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**ARTICLE 1 — INTRODUCTION AND GENERAL PROVISIONS**

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# Article I — Introduction and General Provisions

## Chapters:

- 1.1 Introduction
- 1.2 Title, Purpose, and General Administration
- 1.3 Lot of Record and Legal Lot Determination
- 1.4 Non-Conforming Situations
- 1.5 Code Interpretations
- 1.6 Enforcement

**Users Guide:** Consult your city recorder and city attorney regarding codification requirements. Options include repealing existing zoning and subdivision ordinances and adopting one ordinance that is a chapter (or title) of your existing municipal code, or adopting a separate ordinance that is incorporated into the municipal code by reference but has its own numbering.

## Chapter 1.1 — Introduction

The City of [name] Development Code (“Code”) is administered by the [City Official] or his or her designee. The Code regulates land use and development within the City of [name], and is organized as follows:

**Article 1.** Article 1 describes the title, purpose, authority, organization and general administration of the Code. Article 1 also explains how city officials interpret and enforce code requirements.

**Article 2.** Article 2 contains the zoning regulations. Zones are designated by the City of [name] Zoning Map, consistent with the City of [name] Comprehensive Plan. The zoning regulations specify allowed land uses, and lot and development standards that are specific to particular land uses or zones. Before commencing a new use or development, changing an existing use or development, or applying for a building permit, the property owner [should verify the City’s zoning requirements. / shall complete a Zoning Checklist pursuant with Section 4.1.020.]

**Article 3.** Article 3 contains the City’s development design standards, including requirements for street access; pedestrian and vehicle circulation; parking; landscaping, screening, fences and walls; outdoor lighting; adequate transportation, water, sanitary sewer, and storm drainage facilities; and utility requirements. Article 3 applies to all development, including land divisions and projects for which no land use application or review is required; Article 3 is supported by the more detailed engineering design standards in the City’s [Public Works Design Manual / Engineering Design Standards Manual].

**Article 4.** Article 4 contains the City’s application requirements and review procedures for land use and development decisions, including but not limited to procedures for land divisions, property line adjustments, conditional use permits, site design review, master planned developments, and variances.

**Article 5.** Article 5 contains definitions and other exhibits that the City uses in interpreting and administering the Code. For example, where Article 2 contains a general list of land uses allowed in each zone, Article 5 provides examples of uses that are consistent with each general category.

## Chapter I.2 — Title, Purpose, and Authority

### Sections:

Section I.2.010 Title

Section I.2.020 Purpose

Section I.2.030 Compliance and Scope

Section I.2.040 Rules of Code Construction

Section I.2.050 Development Code Consistency with Comprehensive Plan and Laws

Section I.2.060 Development Code and Zoning Map Implementation

Section I.2.070 *[Zoning Checklist and]* Coordination of Building Permits

Section I.2.080 Official Action

### **I.2.010 Title**

The official name of this *[Code / Title]* is “The City of *[name]* Development Code.” It may also be referred to as “Development Code” and “Code.”

### **I.2.020 Purpose**

This Code is enacted to promote the public health, safety, and welfare; and to encourage the orderly and efficient development and use of land within the City of *[name]*, consistent with the City of *[name]* Comprehensive Plan and the following principles:

- A. Compact Development**, which promotes the efficient provision of public services and infrastructure;
- B. Mixed-Use**, which places homes, jobs, stores, parks, and services within walking distance of one another;
- C. Full Utilization of Urban Services** (e.g., water, sewer, storm drainage, parks and transportation facilities), which maximizes the return on public investments in infrastructure;
- D. Transportation Efficiency**, or development of an interconnected street system supporting multiple modes of transportation, which yields more direct routes (shorter distances) between local designation, conserves energy, reduces emergency response times, and provides alternatives to the automobile for those who are unable or choose not to drive a car;
- E. Human-Scale Design**, or development in which people feel safe and comfortable walking from place to place because buildings, streetscapes, parking areas, landscaping, lighting and other components of the built environment are designed foremost with pedestrians in mind;
- F. Environmental Health**, which requires adequate light and air circulation, management of surface water runoff, and treatment and disposal of waste; and
- G. Efficient Administration of Code Requirements**, consistent with the needs of *[the City of (name), a small city with limited administrative capacity]*.

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## 1.2 – Title, Purpose, and Authority | Compliance and Scope

### 1.2.030 Compliance and Scope

- A. Compliance with the Development Code.** No structure or lot shall hereinafter be used, developed, or occupied, and no structure or part thereof shall be erected, moved, reconstructed, extended, enlarged or otherwise altered except as permitted by this Code. Furthermore, *[annexations and]* amendments to the Zoning Map, and amendments Development Code shall conform to applicable provisions of this Code.
- B. Obligation by Successor.** The requirements of this Code apply to the owner(s) of record, persons undertaking the development or the use of land, and to those persons' successors in interest.
- C. Transfer of Development Standards Prohibited.** Except as otherwise specifically authorized by this Code, no lot area, yard, landscaping, or open space that is used to satisfy a requirement of this Code for one use shall be used to satisfy the same requirement for another use.

### 1.2.040 Rules of Code Construction

- A. Provisions of this Code Declared to be Minimum Requirements.** The provisions of this Code, in their interpretation and application, are minimum requirements, adopted for the protection of the public health, safety, and general welfare.
- B. Highest standard or requirement applies.** Where as the requirement of this Code varies from another provision of this Code or with other applicable regulations, the highest standard or regulation shall govern. The *[City Planning Official or Planning Commission]*, as applicable, shall determine which Code provision sets the highest standard. Where the applicability of a Code provision is unclear, the *[Planning Official or Planning Commission, or upon referral the City Council,]* may issue a formal interpretation pursuant with Chapter 1.4 Interpretation.
- C. Tenses.** Words used in the present tense include the future; the singular form includes the plural; and the plural includes the singular.

**User's Guide:** With regard to optional subsections 'D' and 'E', below, cities are required to provide clear and objective standards for needed housing under ORS 197.303 – 197.307. Where guidelines are used (e.g., commercial or historic design), the code should be tailored to the local context and the needs of community.

**[D. Requirements versus Guidelines.** *The use of the word “shall,” “must,” “required,” or similar directive terms, means the Code provision is a requirement. The use of the word “should,” “encouraged,” “recommended,” or similar terms, means the provision is a guideline, which may be imposed as a requirement but only where the applicable code criteria allow the City decision making body to exercise such discretion.]*

**[E. Interpreting Illustrations.** *This Code contains illustrations and photographs, code “graphics,” which are intended to serve as examples of development design that either meet or do not meet particular Code standards. Except where a graphic contains a specific numerical standard or uses the word “shall,” “must,” “required” or “prohibited,” strict adherence to the graphic is not required.]*

- F. Severability.** The provisions of this Code are severable; where any section, sentence, clause or phrase is judged to be invalid by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portion of the Code.

### 1.2.050 Development Code Consistency with Comprehensive Plan and Laws

- A. City of [name] Comprehensive Plan.** This Code implements the City of [name] Comprehensive Plan. Except as otherwise required by applicable State or Federal law, all provisions of this Code shall be construed in conformity with the Comprehensive Plan, including any Comprehensive Plan elements or public facility master plans, adopted pursuant to the Comprehensive Plan.
- B. Compliance with Other Laws Required.** In addition to the requirements of this Code, all uses and development must comply with all other applicable City, State of Oregon, and Federal rules and regulations.
- C. References to Other Regulations.** All references to other City, State, and Federal rules and regulations are for informational purposes only and do not constitute a complete list of such requirements. The references do not imply any responsibility by the City for enforcement of State or Federal regulations. Where a proposal, permit, or approval is subject to both City of [name] requirements and State or Federal requirements, the property owner is responsible for contacting the applicable agencies and complying with their rules and regulations.
- D. Current Versions and Citations.** All references to the regulations of other jurisdictions refer to the most current version and citation for those regulations, except where this Code, City Council policy, or applicable law require otherwise. Where a referenced regulation has been amended or repealed, the City Planning Official, Planning Commission or, upon referral, the City Council, through shall interpret this Code and, based on adopted City policy, determine whether an equivalent standard applies. Such determinations, unless made through a legislative process, may be appealed to City Council.

### 1.2.060 Development Code and Zoning Map Implementation

- A. Zoning of Areas to be Annexed.** Concurrent with annexation of land to the City of [name], the City Council [*, upon considering the recommendation of the Planning Commission,*] shall enact an ordinance applying applicable zoning designation(s) to the subject land, pursuant with Chapter 4.6. The Comprehensive Plan shall guide the designation of zoning for annexed areas.
- B. Land Use Consistent With Development Code.** Land and structures in the City of [name] may be used or developed only in accordance with this Code, including all amendments thereto. A lawful use of land (“use”) is one that is permitted in accordance with this Code, or is allowed as a legal non-conforming use, pursuant with Chapter 1.4, provided State or Federal law does not prohibit the use.
- C. Development Code and Zoning Map.** The City’s Official Zoning Map (“Zoning Map”), which may be published, amended, and filed separately from this Code, is part of this code. The zoning districts depicted on the Zoning Map correspond to the zoning districts in this code. In addition, this Code may contain zoning regulations for special areas, (i.e., overlay zones), and for certain uses or structures that do not appear on

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## I.2 – Title, Purpose, and Authority | Development Code and Zoning Map Implementation

the Zoning Map.

- D. Interpreting the Zoning Map.** Except as otherwise specified by this Code, the City’s zoning boundaries are as designated on the Official Zoning Map, which is kept on file at City Hall. The City may adopt and publish supplemental zoning maps where it is impractical to illustrate all regulated features on one map; examples regulated features include but are not limited to historical landmarks, special street setbacks, base flood (flood plain) elevation, local wetland inventories, and specific area plans. In addition, the City may require field verification and mapping (e.g., survey) of a regulated feature as part of a development application, where the feature is thought to exist on or adjacent to the subject property but its exact location is unknown.
- E. Boundary Lines.** Zoning district boundaries are determined pursuant to Section 2.1.030.
- F. Changes to Official Zoning Map.** Proposed changes to the Official Zoning Map are subject to review and approval under Chapter 4.6 Amendments.

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## I.2 – Title, Purpose, and Authority | *[Zoning Checklists and]* Coordination of Building Permits

### I.2.070 *[Zoning Checklists and]* Coordination of Building Permits

- A. Land Use Approvals and Building Permits.** Land use and building approvals are processed by two city officials: The *[designated]* Building Official administers building codes *[including floodplain regulations,]* and issues building permits; and the *[Planning Official]* administers the Development Code, processes land use approvals, and coordinates with the *[designated]* Building Official on development and building projects to ensure compliance with the Development Code.
- B. Zoning Compliance Required for Building Permits.** A building permit shall not be issued until the *[Planning Official]* has confirmed that all applicable requirements of this Code are met, or appropriate conditions of approval are in place to ensure compliance.
- [C. Zoning Checklist.** *Where a Zoning Checklist is required prior to issuance of a building permit, pursuant with Section 4.1.020, the Planning Official through a Type I procedure shall review the project proposal. The Building Official shall not issue any building permit without an approved Zoning Checklist for the project. If in reviewing the project proposal the Planning Official determines that other permits or approvals are required before development may commence, or a building permit may be issued, the Planning Official shall advise the applicant in writing, accordingly. See Article 4 Application Requirements, Administrative Procedures, and Approval Criteria.]*

### I.2.080 Official Action

- A. Official Action.** The City of *[name]* *[Planning Official, Planning Commission, (Hearings Officer,) and City Council]* are vested with authority to issue permits and grant approvals in conformance with this Code, pursuant to Article 4 Application Requirements, Administrative Procedures, and Approval Criteria. City officials shall issue no permit and grant no approval for any development or use that violates or fails to comply with conditions or standards imposed to carry out this Code.
- B. Void Future Actions.** Any permit or approval issued or granted in conflict with the provisions of this Code shall be void, unless the City modifies it in conformance with the Code. The *[Planning Official]* shall determine when an approval is void and, as applicable, he or she shall refer it back to the decision body for modification to ensure Code compliance.
- C. Referral to Planning Commission.** In addition to those actions that require Planning Commission approval, the *[Planning Official]* may refer any question or permit request to the Planning Commission, who then shall take action on the request pursuant to the applicable provisions of this Code. See also, Chapter 1.5 Code Interpretations and Article 4 Application Requirements, Administrative Procedures, and Approval Criteria.
- D. Notices, Filing, and Validity of Actions.** The failure of any person to receive mailed notice or failure to post or file a notice, staff report, or form shall not invalidate any actions pursuant to this Code, provided a good faith effort was made to notify all parties entitled to such notice report, or form. See Chapter 4.1 General Review Procedures.

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## I.3 – Lot of Record and Legal Lot Determination

### Chapter I.3 — Lot of Record and Legal Lot Determination

#### Sections:

I.3.010 Purpose and Intent

I.3.020 Criteria

I.3.030 Legal Lot Determination Procedure

**User's Guide:** The lot of record procedure is per state statute. Local jurisdictions may adopt local procedures for lot of record determinations, provided they are not in conflict with ORS 92.010 to 92.190.

#### **I.3.010 Purpose and Intent**

The purpose of Chapter I.3 is to establish criteria and a process for determining when a lot of record exists for the purpose of allowing a use or development on a non-conforming lot (e.g., substandard lot that does not meet lot area, setback, or coverage regulations). The owner of lot of record shall not be denied development of one single family dwelling per lot of record, provided applicable building codes are met; the City shall accept a legal lot determination as sufficient evidence of a hardship for purposes of approving a variance under Chapter 4.7.

#### **I.3.020 Criteria**

A lot of record is a plot of land that meets one or more of the following criteria, pursuant to ORS 92.010 to 92.190:

- A.** The plot of land was lawfully created through a subdivision or partition plat in *[name]* County prior to annexation to the City of *[name]*;
- B.** The plot of land was created through a deed or land sales contract recorded with *[name]* County *[prior to (date) / before the City or County, as applicable, adopted planning, zoning, subdivision or partition regulations]*; or
- C.** The plot of land was created through a deed or land sales contract recorded with *[name]* County prior to January 1, 2007 and the subject plot of land would have complied with the applicable planning, zoning, subdivision or partition regulations in effect at the time it was created.

#### **I.3.030 Legal Lot Determination Procedure**

The *[Planning Official / Planning Commission]*, through a *[Type II / Type III]* procedure, shall process requests to validate a lot of record, pursuant with ORS 92.010 to 92.190.

### Chapter I.4 — Non-Conforming Situations

#### Sections:

- I.4.010 Purpose and Applicability
- I.4.020 Non-conforming Use
- I.4.030 Non-conforming Development
- I.4.040 Non-conforming Lot

**User's Guide:** Chapter I.4 should be customized to address the types of non-conforming uses and code violations that exist in a community. First, a city should consider whether its current land use standards are appropriate. If some code conflicts are so common that property owners routinely ask for and are granted variances, then that standard (e.g., setback, lot size, etc.) should be amended. Where non-conforming uses are common and predate current zoning regulations (e.g., single family dwellings in a downtown zone), consider permitting those uses subject to a cutoff date, provided they were lawfully established when constructed.

The limitations on expanding non-conforming uses, and the requirement that “discontinued” uses after a certain period of time not be resurrected, should also be customized to community. A basic land use inventory and some spot measurements from representative neighborhoods or developments can be helpful in educating the community about non-conforming uses and in establishing numerical standards and thresholds for this chapter.

#### **I.4.010 Purpose and Applicability**

Chapter I.4 provides standards and procedures for the continuation of uses and developments that are lawfully established but do not comply with current Code standards (“non-conforming situations”). The Code is intended to protect public health, safety, and general welfare, while allowing reasonable use of private property. The chapter contains three sections as follows:

- A. Non-conforming uses** (e.g., industrial use in residential zone) are subject to Section I.4.020;
- B. Non-conforming developments** (e.g., structure does not meet setback or height standards) are subject to Section I.4.030; and
- C. Non-conforming lots** (e.g., lot is smaller than minimum area standard) are subject to Section I.4.040.

#### **I.4.020 Non-conforming Use**

Where a use of land exists that would not be permitted under the current Code, but was lawful at the time it was established, the use may continue, provided it conforms to the following requirements:

- A. Expansion of Non-conforming Use Limited.** Expansion of a non-conforming use shall not exceed [20-50] percent of the subject site or building, and not more than [500-5,000] square feet of building area (footprint or floor area), cumulatively, whichever is less, that existed as of [cutoff date]. [Expansion of a non-conforming use requires approval of a Conditional Use Permit under Chapter 4.3.]

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## 1.4 – Non-Conforming Situations | Non-conforming Uses

- B. Location of Non-conforming Use.** A non-conforming use shall not be moved in whole or in part from one lot to another lot, except as to bring the use into conformance with this Code.
- C. Discontinuation or Abandonment of Non-conforming Use.** *[Except as provided by Section 1.4.020.E]* A non-conforming use that is discontinued for any reason other than fire or other catastrophe beyond the owner's control for a period of more than *[number text (12-18)]* months shall be deemed abandoned and shall no longer be an allowed use. For purposes of calculating the *[number text (12-18)]* month period, a use is discontinued upon the first occurrence of any one of the following:
1. The date when the use of land is physically vacated;
  2. The date the use ceases to be actively involved in the sale of merchandise or the provision of services; for example, as evidenced by the removal of signs, goods/stock, or office equipment, or the disconnection of telephone or utility service;
  3. The date of termination of any lease or contract under which the non-conforming use has occupied the land;
  4. The date a request for final reading of water and power meters is made to the applicable utility districts;
  5. The date when the owner's utility bill or property tax bill account became delinquent; or
  6. The date of an event similar to those listed in subsections 1-5, above, as determined by the Planning Commission.
- D. Application of Code Criteria and Standards to Non-conforming Use.** Once the City deems a use abandoned pursuant to subsection 1.4.020.C, any subsequent use of the subject lot shall conform to the current standards and criteria of this Code. After the City has deemed a non-conforming use abandoned, the use shall not be allowed to resume, in whole or in part, under the same or different ownership/management; any such activity is a violation of this Code and subject to enforcement proceedings under Chapter 1.6.
- E. Extension of Non-Conforming Status for Discontinued Use.** Notwithstanding the provisions of subsection 1.4.020.C, a non-conforming use that is discontinued shall not be considered abandoned where, through a Type III procedure, the Planning Commission approves an extension for repair, including as applicable ongoing, active renovation and efforts to lease the subject property. The owner must request the extension within the six-month period of discontinuance.

### I.4.030 Non-conforming Development

**User's Guide:** Section I.4.030 provides flexibility where existing developments do not conform to current code standards. For example, historic areas often have small lot sizes, mixed land uses, less parking, and smaller setbacks than areas developed under current standards. Where existing development predates modern zoning, cities should allow greater flexibility for new construction and alterations to existing development.

Section I.4.030 regulates non-conforming development. Non-conforming development includes situations where a development exists on the effective date of adoption or amendment of this Code that could not be built under the terms of the Code today; for example, by reason of restrictions on lot area, lot coverage, location on a lot, setbacks, height, yard, equipment, access, parking, landscaping, or other physical restriction or requirement. If the development was lawful when constructed, it may remain on the site so long as it remains otherwise lawful and complies with the following regulations:

- A. Alterations.** Any expansion a non-conforming development shall not exceed *[number text (20-50)]* percent of the subject building area or development area, as applicable; for example, such area may include floor area or other surface area, paving, parking spaces, landscaping, outdoor storage, signage, lighting, or other developed areas that existed as of *[effective date of new code]*. *[Expansion of a non-conforming use requires approval of a Conditional Use Permit under Chapter 4.3.]* A non-conforming development shall not be enlarged or altered in a way that increases its non-conformity *[by more than (20-50) percent; approval of a variance is required to increase a development's non-conformity, and not more than one such variance shall be approved to expand the same development]*. A development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or moves in the direction conformity;
- B. Destruction.** Should a non-conforming development or non-conforming portion of development be destroyed by any means to an extent more than *[number text (20-50)]* percent of its current value as assessed by the *[name]* County Assessor, it shall be reconstructed only in full conformity with this Code. This does not preclude the reestablishment of a non-conforming use after fire or other catastrophe as allowed under Section I.4.020;
- C. Roadway Access.** The owner of a non-conforming driveway approach or access to a public street or highway, upon receiving land use or development approval, may be required as a condition of approval to bring the non-conforming access into conformance with the standards of the applicable roadway authority.
- D. Relocation or Removal.** Once a non-conforming structure or a portion of a non-conforming structure or development is moved it shall thereafter conform to current Code standards.

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## I.4 – Non-Conforming Situations | Non-conforming Uses

### I.4.040 Non-conforming Lot

**User's Guide:** Cities should review their minimum lot size requirements and determine whether amendments are needed. Where lots predate modern zoning and lot sizes are unusually small, it may be necessary to amend the development standards of Section 2.2.040.

A legal lot or lot of record, as provided by Chapter 1.3, with an area or dimensions that do not meet the standards of the zoning district in which the property is located, may be occupied by a use permitted in the zone subject to other requirements of the zone; provided that if there is a lot area deficiency, residential use shall be limited to a single-family dwelling.

### Chapter I.5 — Code Interpretations

#### Sections:

#### I.5.010 Code Interpretations

**User's Guide:** This chapter provides cities with a procedure for responding to requests for written code interpretations. Cities should keep written records of the code interpretations they make. Even informal interpretations made by staff in the course of answering questions from builders or business owners, should be noted, so that the city, through periodic code maintenance or housekeeping updates, can continually improve the code. Some cities do this annually, while others wait until they have accumulated a large number of needed changes. It is usually easier and takes less time overall to process the changes in smaller packages of code amendments every few years; however, the trade-off is that for every package of amendments, the city is required to provide public notice and conduct hearings. The important thing to remember is that the development code should be reviewed regularly and updated as conditions change and as the code is tested in ways that could not have been anticipated when first drafted.

#### **I.5.010 Code Interpretations**

Some terms or phrases within this Code may have two or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the Code text.

**A. Authorization of Similar Uses.** Where a proposed use is not specifically identified by this Code, or the Code is unclear as to whether the use is allowed in a particular zone, the *[Planning Official / Planning Commission]* may find the use is similar to another use that is permitted, allowed conditionally, or prohibited in the subject zone and apply the Code accordingly. However, uses and activities that this Code specifically prohibits in the subject zone, and uses and activities that the *[Planning Official / Planning Commission]* finds are similar to those that are prohibited, are not allowed. Similar use rulings that require discretion on the part of City officials shall be processed following the *[Type II / Type III]* procedure of Chapter 4.1.*[030 / 040]*. *[The Planning Official may refer a request for a similar use determination to the Planning Commission for its review and decision.]*

**B. Code Interpretation Procedure.** Requests for a code interpretations, including but not limited to similar use determinations, shall be made in writing to the *[Planning Official]* and shall be processed as follows:

1. The *[Planning Official]*, within *[(text) 7-14]* days of the inquiry, shall advise the person making the inquiry in writing as to whether the City will make a formal interpretation.
2. Where an interpretation does not involve the exercise of discretion, the *[Planning Official]* shall advise the person making the inquiry of his or her decision within a reasonable timeframe and without public notice.
3. Where an interpretation requires discretion, the *[Planning Official]* shall inform the person making the

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## I.5 – Code Interpretations

request that an application for code interpretation is required and advise the applicant on how to make the request. At a minimum, an application for code interpretation shall include a letter citing the nature and reasons for the request, and, as required, a City fee. The *[Planning Official]* then shall review relevant background information, including but not limited to other relevant Code sections and previous City land use decisions, and follow the *[Type II / Type III]* review and *[public hearing]* decision making procedures in Section 4.1.*[030 / 040]*.

- D. Written Interpretation.** Following the *[close of the public comment period on an application for a code interpretation, / Planning Commission's decision on a code interpretation application,]* the *[Planning Official]* shall mail or deliver the City's decision in writing to the person requesting it, to any other person who specifically requested a copy of the decision, and to those who provided public testimony on the application. The decision shall become effective when the appeal period for the decision expires.
- E. Referral to City Council.** Where a code interpretation may have significant citywide policy implications, the *[Planning Official]* may bypass the procedure in subsection 1.5.010.B and refer the request directly to the City Council for its legislative review in a public hearing; such public hearings shall be conducted following Type IV procedure of Chapter 4.1.050.
- F. Interpretations On File.** The City shall keep on file a record of its code interpretations.

## Chapter I.6 — Enforcement

### Sections:

- I.6.010 Violation
- I.6.020 Other Remedies

**User's Guide:** This chapter should not be inserted directly into city development codes. It is a placeholder. Cities should first review any enforcement procedures already existing in other city ordinances, and then either incorporate those provisions into the Development Code by reference, or work with the city attorney to draft provisions specific to the Development Code.

### I.6.010 Violations

Except as provided under Subsection I.6.020, any person violating or causing the violation of any of the provisions of this Code who fails to abate said violation has committed *[an infraction / a misdemeanor]*, which, upon conviction thereof, is punishable as prescribed in *[Section (#) of the (name) Municipal Code / Oregon Revised Statute (ORS) Chapter 161]*. Such person is guilty of a separate violation for each and every day during any portion of which a violation of this Code is committed or continued. A finding of a violation of this Code shall not relieve the responsible party of the duty to abate the violation.

**A. Classification of Violation.** Violations shall be identified by the *[Planning Official]* under one of the following classifications:

1. Type I - Violations which represent a serious threat to public health, safety, and welfare, or those unapproved actions deemed potentially to create serious adverse environmental or land use consequences as the result of continued development activity; or
2. Type II - Violations which do not pose a serious threat to public health, safety, and welfare, but do violate provisions of this code, including any conditions of approval.

### B. Notice of Violation

1. Type I - After receiving a report of an alleged Type I violation, the *[Planning Official]* determines whether the violation requires that a citation be issued immediately or whether to provide notice of the violation prior to the issuance of a citation. Notice shall be in writing and shall be provided to the owner of record for tax purposes or to the person in charge of the property. Such a notice shall indicate the following:
  - a. Location and nature of the violation; and
  - b. Provision or provisions of this Code or conditions of approval which allegedly have been violated; and
  - c. Whether immediate enforcement will be sought or if a specified time period will be allowed to correct or remove the violation.
2. Type II - After receiving a report of an alleged Type II violation from the *[Planning Official]*, the City Attorney shall, if he/she determines that *[probable cause]* exists, promptly give notice of the alleged violation by certified first-class mail, return receipt requested, or by personal service to the owner of

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## I.6 – Enforcement

record for tax purposes and to the person in charge of the property. Such a notice shall indicate the following:

- a. Location and nature of the violation;
- b. Provision or provisions of this Code or conditions of approval, which allegedly have been violated;
- c. Whether immediate enforcement shall be sought or if fifteen (15) days will be allowed to correct or remove the violation; and
- d. The date when the notice was personally served or, if the notice was sent by first-class mail, the date three (3) days after mailing if the address to which it was mailed is within this state and seven days after mailing if the address to which it was mailed is outside this State. However, a defect in the notice of violation with respect to this notice delivery provision shall not prevent enforcement of this code.

**C. City Attorney to Pursue Enforcement.** When the compliance deadline expires, the City Attorney shall proceed with any action deemed appropriate, unless:

1. The City Attorney finds that the violation has been corrected, removed, or will not be committed; or
2. A court of competent jurisdiction has halted enforcement pending the outcome of a proceeding concerning the violation.

**D. Penalties.** Code violations may be subject to criminal, civil, or other sanctions authorized under ordinance of the City.

1. **Criminal Penalties** - Unless specified otherwise, every violation of the terms of this Code is a Class A infraction, punishable by a fine of up to [\$]. Each day such violation continues, it shall be considered a separate offense.
2. **Civil Penalties and Remedies** - In addition to, or in lieu of, criminal actions, a violation of this code or a permit issued hereunder may be the subject of a civil action in the nature of a debt or of any appropriate remedy issuing from a court of competent jurisdiction, including mandatory and prohibitory injunctions and orders of abatement.

**User's Guide:** Limits on fines are established in ORS 161.

### I.6.020 Other Remedies

The City, in addition to finding a Code violation is *[an infraction / a misdemeanor]*, it may use any of the other remedies available to it, including but not limited to the following:

**A. Stop Work Order.** The City may issue a stop work order.

**B. Public Nuisance.** The City may find a violation of this Code is a public nuisance and take enforcement action pursuant to City of *[name]* Ordinance No. *[#]*.

**C. Mediation.** The City and property owner may agree to engage in mediation.