



**AGENDA BILL 2014-04-21-01**

**Subject:** Ordinance Relating to Code Enforcement and Uniform Administrative Appeals

**For Council:** April 21, 2014

**Land Use Case Number:** N/A

**Public Hearing**

**Required:**

**Optional:**

**City Manager's Initials:** \_ *CJ* \_

**Attachments:**

1. Memorandum to City Manager
2. Proposed Ordinance Relating to Uniform Appeals and Code Enforcement

**Initiated by:**

- City Council

**Budget Impact:**

- The Ordinance has no direct budget impacts.

**Sustainability Considerations:**

- Not applicable.

**Policy Question(s) for Council Consideration:**

Does the Council wish to approve First Reading of “An Ordinance Relating to Code Enforcement Procedures; Adopting a Uniform Administrative Appeals Process; Amending Numerous Sections to Reference the Administrative Appeals Process; and Changing “Infraction” to “Violation” throughout the WLMC,” and set the matter for Second Reading?

**Summary:**

The advantages of the proposed ordinance are that it:

- adds necessary definitions and boilerplate provisions, such as the cumulative remedies provision in 1.215;
- provides a way in 1.220 of designating powers and duties when departments and titles change without requiring immediate amendment of the WLMC;
- adopts state criminal laws, procedures, and offense classifications;
- makes the code enforcement provisions available to all city officials that enforce the Code and provides additional options for serving violations; and
- adds a uniform administrative appeals process.

**Staff Recommendation:**

Staff recommends that the Council move to approve the First Reading for “An Ordinance Relating to Code Enforcement Procedures; Adopting a Uniform Administrative Appeals Process; Amending Sections 1.330, 4.090, 4.465, 4.595, 4.690, 5.487, 5.695, 5.770, 6.015, 7.045, 7.145, 7.225, 7.478, 7.860, 7.870, and 8.640 to Reference the Administrative Appeals Process; and Changing “Infraction” to “Violation” throughout the WLMC,” and set the matter for Second Reading.

## Memorandum

Date: April 14, 2014

To: Chris Jordan, City Manager

From: Megan Thornton, Assistant City Attorney

Subject: Ordinance Relating to Code Enforcement and Uniform Administrative Appeals

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### **Purpose**

The City Council should consider whether to conduct and approve First Reading of the proposed ordinance, which modifies the variety of appeals processes and makes them uniform.

### **Background**

At a work session for the noise ordinance on November 19, 2012, the Council requested an additional work session to address other policy issues related to the nuisance code. On March 18, 2013, the Council directed staff to pursue changes to the municipal code that would:

- make the City's code enforcement provisions more uniform,
- move provisions of the code that are general in nature to Chapter 1,
- structure the code to utilize the same administrative appeals process for administrative decisions, and
- utilize currently existing state procedures for violations.

### **Discussion**

The proposed ordinance amends Chapter 1 to:

- add necessary definitions and boilerplate provisions, such as the cumulative remedies provision in 1.215;
- provide a way in 1.220 of designating powers and duties when departments and titles change without requiring immediate amendment of the WLMC;
- adopt state criminal laws, procedures, and offense classifications;
- make the code enforcement provisions available to all city officials that enforce the Code and provide additional options for serving violations; and
- add a uniform administrative appeals process.

The code sections that were relocated into WLMC Chapter 1 are those that should apply to all code violations within the City. Thus, instead of code enforcement provisions and non-exclusive remedies clauses in multiple sections of the WLMC, these provisions are generalized in Chapter one. These changes will make the code enforcement provisions uniform throughout the WLMC and easier for staff to administer; the same is true of the Uniform Administrative Appeals Process that is also included in WLMC Chapter 1.

Specifically, the code enforcement provisions include things such as moving the definition of city official from the stop work order section to the general definitions and adding additional means for service of process for code violations. Moving the non-exclusive remedies provision to Chapter 1 also allows the City to use nuisance abatement, the municipal code, civil law, or any other means to obtain a remedy.

The adoption of state criminal law and procedures requires that the term “infraction” be replaced with “violation” throughout the WLMC and CDC. The term infraction has not been used in Oregon law since 1999. Pursuant to Oregon Revised Statute (ORS) 153.025 the City has the right to classify its offenses under the state law system. Then the City could utilize Oregon’s violation procedures for code violations. Thus, all traffic violations and code violations would follow the same procedures and utilize the violation process established in ORS Chapters 138, 153, 156, 161, etc. This is a comprehensive system, and it is more efficient for these types of cases to use this system, and the case law associated with it, then to set up another system or utilize the Oregon Rules of Civil Procedure. The ORS regulates everything from the form of a citation, to service, discovery process, trial procedures, acceptable penalties, restitution, and the appeals process. In addition, there is some question as to the validity of the City’s current system of civil forfeitures. Under state law, a civil forfeiture is only allowed if there is property to be forfeited in as an instrumentality of a crime; it is a complicated system, and the City’s provisions do not align with the process delineated in ORS 131A.

The Uniform Administrative Appeals process is proposed to be used for appeals of Director level decisions. The benefits to having a Uniform Administrative Appeal Process are that it:

- Provides the same requirements for appeals of different types of permits and decisions without requiring the text of the entire appeals process to be placed in each code section;
- Can be utilized for decisions if there is a specific reference authorizing its use, which allows the Council to designate the correct procedure by ordinance;
- Provides a denied applicant an opportunity for notice and a hearing conducted by either the City Manager, municipal court judge or an outside hearings officer; and
- Any further appeals would go to the Clackamas County Circuit Court.

### **Related City Policies**

City Charter Chapter VIII, Ordinances: ordinance adoption process.

### **Council Options**

1. Move to approve First Reading and set the matter for Second Reading.
2. Move to approve First Reading and if unanimous, move to approve Second Reading and adopt the ordinance.
3. Postpone consideration of the proposed ordinance.

### **Recommendation**

Staff recommends adoption of “An Ordinance Relating to Code Enforcement Procedures; Adopting a Uniform Administrative Appeals Process; Amending Numerous Sections to Reference the Administrative Appeals Process; and Changing “Infraction” to “Violation” throughout the WLMC.”

### **Potential Motions**

Council: *Move to approve First Reading of “An Ordinance Relating to Code Enforcement Procedures; Adopting a Uniform Administrative Appeals Process; Amending Numerous Sections to Reference the Administrative Appeals Process; and Changing “Infraction” to “Violation” throughout the WLMC,” and set the matter for Second Reading.*

- If the motion passes unanimously, the Council may: *Move to approve Second Reading for “An Ordinance Relating to Code Enforcement Procedures; Adopting a Uniform Administrative Appeals Process; Amending Numerous Sections to Reference the Administrative Appeals Process; and Changing “Infraction” to “Violation” throughout the WLMC,” and adopt the ordinance.*

ORDINANCE NO. 1621

**AN ORDINANCE RELATING TO CODE ENFORCEMENT PROCEDURES;  
ADOPTING A UNIFORM ADMINISTRATIVE APPEALS PROCESS;  
AMENDING SECTIONS 1.330, 4.090, 4.465, 4.595, 4.690, 5.487, 5.665 to 5.695, 5.770, 6.015,  
7.040, 7.145, 7.225, 7.478, 7.488, 7.860, 7.870, 8.040 and 8.640 TO UTILIZE THE  
ADMINISTRATIVE APPEALS PROCESS; AND CHANGING “INFRACTION” TO “VIOLATION” AND  
“PLANNING DEPARTMENT” TO “COMMUNITY DEVELOPMENT DEPARTMENT” THROUGHOUT  
THE WEST LINN MUNICIPAL CODE AND COMMUNITY DEVELOPMENT CODE**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are **bold underlined**.

**WHEREAS**, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers; and

**WHEREAS**, the above referenced grant of power has been broadly interpreted to allow local governments to decide upon the scope of their powers in their charter so that specific statutory authorization is not required for a city to exercise its powers, LaGrande/Astoria v. PERB, 281 Or 137, 142 (1978), aff'd on reh'g 284 Or 173 (1978); and

**WHEREAS**, on March 21, 2013, Council provided staff with direction to modify the City's code enforcement provisions in Chapter 1 to make code enforcement provisions uniform throughout the WLMC and easier for staff to administer;

**WHEREAS**, Council also gave staff direction to add a uniform Administrative Appeals Process that could be utilized for various appeals of initial administrative decisions that occur without a hearing; and

**WHEREAS**, it is necessary to change references to infractions to violations to align with terminology and procedures provided for non-criminal violations under state law.

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

**SECTION 1. Amendment.** West Linn Municipal Code Section 1.100 [Definition] is amended to read as follows:

**1.100 Definitions.**

The following words and phrases, whenever used in the ordinances of the City of West Linn, Oregon, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

**Business Day. A calendar day, excluding Saturday, Sunday, and City recognized state and federal holidays.**

City. The City of West Linn, Oregon, or the area within the territorial limits of the City of West Linn, and such territory outside of the City of West Linn, over which the City of West Linn has jurisdiction or control by virtue of any constitutional or statutory provision.

City Engineer. The City Engineer of West Linn, Oregon, or his or her designee.

City Manager/City Official. The administrative head of the City's government appointed by the City Council, or **any City department head, City police officer, City code enforcement officer, City employee, or agent that the City Manager has designated to be responsible for any duty or act required in the Code** ~~his or her designee.~~

**City Recorder. The person holding the position of City Recorder, or his or her designee.**

**Code includes the West Linn Municipal Code, the West Linn Community Development Code, and all permits and approvals issued by the City of West Linn.**

Council. The City Council of the City of West Linn, Oregon. "All its members" or "all council members" means the total number of council members holding office.

County. The county of Clackamas.

**Day. A calendar day, unless otherwise specified.**

**Hearings Officer. City Manager or, at City Manager's discretion, the municipal court judge, municipal court judge pro tem, or an outside party not affiliated with the City that is hired or selected by the City Manager to conduct an appeals proceeding.**

Law. Applicable federal law, the Constitution and statutes of the state of Oregon, the ordinances of the City of West Linn, and, when appropriate, all rules and regulations which may be promulgated thereunder.

May. Permissive.

Month. A calendar month.

Must and shall. Mandatory.

Oath. Includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Owner. Applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, or contract purchaser of the whole or a part of such building or land.

Person. Includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

Personal property. Includes money, goods, chattels, things in action and evidences of debt.

Preceding and following. Next before and next after, respectively.

Property. Includes real and personal property.

Real property. Includes lands, tenements and hereditaments.

Sidewalk. That portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

State. The state of Oregon.

Street. Includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this city which have been or may hereafter be dedicated and open to public use, or such other public property as designated in any law of this state.

Tenant and occupant. Applied to a building or land, include any person who occupies the whole or a part of such building or land, whether alone or with others.

Written. Includes printed, typewritten, mimeographed, multigraphed, or otherwise reproduced in permanent visible form.

Year. A calendar year.

**SECTION 2. New Section.** West Linn Municipal Code Section 1.118 [Designation of powers and duties] is added to read as follows:

**1.118. Designation of powers and duties.**

**(1) For purposes of this section, a "subordinate" of the City Manager includes a department, division, title, office, or position over which the City Manager exercises supervision or control.**

**(2) Where an ordinance, code section, or resolution specifies that a particular subordinate of the City Manager shall have certain powers or duties, the City Manager shall nevertheless have the authority to transfer or assign any of those powers and duties to any other subordinate, or to exercise any of those powers and duties himself or herself. The transfer or assignment may be in any manner that the City Manager deems appropriate, for example, by designating an individual, officer, job title, department, division, department head, or division head or by allowing other appropriate persons to make the transfer or assignment. The City Manager shall have the authority to change those designations from time to time as he or she deems**

proper. Any designee or subordinate of the City Manager may further designate to the extent allowed by the City Manager.

(3) This section applies except to the extent it is inconsistent with the manifest intent of the council, the context clearly requires otherwise, or it conflicts with state or federal law. The principle that the expression of one thing is the exclusion of another will not alone generally be sufficient to prevent the application of subsection (2) of this section.

**SECTION 3. Amendment.** West Linn Municipal Code Section 1.130 [Computation of Time] is amended to read as follows:

**1.130 Computation of Time.**

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is **Saturday**, Sunday or a **City recognized state or federal** holiday, in which case it shall also be excluded.

**SECTION 4. New Section.** West Linn Municipal Code Section 1.200 [Adoption of State and Criminal Laws and Procedures] is added to read as follows:

**1.200 Adoption of State Criminal Laws and Procedures**

**(1) All criminal procedures, provisions and requirements applicable to violations and misdemeanors, including but not limited to Oregon Evidence Code, (ORS Chapters 40 and 41), ORS Chapter 153 violations, defenses, burden of proof, general principles of criminal liability, parties, and general principles of justification contained in Oregon Revised Statutes Chapters 131 through and including 167, as well as Chapters 471 through 480 are hereby adopted in full and made applicable to the municipal court.**

**(2) All misdemeanor and violation offenses and penalties described in ORS Chapters 161, 162, 163, 164, 165, 166 and 167, as well as offenses described in the Oregon Vehicle Code and ORS Chapters 33, 137, 153, 471, 475, 476, and 480, are hereby adopted by reference. When cited as a City ordinance violation, violation of an ORS section adopted by reference is an offense against this City and shall be punishable to the same extent as provided in the Code. Notwithstanding the above, nothing herein prohibits or restricts the City police or City Attorney from electing to pursue a charge and prosecute defendants with state law offenses in the name of the State of Oregon pursuant to ORS 221.339.**

**(3) Except where the context clearly indicates a different meaning, definitions appearing in the general definitional and other particular sections of chapters adopted by subsections (1) and (2) of this section are applicable throughout this chapter. Where appropriate, references to "state" and "state statute" shall be deemed to also include "City" and "City ordinances."**

**(4) The City police, City Attorney, Assistant City Attorney, and municipal court, including the Municipal Court Judge, Judges Pro Tem, and court staff, shall have all the**

**powers, duties, and responsibilities provided under Oregon Revised Statutes, applicable to investigation, prosecution, administration, and adjudication of violation and criminal offenses within the City.**

**(5) The statutes, codes and procedures adopted above are expressly made applicable within the City limits of the City of West Linn as well as outside the City limits when concerning offenses occurring on City-owned or controlled property located outside the City limits.**

**SECTION 5. Amendment.** West Linn Municipal Code Section 1.205 [Penalty Designated] is amended to read as follows:

**1.205 Penalty Designated.**

**(1) Unclassified violation.** Any person violating any of the provisions or failing to comply with any of the mandatory requirements of any **code or** ordinance of the City, where a specific penalty is not specified in the **code or** ordinance for the violation, shall be guilty of a **Class B violation misdemeanor**.

**(2) Unclassified misdemeanor. An offense described in the code that is designated as a misdemeanor, but does not specify the classification of the misdemeanor, is an unclassified misdemeanor punishable** ~~Any person convicted of a misdemeanor under the ordinances of the city where a specific penalty is not elsewhere established, shall be punished~~ by a fine ~~of~~ not to exceed \$500 or by imprisonment, not to exceed 30 days, or by both such fine or imprisonment.

**SECTION 6. Repeal and Replace.** West Linn Municipal Code Sections 1.215 through 1.260 are repealed in their entirety and replaced as follows:

**1.215 Cumulative Remedies**

**The rights, remedies, and penalties provided in the code are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law.**

**1.220 Designation; General Powers and Duties of City Officials.**

**The following are designated City officials with authority to enforce code provisions, permits, and approvals without further order: all City police officers, community service officers, City Public Works Director, Chief Financial Officer, Community Development Director, Parks Director, Building Official, and any employee with an approved job description that includes code compliance or enforcement. City officials are authorized to enforce any and all the provisions of the Code and have all law enforcement authority granted by charter, ordinance and general law.**

**1.225 Right of Entry/ Warrant.**



When it is necessary to inspect a building or premises to enforce the provisions of this code, or the City official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to, in violation of this code or which otherwise makes the building or premises unsafe, dangerous or hazardous, the City official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Code; however, if the building or premises is occupied the City official must present his credentials to the occupant and request entry. If the building or premises is unoccupied, the City official shall first make a reasonable effort to locate the owner or other person in charge or control of the building or premises and request entry. If entry is refused, the City official shall have recourse to the remedies provided by law to secure entry, including but not limited to taking action to obtain an Administrative Search Warrant.

#### 1.230. Warnings.

A City official may issue a warning notice for any non-criminal violation of the Code, provided the Code does not prohibit a warning. Warning notices generally provide a brief description of the violation, the name of the City department to contact regarding the abatement of the violation, the name of the person issuing the warning notice, the date the warning was issued, and a statement that failure to correct the alleged violation or to contact the named department contact within a specific time frame may result in enforcement proceedings. The warning notice shall be served upon the person or entity accused of the violation and a copy placed in the enforcement file. Nothing in this section shall be construed to require a warning notice be given to any defendant prior to issuing a citation or taking any other enforcement or abatement action.

#### 1.235 Citation.

City officials are empowered to investigate and enforce all violations of City ordinances. For criminal offenses created by City ordinance, any City police officer may make an arrest consistent with the criminal laws of the State of Oregon or may issue and serve a citation in lieu of arrest as authorized by state law. For violation offenses created by City Ordinance or Charter, any City official may issue and serve a citation which shall be in the form of a Uniform citation form adopted by the Oregon Supreme Court. A City official is expressly authorized by law to issue a citation to a person for a violation created by City ordinance if the City official personally witnesses the violation or has probable cause to believe that the person has committed a City ordinance offense. As authorized by state law, the City elects to only allow City officials to initiate violation proceedings for City Charter and City ordinance offenses.

#### 1.240 Service; Service by Mail and Failure to Receive Notice; Default.

(1) Service on individuals may be made by a City official by any of the following means:

(a) Service may be made by mailing the summons and complaint by restricted or unrestricted certified or registered mail, return receipt requested. For purposes of

computing any time period prescribed by this code, service by mail shall be complete three days after such mailing if the address to which it was mailed is within the State, and seven days after mailing if the address to which it is mailed is outside the State.

(b) No default shall be entered against any responsible party served by mail under this section who has not either received or rejected the registered or certified letter containing a copy of the summons and complaint, unless otherwise authorized by the municipal judge based upon service procedures of the Oregon Rules of Civil Procedure.

(c) Service may be made by delivering the summons and complaint directly to the person to be served.

(d) Substituted service may be made by delivering a copy of the summons and complaint at the dwelling house or usual place of abode of the person to be served, to any person over 14 years of age residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the City official, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the responsible party at the responsible party's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by this code, substituted service shall be complete upon mailing.

(e) If the person to be served maintains an office for the conduct of business, office service may be made by leaving a true copy of the summons and complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the City official, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the responsible party at the responsible party's dwelling house or usual place of abode or the responsible party's place of business or such other place under the circumstances that is most reasonably calculated to apprise the responsible party of the existence and dependency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by this ordinance, office service shall be complete upon such mailing.

(2) Service on particular responsible parties; minors, incapacitated persons, corporations, limited partnerships, the State, other public bodies, general partnerships and other entities, shall be on the persons named in the Oregon Rules of Civil Procedure.

1.245. Personal appearance for a Continuing Violation.

Notwithstanding the appearance options generally available for violation offenses under state law, when the Code offense alleged involves a continuing violation, a personal appearance on the citation shall be required. The violation citation itself or

this Code may specify offenses or classes of offenses which require a personal appearance.

1.250 Failure to Appear on a Violation Citation.

1) Failure to appear on a violation citation may result in a default judgment, criminal prosecution for failure to appear pursuant to state law, a Court order to show cause for Contempt, as well as issuance of an arrest warrant.

1.255 Violation Penalties.

(1) Violation offenses in the Code shall be classified pursuant to the state violation classifications as Class A, B, C, or D violations and penalized accordingly.

(2) In addition to a fine, the Municipal Court may impose additional punishment or remedial measure (e.g. restitution) appropriate for the violation offense.

1.260 Violation Trial

(1) The trial of any violation offense shall be by the Court without a jury, unless otherwise required by law.

(2) The City shall have the burden of proving the violation offense by a preponderance of the evidence and the Defendant may not be required to be a witness in the trial of such violation offense.

(3) At any trial involving a violation offense, the City Attorney shall not appear unless the Defendant is represented by an attorney, or unless the City Attorney is granted leave of the Court to appear. Further, at any such violation trial, defense counsel shall not be provided at public expense, unless otherwise required by law.

(4) Consistent with state law, in any trial of a violation offense, whether created by ordinance or statute, in which the City Attorney is prohibited from appearing, the City police officer or City official who issued the citation for the offense is specifically authorized by law to present evidence, examine and cross-examine witnesses and make arguments relating to:

- (a) The application of statutes and rules to the facts in the case;
- (b) The literal meaning of the statutes or rules at issue in the case;
- (c) The admissibility of evidence; and
- (d) Proper procedures to be used in the trial.

(5) Except as expressly provided above, only a person who is currently licensed to practice law in the State of Oregon by the Oregon State Bar is permitted to represent another person or entity in the West Linn Municipal Court.

**(6) A person who commits a violation offense by violating designated provisions of the Code shall not suffer any disability or legal disadvantage based upon conviction of crime.**

**1.265 Misdemeanor Penalties and Procedures**

**(1) Misdemeanor offenses in the Code shall be classified pursuant to the state misdemeanor classifications as Class A, B, or C misdemeanors and penalized accordingly. Unclassified misdemeanors shall be penalized in accordance with WLMC 1.205(2).**

**(2) In addition to a fine and incarceration, the Municipal Court may impose any additional punishment, probation, remedial measure (e.g. restitution) that is appropriate for the offense.**

**SECTION 7. Amendment.** West Linn Municipal Code Section 1.300 [Definitions] through 1.360 [Noncompliance] are amended to read as follows:

**1.300 Definitions**

~~The following definitions shall apply in Sections 1.300 to 1.360:~~

~~(1) City official means the City Manager, City department heads, City police officers, City code enforcement officers, and professional employees of the City's Engineering, Public Works, Planning, and Building Departments. The City Manager, City police officers, and code enforcement officers shall have authority under Section 1.310 as to any violation. Department heads, and professional employees of the City's Engineering, Public Works, Planning and Building Departments shall have authority under Section 1.310 as to code provisions, permits, and approvals that they are responsible for administering.~~

~~(2) Code includes the West Linn Municipal Code, the West Linn Community Development Code, and all permits and approvals issued by the City of West Linn.~~  
...

**1.320 Scope of Stop Work Orders.**

(1) A stop work order issued under Section 1.310 shall be effective when posted in a conspicuous location at the site of the work. A copy of the stop work order shall be mailed by certified mail or hand delivered to the owner of the property and to any other person in violation of any code provision. The stop work order shall be effective until:

- (a) The necessary permit is obtained;
- (b) The City ~~official~~ **Manager or the department head with responsibility for administration of the code provision** issues a written approval for work to continue based on a finding that the violation has been cured; or
- (c) The stop work order is withdrawn on appeal.

Except as provided in this section, no person may engage in any activity covered by the stop work order while the stop work order is in effect.

(2) With the written approval of the City ~~official~~ Manager or the department head with responsibility for administration of the code provision, any person may undertake work that is necessary to avoid a threat or hazard to persons or property that would result if work is left unfinished.

(3) If an appeal is filed with the City Manager pursuant to WLMC 8.045 for a decision made by the Building Official, or with the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. for a decision made by all other City officials, City Manager, the work may continue if a bond is provided in a sufficient amount to pay for the removal of any work and the return of the property to its previous condition and the City ~~official~~ Manager determines that continuation of the work will not result in irreparable harm. If the stop work order is upheld ~~by the City Manager pursuant to the Administrative Appeals Process and City Council as provided in Section 1.330~~, all work performed under this subsection shall be removed by appellant within 15 days of the final decision ~~by the Hearings Officer, by the City on the appeal~~ except as otherwise permitted in writing by the Hearings Officer ~~City Manager~~.

(4) When an emergency condition exists, a City official may issue a stop work order orally. An emergency condition exists at any time when continuing the work would have an irreversible effect. A written notice confirming the oral stop work order must then be issued, posted and mailed within 24 hours.

### **1.330 Appeal.**

The owner of the property where the work was performed and any other person affected by a stop work order may appeal the stop work order at any time while the order is still in effect by filing a written appeal with the City Manager pursuant to WLMC 8.045 for a decision made by the Building Official, or with the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. for a decision made by all other City officials ~~at any time while the stop work order is still in effect~~.

The City Manager shall decide the appeal within two business days of receiving the written appeal by issuing a written decision and providing copies of the decision to the appellant, the property owner if different, and the City official who issued the stop work order. ~~The appellant may appeal the City Manager's decision to the City Council by filing a written request for hearing within 10 days of the City Manager's decision. On receipt of the written request for hearing, the City Manager shall set the matter for hearing before the City Council at the next City Council meeting and shall advise the person requesting the hearing of the date and time of the hearing.~~

### **1.340 Appeal Procedures and Standards.**

~~If the matter is appealed to the City Council, the City Council shall decide the matter after a public hearing at which the appellant and any other person may give evidence and provide argument. The City Council shall decide the issue by motion.~~ In deciding an appeal, the issues to be considered by the City Manager or the Hearings Officer ~~City Council~~ are:

- (1) Whether work was performed;
- (2) Whether a City permit or approval was required for that work;
- (3) Whether the required permit or approval was issued; and
- (4) Whether the stop work order violated any constitutional, statutory, code, or common law requirements.

~~Failure of an appellant to raise an issue shall be a waiver of the issue.~~

~~**1.350 Judicial Review of the City Council Decision.**~~

~~The City Council decision on an appeal of a stop work order is a quasi-judicial decision and is subject to judicial review on the record by writ of review pursuant to ORS Chapter 34 and not otherwise.~~

~~**1.350360 Noncompliance.**~~

(1) Failure to comply with a stop work order is a Class B violation civil infraction punishable by a civil penalty of up to \$1,000 per day for each day during which work continues after a stop work order is issued. Work performed as authorized under Section 1.320 is not a failure to comply with a stop work order.

(2) It is a Class C violation civil infraction to intentionally remove, obscure, mutilate or otherwise damage a posted stop work order while the order remains in effect.

(3) ~~The remedies provided by this chapter are cumulative and are in addition to any other remedies provided by common law, statute or ordinance.~~ Any work performed in violation of this chapter is a nuisance that may be abated as provided in Sections 5.400 through 5.530 of this code.

**SECTION 8. New Sections.** West Linn Municipal Code Sections 1.400 [Title] through 1.430 [Frivolous Appeals] are added to read as follows:

**1.400 Title.**

**Sections 1.400 to 1.430 shall be known, and may be cited, as the “Administrative Appeals Process.”**

**1.405 Applicability and Scope.**

**Any person aggrieved by the decision of a City official may appeal such action to a Hearing Officer through the following procedures if the West Linn Municipal Code chapter or section granting the City official authority to make the decision expressly authorizes use of this appeals process. The Administrative Appeals Process can only be utilized for administrative decisions made without a hearing. Land use decisions subject to Community Development Code shall not be subject to the Administrative Appeals Process.**

**1.410 Procedures for initiation of Administrative Appeal.**

**(1) When the WLMC authorizes an appeal, specific appeal procedures, timeframes, fees and other requirements, the specific provisions of the WLMC section authorizing the appeal shall control over the general provisions of the Administrative Appeals Process. When the specific code sections are silent, the provisions in these sections shall govern and provide additional standards for the appeal process.**

**(2) The general procedures for initiation of an appeal are as follows:**

- (a) Filing Deadline. A person appealing a decision of a City official shall file a written notice of appeal with the City Recorder within 10 days from the date of mailing of the notice of final decision or the date of an alternative means of service pursuant to WLMC 1.240.**
- (b) Notice of Appeal Contents. The written notice of appeal shall include:**
  - (i) the name and address of the appellant;**
  - (ii) a statement of the authority or jurisdiction for the appeal including specific Code sections authorizing the appeal;**
  - (iii) a statement of the appellant's standing or right to be heard;**
  - (iv) the nature of the decision being appealed;**
  - (v) a copy of the decision being appealed;**
  - (vi) a short and plain narrative statement including the reason(s) the original decision is alleged to be incorrect, with reference to the particular sections of the applicable code sections; and**
  - (vii) the result the appellant desires on appeal.**

**(3) Appeal Fee. The appellant shall pay a nonrefundable appeals fee to facilitate the appeal in the amount set by resolution of the Council.**

**(4) Jurisdictional Defect. Failure to strictly comply with the applicable appeal requirements, including, but not limited to, the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal. All requirements shall be fully met prior to the appeal deadline.**

**(5) Stay. Unless otherwise specifically provided for in the code, the action of the City official shall be stayed pending the outcome of an appeal properly filed pursuant to this section. A stay shall not remain in effect for more than 30 days unless the City Manager orders a longer stay.**

#### **1.415 Scheduling of Appeal Hearing**

**(1) The City Recorder shall forward the appeal materials to the Hearings Officer as soon as possible after the appeal is received, and not more than five business days after receipt of the appeal.**

**(2) The Hearings Officer shall determine whether the jurisdictional requirements are met.**

- (a) If the Hearings Officer finds that the appeal requirements are met, the Hearings Officer shall put the decision in writing and notify the appellant that the appeal is being dismissed. The final decision made by the City official that was the basis for the attempted appeal shall be the final decision of the City.
- (b) If the Hearings Officer finds that the appeal requirements are not met, or does not respond within ten days, the City Recorder shall coordinate with the Hearings Officer and set a hearing date not more than 30 days after the appeal has been filed. However, nothing shall prevent the Hearings Officer from later determining at a later date that there is no jurisdiction to hear the appeal.

(3) The City Recorder shall notify the parties in writing of the date and time set for the hearing. The notice shall be mailed at least 10 days prior to the date of the hearing, unless the parties agree to a shorter amount of time.

#### 1.420 Hearing procedures

The Hearings Officer shall provide the parties with reasonable notice and a meaningful opportunity to be heard. The procedures of this section may be varied to best afford the parties procedural due process. At a minimum, the Hearings Officer shall:

- (1) Review all written testimony submitted to the City Recorder for entry into the record. All written testimony must be submitted no less than five business days before the hearing, unless otherwise allowed by the Hearings Officer due to an explanation of why the testimony could not be provided earlier.
- (2) Review bias challenges made by the parties prior to the hearing. All bias challenges must be submitted in writing prior to the hearing, and the challenge must be supported by competent substantial evidence of actual bias.
- (3) Announce the matter to be heard at the beginning of the hearing and explain the relevant issue(s), the applicable procedures, and the burden of proof.
- (4) Place on the record the substance of any written or oral ex parte communications concerning any relevant and material fact in issue at the hearing that was made to the Hearings Officer outside the official proceedings while the appeal was pending. The parties shall be notified of the substance of the communication and the right to rebut the communication. The Parties are prohibited from engaging in ex parte communications with the Hearings Officer.
- (5) Make a determination regarding any bias challenges.
- (6) Take testimony of witnesses. Testimony may be taken upon oath or affirmation of witnesses; evidence provided under oath will be given more weight than unsworn evidence.
- (7) Admit any relevant evidence that is the type of evidence that reasonable persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any law or rule that might make improper the admission of such evidence over objection in civil action in courts of competent jurisdiction. Evidence of past transactions and occurrences shall not be excluded solely on the basis of having occurred in the past, and it may be relied upon by the Council in



- making its recommendation. However, irrelevant and unduly repetitious evidence shall be excluded.
- (8) Ensure that the record developed at the hearing shows a full and fair inquiry into the relevant and material facts for consideration of the issues properly before the Hearings Officer.
- (9) Require a written or electronic record to be made that contains all motions, rulings and testimony.
- (10) Issue a final decision in writing, which will be the final decision of the City. Unless informal disposition of the appeal occurs by stipulation, agreed settlement, consent order or default.

**1.425 Appearance by Parties.**

Parties shall be entitled to appear personally or by legal counsel. When appearing by counsel, the appellant must provide reasonable notice to the City Recorder and copy the City Attorney.

**1.430 Frivolous Appeals.**

If the appellant loses on appeal, and the Hearings Officer finds that the appeal was entirely without merit, the appellant will be held financially responsible for the full cost of the appeal proceeding to the City, including, but not limited to, the cost of hiring an independent hearing officer, if required.

**SECTION 9. Amendment.** West Linn Municipal Code Section 4.090 [Appeal], regarding the appeal of decisions related to customer accounts for surface water management, is amended to read as follows:

**4.090 Appeal.**

Any customer aggrieved by any decision made with regard to the customer's account may appeal to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. ~~City Manager by filing with the City a written request for review no later than 10 days after receiving the decision. The City Manager's decision shall be subject to review by the City Council upon filing of an appeal within 15 days of the notice of decision.~~

**SECTION 10. Amendment.** West Linn Municipal Code Section 4.465 [Appeal Procedure], regarding the appeal of decisions related to system development charges, is amended to read as follows:

**4.465 Appeal Procedure.**

(1) A person aggrieved by a decision required or permitted to be made by the City manager under sections 4.400 to 4.485 or a person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et sequence. ~~city council by filing a written request with the city manager describing with particularity the decision of the city manager or the expenditure from which the person appeals.~~

(2) An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision must be filed within 30 days of the date of the decision.

(3) The ~~council~~ **Hearings Officer** shall determine whether the City Manager's decision or the expenditure is in accordance with sections 4.400 to 4.485 and the provisions of ORS 223.297 to 228.314 and may affirm, modify, or overrule the decisions. If the **Hearings Officer** ~~council~~ determines that there has been an improper expenditure of system development charge revenues, the **Hearings Officer shall notify the council to allow the council to shall** direct that a sum equal to the misspent amount shall be deposited within one year of the date of that determination to the credit of the account or fund from which it was spent.

(4) A legal action challenging the methodology adopted by the council pursuant to sections 4.415 and 4.420 shall not be filed later than 60 days after the adoption.

(5) A person may request that the City Council issue systems development charge credits to them as compensation for the impact of the limitation of use of transferred credits provisions of 4.455(5)(f) if;

(a) The person has received the credit for a qualified public improvement;

(b) The credit amount received exceeded the systems development charge obligation for the original development project and all subsequent phases of the original development project; and,

(c) The person has transferred the credits, establishes that the value received for the transferred credit was less than face value, and that the reduction in value was directly caused by the limitation in 4.455(5)(f).

The request pursuant to this subsection must be filed with the City within 30 days of the date of the transfer of the credit. The Council will consider the request and if it finds that the value of the credit has in fact been reduced it shall offer compensation for the reduction in the form of additional credits for the system for which the credit was originally issued.

**SECTION 11. Amendment.** West Linn Municipal Code Section 4.595 [Appeal], regarding the appeal of decisions related to roadway maintenance fees, is amended to read as follows:

**4.595 Appeal.**

Upon written request from a utility customer, the City Manager, upon the advice of the Director of Public Works or Finance Director, as appropriate, shall issue a written determination concerning any administrative aspect of the roadway maintenance service fee that affects the utility customer. ~~Within 15 days of the issuance of this written determination, the~~ **The** utility customer may appeal the administrative determination to the **Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq** ~~City Council. The City Council shall hold a public hearing and may affirm, overturn, or modify the decision of the City Manager.~~

**SECTION 12. Amendment.** West Linn Municipal Code Section 4.690 [Appeal], regarding the appeal of decisions related to parks utility service fees, is amended to read as follows:

**4.690 Appeal.**

Any customer aggrieved by any decision made by the City Manager with regard to the customer's parks utility service fee account may appeal to **the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq**~~the City Council by filing with the city a written request for review no later than 15 days after receiving a written notice of decision from the City Manager.~~

**SECTION 13. Amendment.** West Linn Municipal Code Section 5.487(7) [Special Permits], regarding noise permits, is amended to read as follows:

**5.487(7) Special Permits.**

(a) The City Manager may grant a special permit to any person or organization if findings are made that immediate compliance with any requirement of this section cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source or because of the unavailability of feasible technology or control methods.

(b) Any such special permit shall be granted only for the minimum time period found to be necessary under the facts and circumstances.

(c) The City Manager may attach conditions of approval to a special permit to mitigate noise impacts to surrounding properties.

(d) The decision of the City Manager may be appealed to **the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq**~~City Council within 14 days of the issuance of the decision. The City Council shall conduct a public hearing on the special permit within 60 days of the filing of the appeal. The City Manager shall provide notice of the public hearing to all property owners noticed prior to the original decision, and all other parties who commented on the application. The City Council may uphold, modify, or reverse the City Manager's decision. The City Council's decision shall be final.~~

**SECTION 14. Amendment.** West Linn Municipal Code Section 5.527 [Remedies Cumulative] to Section 5.530 [Separate Violations] are amended to read as follows:

**5.527 Remedies Cumulative Duty to Abate.**

~~The remedies and procedures for nuisances provided in Sections **5.535 to 5.530** are in addition to all other remedies and procedures provided by law. Nothing in Sections **5.535 to 5.530** shall limit or restrict in any way the City's right to obtain a remedy by means of a civil infraction action, a criminal action, a civil lawsuit, or any other form of procedure to obtain a remedy.~~

~~**5.530 Separate Violations.**~~

~~(1) Each day's violation of a provision of Sections 5.400 to 5.530 constitutes a separate offense.~~

~~(2) The abatement of a nuisance is not a penalty for violating Sections 5.400 to 5.530 but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance.~~

**SECTION 15. Amendment.** West Linn Municipal Code Sections 5.665 [Storage—Permit Required] to Section 5.695 [Hearing on Denial or Revocation of Permit] are amended to read as follows:

**5.665 Storage – Permit Required.**

No person may store any explosives unless a permit is first obtained from the City Manager~~city council~~. A revocable permit valid for one year may be issued by City Manager~~city council~~.

**5.670 Storage – Application for Permit.**

Written application for a permit or for renewal of a permit to store explosives shall be made to the city manager on forms provided by the city. The application shall be accompanied by a permit fee in an amount to be set by resolution of the city council, which shall be returned to the applicant if the application is denied. ~~The city manager shall refer the application to the city council at the next regular council meeting.~~

**5.675 Storage – Consideration of Application.**

The ~~council~~ City Manager may either grant or deny the application for a permit, taking into consideration:

- (1) The congestion of persons, the type of buildings, the volume of vehicular traffic, and the topography in the vicinity of the storage area;
- (2) The condition and construction of the structure or magazine used or to be used for storage of explosives and the applicable fire zone regulations;
- (3) The adequacy of water supply in the storage area;
- (4) "The American Table of Distances for Storage of Explosives," published by the Institute of Makers of Explosives, September 30, 1955;
- (5) Any other factors relevant to public safety.

**5.680 Issuance of Storage Permit.**

In granting a permit, the City Manager~~council~~ may limit the quantity of explosives which may be stored by the applicant and may prescribe in the permit the terms and conditions the City Manager~~council~~ considers necessary for the protection of the public from the dangers of explosion. The city manager shall issue the permit ~~as directed by the council~~.

**5.685 Overnight Storage Limitations.**

No permit may be granted to store or keep over 50 pounds of explosives or over 500 blasting caps any place within the city between the hours of 6:00 p.m. and 7:00 a.m. of the following day.

**5.690 Revocation of Permit.**

The City Manager council may revoke a permit if:

- (1) Conditions considered in granting the permit change at the storage area or in the vicinity and the public is endangered by the storage of explosives as authorized by the permit;
- (2) The permittee is convicted of a violation of sections 5.650 to 5.725;
- (3) The permittee is convicted for violation of federal or state laws or regulations relating to safety in storing and transporting explosives.

**~~5.695 Hearing on Denial or Revocation of Permit Appeal.~~**

~~Before denying or revoking a permit, the The City Manager council shall give written notice of his decision to deny or revoke a permit ~~its proposed action~~ to the applicant or permittee. A decision by the City Manager to deny or revoke a permit may be appealed to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. ~~If, within ten days after the date of such notice, a hearing is requested by the applicant or permittee, the council shall fix a time within the next 30 days in which it shall hear the objections of the applicant or permittee to the denial or revocation of the permit. Thereafter the decision of the council shall be final.~~~~

**SECTION 16. Amendment.** West Linn Municipal Code Section 5.770 [Revocation or Denial of Permit - Hearing] is amended to read as follows:

**~~5.770 Revocation or Denial of Permit — Hearing Appeal.~~**

~~Any person, company, or corporation who makes application for a permit to blast under the terms of sections 5.750 to 5.785 and whose application is denied by the City Manager, or whose permit is revoked by the City Manager, A decision by the City Manager to deny or revoke a blasting permit may be appealed to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. ~~under the terms hereof may, within ten days thereafter, file notice of appeal to the City Council with the City Manager, and the City Council shall, within 30 days thereafter, grant a hearing to the appealing party. On appeal, the City Council shall have the same power and authority hereunder as the City Manager.~~~~

**SECTION 17. Amendment.** West Linn Municipal Code Section 6.015(3) [Residential Parking Zones], regarding the appeal of the decision to revoke a residential parking permit, is amended to read as follows:

6.015(3) Residential Parking Zones

- (a) The City Council, pursuant to WLMC Section 6.015(2) may establish residential parking zones. The purpose of residential parking zones is to prohibit parking by



non-residents during specific time periods within specific geographic areas used predominately for residential purposes. The City Council resolution which establishes the residential parking zone shall clearly define the geographic limits of the area affected by the zone and the hours during which the parking by non-residents will be prohibited. Residents within the parking zones may obtain a permit from the City Manager pursuant to subsection (b) of this section to allow for the parking of vehicles within the zone during the restricted hours.

(b) The City Manager shall establish procedures and standards for the issuance of permanent and temporary permits to residents that will allow the residents and their guests to park their vehicles within residential parking zones during the restricted hours. At a minimum, the City Manager shall establish rules which establish the criteria for issuance, surrender and revocation of permits, evidence of proof of residence and vehicle ownership, terms of the permit, standards for display of permit, and allow for the issuance of temporary permits to residents for the parking of non-resident vehicles for temporary periods upon a showing of reasonable need for such permits.

(c) The City Manager may cause to be installed and maintained, pursuant to WLMC [6.020](#), official signs for residential parking zones which clearly identify the parking restrictions for non-residents and the exception to those restrictions for permit holders within the residential parking zones.

(d) It shall be unlawful for any person to:

- (1) Provide false information in connection with an application for a permanent or temporary permit.
- (2) Fail to surrender a permit, when requested to do so, when the person is no longer entitled to the permit.
- (3) Use a permit when the permit holder is no longer entitled to the permit.
- (4) Use, or allow the use of a permit in conjunction with a vehicle other than the vehicle for which the permit was issued.
- (5) Use, or allow the use of a temporary permit in a manner inconsistent with the terms and limitations of the permit.

(e) The City Manager is authorized to revoke any permit when the permit holder is found to be in violation of the provisions of this section, and, upon written notification thereof, the permit holder shall surrender the permit to the City Manager. Failure to do so shall constitute a violation of this section.

**(f) A decision by the City Manager to revoke a permit may be appealed to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq.**

**SECTION 18. Amendment.** West Linn Municipal Code Section 7.040 [Denial or Revocation of License] is amended to read as follows:

**7.040 Denial or Revocation of License; Appeal.**

- (1) The city may deny or revoke a license upon finding that:
  - (a) The applicant fails to meet the requirements of Sections 7.000 to 7.080, or is doing business in violation of this chapter, zoning regulations, or applicable federal, state, county, or local law.
  - (b) The applicant has provided false or misleading information, or has omitted disclosure of a material fact on the business license application, related materials, or license.
  - (c) The information supplied for review of the business license application does not indicate that the applicant has the special knowledge or skill required to perform the licensed activity.
  - (d) The licensed activity would constitute a public nuisance, endanger property, or endanger the public health, safety, or welfare.
  - (e) The applicable business license fee has not been paid by the due date.
- (2) The city manager shall provide written notice to the applicant of a denial or revocation. The notice shall state the reason for denial or revocation and shall inform the applicant of the right to appeal pursuant to **the Administrative Appeals Process in WLMC 1.400 et seq** ~~the West Linn Municipal Code~~.
- (3) Notices of revocation shall be given at least 30 days before the revocation becomes effective. If the violation ends within the 30 days, the city may discontinue the revocation proceedings.
- (4) A person whose application for any business license has been denied or whose license has been revoked may, after 90 days from the date of denial or revocation, apply for a license upon payment of the application fee and submission of an application form and required attachments.

**SECTION 19. Amendment.** West Linn Municipal Code Section 7.145 [Appeals], regarding the appeal of decisions related to permits for adult businesses, is amended to read as follows:

**7.145 Appeals.**

**The decision of the City Manager may be appealed to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq.** The filing of an appeal of a revocation or suspension of a permit under sections 7.100 to 7.185 shall stay the effectiveness of such suspension or revocation until the appeal is determined by the **Hearings Officer council.** ~~Upon receipt of notice of the appeal, the auditor shall give notice of the filing of the appeal to the city manager, who shall file a report with the council containing the reasons for such denial, revocation or suspension. The notice of appeal filed with the city manager shall contain an address for the appellant to which all notices required in sections 7.100 to 7.185 may be mailed. The city manager shall set a date for a council hearing upon the denial, revocation or suspension. At the hearing the city manager shall report to the council his reasons for denying, revoking or suspending the permit. The person whose application has been denied or whose permit has been revoked or suspended shall have the right to call witnesses and be~~

~~heard by council and file a written statement in his behalf. At the conclusion of the hearing, the council shall determine the appeal and the decision of the council shall be final. If the council denies the appeal, the revocation or suspension shall be effective immediately.~~

**SECTION 20. Amendment.** West Linn Municipal Code Section 7.225 [False Alarms—Permit Revocation], regarding the appeal of decisions related to alarm system permit revocations, is amended to read as follows:

**7.225 False Alarms--Permit Revocation; Appeal.**

(1) Any alarm system which has ten or more false alarms within a permit year shall be subject to permit revocation as provided herein.

(2) If the communications center records ten or more false alarms within a permit year for any alarm system:

(a) The Chief of Police shall notify the alarm user and the alarm business providing service or inspection to the user by certified mail of such fact and direct that the user submit a report to the chief of police within ten days of receipt of the notice describing actions taken or to be taken to discover and eliminate the cause of the false alarms.

(b) If the alarm user submits a report as directed, the Chief of Police shall determine if the actions taken or to be taken will prevent the occurrence of false alarms; if he determines that the action will prevent the occurrence of false alarms, he shall notify the alarm user and the relevant alarm business in writing that the permit will not be revoked at that time and that if one more false alarm occurs within the permit year, the permit will be summarily revoked.

(c) If no report is submitted, or if the Chief of Police determines that the actions taken or to be taken will not prevent the occurrence of false alarms, the Chief of Police shall give notice by certified mail to the user that the permit will be revoked without further notice on the tenth day after the date of the notice, **and notifying the user of their right to appeal pursuant to the Administrative Appeals Process in WLMC 1.400 et seq.** ~~if the user does not file within that period a written request for a hearing.~~

~~(d) If a hearing is requested, written notice of the time and place of the hearing shall be served on the user by the Chief of Police by certified mail at least 10 days prior to the date set for the hearing, which date shall not be more than 21 nor less than 10 days after the filing of the request for hearing.~~

~~(e) The hearing shall be before the City Council, and the Chief of Police and the alarm user shall have the right to present written and oral evidence, subject to the right of cross examination. If the Council determines that 10 or more false alarms have occurred in a permit year, and that the user has not taken actions which will prevent the occurrence of false alarms, the Council shall issue written findings to that effect and may issue an order revoking the user's permit.~~



(f) An alarm user whose permit has been revoked may apply for a revoked user's permit as provided in Section 7.210(2). The Chief of Police shall not be required to issue a revoked user's permit, unless he is satisfied that the user's system has been properly serviced and its deficiencies corrected. The Chief of Police may impose reasonable restrictions and conditions upon the user, before issuing a revoked user's permit, which restrictions and conditions shall be written on the permit and shall provide for summary revocation on the occurrence of 10 false alarms in the permit year.

(g) In situations permitting summary revocation under subsections (b) and (f) of this section, revocations shall be effective on the fifth day following the mailing by certified mail by the Chief of Police of a notice of revocation. ~~There shall be no appeal of a summary revocation.~~

**SECTION 21. Amendments.** West Linn Municipal Code Sections 7.478 [Redeterminations] through 7.488 [Appeals to Council], related to the transient lodging tax, are amended to read as follows:

**7.478 Redeterminations.**

(1) Any person against whom a determination is made under Section 7.470, 7.472, or 7.475 or any person directly interested may petition for a redetermination and redemption and refund within the time required in these sections. If the petition for redetermination and refund is not filed within the time required by Section 7.470, 7.472, or 7.475, the determination becomes final at the expiration of the allowable time.

(2) If the petition for redetermination and refund is filed within the allowable period, the City Manager shall reconsider the determination, and if the person has so requested in the petition, shall grant the person an oral hearing and shall give the person 10 days' notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.

(3) The City Manager may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined such increase shall be payable immediately after the hearing.

(4) The order or decision of the City Manager upon a petition for redemption or redetermination and refund becomes final 10 days after service upon the petitioner of notice, unless appeal of such order or decision is filed with the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. ~~City Council within 10 days after service of such notice.~~

(5) No petition or appeal shall be effective for any purpose unless the operator has first complied with the payment provisions.

...

**7.488 Appeals to Council.**

Any person aggrieved by a final decision of the City Manager may appeal to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. City Council by filing a notice of appeal with the City Manager within 10 days of the serving or the mailing of the notice of the decision given by the City Manager. The City Manager shall schedule a Council hearing on the appeal within 45 days of receipt of the notice of appeal. The City Manager shall give the appellant not less than 10 days' written notice of the time and place of the hearing.

**SECTION 22. Amendments.** West Linn Municipal Code Section(s) 7.860 [Appeal Procedure] through 7.870 [Cleanup Deposits for Certain Special Events], related to special events permits, are amended to read as follows:

**7.860 Appeal Procedure.**

The applicant shall have the right to appeal (1) denial of a permit, (2) a permit condition, (3) a determination not to act on a late application, and (4) a refusal to issue a permit based on a determination that the applicant's insurance policy does not satisfy a condition imposed under Section 7.840. A notice of appeal stating the grounds of appeal with specificity, in addition to the requirements in 1.410(2)(b), shall be filed with the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. and shall be heard at the next regularly scheduled Council meeting held at least two weeks after the filing of the notice of appeal. The City Council shall hear the applicant or a designated representative and receive any relevant information and documents. The decision of the City Council shall be final.

...

**7.870 Cleanup Deposits for Certain Special Events.**

A. Cleanup Deposit. The applicant for an event (including but not limited to) involving the sale of food or beverages, erection of structures, participation of horses or other large animals, or use of water aid stations, shall be required to provide a cleanup deposit prior to the issuance of a special event permit. The cleanup deposit shall be in an amount established by the City Council by resolution.

B. Refund. The cleanup deposit shall be returned after the event if the area used for the permitted event has been cleaned and restored to the same condition as existed prior to the event. If the actual cost for cleanup is less than the estimated cost, the applicant will be refunded the difference. Should the amount of the bill exceed the cleanup deposit, the difference shall become due and payable to the City upon the applicant's receipt of the bill.

C. Appeals. ~~If the~~ The applicant may dispute and appeal ~~disputes~~ the cleanup charge, by filing an appeal with the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. he/she/it may appeal to the City Manager within five days after receipt of the bill. The decision of the City Manager shall be final.

**SECTION 23. Amendment.** West Linn Municipal Code Section 8.040 [Powers and Duties of Building Official] is amended to read as follows:

### **8.040 Powers and Duties of Building Official.**

(1) **General.** There is hereby established a Code Enforcement Agency which shall be under the administrative and operational control of the Building Official.

The Building Official is authorized to enforce all the provisions of this Code.

The Building Official shall have the power to render written and oral interpretations of this Code and to adopt and enforce administrative procedures in order to clarify the application of its provisions.

(2) **Deputies.** In accordance with prescribed procedures and with the approval of the City, the Building Official may appoint technical officers and inspectors and other employees to carry out the functions of the code enforcement agency. The Building Official may request, and shall receive, the assistance and cooperation of other officials of this jurisdiction, so far as is required in the discharge of the duties required by this Code or other pertinent law or ordinance.

(3) **Liability Limitation.** The Building Official charged with the enforcement of this Code, acting in good faith and without malice in the discharge of the duties required by this Code or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the Building Official or employee because of such act or omission performed by the Building Official or employee in the enforcement of any provision of such codes or other pertinent laws or ordinances implemented through the enforcement of this Code or enforced by the code enforcement agency shall be defended by the City of West Linn until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the City of West Linn.

This Code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the City of West Linn be held assuming any such liability by reason of the inspections authorized by this Code or any permit or certificates issued under this Code.

~~(4) Right of Entry. When it may be necessary to inspect a building in order to enforce the provisions of this Code, or the Building Official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to, in violation of this code or which otherwise makes the building or premises unsafe, dangerous or hazardous, the Building Official may enter said building or premises at reasonable times to inspect or to perform the duties imposed by this code; provided, that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the Building Official shall have the right to seek a search warrant from a judicial officer in order to secure entry.~~

(5) **Stop Work Orders.** Whenever any work is being done contrary to the provisions of this code (or other pertinent laws or ordinances implemented through its enforcement), the Building Official may order the work stopped by giving notice in writing in accordance with 1.235 and the provisions of WLMC 1.300 to 1.360 shall apply, served on any person(s) engaged in the doing or causing of such work to be done. Such person(s) shall stop any and all such work until specifically authorized or released by the Building Official to proceed herewith.

**SECTION 24. Amendment.** West Linn Municipal Code Section 8.640 [Appeal], related to tree removal permits, is amended to read as follows:

**8.640 Appeal.**

Any decision of the City Arborist regarding a tree removal permit may be appealed to the Hearings Officer pursuant to the Administrative Appeals Process in WLMC 1.400 et seq. ~~City Manager if such appeal is filed within 10 business days of the date of the City Arborist's decision. The~~ In addition to the notice requirements in WLMC 1.410(2)(b), the written notice of appeal shall include a statement from the appellant listing the errors the appellant believes the City Arborist has made in issuing the decision. ~~Any decision of the City Manager regarding a tree removal permit may be appealed to the City Council if such appeal is filed within 10 business days of the date of the City Manager's decision. If appealed, the City Council shall cause a public hearing to be held, notice to be given in a manner similar to the original notice, and in addition shall publish notice of the hearing in a newspaper of general circulation at least 10 business days prior to the hearing. The City Council shall consider the same approval criteria as considered by the City Arborist and City Manager. Any decision of the City Council shall be final.~~

**Note:** ~~All references to business days shall mean working days, Monday through Friday, not counting federal or state holidays.~~

**SECTION 25. Amendment.** West Linn Municipal Code is amended to revise the following terms wherever the terms appear throughout the West Linn Municipal Code and the Community Development Code:

- (1) "civil infraction " is changed to "violation,"
- (2) "infraction" is changed to "violation," and
- (3) "Planning Department" is changed to "Community Development Department."

**SECTION 26. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 27. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 28. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections **25-28**) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

**SECTION 29. Effective Date.** This ordinance shall take effect on the 30<sup>th</sup> day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 2(C) of the City Charter on the 21st day of April, 2014, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JOHN KOVASH, MAYOR

ATTEST:

\_\_\_\_\_  
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY