter duration if the City Manager determines a shorter duration is necessary and appropriate.
- (2) Appeal to City Council.
 - (a) An owner or other responsible party of a property may dispute a final order issued by the City Manager pursuant to subsection (1) of this Section by submitting a written appeal to the City Recorder within 14 days of the date of the City Manager's final order. The appeal hearing will take place at a meeting of the City Council and shall be decided by the City Council.
 - (b) The written appeal must, at a minimum, contain the following information:
 - (I) The name, mailing address, telephone number and email address of the person submitting the protest;
 - (II) A description of the real property, by street address or otherwise, on which the Code violation is alleged to exist;

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- (III) A written statement, and all supporting evidence, specifying the basis for appealing the City Manager's final order.
 - (c) Subject to the requirements of this Section, the City Council may adopt additional procedures for the conduct of any hearings before them, but at a minimum, must allow each party to introduce evidence, including rebuttal evidence, that is relevant to prove or refute any matter raised in the underlying notice or City Manager's final order.
 - (d) Following the closing of the record, the City Council will issue a decision that either upholds, amends, or dismisses the City Manager's final order.
 - (e) If the City Council decision upholds or amends the City Manager's final order, then the City Council's final order must include:
 - (I) A brief statement of the findings of fact;
 - (II) The amount of any assessed corrective action costs, civil penalties, and associated administrative costs;
 - (III) The date by which any costs and assessments must be paid; and
 - (IV) An order directing the responsible party to correct the Code violation, pay the assessed corrective action costs, and/or pay the assessed civil penalty, as appropriate to the nature of the appeal.
 - (f) If the City Council's decision dismisses the City Manager's final order, then the City Council's final order must include an order that all costs of the abatement will be dismissed or refunded.
- (3) Appeal of the City Council's Final Order.
- (a) Any party to the appeal may obtain review of the City Council's final order by writ of review pursuant to ORS Chapter 34.

1.020. Definitions.

- (1) The definitions contained in the Oregon Criminal Code, as defined by ORS 161.005, as now or hereafter constituted, are adopted by reference and made a part of the Wilsonville Code. Except where the context clearly indicates a different meaning, the general definitions appearing in the definitional and other sections of particular articles of the Oregon Criminal Code shall be applicable throughout the Wilsonville Code.

(Ord. No. 253, 2-21-1984)

1.021. Continuation of Existing Ordinances.

The provisions appearing in this Code, so far as they are the same as those of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

(Ord. No. 253, 2-21-1984)

1.022. Effect of Repeal of Ordinances.

The repeal of an ordinance shall not revive an ordinance in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

1.025. Severability of Parts of Code.

It is hereby declared to be the intention of the Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

1.030. Catchlines of Sections.

The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed as a part of the section, nor, unless expressly so provided, shall they be so deemed when sections, including the catchline, are amended or re-enacted.

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