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DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

December 12, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Second Reading of Ordinance No. 07-2019: Amendments to County Code Chapter 9.02, Application and Enforcement of the Clackamas County Building Code, and Chapter 9.03, Excavation and Grading, and Declaring an Emergency**

<b>Purpose/Outcomes</b>	Amending County Code Chapters 9.02, <i>Application and Enforcement of the Clackamas County Building Code</i> , and Chapter 9.03, <i>Excavation and Grading</i> to maintain current business practices, services and consistency. Declaring an emergency so the amendments take immediate effect upon adoption.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	These changes are for the Building Codes Division, which is a dedicated fund, with all costs covered by fees for service.
<b>Duration</b>	Indefinitely
<b>Previous Action</b>	9/24/2019: Informational policy session with the Board to discuss the need for County Code amendments 11/5/2019: Policy session where the Board directed staff to prepare proposed amendments for public hearing and discussion at two separate business meetings. 11/27/2019: BCC first reading and public hearing on proposed amendments
<b>Counsel Review</b>	Reviewed by County Counsel on November 18, 2019 and December 2, 2019
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build public trust through good government</li> <li>2. Build a strong infrastructure</li> <li>3. Ensure safe, healthy and secure communities</li> </ol>
<b>Contact Person</b>	Cheryl Bell, Assistant Director of Development, Transportation & Development, 503-742-4748

**BACKGROUND**

**The State Building Code**

As part of the Department of Transportation and Development's Land Use and Development line of business, Clackamas County administers a building codes program for unincorporated

Clackamas County and, with intergovernmental agreements, select cities. The county is mandated to maintain a building code program by ORS 455.020, with the program delegated to the County from the State Building Codes Division (State BCD) through OAR 918-020.

On August 30, 2019, the State BCD issued a notice of rulemaking that revises the administrative provisions of the residential code (Oregon Residential Specialty Code or ORSC), and in October 2019 State BCD adopted a new commercial code (Oregon Structural Specialty Code or OSSC) with the same changes included in the Code's scoping provisions.

As presented to the Board in policy sessions held on September 24, 2019 and November 5, 2019, local action is required to address the extensive changes made by the State BCD to the building code's administrative provisions, referred to as *Chapter 1- Scope and Administration* (Chapter 1).

To keep critical elements as part of the building codes program, maintain interdisciplinary coordination, and to keep business practices and permitting process as they have been since the adoption of a statewide building code in 1974, local jurisdictions must adopt *Scope and Administration* provisions (language taken from the original Chapter 1) in their local codes.

Additionally, while preparing these proposed amendments to the County Code, staff took the opportunity to make needed minor changes to Chapters 9.02 and 9.03.

### **Proposed Amendments to County Code Chapters 9.02 and 9.03**

#### ***Reestablishing Technical Items and Code Enforcement Authority***

The revised state code Chapter 1 language changes the scope of the building code's authority regarding technical items and code enforcement action that is a departure from practices in place since state building codes were established in 1974.

The revisions are driven by the State's desire to have the building code focus specifically and only on buildings under construction, or elements under construction that directly impact buildings. In doing this, the code removes regulation of items like new communications towers, retaining walls, private access bridges, and exterior tanks holding fuel, industrial chemicals, etc.

The building code's change in focus also led to the removal of the right-of-entry provisions and removal of the clear authority to require that building code violations be abated. This weakens our ability to use building codes to obtain compliance of building code violations.

The proposed amendments to County Code Chapter 9.02 (provided as attachment A) reestablish the technical elements to be consistent with model code, previous practice, and other metro area and state jurisdictions, providing important consistency for our customers (Section 9.02.020). The proposed amendments also add back model code language to allow for right-of-entry and authority for building code enforcement related to code violations (Sections 9.02.020, 9.02.100, 9.02.110, and 9.02.330).

#### ***Reestablishing the Tie between Permits, Occupancy Certificates and Other Ordinances***

In model code and previous versions of the state building codes, the sections governing the issuance of permits and certificates of occupancy included language noting that issuance can be conditional based upon consideration of "other ordinances of the municipality."

The State's revisions to Chapter 1 remove all references to these other requirements, making issuance of permits and occupancy certificates *contingent only upon the requirements of the building code*. This would decouple the current, long-standing process where approval of issuance is tied to a variety of reviews, including:

- Zoning and development code,
- Roadway standards governing site development and site access,
- Adequate connection to septic or sanitary systems,
- Health Department permitting and inspections; and
- Payment of SDC fees.

The proposed Chapter 9.02 amendments maintain the tie between issuance of permits and certificates of occupancy and compliance with other ordinances (Sections 9.02.240 and 9.02.260). Not re-establishing this pairing could force staff to issue permits in violation of other important land use, zoning, access, roadway and health safety provisions. This could result in having to put properties that do not meet these other ordinances immediately into code enforcement action, rather than working with customers so they can come into compliance during permitting and plan review.

This forced path to code enforcement would increase costs, increase staff time and provide poor consultation and service to our customers. In addition, it could place properties in an expensive or dangerous position of having permits or certificates of occupancy issued when important land use, zoning, and other safety provisions are not included or provided in the project scope.

### ***Minor Changes***

Staff took the opportunity to review Chapters 9.02 and 9.03 and after this review have included the following minor amendments.

- **Use current code language.** Where the County Code uses language directly from the building codes, these sections were updated to use current code language.
- **Gender-neutral language.** Chapters 9.02 and 9.03 were revised to use gender-neutral language.
- **Definition of processing.** A definition of processing will help when parsing out the business practices allowed in agricultural buildings. Preparation and processing are different uses, and have different associated risk (e.g., packaging hemp verses cold-extracting hemp).
- **Grading ordinance.** When Chapter 9.03 was written, the text of an optional building code appendix was put directly into County Code. The proposed changes to Chapter 9.03 directly adopt Building Code Appendix J, with amendments as presented in Attachment B, in lieu of reproducing the text of the appendix in the body of the County Code. This allows for Chapter 9.03 to use current code language each time a new code is adopted, without revising the County Code itself.

### ***Updates Following the First Reading***

After the first reading of the proposed amendments (held on November 27, 2019) County Counsel noted that the definition of agricultural processing provided in Section 9.02.030 (A)

needed minor revisions to correspond with existing land use and zoning definitions related to agricultural processing. The new definition, with additions and changes noted, is provided below.

AGRICULTURAL PROCESSING is the ~~processing~~, compounding, or conversion of an agricultural good into a product. The alteration of the physical makeup of the agricultural good is the primary characteristic of agricultural processing. Agricultural processing does not include preparation, cleaning, treatment, sorting, ~~and packaging packing-and-storage~~ of agricultural goods.

In addition, the amended ordinances need to be in effect by January 1, 2020. As such, an emergency exists such that the amended ordinances need to take effect immediately upon the date of their adoption. This is so because absent the amended ordinances taking immediate effect, the adverse consequences described above could be realized, and complex systems will need to be developed to ensure that other technical items are reviewed, code enforcement actions can proceed, and ordinances are enforced.

### **Outreach**

The process for drafting and adopting these amendments was fast tracked due to the timing provided by the State. The notice of rulemaking for the residential code was published by the State BCD on August 30, 2019, with the comment period closing on September 20, 2019. The new commercial code, with the same changes to its Chapter 1, went into effect October 1, 2019. A “grace period” for enacting these changes was established, with this transition period ending on January 1, 2020.

Due to the decreased length of notice from the State BCD the County had limited time to make changes, which lead to a narrow window for public outreach. Public notice of the proposed amendments was made using our website, social media, and through a notice to our Community Planning Organizations (CPO). The first and second readings of the ordinance also serves as an opportunity for the public to comment on the proposed changes. At the time of the submission of this staff report, no public input was received regarding the proposed amendments.

### **RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners read fully and distinctly the change in the definition of Agricultural Processing under County Code Section 9.02.030 (A). Staff further requests that the Board of County Commissioners subsequently read the proposed ordinance by title only and proceed to adoption of the proposed amendments. Last, staff respectfully requests that the Board declare an emergency exists such that the amendments take effect immediately upon adoption of the proposed ordinance.

### **ATTACHMENTS:**

- A. ORDINANCE No. 07-2019, Amendments to County Code Chapter 9.02, *Application and Enforcement of the Clackamas County Building Code*, and Chapter 9.03, *Excavation and Grading*, to Maintain Current Business Practices, Services and Consistency

B. ORDINANCE No. 07-2019, Amendments to County Code Chapter 9.02, *Application and Enforcement of the Clackamas County Building Code*, and Chapter 9.03, *Excavation and Grading*, to Maintain Current Business Practices, Services and Consistency – December 2, 2019 version with tracked changes

Respectfully submitted,

Dan Johnson, Director  
Department of Transportation & Development

## ORDINANCE NO. 07-2019

### **An Ordinance Amending Clackamas County Code Chapters 9.02, *Application and Enforcement of the Clackamas County Building Code*, and Chapter 9.03, *Excavation and Grading*, and Declaring an Emergency**

WHEREAS, as part of the Department of Transportation and Development's Land Use and Development line of business, Clackamas County administers a building codes program for unincorporated Clackamas County and, with intergovernmental agreements, select cities. The County is mandated to maintain a building code program by ORS 455.020, with the program delegated to the County from the State Building Codes Division (State BCD) through OAR 918-020; and

WHEREAS, on or about August 30, 2019, the State BCD issued a notice of rulemaking that revises the administrative provisions of the residential code, and in October 2019 State BCD adopted a new commercial code with the same changes included in the Code's scoping provisions; and

WHEREAS, local action is required to address the extensive changes made by the State BCD to the building code's administrative provisions; and

WHEREAS, to keep critical elements as part of the building codes program, maintain interdisciplinary coordination, and to keep business practices and permitting process as they have been since the adoption of a statewide building code in 1974, local jurisdictions must adopt Scope and Administration provisions (language taken from the original Chapter 1) in their local codes; and

WHEREAS, the adoption of the State BCD standards must be in place by January 1, 2020,

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Chapters 9.02 and 9.03, of the Clackamas County Code are hereby amended as shown on Exhibit "A," attached hereto and incorporated herein by this reference.

**Section 2:** Emergency Clause. The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of the amended ordinances, as shown in Exhibit "A," are necessary to ensure compliance with State BCD standards and must be effective by January 1, 2020,

to avoid potential adverse consequences to both the County staff and customers. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this 12<sup>th</sup> day of December, 2019.

BOARD OF COUNTY COMMISSIONERS

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Chair

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Recording Secretary

## Chapter 9.02

# 9.02 APPLICATION AND ENFORCEMENT OF THE CLACKAMAS COUNTY BUILDING CODE

### 9.02.010 Purpose

The purpose of this chapter is to establish uniform performance standards for building-related codes and rules to reasonably safeguard the public health, safety, and general welfare of occupants and users of buildings within this jurisdiction, and provide for the use of modern methods, devices, materials and techniques and for superior energy conservation. The provisions of this chapter are in addition to the requirements of the State Building Code, as defined in ORS 455.010, and in many cases are intended to amend specific sections of the State Building Code pursuant to the authority granted to Clackamas County through ORS 455.020.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### 9.02.020 Application

This chapter shall apply to the construction, reconstruction, alteration, relocation (i.e. moving), demolition, repair, maintenance and work associated with any building or structure except when such work is located in a public right of way.

Without limiting the generality of the foregoing, this chapter shall also apply to the following:

- A. Abatement of nuisances and dangerous buildings.
- B. Demolition
- C. Protection of adjoining property.
- D. Retaining walls.
- E. Fences.
- F. Tanks that are located exterior to and not attached to or supported by a regulated building.
- G. Telecommunications towers.
- H. Ground mounted flagpoles exceeding 25 feet.
- I. Signs not attached to or supported by a regulated building.
- J. Piers and wharves.
- K. Bridge structures outside of a public right of way.
- L. Structures associated with agricultural processing.

This chapter shall not apply to the following:

- A. Fire safety during construction.
- B. Structures within a public right of way.
- C. Floating structures.
- D. Docks.
- E. Equipment shelters not intended for human occupancy with a building area 250 square feet or less, designated as Risk Category I or II.
- F. Administration and implementation of a National Flood Insurance Program (NFIP).
- G. Transitional housing accommodations.



- H. Water tanks supported directly upon grade if the capacity does not exceed 5000 gallons and the ratio of height to diameter or width does not exceed 2 to 1.

If any conflict arises because different sections of this chapter specify different materials, methods of construction or other requirements, the most restrictive provision shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement will apply.

If any conflict arises between a provision of this Chapter and Oregon Revised Statutes or State Building Code, the statutory or State Building Code provision(s) shall govern.  
[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### **9.02.030 Definitions**

When used in this chapter, the following terms, phrases, words and their derivatives shall have the meanings ascribed to them below. When terms are used that are not defined below, they shall have the ordinary accepted meanings that are appropriate to their context. Words used in the singular include the plural and those used in the plural include the singular. Words used in the masculine gender include the feminine and those used in the feminine include the masculine.

- A. **AGRICULTURAL PROCESSING** is the compounding, or conversion of an agricultural good into a product. The alteration of the physical makeup of the agricultural good is the primary characteristic of agricultural processing. Agricultural processing does not include preparation, cleaning, treatment, sorting and packaging of agricultural goods.
- B. **AUTHORIZED REPRESENTATIVE** may include, among others, the Deputy Building Codes Administrator and his/her authorized inspection personnel, and the Fire Marshal.
- C. **BUILDING** is any structure used or intended for supporting or sheltering any use or occupancy.
- D. **BUILDING OFFICIAL** is the official designated by order of the Clackamas County Board of Commissioners, charged with administration and enforcement the State of Oregon Building Codes as outlined in ORS 455.148, and includes that official's authorized representatives.
- E. **PERSON** includes human beings and, where appropriate, public or private corporations, unincorporated associations, partnerships, firms, governments, governmental instrumentality, joint stock companies, trusts and estates, trustees, and any other legal entities whatsoever, and shall indicate both the singular and the plural.
- F. **STRUCTURE** is that which is built or constructed, including buildings.
- G. **STATE BUILDING CODE** is defined in ORS 455.010.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.040 Clackamas County Building Code**

The Clackamas County Building Code consists of the following Specialty Codes as adopted by the State of Oregon, and regulations:

- A. The Oregon Structural Specialty Code, as adopted by OAR Chapter 918, Division 460, except as modified in this Chapter, shall be enforced as part of this Chapter.
- B. The Oregon Mechanical Specialty Code, as adopted by OAR Chapter 918, Division 440, except as modified in this Chapter, shall be enforced as part of this

- Chapter.
- C. The Oregon Plumbing Specialty Code, as adopted by OAR Chapter 918, Division 750, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - D. The Oregon Electrical Specialty Code, as adopted by OAR Chapter 918, Division 251 except as modified in this Chapter, shall be enforced as part of this Chapter.
  - E. The Oregon Residential Specialty Code, as adopted by OAR Chapter 918, Division 480, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - F. The manufactured dwelling park and mobile home park rules adopted by OAR Chapter 918 Division 600, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - G. The manufactured structure rules adopted by OAR Chapter 918, Division 500, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - H. The Recreational Park and Organizational Camp Rules adopted by OAR Chapter 918, Division 650, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - I. Chapter 9.01 of the Clackamas County Code: Code for the Abatement of Dangerous Buildings and Structures.
  - J. Chapter 9.03 of the Clackamas County Code: Excavation and Grading.
  - K. The On-Site Sewage Disposal Rules as adopted by OAR Chapter 340, Division 71 and OAR Chapter 340, Division 73, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - L. The Oregon Energy Efficiency Specialty Code as adopted by OAR Chapter 918, Division 460, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - M. The Oregon Solar Installation Specialty Code as adopted by ORS 455.010 through 455.897, except as modified in this Chapter, shall be enforced as part of this Chapter.
  - N. 2018 International Building Code, International Code Council (ICC IBC-2018) Section 105.2.
  - O. ICC IBC-2018 Section 1807.3
  - P. American Society of Civil Engineers (ASCE) 7.16, Section 15.  
[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

#### **9.02.050 Clackamas County Operating Plan**

The provisions of the Clackamas County Operating Plan are hereby incorporated as if fully set forth herein. A copy of the operating Plan is on file with the Building Codes Division of the Department of Transportation and Development and may be reviewed upon request. Where the terms of the Clackamas County Operating Plan conflict with this Chapter, the provisions of this Chapter shall control.  
[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.060 Modifications**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.070 Tests**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.080 Powers And Duties Of The Building Official**

The building official is hereby authorized and directed to enforce all the provisions of this chapter.

The building official shall have the authority to render interpretations of this chapter and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall be in conformance with the intent and purpose of this chapter. The building official shall have the authority to vary the approval period for permits applied to resolve violations to less than the 180 days referred to in Section 9.02.270 of this Chapter.

The building official may request, and shall receive, the assistance and cooperation of other officials of this jurisdiction in the discharge of duties required by this chapter and other pertinent laws or ordinances.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.090 Deputies**

In accordance with prescribed procedures the building official may appoint a deputy building official, technical officers and inspectors and other employees to carry out the functions of code enforcement under this chapter. The building official may deputize such inspectors or employees as may be necessary to carry out the functions of code enforcement under this chapter as delegated by the building official.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.100 Right Of Entry**

When it is necessary to make an inspection to enforce the provisions of this chapter, or when the building official has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this chapter which makes the structure or premises unsafe, dangerous or hazardous, the building official or designee may enter or inspect the structure or premises at reasonable times to inspect or to perform the duties imposed by this chapter, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If the structure 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 structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.110 Stop Work Orders, Warning Notices & Violation Notices**

Whenever any work is being done contrary to the provisions of this chapter, or other pertinent laws or ordinances implemented for enforcement of this chapter, the building official may order the work stopped by notice in writing served on any person engaged in doing the work or causing the work to be done, or by posting of the building or work being done, and any such person shall forthwith stop such work until authorized by the building official to resume the work.

In the discretion of the building official, warning notices or violation notices may also be issued for violations of this chapter and any other pertinent laws or ordinances implemented for enforcement of this chapter.

Orders or notices shall give a brief description of the violation identified, and shall be issued through one of the following methods:

- A. Personal service upon the person responsible for the violation;
- B. Posting at the site of the violation; or
- C. Delivered by regular U.S. mail to the address listed on the permit application (if any) submitted in association with the work in question.

Orders or notices shall contain the name of the County Department(s) to contact regarding the violation, the name of the person issuing the order or notice, the date the order or notice was issued and a statement that failure to correct the alleged violation within the time set (no less than 30 days) may result in legal action with the courts or the Compliance Hearings Officer to abate the nuisance or both, and the imposition of administrative fees, penalties and enforcement fees.

If the building official believes an alleged violation presents an imminent threat to public health or safety, no warning notice need be given before pursuing remedies allowed for by this chapter.

[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.120 Authority To Disconnect Utilities In Emergencies**

In case of emergency, the building official shall have the authority to disconnect the energy, fuel or power supply, or plumbing utility service to a building, structure, premises or equipment regulated by this chapter when necessary to eliminate an immediate hazard to life or property. The building official shall, whenever possible, give advance notice to the serving utility, the owner and the occupant(s) of the building or premises that utilities will be disconnected, and shall notify the serving utility, owner and occupant of the building or premises in writing of utility disconnection immediately afterward.

[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.130 Connection After Order To Disconnect**

Persons shall not make connections from an energy, fuel, power supply or plumbing service, nor supply energy, fuel, power or plumbing to any equipment regulated by this chapter which has been disconnected or ordered to be disconnected by the building official, or the use of which has been ordered to be discontinued by the building official, until the building official authorizes the reconnection and use of such equipment. [Codified by Ord. 05-2000, 7/13/00]

#### **9.02.140 Occupancy Violations**

Whenever any structure or equipment therein regulated by this chapter become unsafe, insanitary, deficient, or is otherwise being used contrary to the provisions of this chapter, the building official may order such use discontinued and the building, structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Any person receiving notice shall discontinue the use within the time prescribed by the building official to make the building, or portion thereof, comply with the requirements of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.150 Adjudicating Entities For Specific Appeals**

- A. In the event an appeal of a staff interpretation of code is necessary during plan review, the appeal shall be processed as set forth in this subsection. If a permit applicant disagrees with a plans examiner's decision, the request is first sent to the Plans Examiner Supervisor or a Section Supervisor depending upon the nature of the problem and which specific code is being appealed. The Supervisor will make a decision regarding the matter. If the matter is not resolved at that level, the appeal is forwarded to the building official. After consultation with the

- appellant and the appropriate technical staff, the building official reviews the request and shall respond in writing within 10 business days.
- B. In the event an appeal of a staff interpretation of code is necessary during field inspections, the appeal shall be processed as set forth in this subsection. If a permit holder disagrees with a field inspector's correction, the request is first sent to the Structural/Mechanical Inspector Supervisor, the Plumbing Inspection Supervisor, Electrical Inspection Supervisor, or other Section Supervisor depending upon the nature of the problem and which specific code is being appealed. The Supervisor will make a decision regarding the matter. If the matter is not resolved at that level, the appeal is forwarded to the building official. After consultation with the appellant and the appropriate technical staff, the building official reviews the request and shall respond in writing within 10 business days.
- C. For those issues that are within the scope and application of the State Building Code, where the applicant is still aggrieved, the matter may be further appealed to the appropriate Division Chief at the State of Oregon and then further to the appropriate Advisory Board at the State of Oregon. Appeals to the State shall follow ORS 455.060, ORS 455.475, and the appropriate Oregon Administrative Rules.
- D. For those issues that are outside of the scope and application of the State Building Code, where the applicant is still aggrieved, the applicant may request a hearing as provided in County Code Section 2.07.040. The procedures associated with the applicant's requested hearing shall be subject to those provisions of County Code Section 2.07.
- E. Notwithstanding the provisions above, appeals related to a staff interpretation of the On-Site Sewage Disposal Rules as adopted by OAR Chapter 340, Division 71 and OAR Chapter 340, Division 73 shall follow the appeal process set forth in OAR Chapter 340, Division 71.

[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.160 Board Of Appeals**

Repealed.

[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.170 Form Of Appeal**

Repealed.

[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.180 Effect Of Failure To Appeal**

Repealed.

[Codified by Ord. 05-2000, 7/13/00]

#### **9.02.190 Scope Of Hearing On Appeal**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.200 Procedures For Conduct Of Appeals Hearings**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.210 Form Of Notice Of Hearing**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.220 Conduct Of Hearing**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.230 Method And Form Of Decision**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.240 Plans And Permits**

The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building official or appointed deputies. Such plans may be reviewed by other departments and divisions of Clackamas County to verify compliance with any applicable laws and ordinances. If the building official or deputy finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this chapter and other pertinent laws and ordinances, and that the fees have been paid, the building official shall issue a permit to the applicant.

When the building official issues a permit for which plans are required, the building official shall endorse in writing or stamp the plans and specifications. Such approved plans and specifications shall not be changed, modified or altered without authorization from the building official, and all work regulated by this chapter shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the complete plans and specifications for the whole building or structure have been submitted or approved, if adequate information and detailed statements have been filed to assure compliance with all pertinent requirements of this chapter. The holder of a partial permit who chooses to proceed assumes the risk that the permit for the entire building or structure may be denied. Clackamas County is not responsible for any costs associated with work performed under a partial permit if the full permit is denied.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.250 Retention Of Plans**

Repealed.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.260 Validity Of Permit**

The building official shall consider any violations of Clackamas County Ordinances or other applicable laws that are known to them in responding to all permit requests, applications, and occupancy or completion certificates. The building official may refuse to issue permits, occupancy or completion certificates under this chapter if the parcel of land, or the use of the land on which the building, structure, or equipment is to be placed, altered, equipped or used is in violation of any Clackamas County Ordinance or State Building Code.

No building or site permit shall be issued by the building official until all plans for on-site sewage disposal facilities have been approved by the appropriate authority. Further, no building containing plumbing shall be occupied until connected to an on-site sewage disposal facility approved by the appropriate authority and meeting the minimum standards of the Oregon State Board of Health and the Department of Environmental Quality.

The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, acquiescence to, any violation of any of the provisions of this chapter or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this chapter or other ordinances of the jurisdiction shall be null and void.

The issuance of a permit based on plans, specifications and/or other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building occupancy or operations associated with the permit, if executed in violation of this chapter or of any other ordinances of this jurisdiction.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.270 Expiration Of Applications, Plans And Permits**

- A. Automatic Expiration of Applications -- Applications for which no permit is issued within 180 days following the date of the application shall automatically expire, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official.
- B. Extensions on Unexpired Applications – The building official may extend the time for action by the applicant for a period not exceeding 90 days if:
  - 1. The applicant so requests in writing;
  - 2. The applicant shows that circumstances beyond applicant’s control have prevented action from being taken; and
  - 3. The application is consistent with the relevant provisions of this Chapter in effect on the date the request for a time extension is submitted.
- C. Pre-Conditions to Renewing Action on an Expired Application – In order to renew action on an application after expiration, the applicant shall resubmit plans if directed by the building official and shall pay a new plan review fee. The building official shall have authority to modify renewal fees where warranted.
- D. Automatic Expiration of Permits – Every permit issued by the building official under the provisions of this Chapter shall automatically expire and become null and void if the building or work authorized by the permit is:
  - 1. Not commenced within 180 days from the date of the permit; or
  - 2. Suspended or abandoned for a period of 180 days at any time after the work is commenced, or
  - 3. Not subject to inspection approval for a period of 180 days at any time

after the work is commenced.

- E. Extensions on Unexpired Permits – Any permittee holding an unexpired permit may apply for an extension of the time within which to commence work under that permit when the permittee is unable to commence work within the time originally required for good reason. The building official may extend the time for action by the permittee for a period not exceeding 180 days if:
1. The permittee requests an extension in writing; and
  2. The permittee shows that circumstances beyond permittee’s control have impeded progress under the permit.
  3. The unexpired permit remains consistent with the relevant provisions of this Chapter in effect on the date the request for a time extension is submitted.
- F. Timelines for Permits Issued to Resolve Violations – In those instances where a permit is issued to resolve a violation, the building official may specify the length of time an issued permit may remain valid and they may establish specific timelines for compliance.
- G. Pre-Conditions to Resuming Work on Expired Permit – Before resuming work under an expired permit, an existing permit must be renewed where appropriate or a new permit must be obtained if directed to do so by the building official, and an additional fee remitted. The fee will determined under the following guidelines:
1. If no changes have been made or will be made in the original plans and specifications for the work to be resumed; and the suspension or abandonment of work under the permit has not exceeded six months, then no fee will be required to renew the permit; or
  2. If there have been or will be changes to the original plans and specifications for the work to be resumed, or the suspension or abandonment of work under the permit has exceeded six months but has not exceeded one year, then the permittee shall pay one half the amount of the full permit fee, plus additional plan review fees assessed at the County’s currently hourly rate where applicable.
  3. If the suspension or abandonment of work under the permit has exceeded one year, then the permittee shall pay an amount equivalent to the full permit fee, plus additional plan review fees assessed at the County’s current hourly rate where applicable.
  4. The building official shall have authority to modify renewal fees where warranted.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.280 Work Without A Permit; Investigation Fees**

Whenever any work for which a permit is required by this chapter has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work.

An investigation fee, in addition to the permit fee, may be collected whether or not a permit is ever issued. The investigation fee shall be based on the actual cost of the investigation or the average cost of such investigations per ORS 455.058, but not less than the amount specified in Appendices A&B of the Clackamas County Code. The payment of the investigation fee shall not exempt any person from compliance with all other provisions of this chapter nor from any penalty prescribed by law.



[Codified by Ord. 05-2000, 7/13/00]

### **9.02.290 Transferability**

With the permission of the building official a permit issued and paid for by a person or firm may be transferred to another person or firm to perform any work thereunder.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.300 Suspension; Revocation**

The building official may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information supplied, or in violation of any ordinance or regulation of any of the provisions of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.310 Inspections**

It shall be the duty of the permit holder or their agent to request all necessary inspections in a timely manner and according to the policies of Clackamas County, provide access to the site, and provide all necessary equipment to make inspections as determined by the building official. The permit holder shall not proceed with construction until authorized by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permit holder to remove or replace any material required for proper inspection shall be the responsibility of the permit holder or their agent. Failure to request inspections shall result in expiration of the permit as per Section 9.02.270. The county has no obligation, responsibility, or liability to follow up on permits for which necessary inspections have not been requested or which are at risk of expiration under Section 9.02.270. The permittee shall bear all such responsibility and liability.

Any person to whom a permit is issued shall be liable for any loss, damage, or injury caused or arising from the permittee's negligence, as well as for any breach of the building codes or regulations, to the person suffering such loss, damage, or injury. The permittee shall indemnify, defend and hold harmless the County and its officers, employees and agents from any and all claims, demands, actions and suits (including all attorney fees and costs, through trial and on appeal) arising from the permittee's negligence, as well as for any breach of the building codes or regulations to the person suffering such loss, damage or injury.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.320 Fees**

Fees for permits, inspections, plan checks, site plan review, copy costs, and such other fees that the Clackamas County Board of Commissioners deem reasonable shall be as set from time to time by order of the Clackamas County Board of Commissioners.

The building official may authorize refunds of fees when the guidelines of the applicable refund policy so authorize.

The determination of value or valuation under any provisions of this chapter shall be made by the building official. The value to be used in computing building permit and plan review fees shall be the total value of all construction work associated with the permit, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Valuations shall be determined as specified in OAR 918-050-0100. The building official may modify the valuation of any building or structure where warranted.

Enforcement fees are in addition to and not in lieu of civil penalties that may be imposed by a Compliance Hearings Officer or court. Enforcement fees shall be used to defray the costs of enforcement of the provisions of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.330 Violations And Enforcement**

All persons shall comply with this chapter in the location, construction, maintenance, repair, alteration, or use of buildings, structures, installations or on-site sewage disposal systems or facilities within Clackamas County.

A violation of this Chapter exists whenever a building, structure, installation, on-site sewage disposal system or sewage disposal facility, or grading is, or is proposed to be, located, constructed, maintained, repaired, altered, or used contrary to the requirements of this Chapter. Each day that a violation exists is considered to be a separate offense.

A violation of this Chapter is a public nuisance, and continues to be a public nuisance until the offending building, structure, installation, system, facility or use is brought into compliance with this Chapter.

The County may, in addition to the other remedies provided by law, institute injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove violations of this Chapter. The County may also enforce this chapter through the provisions of the Clackamas County Compliance Hearing Officer Ordinance.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.340 Prioritization Of Violations For Enforcement**

The building official is charged with administration, implementation and enforcement of the State Building Code and this Chapter. The building official's duties include the duty to oversee plan reviews and building inspections required under the State Building Code and this chapter, and the duty to supervise continuing enforcement when violations are identified. Since the Building Code Division has limited financial resources, the building official must exercise their inherent discretion to ensure that sufficient funds are available to deal with the most important public policy matters that come before them.

The top priority for Division resources is the processing of plans and permits properly applied for under the Codes. Although the Division must also address Code violations, violations vary greatly in severity, with some violations having a negligible impact on the public interest and others having a potentially great impact on the public interest. For this reason, the Board of County Commissioners has determined that the building official may prioritize violations for enforcement action without unduly compromising public policy. The Board of County Commissioners believes that this prioritization of violations for enforcement will result in the most effective and efficient re-allocation of Building Division resources.

[Codified by Ord. 05-2000, 7/13/00]

## Chapter 9.03

### 9.03 EXCAVATION AND GRADING

#### 9.03.010 Purpose

The purpose of this chapter is to safeguard life, limb, property and the public welfare by regulating grading on private property.

[Codified by Ord. 05-2000, 7/13/00]

#### 9.03.020 Scope

This chapter sets forth rules and regulations to control excavation, grading and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspection of grading construction. All excavation, grading and earthwork construction, including fills and embankments, shall be performed in accordance with Appendix J of the Oregon Structural Specialty Code (OSSC), modified as follows:

- A. OSSC Section J104.1: Submittal requirements. In addition to the provisions of Section 105.3, the applicant shall state the estimated quantities of excavation and fill, and provide a quantity calculation and/or methodology.
- B. OSSC Section J104.2: Site Plan Requirements. In addition to the provisions of Section 107, a grading plan shall show the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it complies with the requirements of this code. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this code. Cross section drawing(s) shall be provided and shall be of sufficient quality and detail to accurately represent the proposed work, and that it conforms to the requirements of this code.

[Codified by Ord. 05-2000, 7/13/00]

#### 9.03.030 Permits Required; Exceptions

No person shall do any excavation, grading or earthwork construction without first having obtained a permit from the Clackamas County Building Official or his/her designee. The following activities shall be exempt from this Chapter:

- C. Farm grading, as defined in ORS 30.936. All farm grading shall be done in accordance with ORS 455.315; and
- D. Grading performed as part of stream or habitat improvements, including turtle nests and log jams.

[Codified by Ord. 05-2000, 7/13/00]

#### 9.03.040 Fees

Fees are as set forth in Appendix A, "A500. Building".

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

**9.03.050 Bonds**

- E. The Clackamas County Building Official may require bonds in such form and amounts as may be deemed necessary to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.
- F. In lieu of surety bond the applicant may file a cash bond or instrument of credit with the Clackamas County Building Official in an amount equal to that which would be required in the surety bond.

[Codified by Ord. 05-2000, 7/13/00]

## ORDINANCE NO. 07-2019

### **An Ordinance Amending Clackamas County Code Chapters 9.02, *Application and Enforcement of the Clackamas County Building Code*, and Chapter 9.03, *Excavation and Grading*, and Declaring an Emergency**

WHEREAS, as part of the Department of Transportation and Development's Land Use and Development line of business, Clackamas County administers a building codes program for unincorporated Clackamas County and, with intergovernmental agreements, select cities. The County is mandated to maintain a building code program by ORS 455.020, with the program delegated to the County from the State Building Codes Division (State BCD) through OAR 918-020; and

WHEREAS, on or about August 30, 2019, the State BCD issued a notice of rulemaking that revises the administrative provisions of the residential code, and in October 2019 State BCD adopted a new commercial code with the same changes included in the Code's scoping provisions; and

WHEREAS, local action is required to address the extensive changes made by the State BCD to the building code's administrative provisions; and

WHEREAS, to keep critical elements as part of the building codes program, maintain interdisciplinary coordination, and to keep business practices and permitting process as they have been since the adoption of a statewide building code in 1974, local jurisdictions must adopt Scope and Administration provisions (language taken from the original Chapter 1) in their local codes; and

WHEREAS, the adoption of the State BCD standards must be in place by January 1, 2020,

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Chapters 9.02 and 9.03, of the Clackamas County Code are hereby amended as shown on Exhibit "A," attached hereto and incorporated herein by this reference.

**Section 2:** Emergency Clause. The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of the amended ordinances, as shown in Exhibit "A," are necessary to ensure compliance with State BCD standards and must be effective by January 1, 2020,

to avoid potential adverse consequences to both the County staff and customers. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this 12<sup>th</sup> day of December, 2019.

BOARD OF COUNTY COMMISSIONERS

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Chair

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Recording Secretary

## Chapter 9.02

# 9.02 APPLICATION AND ENFORCEMENT OF THE CLACKAMAS COUNTY BUILDING CODE

### 9.02.010 Purpose

The purpose of this chapter is to establish uniform performance standards for building-related codes and rules to reasonably safeguard the public health, safety, and general welfare; ~~comfort and security of residents of this jurisdiction who are~~ occupants and users of buildings within this jurisdiction, and provide for the use of modern methods, devices, materials and techniques and for superior energy conservation. The provisions of this chapter are in addition to the requirements of the State Building Code, as defined in ORS 455.010, and in many cases are intended to amend specific sections of the State Building Code pursuant to the authority granted to Clackamas County through ORS 455.020. ~~Do we reference the changes made in Ch. 1?~~

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### 9.02.020 Application

This chapter shall apply to the construction, reconstruction, alteration, relocation (i.e. moving), demolition, repair, maintenance and work associated with any building or structure except when such work is located in a public right of ways.

Without limiting the generality of the foregoing, this chapter shall also apply to the following:

- A. Abatement of nuisances and dangerous buildings.
- B. Demolition
- C. Protection of adjoining property.
- D. Retaining walls.
- E. Fences.
- F. Tanks that are located exterior to and not attached to or supported by a regulated building.
- G. Telecommunications towers.
- H. Ground mounted flagpoles exceeding 25 feet.
- I. Signs not attached to or supported by a regulated building.
- J. Piers and wharves.
- K. Bridge structures outside of a public right of way.
- L. Structures associated with agricultural processing.

This chapter shall not apply to the following:

- A. Fire safety during construction.
- B. ~~Temporary use of ROW/Encroachments??~~ Structures within a public right of way.
- C. Floating structures.
- D. Docks.
- E. Equipment shelters not intended for human occupancy with a building area 250 square feet or less, designated as Risk Category I or II.
- F. Administration and implementation of a National Flood Insurance Program (NFIP).
- G. Transitional housing accommodations.

H. Water tanks supported directly upon grade if the capacity does not exceed 5000 gallons and the ratio of height to diameter or width does not exceed 2 to 1.

If any ~~apparent~~<sup>[BE1][RM2]</sup> conflict arises because different sections of this chapter specify different materials, methods of construction or other requirements, the most restrictive provision shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement will apply.

If any ~~apparent~~ conflict arises between a provision of this Chapter and Oregon Revised Statutes or State Building Code, the statutory or State Building Code provision(s) shall govern. ~~Do we make mention of Chapter 1?~~

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### 9.02.030 Definitions

When used in this chapter, the following terms, phrases, words and their derivatives shall have the meanings ascribed to them below. When terms are used that are not defined below, they shall have the ordinary accepted meanings that are appropriate to their context. Words used in the singular include the plural and those used in the plural include the singular. Words used in the masculine gender include the feminine and those used in the feminine include the masculine.

~~A. PERSON includes human beings and, where appropriate, public or private corporations, unincorporated associations, partnerships, firms, governments, governmental instrumentality, joint stock companies, trusts and estates, trustees, and any other legal entities whatsoever, and shall indicate both the singular and the plural [BC][BM].~~

~~BUILDING OFFICIAL is the official designated by order of the Clackamas County Board of Commissioners, charged with as the Clackamas County Building Official, administration and enforcement the State of Oregon Building Codes as outlined in ORS 455.148, and includes that official's authorized representatives.~~

~~A. AGRICULTURAL PROCESSING is the processing, compounding, or conversion of an agricultural good into a product. The alteration of the physical makeup of the agricultural good is the primary characteristic of agricultural processing. Agricultural processing does not include preparation, cleaning, treatment, sorting and packaging, packing and storage o of agricultural goods.~~

~~B. AUTHORIZED REPRESENTATIVE may include, among others, the Community Environment Manager Deputy Building Codes Administrator and his/her authorized inspection personnel, and the Fire Marshall.~~

~~A BUILDING is any building or structure constructed for any purpose whatsoever structure used or intended for supporting or sheltering any use or occupancy.~~

~~BUILDING OFFICIAL is the official designated by order of the Clackamas County Board of Commissioners, charged with administration and enforcement the State of Oregon Building Codes as outlined in ORS 455.148, and includes that official's authorized representatives.~~

~~PERSON includes human beings and, where appropriate, public or private corporations, unincorporated associations, partnerships, firms, governments, governmental instrumentality, joint stock companies, trusts and estates, trustees,~~



and any other legal entities whatsoever, and shall indicate both the singular and the plural.

~~PROCESSING~~ [RM5] [BE6]

F. ~~A STRUCTURE~~ is that which is built or ~~erected~~ constructed, including buildings.

G. STATE BUILDING CODE is defined in ORS 455.010.

~~A. PROCESSING~~ [RM7]

~~BOARD OF APPEALS is the entity appointed by the Clackamas County Board of Commissioners to hear and decide appeals of orders, decisions and determinations made by the building official relative to the application and interpretation of this Chapter, except that the Board of Appeals will not have jurisdiction over appeals arising from the Electrical Specialty Code, the Manufactured Dwelling or Mobile Home Parks Administrative Rules, or the On-Site Sewage Disposal Administrative Rules, which must be appealed to the entities identified in Section 9.02.150 of this Chapter.~~

[Codified by Ord. 05-2000, 7/13/00]

## 9.02.040 Clackamas County Building Code

The Clackamas County Building Code consists of the following Specialty Codes as adopted by the State of Oregon, and regulations:

- A. The Oregon Structural Specialty Code, as adopted by OAR Chapter 918, Division 460, except as modified in this Chapter, shall be enforced as part of this Chapter.
- B. The Oregon Mechanical Specialty Code, as adopted by OAR Chapter 918, Division 440, except as modified in this Chapter, shall be enforced as part of this Chapter.
- C. The Oregon Plumbing Specialty Code, as adopted by OAR Chapter 918, Division 750, except as modified in this Chapter, shall be enforced as part of this Chapter.
- D. The Oregon Electrical Specialty Code, as adopted by OAR Chapter 918, Division 251 except as modified in this Chapter, shall be enforced as part of this Chapter.
- E. The Oregon Residential Specialty Code, as adopted by OAR Chapter 918, Division 480, except as modified in this Chapter, shall be enforced as part of this Chapter.
- F. The manufactured dwelling park and mobile home park rules adopted by OAR Chapter 918 Division 600, except as modified in this Chapter, shall be enforced as part of this Chapter.
- G. The manufactured structure rules adopted by OAR Chapter 918, Divisions 500 and ~~530~~ [BC8] [BN9], except as modified in this Chapter, shall be enforced as part of this Chapter.
- H. Chapter 9.01 of the Clackamas County Code: Code for the Abatement of Dangerous Buildings and Structures.

~~H.I.~~

~~H.J.~~ Chapter 9.03 of the Clackamas County Code: Excavation and Grading.

~~H.K.~~ The On-Site Sewage Disposal Rules as adopted by OAR Chapter 340, Division 71 and OAR Chapter 340, Division 73, except as modified in this Chapter, shall

- be enforced as part of this Chapter.
- ~~K.L.~~ The Oregon Energy Efficiency Specialty Code as adopted by OAR Chapter 918, Division 460, except as modified in this Chapter, shall be enforced as part of this Chapter.
- M. The Oregon Solar Installation Specialty Code as adopted by ORS 455.010 through 455.897, except as modified in this Chapter, shall be enforced as part of this Chapter.
- N. 2018 International Building Code, International Code Council (ICC IBC-2018) Section 105.2.
- O. ICC IBC-2018 Section 1807.3  
American Society of Civil Engineers (ASCE) 7.16, Section 15.
- ~~L.P.~~  
[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### **9.02.050 ~~Alternate Materials And Methods~~ Clackamas County Operating Plan**

The provisions of the Clackamas County Operating Plan are hereby incorporated as if fully set forth herein. A copy of the operating Plan is on file with the Building Codes Division of the Department of Transportation and Development and may be reviewed upon request. Where the terms of the Clackamas County Operating Plan conflict with this Chapter, the provisions of this Chapter shall control, this chapter are not intended to prevent the use of any material, alternate design or method of construction not specified in this chapter, provided the alternate has been approved and its use authorized by the building official.

~~The building official may approve any alternative, provided the building official finds that the proposed design is satisfactory and complies with the provisions of this chapter, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that required under this chapter in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.~~

~~The building official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding the use of alternates. The details of any action granting approval of an alternate shall be recorded and entered in the files. An applicant may appeal the decision of the building official regarding the use of alternates to the Board of Appeals. An appeal of the building official's decision shall be accompanied by the appropriate filing fee.~~

~~ORS 455.060 provides for state rulings on acceptable materials, designs and methods of construction. When a state ruling has been issued, ORS 455.060 (4) applies.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.060 Modifications**

#### Repealed.

~~When there are practical difficulties involved in carrying out the provisions of this chapter, the building official may grant modifications for individual cases. In order to grant such a modification, the building official must first find that a unique factor distinguishes the situation before him in a manner that makes it impractical to strictly apply this chapter, and that the modification is in conformance with the intent and purpose of this chapter. Such modifications shall not lessen any fire protection requirements or any degree of structural integrity. The details of any action granting modification shall be recorded and entered in the files.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.070 Tests**

Repealed.

~~Whenever there is insufficient evidence of compliance with any of the provisions of this chapter or evidence that any material or construction does not conform to the requirements of this chapter, the building official may require tests as proof of compliance to be made at no expense to Clackamas County.~~

~~Test methods shall be as specified by this chapter or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.~~

~~All tests shall be made by an approved accredited testing agency. Reports of such tests shall be retained by the building official for the period required for the retention of public records.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.080 Powers And Duties Of The Building Official**

The building official is hereby authorized and directed to enforce all the provisions of this chapter.

The building official shall have the ~~power authority~~ to render interpretations of this chapter and to adopt ~~policies and procedures and enforce administrative procedures~~ in order to clarify the application of its provisions. Such interpretations, ~~rules policies,~~ and ~~regulations procedures~~ shall be in conformance with the intent and purpose of this chapter. The building official shall have the ~~authority power~~ [BE10] to vary the approval period for permits applied to resolve violations to less than the 180 days referred to in Section 9.02.270 of this Chapter.

The building official may request, and shall receive, the assistance and cooperation of other officials of this jurisdiction in the discharge of duties required by this chapter and other pertinent laws or ordinances.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.090 Deputies**

In accordance with prescribed procedures the ~~bb~~building ~~o~~official may appoint ~~a~~ deputy building official, technical officers and inspectors and other employees to carry out the functions of code enforcement under this chapter. The ~~bb~~building ~~o~~official may deputize such inspectors or employees as may be necessary to carry out the functions of code enforcement under this chapter as delegated by the building official.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.100 Right Of Entry**

When it is necessary to make an inspection to enforce the provisions of this chapter, or when the building official has reasonable cause to believe that there exists in a ~~building, structure,~~ or upon a premises a condition which is contrary to or in violation of this chapter which makes the ~~building, structure,~~ or premises unsafe, dangerous or hazardous, the building official or designee may enter or inspect the ~~building, structure,~~ or premises at reasonable times to inspect or to perform the duties imposed by this chapter, provided that if such ~~building, structure,~~ or premises be occupied that credentials be presented to the occupant and entry requested. If the ~~building, structure,~~ 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, structure,~~ or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.110 Stop Work Orders, Warning Notices & Violation Notices**

Whenever any work is being done contrary to the provisions of this chapter, or other pertinent laws or ordinances implemented for enforcement of this chapter, the ~~building official~~ building official may order the work stopped by notice in writing served on any person engaged in doing the work or causing the work to be done, or by posting of the building or work being done, and any such person shall forthwith stop such work until authorized by the ~~building official~~ building official to resume the work.

In the discretion of the ~~building official~~ building official, warning notices or violation notices may also be issued for violations of this chapter and any other pertinent laws or ordinances implemented for enforcement of this chapter.

Orders or notices shall give a brief description of the violation identified, and shall be issued through one of the following methods:

- A. Personal service upon the person responsible for the violation;
- B. Posting at the site of the violation; or
- C. Delivered by regular U.S. mail to the address listed on the permit application (if any) submitted in association with the work in question.

Orders or notices shall contain the name of the County Department(s) to contact regarding the violation, the name of the person issuing the order or notice, the date the order or notice was issued and a statement that failure to correct the alleged violation within the time set (no less than 30 days) may result in legal action with the courts or the Compliance Hearings Officer to abate the nuisance or both, and the imposition of administrative fees, penalties and enforcement fees.

If the building official believes an alleged violation presents an imminent threat to public health or safety, no warning notice need be given before pursuing remedies allowed for by this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.120 Authority To Disconnect Utilities In Emergencies**

In case of emergency, the building official shall have the authority to disconnect the energy, fuel or power supply, or plumbing utility service to a building, structure, premises or equipment regulated by this chapter when necessary to eliminate an immediate hazard to life or property. The building official shall, whenever possible, give advance notice to the serving utility, the owner and the occupant(s) of the building or premises that utilities will be disconnected, and shall notify the serving utility, owner and occupant of the building or premises in writing of utility disconnection immediately afterward.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.130 Connection After Order To Disconnect**

Persons shall not make connections from an energy, fuel, power supply or plumbing service, nor supply energy, fuel, power or plumbing to any equipment regulated by this chapter which has been disconnected or ordered to be disconnected by the building official, or the use of which has been ordered to be discontinued by the ~~building official~~ building official, until the ~~building official~~ building official authorizes the reconnection and use of such equipment. [Codified by Ord. 05-2000, 7/13/00]

### **9.02.140 Occupancy Violations**

Whenever any ~~building~~ structure or equipment therein regulated by this chapter become unsafe, insanitary, deficient, or is otherwise being used contrary to the provisions of this chapter, the ~~building official~~ building official may order such use discontinued and the ~~building~~ structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Any person receiving notice shall discontinue the use within the time prescribed by the ~~building official~~ building official to make the building, or portion thereof, comply with the requirements of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.150 Adjudicating Entities For Specific Appeals

- ~~A. Appeals relating to the administrative portions of this chapter shall be made only to the building official. In the event~~
- ~~A. An appeal of a staff interpretation of code is necessary during plan review, the appeal shall be processed as set forth in this subsection. If a permit applicant disagrees with a plans examiner's decision, the request is first sent to the Plans Examiner Supervisor Structural/Mechanical Inspector Supervisor or a Section Supervisor depending upon the nature of the problem and which specific code is being appealed. The Supervisor will make a decision regarding the matter. If the matter is not resolved at that level, the appeal is forwarded to the building official. After consultation with the appellant and the appropriate technical staff, the building official reviews the request and shall respond in writing within 10 business days.~~
- ~~B. In the event an appeal of a staff interpretation of code is necessary during field inspections, the appeal shall be processed as set forth in this subsection. If a permit applicant disagrees with a plans examiner's field inspector's decision correction, the request is first sent to the Structural/Mechanical Inspector Supervisor, the Plumbing Inspection Supervisor, and Electrical Inspection Supervisor, or other Section Supervisor depending upon the nature of the problem and which specific code is being appealed. The Supervisor will make a decision regarding the matter. If the matter is not resolved at that level, the appeal is forwarded to the building official. After consultation with the appellant and the appropriate technical staff, the building official reviews the request and shall respond in writing within 10 business days.;~~
- ~~C. [BC11][BN12] For those issues that are within the scope and application of the State Building Code, where the applicant is still aggrieved, the matter may be further appealed to the appropriate Division Chief at the State of Oregon and then further to the appropriate Advisory Board at the State of Oregon. Appeals to the State shall follow ORS 455.060, ORS 455.475, and the appropriate Oregon Administrative Rules.~~
- ~~D. For those issues that are outside of the scope and application of the State Building Code, where the applicant is still aggrieved, the applicant may request a hearing as provided in County Code Section 2.07.040. The procedures associated with the applicant's requested hearing shall be subject to those provisions of County Code Section 2.07.~~
- ~~E. Notwithstanding the provisions above, appeals related to a staff interpretation of the On-Site Sewage Disposal Rules as adopted by OAR Chapter 340, Division 71 and OAR Chapter 340, Division 73 shall follow the appeal process set forth in OAR Chapter 340, Division 71.~~
- ~~B. Any person aggrieved by a decision of the building official made to apply, interpret or enforce the following specialty codes may appeal that decision to the designated entities:~~

- ~~1. Electrical Specialty Code—appeals may be made to the State of Oregon, Building Codes Division, Chief Electrical Inspector (ORS 479.853);  
—Manufactured Dwelling or Mobile Home Parks—appeals, requests for interpretations, or alternate methods and materials of OAR 918, Division 600 may be made to the Administrator of the Building Codes Division for a ruling (OAR 918-600-0080); and~~
  - ~~2. On-Site Sewage Disposal—appeals may be made to the State of Oregon, Department of Environmental Quality.~~
- ~~Appeals of all other substantive provisions of this chapter will be made first to the building official, then to the Board of Appeals.~~

[Codified by Ord. 05-2000, 7/13/00]

9.02.160 Board Of Appeals ~~Do we need to keep this or amend it for items outside BCD's scope?~~

Repealed.

~~In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this chapter, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to construction and who are not employees of the jurisdiction. The building official shall be an ex officio member of and shall act as secretary to the Board of Appeals but shall have no vote on any matter before the Board. The Board of Appeals shall be appointed by the governing body and shall hold office at its pleasure. The Board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.~~

~~The Board of Appeals shall have no authority relative to interpretation of the administrative provisions of the code nor shall the Board be empowered to waive requirements of this chapter.~~

~~All applications for an appeal shall be accompanied by the appropriate filing fee.~~

~~Any decision relating to the suitability of alternate materials and methods of construction or interpretation by the building official with regard to this chapter, except for the State of Oregon Electrical Specialty Code, the State of Oregon Manufactured Dwelling or Mobile Home Park Rules and the State of Oregon On-Site Sewage Disposal Rules, should be appealed first to the building official, then to the Board of Appeals, in conformance with procedures provided herein.~~

~~An appeal shall be in writing, shall describe the basis for the appeal and shall first be filed with the building official.~~

[Codified by Ord. 05-2000, 7/13/00]

## 9.02.170 Form Of Appeal

Repealed.

~~FFF.—Any person appealing an order, decision or determination of the building official to the Board of Appeals must do so by filing at the office of the building official a written appeal containing:~~

- ~~0. —A heading in the words: “Before the Board of Appeals for the Building Official of Clackamas County”;~~
- ~~0. —A caption reading: “In the matter of the appeal of .....,” giving the~~

- ~~names of all appellants participating in the appeal;~~
- ~~0. — A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the action of the building official;~~
  - ~~0. — A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the appellant's contentions;~~
  - ~~0. — A brief statement in ordinary and concise language of the relief sought and the reasons why the protested order or action should be reversed, modified or set aside;~~
  - ~~0. — The signatures of all parties named as appellants and their official mailing addresses; and~~
  - ~~0. — The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.~~

~~The Department of Transportation and Development shall make available to the public an appeal form consistent with the requirements of section A above.~~

~~The appeal shall be filed within 10 days from the date of the service of the order or from the action of the building official.~~

~~As soon as possible after receiving the written appeal, the Board of Appeals shall fix a date, time and place for the hearing by the Board of Appeals. The date shall not be less than 10 days nor more than 60 days from the date the appeal was filed with the building official. Written notice of the time and place of the hearing shall be given to each appellant at least 10 days prior to the date of the hearing, either by:~~

- ~~0. — Causing a copy of such notice to be delivered to the appellant personally;~~
- ~~or~~
- ~~0. — Mailing a copy of the notice to the appellant at the address shown on the appeal.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.180 Effect Of Failure To Appeal**

Repealed.

~~Failure of any person to file an appeal in accordance with the provisions of Section 9.01.170 shall constitute a waiver of the right to an administrative hearing and adjudication of the Notice and Order or other action of the building official.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.190 Scope Of Hearing On Appeal**

Repealed.

~~Only those matters or issues specifically raised by the appellant in the written request for appeal shall be considered in the hearing of the appeal.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.200 Procedures For Conduct Of Appeals Hearings**

Repealed.

~~FFF. Record—A record of the entire appeal proceedings shall be made by tape recording or by any other means of permanent recording found appropriate by the Board of Appeals.~~

~~FFF. Continuances—The Board of Appeals may grant requests for a continuance if good cause is shown for the continuance.~~

~~FFF. Reasonable Dispatch—The Board of Appeals shall proceed with reasonable speed to conclude any matter before it.~~

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.210 Form Of Notice Of Hearing

Repealed.

~~The notice to appellant shall follow this basic form, but may include additional information:~~

~~“You are hereby notified that a hearing will be held before the Board of Appeals for the Building Official of Clackamas County at [hearing location] on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour \_\_\_\_\_, upon the [Order or other action] regarding [address/location of building]. You may be present at the hearing. You may be represented by counsel, but need not be. You may present any relevant evidence and will be given the opportunity to cross-examine witnesses testifying against you.”~~

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.220 Conduct Of Hearing

Repealed.

~~FFF. Rules—Hearings need not be conducted according to court rules regarding evidence and witnesses.~~

~~FFF. Oral Evidence—Oral evidence shall be taken only on oath or affirmation of the witness. The Board of Appeals may administer oaths or affirmations to witnesses.~~

~~FFF. Admissibility of Evidence—Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Common law or statutory rules that might dictate a contrary result in state courts will not apply.~~

~~FFF. Exclusion of Evidence—Irrelevant, immaterial or unduly repetitious evidence shall be excluded.~~

~~Rights of Parties—Each party shall have the following rights, among others:~~

- ~~0. To call and examine witnesses on any matter relevant to the issues of the hearing;~~
- ~~0. To introduce documentary and physical evidence;~~
- ~~0. To cross-examine opposing witnesses on any matter relevant to the issues of the appeal;~~
- ~~0. To impeach any witness regardless of which party first called the witness to testify;~~
- ~~0. To rebut the evidence; and~~
- ~~0. To be represented by anyone who is lawfully permitted to do so.~~

~~Inspection of Premises—The Board of Appeals may inspect any building or premises~~



- ~~involved in the appeal during the course of the hearing, provided that:~~
- ~~0. — Notice of the inspection is given to the parties before the inspection is made;~~
  - ~~0. — The parties are given an opportunity to be present during the inspection, and~~
  - ~~0. — conclusions reached upon completion of the inspection. Each party must be given an opportunity to rebut or explain observations and conclusions announced by the Appeals. The Appeals Adjudicator states for the record the material facts observed and the Adjudicator.~~

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.230 Method And Form Of Decision

#### Repealed.

~~FFF. — Form of Decision — The decision of the Board of Appeals shall be in writing, and shall contain findings of fact and a determination of the issues presented. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested. A decision shall be issued within 14 days of the conclusion of any appeals hearing.~~

~~FFF. — Effective Date of Decision — The effective date of the decision shall be as stated in the decision itself. The timelines for compliance with the final decision should be based on the guidelines for compliance with the original Order or action of the building official, when appropriate.~~

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.240 Plans And Permits

The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the ~~building official~~building official or appointed deputies. Such plans may be reviewed by other departments and divisions of Clackamas County to verify compliance with any applicable laws and ordinances. If the ~~building official~~building official or deputy finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this chapter and other pertinent laws and ordinances, and that the fees have been paid, the ~~building official~~building official shall issue a permit to the applicant.

When the ~~building official~~building official issues a permit for which plans are required, the ~~building official~~building official shall endorse in writing or stamp the plans and specifications. Such approved plans and specifications shall not be changed, modified or altered without authorization from the ~~building official~~building official, and all work regulated by this chapter shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the complete plans and specifications for the whole building or structure have been submitted or approved, if adequate information and detailed statements have been filed to assure compliance with all pertinent requirements of this chapter. The holder of a partial permit who chooses to proceed assumes the risk that the permit for the entire building or structure may be denied. Clackamas County is not responsible for any costs associated with work performed under a partial permit if the full permit is denied.

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.250 Retention Of Plans

Repealed.

~~One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant.~~

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.260 Validity Of Permit

The building official shall consider any violations of Clackamas County Ordinances or other applicable laws that are known to ~~him/her/them~~ in responding to all permit requests, ~~and applications, and occupancy or completion certificates.~~ The building official may refuse to issue permits, occupancy of completion certificates under this chapter if the parcel of land, or the use of the land on which the building, structure, or equipment is to be placed, altered, equipped or used is in violation of any Clackamas County Ordinance or State Building Code.

No building or site permit shall be issued by the building official until all plans for on-site sewage disposal facilities have been approved by the appropriate authority. Further, no building containing plumbing shall be occupied until connected to an on-site sewage disposal facility approved by the appropriate authority and meeting the minimum standards of the Oregon State Board of Health and the Department of Environmental Quality.

The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, acquiescence to, any violation of any of the provisions of this chapter or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this chapter or other ordinances of the jurisdiction shall be null and void.

The issuance of a permit based on plans, specifications and/or other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building occupancy or operations associated with the permit, if executed in violation of this chapter or of any other ordinances of this jurisdiction.

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.270 Expiration Of Applications, Plans And Permits

- A. Automatic Expiration of Applications -- Applications for which no permit is issued within 180 days following the date of the application shall automatically expire, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official.
- B. Extensions on Unexpired Applications – The building official may extend the time for action by the applicant for a period not exceeding ~~180~~ 90 days if:
  1. The applicant so requests in writing; ~~and~~
  - ~~2. The applicant shows that circumstances beyond applicant's control have prevented action from being taken; and-~~
  - ~~2. The application is consistent with the relevant provisions of this Chapter in effect on the date the request for a time extension is submitted.~~
  - ~~3. No application shall be extended more than once.~~
- C. ~~Pre-Conditions to Renewing Action on an Expired Application – In order to renew action on an application after expiration, the applicant shall resubmit plans if directed by the building official and shall~~ pay a new plan review fee. The

- building official shall have authority to modify renewal fees where warranted.
- D. Automatic Expiration of Permits – Every permit issued by the building official under the provisions of this ~~C~~chapter shall automatically expire and become null and void if the building or work authorized by the permit is:
1. Not commenced within 180 days from the date of the permit; or
  2. Suspended or abandoned for a period of 180 days at any time after the work is commenced, or
  3. ~~Not~~ subject to inspection approval for a period of 180 days at any time after the work is commenced.
- E. Extensions on Unexpired Permits – Any permittee holding an unexpired permit may apply for an extension of the time within which to commence work under that permit when the permittee is unable to commence work within the time originally required for good reason. The building official may extend the time for action by the permittee for a period not exceeding 180 days if:
1. The permittee requests an extension in writing; and
  2. The permittee shows that circumstances beyond permittee’s control have impeded progress under the permit.
  4. The unexpired permit remains consistent with the relevant provisions of this Chapter in effect on the date the request for a time extension is submitted.
  3. ~~No application shall be extended more than once.~~
- F. Timelines for Permits Issued to Resolve Violations – In those instances where a permit is issued to resolve a violation, the building official may specify the length of time an issued permit may remain valid and ~~he/she/they~~ may establish specific timelines for compliance of approval of the permit.
- G. Pre-Conditions to Resuming Work on Expired Permit – Before resuming work under an expired permit, an existing permit must be renewed where appropriate or a new permit must be obtained if directed to do so by the bBuilding oOfficial, and an additional fee remitted. The fee will determined under the following guidelines:
1. If no changes have been made or will be made in the original plans and specifications for the work to be resumed; and the suspension or abandonment of work under the permit has not exceeded ~~one year~~six months, then ~~the no~~ fee will be ~~one half the amount required for a new permit for such work required to renew the permit;~~ or
  2. If there have been or will be changes to the original plans and specifications for the work to be resumed, or the suspension or abandonment of work under the permit has exceeded ~~one year~~ six months but has not exceeded one year, then the permittee shall pay a new one half the amount of the full permit fee, plus additional plan review fees assessed at the County’s currently hourly rate where applicable.
  3. If ~~the~~ the suspension or abandonment of work under the permit has exceeded one year, then the permittee shall pay an amount equivalent to the full permit fee, plus additional plan review fees assessed at the County’s current hourly rate where applicable.
  - 2.4. The building official shall have authority to modify renewal fees where

warranted.

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.280 Work Without A Permit; Investigation Fees

Whenever any work for which a permit is required by this chapter has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work.

An investigation fee, in addition to the permit fee, may be collected whether or not a permit is ever issued. The investigation fee shall be ~~equal to the amount of the permit fee based on the actual cost of the investigation or the average cost of such investigations per ORS 455.058, but not less than the amount specified in Appendices A&B of the Clackamas County Code.~~ The payment of the investigation fee shall not exempt any person from compliance with all other provisions of this chapter nor from any penalty prescribed by law.

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.290 Transferability

With the permission of the building official a permit issued ~~and paid for to one~~ by a person or firm may be transferred to another person or firm to perform any work thereunder.

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.300 Suspension; Revocation

The building official may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information supplied, or in violation of any ordinance or regulation of any of the provisions of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### 9.02.310 Inspections

It shall be the duty of the permit holder or his/her/their agent to request all necessary inspections in a timely manner and according to the policies of Clackamas County, provide access to the site, and provide all necessary equipment to make inspections as determined by the building official. The permit holder shall not proceed with the building construction until authorized by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permit holder to remove or replace any material required for proper inspection shall be the responsibility of the permit holder or his/her/their agent. Failure to request inspections shall result in expiration of the permit as per Section 9.02.270. The county has no obligation, responsibility, or liability to follow up on permits for which necessary inspections have not been requested or which are at risk of expiration under Section 9.02.270. The ~~permitee~~permittee shall bear all such responsibility and liability.

~~Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder has posted or otherwise made available a permit card, an inspection record card that will allow the building official to conveniently notate required entries regarding inspection of the work, or other means of identifying the permit number authorizing the work as determined or provided by the building official. Regardless of the type of card or notice provided, this . This card or notice shall be maintained by the permit holder and kept available until final approval has been granted by the building official [BN14][BC15][BC16].~~

Any person to whom a permit is issued shall be liable for any loss, damage, or injury caused or arising from the permittee's negligence, as well as for any breach of the building codes or regulations, to the person suffering such loss, damage, or injury. The permittee shall indemnify, defend and hold harmless the

County and its officers, employees and agents from any and all claims, demands, actions and suits (including all attorney fees and costs, through trial and on appeal) arising from the permittee's negligence, as well as for any breach of the building codes or regulations to the person suffering such loss, damage or injury.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.320 Fees**

Fees for permits, inspections, plan checks, site plan review, copy costs, and such other fees that the Clackamas County Board of Commissioners deem reasonable shall be as set from time to time by order of the Clackamas County Board of Commissioners.

The building official may authorize refunds of fees when the guidelines of the applicable refund policy so authorize.

The determination of value or valuation under any provisions of this chapter shall be made by the building official. The value to be used in computing building permit and plan review fees shall be the total value of all construction work associated with the permit, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Valuations shall be determined as specified in OAR 918-050-0100. The building official may modify the valuation of any building or structure where warranted.

Enforcement fees are in addition to and not in lieu of civil penalties that may be imposed by a Compliance Hearings Officer or court. Enforcement fees shall be used to defray the costs of enforcement of the provisions of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.330 Violations And Enforcement**

All persons shall comply with this chapter in the location, construction, maintenance, repair, alteration, or use of ~~b~~buildings, structures, installations or on-site sewage disposal systems or facilities within Clackamas County.

A violation of this Cchapter exists whenever a building, structure, installation, on-site sewage disposal system or sewage disposal facility, or grading is, or is proposed to be, located, constructed, maintained, repaired, altered, or used contrary to the requirements of this Cchapter. Each day that a violation exists is considered to be a separate offense.

A violation of this Cchapter is a public nuisance, and continues to be a public nuisance until the offending building, structure, installation, system, facility or use is brought into compliance with this Cchapter.

The County may, in addition to the other remedies provided by law, institute injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove violations of this Cchapter. The County may also enforce this chapter through the provisions of the Clackamas County Compliance Hearing Officer Ordinance.

[Codified by Ord. 05-2000, 7/13/00]

### **9.02.340 Prioritization Of Violations For Enforcement**

The building official is charged with administration, implementation and enforcement of the State Building Code and this Cchapter. ~~His/her~~The Building Official~~building official's~~ duties include the duty to oversee plan reviews and building inspections required under the State Building Code and this chapter, and the duty to supervise continuing enforcement when violations are identified. Since the Building Code Division has limited financial resources, the building official must exercise ~~his/her~~their inherent discretion to ensure that

sufficient funds are available to deal with the most important public policy matters that come before [him/her/them](#).

The top priority for Division resources is the processing of plans and permits properly applied for under the Codes. Although the Division must also address Code violations, violations vary greatly in severity, with some violations having a negligible impact on the public interest and others having a potentially great impact on the public interest. For this reason, the Board of County Commissioners has determined that the building official may prioritize violations for enforcement action without unduly compromising public policy. The Board of County Commissioners believes that this prioritization of violations for enforcement will result in the most effective and efficient re-allocation of Building Division resources.  
[Codified by Ord. 05-2000, 7/13/00]

## Chapter 9.03

### 9.03 EXCAVATION AND GRADING

#### 9.03.010 Purpose

The purpose of this chapter is to safeguard life, limb, property and the public welfare by regulating grading on private property.  
[Codified by Ord. 05-2000, 7/13/00]

#### 9.03.020 Scope

This chapter sets forth rules and regulations to control excavation, grading and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspection of grading construction. All excavation, grading and earthwork construction, including fills and embankments, shall be performed in accordance with Appendix J of the Oregon Structural Specialty Code (OSSC), modified as follows:

- A. OSSC Section J104.1: Submittal requirements. In addition to the provisions of Section 105.3, the applicant shall state the estimated quantities of excavation and fill, and provide a quantity calculation and/or methodology.
- B. OSSC Section J104.2: Site Plan Requirements. In addition to the provisions of Section 107, a grading plan shall show the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it complies with the requirements of this code. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this code. Cross section drawing(s) shall be provided and shall be of sufficient quality and detail to accurately represent the proposed work, and that it conforms to the requirements of this code.

[Codified by Ord. 05-2000, 7/13/00]

#### 9.03.030 Permits Required; Exceptions

No person shall do any excavation, grading or earthwork construction ~~grading~~ without first having obtained a ~~grading~~ permit from the ~~Building Codes Division Manager~~ Clackamas County Building Official or his/her designee. ~~In Appropriate instances, the Building Codes Division Manager may, upon showing by the applicant that one of the following categories applies, allow an exception to this chapter.~~ The following activities shall be exempt from this Chapter:

- ~~C. Grading in an isolated, self-contained area if there is no danger apparent to private or public property or drainage ways and is not in the flood fringe, floodway or flood hazard sub-classification as defined by the Clackamas County Zoning and Development Ordinance and which is designated Rural or Natural Resource by the Clackamas County Comprehensive Plan;~~
- ~~D. An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit; this shall~~

- not exempt any fill made with the material from such excavation nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure;
- ~~E. Cemetery Graves;~~
  - ~~F. Refuse disposal sites controlled by other regulations;~~
  - ~~G. Excavations for wells or tunnels or utilities;~~
  - ~~H. Mining, quarrying, excavating processing, stockpiling of rock, sand, gravel, aggregate or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property;~~
  - ~~I. Exploratory excavations under the direction of soil engineers or engineering geologists;~~
  - ~~J. An excavation which
    - ~~11. is less than 2 feet in depth, or~~
    - ~~12. which does not create a cut in slope greater than 5 feet in height and steeper than one and one half horizontal to one vertical; or,~~~~
  - ~~C. A fill less than 1 foot in depth and placed on natural terrain with a slope flatter than five horizontal to one vertical, or less than 3 feet in depth, not intended to support structures, which does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course. Farm grading, as defined in ORS 30.936. All farm grading shall be done in accordance with ORS 455.315; and~~
- M.D. Grading performed as part of stream or habitat improvements, including turtle nests and log jams.

[Codified by Ord. 05-2000, 7/13/00]

### **9.03.040 — Hazards**

~~Whenever the Building Codes Division Manager determines that any existing excavation, embankment, or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the Building Codes Division Manager, shall within the period specified therein repair or eliminate such excavation or embankment so as to eliminate the hazard and be in conformance with the requirements of this chapter.~~

~~[Codified by Ord. 05-2000, 7/13/00]~~

### **9.03.090 — Definitions**

~~For the purposes of this chapter, the definitions listed hereunder shall be construed as specified in this section:~~

- ~~M. APPROVAL is the proposed work or completed work conforms to this chapter in the opinion of the Building Codes Division Manager.~~
- ~~M. AS GRADED is the surface conditions extent on completion of grading.~~
- ~~M. BEDROCK is in place solid rock.~~
- ~~M. BENCH is a relatively level step excavated into earth material on which fill is to be placed.~~
- ~~M. BORROW is earth material acquired from an off-site location for use in grading on a site.~~



- ~~Q. CIVIL ENGINEER shall mean a professional engineer registered in the state to practice in the field of civil works.~~
- ~~R. CIVIL ENGINEERING shall mean the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind.~~
- ~~S. COMPACTION is the densification of a fill by mechanical means.~~
- ~~T. EARTH MATERIAL is sand, rock, natural soil or fill and/or any combination thereof.~~
- ~~U. ENGINEERING GEOLOGIST shall mean a geologist experienced and knowledgeable in engineering geology.~~
- ~~V. EROSION is the wearing away of the ground surface as a result of the movement of wind, water, and/or ice.~~
- ~~W. EXCAVATION is the mechanical removal of earth material.~~
- ~~X. FILL is a deposit of earth material placed by artificial means.~~
- ~~Y. GRADE shall mean the vertical location of the ground surface.~~
- ~~Z. EXISTING GRADE is the grade prior to grading.~~
- ~~AA. ROUGH GRADE is the stage at which the grade approximately conforms to the approved plan.~~
- ~~BB. FINISH GRADE is the final grade of the site which conforms to the approved plan.~~
- ~~CC. GRADING is any excavating or filling or combination thereof.~~
- ~~DD. KEY is a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.~~
- ~~EE. SITE is any lot or parcel of land or contiguous combination thereof, under the same ownership where grading is performed or permitted.~~
- ~~FF. SLOPE is an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.~~
- ~~GG. SOIL is naturally occurring superficial deposits overlying bedrock.~~
- ~~HH. SOILS ENGINEER (Geotechnical Engineer) shall mean a civil engineer experienced and knowledgeable in the practice of soils engineering (geotechnical engineering)~~
- ~~H. SOILS ENGINEERING (geotechnical engineering) shall mean the application of the principles of soil mechanics in the investigation, evaluation and design of civil works involving the use of earth materials and the inspection and testing of the construction thereof.~~
- ~~JJ. TERRACE is a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.~~
- ~~{Codified by Ord. 05-2000, 7/13/00}~~

**9.03.390 — Grading Permit Requirement**

- ~~M. Permits Required. Except as exempted in 9.03.030 A through I of this chapter, no person shall do any grading without first obtaining a grading permit from the Building Codes Division Manager. A separate permit shall be required for each site, and may cover both excavations and fills~~

- ~~M. Application. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the chapter enforcement agency for that purpose. Every such application shall:~~
- ~~0. Identify and describe the work to be covered by the permit for which application is made;~~
  - ~~0. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work;~~
  - ~~0. Indicate the use or occupancy for which the proposed work is intended;~~
  - ~~0. Be accompanied by plans, diagrams, computations, specifications and other data;~~
  - ~~0. State the valuation of any new building or structure or any addition, remodeling or alteration to an existing building;~~
  - ~~0. Be signed by the permittee, or his authorized agent; and~~
  - ~~0. Give such other data and information as may be required by the Building Codes Division Manager.~~
- ~~M. Plans and Specification. When required by the Building Codes Division Manager, each application for a grading permit shall be accompanied by four sets of plans and specifications, and supporting data consisting of a soil engineering report and/or engineering geology report. When required by the Building Codes Division Manager, the plans and specifications shall be prepared and signed by a civil engineer.~~
- ~~M. Information on Plans and in Specifications. Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this chapter and all relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the person by whom they were prepared. The plans shall include the following information:~~
- ~~0. General vicinity of the proposed site;~~
  - ~~0. Property limits and accurate contours of existing ground and details of terrain and area drainage;~~
  - ~~0. Limiting dimensions, elevations or finish contours to be achieved by the grading and proposed drainage channels and related construction;~~
  - ~~0. Detailed plans of all surface and subsurface drainage device, wall, cribbing, dams and other protective devices to constructed with, or as a part of, the proposed work together with a map showing the drainage area and the estimated runoff of the area served by any drains; and~~
  - ~~0. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within 15 feet of the property or which may be affected by the proposed grading operations.~~
  - ~~0. Specifications shall contain information covering construction and material requirements.~~
- ~~M. Soil Engineering Report. The soil engineering report required by Subsection C shall include data regarding the nature, distribution and strength of existing soils,~~

- conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading including the stability of slopes. Recommendations included in the report and approved by the Building Codes Division Manager shall be incorporated in the grading plans or specifications.
- ~~M. Engineering Geology Report. The engineering geology report required by Subsection C shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading. Recommendations included in the report and approved by the Building Codes Division Manager shall be incorporated in the grading plans or specifications.~~
- ~~M. Issuance. The application, plans, specifications, computations and other data filed by an applicant for permit shall be reviewed by the Building Codes Division Manager. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the Building Codes Division Manager finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this chapter and other pertinent laws and ordinances, and that the fees specified in Appendix A "A500 Building" have been paid, he shall issue a permit therefore to the applicant.~~
- ~~0. In the review of the application, the Building Codes Division Manager may attach conditions of approval which in his opinion are necessary to comply with the purpose and requirements of this chapter and other pertinent laws and ordinances.~~
- ~~0. When the Building Codes Division Manager issues the permit where plans are required, he/she shall endorse in writing or stamp the plans and specifications "REVIEWED." Such reviewed plans and specifications shall not be changed, modified or altered without authorizations from the Building Codes Division Manager, and work shall be done in accordance with the reviewed plans.~~
- ~~M. Retention of Plans. One set of approved plans, specifications and computations shall be retained by the Building Codes Division Manager for a period of not less than 90 days from date of completion of the work covered therein; and one set of reviewed plans and specifications shall be returned to applicant, and said set shall be kept on the site of the work at all times during which the work authorized thereby is in progress.~~
- ~~M. Validity of Permit. The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter or of any other codes or ordinances of the jurisdiction. No permit presuming to give authority to violate or cancel the provisions of this chapter shall be valid.~~
- ~~M. The issuance of a permit based upon plans, specifications, and other data shall not prevent the Building Codes Division Manager from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing~~

- building operations being carried on thereunder when in violation of this chapter or any other codes or ordinances of this jurisdiction.
- ~~NNN. Expiration. Every permit issued by the Building Codes Division Manager, under the provisions of this chapter shall expire by limitation and become null and void if the work authorized by such permit is not commenced within 180 days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.~~
- ~~OOO. Any permittee holding an unexpired permit may apply for an extension of the time within which he may commence work under that permit when he is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Codes Division Manager may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.~~
- ~~PPP. Suspension or Revocation. The Building Codes Division Manager may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any code or ordinance or regulation or any of the provisions of this chapter.~~
- ~~[Codified by Ord. 05-2000, 7/13/00]~~

#### **9.03.7109.03.040 Fees**

Fees are as set forth in Appendix A, "A500. Building".  
[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

#### **9.03.7209.03.050 Bonds**

- ~~N.E.~~ N.E. The ~~Building Codes Division Manager~~Clackamas County Building Official may require bonds in such form and amounts as may be deemed necessary to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.
- ~~O.F.~~ O.F. In lieu of surety bond the applicant may file a cash bond or instrument of credit with the ~~Clackamas County Building Codes Division Manager~~Clackamas County Building Official in an amount equal to that which would be required in the surety bond.
- [Codified by Ord. 05-2000, 7/13/00]

#### **9.03.730 Cuts**

~~P. — General. Unless otherwise recommended in the approved soil engineering and/or engineering geology report, cuts shall conform to the provisions of this section. In the absence of an approved soils engineering report these provisions may be waived for minor fills not intended to support structures.~~

~~Q. — Slope. The slope of cut surfaces shall be no steeper than is safe for the intended use and shall be no steeper than two horizontal to one vertical and unless the owner furnished a soils engineering or an engineering geology report, or both, stating that the site has been investigated and giving an opinion that a cut of a steeper slope will be stable and not create a hazard to public or private property.~~

~~R. — Drainage and Terracing. Drainage and terracing shall be provided as required by 9.03.120.~~

~~[Codified by Ord. 05-2000, 7/13/00]~~

### **9.03.740 — Fills**

~~S. — General:~~

~~1. — Unless otherwise recommended in the approved soil engineering report, fills shall conform to the provisions of this section.~~

~~2. — In the absence of an approved soil engineering report these provisions may be waived for minor fills not intended to support structures.~~

~~T. — Fill Location. Fill slopes shall not be constructed on natural slopes steeper than two to one.~~

~~U. — Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation, non-complying fill, top soil and other unsuitable materials scarifying to provide a bond with the new fill, and where slopes are steeper than five to one, and height is greater than 5 feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one shall be at least 10 feet wide. The area beyond the toe of the fill shall be sloped for sheet overflow or a paved drain shall be provided. When fill is to be placed over a cut, the bench under the toe of fill shall be at least 10 feet wide but the cut shall be made before placing the fill and approved by the Soils engineer and engineering geologist as a suitable foundation for fill.~~

~~V. — Fill Material. Detrimental amounts of organic material shall not be permitted in fills. Fill material is not solid waste as defined in ORS 459 or hazardous waste as defined in ORS 466. Except as Permitted by the Building Codes Division Manager, no rock or similar irreducible material with a maximum dimension greater than 12 inches shall be buried or placed in fills.~~

~~W. — EXCEPTION: The Building Codes Division Manager may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement and approves the fill stability. The following conditions shall also apply:~~

~~1. — Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan;~~

~~2. — Rock sizes greater than 12 inches in maximum dimension shall be 10 feet or more below grade, measured vertically; and~~

3. — Rocks shall be placed so as to assure filling of all voids with fines.
- X. — ~~Compaction. All fills shall be compacted to a minimum 90 percent of maximum density as determined by American Society for Testing and Materials (ASTM) Test D1557-78 Method A. Field density shall be determined in accordance with Test (ASTM) D1556-82 or equivalent as approved by the Building Codes Division Manager.~~
- Y. — ~~Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two horizontal to one vertical.~~
- Z. — ~~Drainage and Terracing. Drainage and terracing shall be provided and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by 9.03.120.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.03.750 — Setbacks**

- AA. — ~~General. Cut and fill slopes shall be set back from site boundaries in accordance with this section. Setback dimensions shall be horizontal distances measured perpendicular to the site boundary. Setback dimensions shall be as shown in Figure No.1 and No. 2.~~
- BB. — ~~Top of Cut Slope. The top of cut slopes shall be made not nearer to a site boundary line than one fifth of the vertical height of cut with a minimum of 2 feet and a maximum of 10 feet. The setback may need to be increased for any required interceptor drains.~~
- CC. — ~~Toe of Fill Slope. The toe of fill slope shall be made not nearer to the site boundary line than one half of the height of the slope, with a minimum of 2 feet and a maximum of 20 feet. Where a fill slope is to be located near the site boundary and the adjacent off-site property is developed, special precautions shall be incorporated in the work as the Building Codes Division Manager deems necessary to protect the adjoining property from damage as a result of such grading. These precautions may include but are not limited to:~~
1. — ~~Additional setbacks.~~
  2. — ~~Provision for retaining or slough walls~~
  3. — ~~Mechanical or chemical treatment of the fill slope surface to minimize erosion.~~
  4. — ~~Provisions for the control of surface waters.~~
- DD. — ~~Modification of Slope Location. The Building Codes Division Manager may approve alternate setbacks. The Building Codes Division Manager may require an investigation and recommendation by a qualified engineer or engineering geologist to demonstrate that the intent of this section has been satisfied.~~

[Codified by Ord. 05-2000, 7/13/00]

### **9.03.760 — Drainage and Terracing**

- EE. — ~~General. Unless otherwise indicated on the approved grading Plan, drainage facilities and terracing shall conform to the provision of this section for cut or fill slopes steeper than three (3) horizontal to one (1) vertical.~~

- ~~FF. — Terrace. Terraces at least 6 feet in width shall be established at not more than 30-foot vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height, one terrace at approximately mid height shall be 12 feet in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be designed by the civil engineer and approved by the Building Codes Division Manager. Suitable access shall be provided to permit proper cleaning and maintenance.~~
- ~~1. — Swales or ditched on terraces shall have a minimum gradient of 5 percent and must be paved with reinforced concrete not less than 3 inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of 1 foot and a minimum paved width of 5 feet.~~
  - ~~2. — A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (projected) without discharging into a down drain.~~
- ~~GG. — Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.~~
- ~~HH. — Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the Building Codes Division Manager and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down drains or other devices.~~
- ~~H. — Building pads shall have a drainage gradient of 2 percent toward approved drainage facilities, unless waived by the Building Codes Division Manager.~~
- ~~JJ. — EXCEPTION: The gradient from the building pad may be 1 percent if all of the following conditions exist through the permit area:~~
- ~~1. — No proposed fills are greater than 10 feet in maximum depth;~~
  - ~~2. — No proposed finish cut or fill slope faces have a vertical height in excess of 10 feet; and~~
  - ~~3. — No existing slope faces, which have a slope face steeper than 10 horizontally to 1 foot vertically, have a vertical height in excess of 10 feet.~~
- ~~KK. — Interceptor Drains. Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than 40 feet measured horizontally. Interceptor drains shall be paved with a minimum of 3 inches of concrete or gunite and reinforced. They shall have a minimum depth of 12 inches and minimum paved width of 30 inches measured horizontally across the drain. The slope of drain shall be approved by the Building Codes Division Manager.~~

~~{Codified by Ord. 05-2000, 7/13/00}~~

**9.03.770 — Erosion Control**

- ~~LL. — Slopes. The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control may consist of effective planting. The protection for the slopes shall be installed as soon as practicable and prior to~~

calling for final approval. Where cut slopes are not subject to erosion due to the erosion resistant character of the materials, such protection may be omitted.

~~MM. Other Devices. Where necessary, check dams, cribbing, riprap or other devices or methods shall be employed to control erosion and provide safety.~~  
[Codified by Ord. 05-2000, 7/13/00]

### **9.03.780 — Grading Inspection**

~~NN. General.~~

- ~~1. All grading operations for which a permit is required shall be subject to inspection by the Building Codes Division. When required by the Building Codes Division Manager, special inspection of grading operations and special testing shall be performed in accordance with the provisions of 9.03.140 C.~~
- ~~2. A survey of the lot may be required by the Building Codes Division Manager to verify that the site is in accordance with the approved plans. It shall be the duty of the permit applicant to cause the work to be accessible and exposed for inspection purposes. Neither the Building Codes Division Manager nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.~~

~~OO. Inspection Requests. It shall be the duty of the person doing the work authorized by a permit to notify the Building Codes Division Manager that such work is ready for inspection. The Building Codes Division Manager may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing or by telephone at the option of the Building Codes Division Manager.~~

~~PP. Required Inspections.~~

- ~~1. Pre-inspection. After all organic material or other deleterious material has been removed from the site and before any fill material is placed on site.~~
- ~~2. Final Inspection. To be made after all finish grading is completed and all conditions of approval have been satisfied~~

~~QQ. Grading Designation. All grading in excess of 5000 cubic yards shall be performed in accordance with the approved grading plan prepared by a civil engineer, and shall be designated as "engineering grading." Grading, involving less than 5000 cubic yards shall be designated "regular grading" unless the permittee, with the approval of the Building Codes Division Manager, chooses to have the grading performed as "engineered grading."~~

~~RR. Engineered Grading Requirements. For engineering grading, it shall be the responsibility of the civil engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He also shall be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade and drainage of the development area. The civil engineer shall act as the coordinating agent in the event the need arises for liaison between the other professionals, the contractor~~



- ~~and the Building Codes Division Manager. The civil engineer also shall be responsible for the preparation of revised plans and the submission of as graded grading plans upon completion of the work. The grading contractor shall submit in a form prescribed by the Building Codes Division Manager a statement of compliance to said as built plan.~~
- ~~1. Soil engineering and engineering geology reports shall be required as specified in Section 9.03.030. During grading all necessary reports, compaction data and soil engineering and engineering geology recommendations shall be submitted to the civil engineer and the Building Codes Division Manager by the soils engineer and the engineering geologist.~~
  - ~~2. The soils engineer's area of responsibility shall include, but need not be limited to the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.~~
  - ~~3. The engineering geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for sub-drains or other ground water drainage devices. He shall report his findings to the soils engineer and the civil engineer for engineering analysis.~~
  - ~~4. The Building Codes Division Manager shall inspect the project at the various stages of the work requiring approval to determine that adequate control is being exercised by the professional consultants.~~
- ~~SS. Regular Grading Requirements.~~
- ~~1. The Building Codes Division Manager may require inspection and testing by an approved testing agency.~~
  - ~~2. The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills.~~
  - ~~3. When the Building Codes Division Manager has cause to believe that geologic factors may be involved, the grading operation will be required to conform to "engineering grading" requirements.~~
- ~~TT. Notification Of Noncompliance. If, in the course of fulfilling their responsibility under this chapter, the civil engineer, the soils engineer, the engineering geologist or the testing agency finds that the work is not being done in conformance with this ordinance or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the Building Codes Division Manager. Recommendations for corrective measures, if necessary, shall be submitted.~~
- ~~UU. Transfer of Responsibility for Approval. If the civil engineer, the soils engineer, the engineering geologist or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.~~

[Codified by Ord. 05-2000, 7/13/00]

**9.03.790 — Completion of Work**

~~VV. — Final Reports. Upon completion of the rough grading work and at the final completion of the work the Building Codes Division Manager may require the following reports and drawings and supplements thereto:~~

- ~~1. — An as graded grading plan prepared by the civil engineer including original ground surface elevations, as graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. He/she shall state that to the best of his knowledge the work was done in accordance with the final approved grading plan;~~
- ~~2. — A soils grading report prepared by the soils engineer including locations and elevation of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. He/she shall render a finding as to the adequacy of the site for the intended use; and~~
- ~~3. — A geologic grading report prepared by the engineering geologist including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan; He/she shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors.~~

~~WW. — Notification of Completion. The permittee or his/her agent shall notify the Building Codes Division Manager when the grading operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed in accordance with the final approved grading plan and the required reports have been submitted.~~

[Codified by Ord. 05-2000, 7/13/00]

**9.03.800 — Powers and Duties of Building Codes Division Manager**

~~XX. — General. The Building Codes Division Manager is hereby authorized and directed to enforce all the provisions of this ordinance. For such purposes he/she shall have the powers of a law enforcement officer.~~

~~YY. — Deputies. The Building Codes Division Manager may appoint technical officers, deputies, agents, inspectors and other employees, and may authorize and empower them to act, enforce and carry out the functions, terms and provisions of this ordinance.~~

~~ZZ. — Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Building Codes Division Manager or his/her authorized representative has reasonable cause to believe that there exists upon any premises any condition or violation which makes such premises unsafe, dangerous or hazardous, the Building Codes Division Manager or his/her~~

~~deputies, or other employees, agents or authorized representative may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon the Building Codes Division Manager by this chapter, provided that if such premises be occupied, he/she shall first present proper credentials and request entry; and if such premises be unoccupied, he/she shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and request entry. If such entry is refused, The Building Codes Division Manager or his/her deputies, or other employees, agents or authorized representative shall have recourse to every remedy provided by law to secure entry.~~

~~AAA. Stop Orders. Whenever any work is being done contrary to the provisions of this chapter, the Building Codes Division Manager or his/her authorized representative may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Building Codes Division Manager to proceed with the work.~~

~~BBB. Liability~~

~~1. The Building Codes Division Manager, or his/her deputies, or other employees, agents or authorized representative charged with the enforcement of this chapter, acting in good faith and without malice in the discharge of his/her duties, shall not thereby render him/herself personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of his/her duties. Any suit brought against the Building Codes Division Manager or employee because of such act or omission performed by him/her in the enforcement of any provision of such chapters shall be defended by this jurisdiction until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by this jurisdiction.~~

~~2. This chapter 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 chapter enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by this chapter or any certificates of inspection issued under this chapter.~~

~~Cooperation of Other Officials and Officers. The Building Codes Division Manager may request, and shall receive so far as is required in the discharge of his duties, the assistance and cooperation of other officials of this jurisdiction.~~

~~{Codified by Ord. 05-2000, 7/13/00}~~

### **~~9.03.810 — Violation Constitutes Nuisance; Abatement Remedies~~**

~~CCC. General. Any violation of any term or provision of this chapter is hereby deemed to constitute a public nuisance. In addition to any other remedies or actions provided for under the terms and provisions of this chapter, or by law, violation of this chapter may be abated by a civil action filed by Clackamas County Counsel~~

~~in Circuit Court in the name of the County against any violator, including the property owner or occupier.~~

~~DDD. Remedies. Procedure for remedy of said violation shall be:~~

- ~~1. Issuance of Warnings—The Building Codes Division Manager or his deputy may issue a warning notice of an alleged violation: if issued, such warning notice shall give a brief description of the violation alleged to exist, and shall be deemed to be served upon the person accused of the offense when sent by certified mail to the address of the violation or to the address of the owner of the property as shown on the Clackamas County Assessor's ownership records;~~
- ~~2. The warning notice shall further contain the name of the County Department to contact regarding 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 appropriate County Department may result in civil proceedings being filed to abate the nuisance;~~
- ~~3. If the alleged violation has not been corrected within ten(10) days after service of the warning notice as set forth above, the County may institute injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate or remove the alleged violation; and~~
- ~~4. Emergencies—In the event that the Building Codes Division determines that an immediate threat exists to the public health, safety or welfare, the ten (10) day notice period may be waived and immediate action to resolve the alleged violation may be taken.~~

~~EEE. Penalties. Any person who violates this chapter shall be subject to a civil penalty in an amount set by County Code Chapter 2.07 as determined by the Compliance Hearings Officer.~~

~~FFF. The aforesaid monetary penalties are in addition to any other remedies provided by law.~~

~~[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]~~



**OFFICE OF COUNTY COUNSEL**

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

December 12, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

First Reading of an Ordinance Amending County Code  
Chapter 2.07, Compliance Hearings Officer

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
Assistants

<b>Purpose/Outcomes</b>	To amend County Code Chapter 2.07, to change the process for delivery of Citations and the Notice of Hearing to reduce costs and provide consistency in the process.
<b>Dollar Amount and Fiscal Impact</b>	Cost savings of approximately \$2,400 annually.
<b>Funding Source</b>	Not applicable.
<b>Duration</b>	Indefinite until amended
<b>Previous Board Action</b>	Chapter 2.07 was last amended in 2003. The matter was presented at Issues on December 3, 2019.
<b>Strategic Plan Alignment</b>	Build Public Trust through Good Government
<b>Contact Person</b>	Jeffrey D. Munns, Assistant County Counsel x 5984

**Background:**

The Clackamas County Compliance Hearings Officer issues Orders in code enforcement matters. Code enforcement matters are typically addressed and attempted to be resolved by working with a property owner or tenant to comply with the County Code voluntarily. If the owner or tenant does not address the violations on their property the code enforcement process is initiated by the issuance of a Citation. If the owner or tenant, known as a Respondent, continues to be in violation, Clackamas County Code Enforcement will take the matter before the Compliance Hearings Officer. The Respondent may also request a hearing to challenge the Citation. For Clackamas County to initiate the hearing a Notice of Hearing is sent to the Respondent.

The proposed County Code changes concern how the Citation and the Notice of Hearing are delivered to a Respondent. The present Code requires that the Citation be sent via Certified Mail, and the Notice of Hearing be sent Registered Mail. Although these two methods are similar they are not the same. This leads to confusion, errors, and increased costs associated with mailing these important documents to Respondents. Further, approximately 80% of these

items mailed using Certified or Registered mail are not claimed or refused by the recipients. For a number of years the Code Enforcement Division has been mailing copies of the required Citations and Hearing Notices to Respondents via First Class Mail to ensure that they are received. These are infrequently returned due to problems such as, no mail receptacle, inability of the USPS to forward, etc.

Also, Certified Mail and Registered Mail are much more expensive than First Class Mail. A typical Certified Mail article that is to deliver a Citation will cost \$6.80 compared to a regular letter for \$0.55. Registered Mail is even more costly as the Hearings Notices a mailed with all documents for the hearing. A typical Hearing Notice mailed with Registered Mail costs over \$25.00, and a copy sent by First Class Mail only requires postage of about \$6.00. This will also result in a significant time savings for staff by eliminating the need to go to the post office for these mailings.

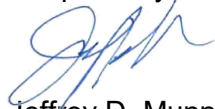
The Code Changes also incorporate methods of serving Respondents should mailing be ineffective. The option to personally serve the Respondent has been retained and then an option to post the Citation or Notice of Hearing has been added. This new method uses the same language as found in statutes concerning posting notices to terminate tenancies or to initiate evictions. This will be a familiar for process servers to complete and the due process for Respondents has already been tested in the courts in the context of eviction cases.

The changes incorporated into the revisions to these two sections are intended to reduce cost, simplify and make more consistent the service of these materials, and ensure that Respondents receive Citations and Hearings Notices.

**Recommendation:**

Staff respectfully recommends that the Board hold a Public Hearing for the first reading of the attached ordinance.

Respectfully submitted,



Jeffrey D. Munns  
Assistant County Counsel

ORDINANCE NO. \_\_\_\_\_

**An Ordinance Amending  
Clackamas County Code Chapter 2.07, Compliance Hearings Officer**

**Whereas**, Chapter 2.07, Compliance Hearings Officer was adopted in 2000 and amended in 2003; and

**Whereas**, it has become apparent that procedural and substantive changes are necessary to more accurately address the operational needs and requirements of the Compliance Hearings Officer program; and

**Whereas**, to more efficiently deliver notice of Citations and Hearings to Respondents appearing before the Compliance Hearings Officer revisions to sections of Chapter 2.07 are necessary; and,

**Whereas**, it further appearing that this matter came before the Board for public hearing on December 12, 2019 and that a decision of approval was made on January 9, 2020;

**NOW, THEREFORE, THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**

**Section 1:** Chapter 2.07.030 Process for Enforcement of Code, and 2.07.050 Notice of Hearing, are amended as depicted in Exhibit A, attached hereto and incorporated herein by this reference.

ADOPTED this 9<sup>th</sup> day of January, 2020.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

## Code Sections Showing Changes:

### **2.07.030(D)(3) Process for Enforcement of Code**

- (D)... 3. Citations may be served by **first class U.S. Mail**, by personal service on respondent, **or by attaching the citation in a secure manner to the main entrance to that portion of the premises of which the respondent has possession.** ~~Citations may also be served by certified mail, return receipt requested through the United States Postal Service.~~

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

### **2.07.050 Notice of Hearing**

- A. The notice shall contain a statement of the time, date, and place of the hearing. A copy of the Complaint and the Statement of Rights described in Section 2.07.060 shall be attached to the notice. Notice shall be mailed or delivered at least 15 days prior to the hearing date.
- B. ~~The Compliance Hearings Officer~~ **County** shall cause notice of the hearing to be given to the respondent(s) **by:**
- i. ~~either First Class U.S. Mail; or,~~
  - ii. ~~Personally service; or,~~
  - iii. **Attaching the hearing notice in a secure manner to the main entrance to that portion of the premises of which the respondent has possession.**
- ~~or by registered mail with return receipt requested.~~
- C. Notice may be delivered to the property or to the mailing address of the owner of the property as listed on the County tax roll. Notice is considered complete on the date of personal delivery or upon deposit in the U.S. mail.
- D. ~~The failure of any person to receive notice properly given shall not invalidate or otherwise affect the proceedings under this Chapter.~~ **The Compliance Hearings Officer shall disregard technical deficiencies in notice provided the Compliance Hearings Officer finds that the respondent received actual notice in advance of the hearing.**

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]



## Code Sections with Changes – Final Form:

### **2.07.030(D)(3) Process for Enforcement of Code**

- (D)... 3. Citations may be served by first class U.S. Mail, by personal service on respondent, or by attaching the citation in a secure manner to the main entrance to that portion of the premises of which the respondent has possession.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

### **2.07.050 Notice of Hearing**

- E. The notice shall contain a statement of the time, date, and place of the hearing. A copy of the Complaint and the Statement of Rights described in Section 2.07.060 shall be attached to the notice. Notice shall be mailed or delivered at least 15 days prior to the hearing date.
- F. The County shall cause notice of the hearing to be given to the respondent(s) by:
- i. First Class U.S. Mail; or,
  - ii. Personal service; or,
  - iii. Attaching the hearing notice in a secure manner to the main entrance to that portion of the premises of which the respondent has possession.
- G. Notice may be delivered to the property or to the mailing address of the owner of the property as listed on the County tax roll. Notice is considered complete on the date of personal delivery or upon deposit in the U.S. mail.
- H. The Compliance Hearings Officer shall disregard technical deficiencies in notice provided the Compliance Hearings Officer finds that the respondent received actual notice in advance of the hearing.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]