

ORDINANCE NO. 261

AN ORDINANCE AMENDING CHAPTER 92 OF THE DUNES CITY CODE OF ORDINANCES ENTITLED “BUILDING PROGRAM” BY ADDING AND CHANGING LANGUAGE TO THE EXISTING CODE TO COMPLY WITH THE PROVISIONS OF NEWLY ADOPTED SENATE BILL 866 AND NEW OREGON ADMINISTRATIVE REGULATIONS ADOPTED BY THE BUILDING CODES DIVISION OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES; AND OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the City Council of Dunes City is responsible for enacting ordinances for the effective and efficient operation of the City of Dunes City for the benefit of its residents; and

WHEREAS, State law authorizes the operation of building programs, including inspection mechanisms, to enforce State Building and Specialty Codes; and

WHEREAS, the Dunes City Council believes it to be in the best interests of the citizens of Dunes City for the City to continue its building program, including inspections, in a manner that complies with State mandates and regulations, and specifically SB 866 adopted last legislative session and new Oregon Administrative Rules adopted by the Building Codes Division of the Department of Consumer and Business Services, while protecting the City’s right to ensure compliance with its own Code provisions, even though the costs for the City to provide such services to City residents may significantly increase;

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

Section 1. Chapter 92, entitled “Building Program” of the Dunes City Code of Ordinances, is hereby amended to read as found in Exhibit A attached hereto and incorporated by reference herein.

Section 2. EFFECTIVE DATE. This Ordinance shall take effect on the 30th day after its adoption.

Section 3. SEVERABILITY. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations or decisions, the remainder of this Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant, and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or State law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding, without the requirement of further action on the part of the City.

Section 4. OTHER REMEDIES. Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance. Non-exclusive remedies for enforcement are all those available under State and County laws including seizure of property, civil and criminal penalties.

Section 5. CAPTIONS. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 6. SCRIVENER'S ERRORS. Any scrivener's errors in this Ordinance may be corrected by Resolution of the City Council.

Passed at the first reading in regular meeting of the City Council of Dunes City, Oregon, on the 19th day of January, 2022.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 2 Vacant: 0

Passed at the second reading and placed on final passage, and adopted by the City Council of Dunes City, Oregon on this 19th day of January, 2022.

Ayes: 5 Nays: 0 Abstain: 0 Absent: 2 Vacant: 0

ADOPTED BY THE DUNES CITY COUNCIL THIS 19th DAY OF January, 2022.

Sheldon Meyer
Sheldon Meyer, Council President

ATTEST:
Jamie Mills
Jamie Mills, City Recorder

EXHIBIT A.

TITLE IX, CHAPTER 92 – BUILDING PROGRAM

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CHAPTER 92 – BUILDING PROGRAM

§ 92.010 Assumption of Building Inspection Program

A. Pursuant to ORS 244.150, the City of Dunes City hereby implements and assumes a Building Inspection Program for the City of Dunes City, which shall be comprised of the administration and enforcement of the State Building Code as defined in Section 92.014 herein.

B. The Building Inspection Program shall be administered and enforced according to the procedures set forth in the State Building Code.

§ 92.011 Codes Adopted. In addition to compliance with this Chapter 92 and other Ordinances of the City, the City of Dunes City adopts the following Building Administrative Code:

A. Except as otherwise provided in this Chapter 92, the following codes, standards and rules are adopted and shall be in force and effect as part of the Dunes City Code of Ordinances. The provisions of these codes, in addition to their individual scoping provisions found therein, shall also apply to demolition of structures, equipment and systems regulated by such codes.

1. The Oregon Specialty Codes adopted under ORS 446.062, 446.185, 447.020(2), 455.496, 455.610, 455.680, 460.085, 460.360, 479.730(1) or 480.545 and including enforcement and administration of the Oregon State Structural Specialty Code, Mechanical Specialty Code, Residential Specialty Code, Electrical Specialty Code, Plumbing Specialty Code, Oregon Energy Efficiency Specialty Code, and Manufactured Dwelling Installation Specialty Code programs, under the authority of ORS 455.153 and 479.855 and as adopted by Ordinance No. 250, effective June 26, 2020, as amended by Ordinance No. 261, effective January 19, 2022.

2. Appendix Chapter J of the most currently published International Building Code as adopted by the State of Oregon Buildings Codes Division, as published by the International Code Council, regarding excavation, including the recognized standards for Appendix Chapter J listed in Chapter 35 of the International Building Code; Excavation and Grading Permits.

3. AN 109.4.2 through AN 109.4.3 of the State of Oregon Structural Specialty Code for alternate fire sprinkler system requirements. Pursuant to the authorization by the Director of the Department of Consumer and Business Services under ORS 455.040(1), Section AN 109.4 through AN 109.4.2.1 of the State Building Code relating to fire sprinkler system requirements are hereby adopted.

4. At least one copy of each of these Specialty Codes shall be kept by the Contract Building Official, and the public may view digital versions of the most current Codes on the Oregon Building Codes Division website. City copies shall be available for inspection upon request at City Hall.

§ 92.012 Title, Purpose, Scope, and Conflicts

A. *Title.* These regulations shall be known as the Building Administrative Code, may be cited as such, and will be referred to herein as “this Code.”

B. *Purpose.* The purpose of this Code is to provide for the administration and enforcement of the Oregon Specialty Codes.

C. *Scope.* The provisions of this Code shall serve as the administrative, organizational and enforcement rules and regulations for the Specialty Codes which regulate site preparation and construction, alteration, moving, demolition, repair, use, and occupancy of buildings, structures and building service equipment within the jurisdictional limits of Dunes City.

§ 92.013 Cooperation with Other Agencies

Plans for buildings that the Fire Marshal inspects for occupancy standards under ORS 476.030 are made available during regular Dunes City business hours at City Hall. Copies of all permits of such buildings or structures are available to the Fire Marshal's office upon review of such plans. The Fire Marshal may provide opinions to City plan review staff. Meetings may be held between the Fire Marshal and plan review staff to allow the Fire Marshal's office to review plans and provide input. The Fire Marshal's office may request an approved copy of all plans that include fire suppression or early warning fire detection systems, or other design features that are inspected by their office. Any alternate materials or methods of construction are forwarded to their office upon request. If any alternate method of construction relates to portions that the Fire Marshal is required to inspect, it shall be reviewed and approved by the Fire Marshal, the Building Inspector and the Contract Building Official. Comments received from the Fire Marshal will be evaluated by the Contract Building Official prior to the issuance of the permit. The final authority for interpreting and applying new construction Specialty Codes and regulations is retained by the Contract Building Official until the Certificate of Occupancy has been issued.

Exception: Fire Department Access and Water Supply are regulated by the Fire Marshal.

§ 92.014 Definitions

For purposes of this Chapter 92, certain terms, phrases, words, and their derivatives shall be construed as specified in this Section 92.014. Where terms are not defined, they shall have their ordinarily accepted meanings within context with which they are used. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

Addition means an extension or increase in floor area or height of a building or structure.

Alter or Alteration means a change or modification in construction or building service equipment.

Approved means as to materials, types of construction, equipment and systems, approval by the Building Inspector as the result of investigation and tests conducted by the Building Inspector, or by reason of accepted principles or tests by recognized authorities, technical or scientific organizations.

Approved Agency means an established and recognized agency regularly engaged in conducting tests or furnishing inspection services, when the agency has been approved by the City Council.

Building means a structure used or intended for supporting or sheltering a use or occupancy.

Building Code or State Building Code means those provisions of the State Building Code, and any modifications thereof, adopted by the City pursuant to ORS 255.040(1), that are part of the building inspection program administered and enforced by the City. Such provisions include, but are not limited to, the Oregon Structural Specialty Code, Oregon Reach Code, Oregon Residential Specialty Code, Oregon Mechanical Specialty Code, Oregon Plumbing Specialty Code, Oregon Electrical Specialty Code, and the Oregon Manufactured Home Specialty Code.

Building, Existing means a building erected prior to the adoption of this Code or one for which a legal building permit has been issued.

Building Inspector means the individual or entity under Contract with the City to provide building and structural inspection services as provided under, and in compliance with, Oregon Revised Statutes, City building codes, and the Specialty Codes.

Building Inspection Program means the process and procedures by which all building inspection takes place.

Contract Building Official means the Contract Building Official designated by the City Council, or his or her designee, charged with the administration and enforcement of this Code.

Building Service Equipment refers to the plumbing, mechanical, electrical, and elevator equipment including piping, wiring fixtures and other accessories which provide sanitation lighting, heating, ventilation, cooling, refrigeration, fire-fighting, and transportation facilities essential to the occupancy of the building or structure for its designated use.

Dangerous Buildings Code means the Uniform Code for Abatement of Dangerous Buildings promulgated by the International Conference of Contract Building Officials, as adopted by the City.

Deferred Submittal. As used in this section, are those portions of the design of the building/structure that are not submitted at the time of the permit application and that are to be submitted to the Contract Building Official within a specified period.

Major Code Interpretation. As used in this subsection means a code interpretation decision that affects or may affect more than one job site or more than one inspection jurisdiction.

Dwelling Code means the Oregon Residential Specialty Code (ORSC).

Electrical Code means the Oregon Electrical Specialty Code (OESC).

Elevator Code means the Safety Code for elevators, dumbwaiters, escalators, and moving walks as adopted by the City in Section 92.011 hereof.

Listed and Listing are terms referring to equipment and materials which are shown in a list published by an approved testing agency, qualified and equipped for experimental testing and maintaining an

adequate periodic inspection of current productions and which listing states that the material or equipment complies with accepted national standards which are approved, or standards which have been evaluated for conformity with approved standards.

Manufactured Home Installation Code means the Oregon Manufactured Dwelling Installation Specialty Code.

Manufactured Home Park Code means the Oregon Manufactured Home Park Construction Specialty Code.

Mechanical Code means the Oregon Mechanical Specialty Code.

Occupancy means the purpose for which a building or part thereof is used or intended to be used.

Owner means any person, agent, firm, or corporation having legal or equitable interest in the property.

Permit means an official document or certificate issued by the Contract Building Official authorizing performance of a specified activity.

Person means a natural person, heirs, executors, administrators or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agency of any of the aforesaid.

Plumbing Code means the Oregon Plumbing Specialty Code (OPSC).

Qualified Employee means an individual that the City employs and has been designated to ratify or disapprove a Contract Building Official's discretionary decisions. More than one person may be designated a Qualified Employee, provided such person has successfully completed all necessary training for the position.

Recreational Vehicle Park Code means the Oregon Recreational Vehicle Park Construction Specialty Code.

Repair means the reconstruction or renewal of any part of any existing building, structure or building service equipment for the purpose of its maintenance.

Specialty Codes refer to those Specialty Codes adopted by the State of Oregon which constitute the Oregon Building Code which have been delegated to the City for enforcement containing the provisions for design, construction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of buildings and structures and building service equipment as herein defined.

Structural Observation means the visual observation of the structural system, including, but not limited to, the elements and connections at significant construction stages, and the completed structure for general conformance to the approved plans and specifications, performed by the design professional or an approved alternate. Reports of structural observation shall be submitted to the Contract Building Official. Structural observation does not include or waive the responsibility for inspections required by this Chapter 92.

Structure means that which is built or constructed, an edifice or building of any kind, any piece of work artificially built up or composed of parts jointed together in some definite manner.

Reference Standards are those standards published by nationally recognized testing and standards organizations and referenced in the building codes adopted by the City.

Valuation or Value as applied to a building and its building service equipment shall be the estimated cost to construct or replace the building and its building service equipment in kind based on current replacement costs from the Building Safety Journal Building Valuation data table, or if inconclusive, as determined by the Contract Building Official.

§ 92.015 Conflicting Provisions

A. When conflicting provisions or requirements occur between this Code, the Specialty Codes and other codes or law, the most restrictive shall govern.

B. When conflicts occur between the Specialty Codes, those provisions providing the greater safety to life shall govern. In other conflicts where sanitation, life safety or fire safety are not involved, the most restrictive provisions shall govern.

C. Where in a specific case different sections of the Specialty Codes specify different materials, methods or construction or other requirements, the most restrictive shall govern. When there is conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

§ 92.016 Powers and Duties of Contract Building Official. The Contract Building Official is hereby authorized and directed to enforce all the provisions of this Chapter 92 and the referenced Specialty Codes. For such purposes, the Contract Building Official shall have the powers of a Code Enforcement Officer and may call upon the City Administrator for assistance in ensuring compliance with Building Code.

§ 92.017 Deputies. In accordance with prescribed procedures and with the approval of the City Council, the Contract Building Official may appoint such number of technical officers and inspectors and other employees as shall be authorized from time to time. The Contract Building Official may deputize such inspectors or employees as may be necessary.

§ 92.018 Qualified Employee.

The Qualified Employee is an individual that the municipality employs and has been designated to ratify or disapprove a contract building official's discretionary decisions. More than one person may be designated a Qualified Employee, provided such person has successfully completed all necessary training for the position.

Before exercising oversight over a Contract Building Official, the Qualified Employee is required to complete the basic training and obtain applicable certification or other evidence of completion, as defined by Oregon Building Codes Division.

Within 180 days after being designated as a Qualified Employee, the employee is required to complete the advanced training and obtain applicable certification or other evidence of completion, as defined by Oregon Buildings Code Division.

The Qualified Employee shall be notified in writing within five (5) days by the Contract Building Official, for each of the contract building official's discretionary decisions. The Qualified Employee must review and ratify or disapprove a Contract Building Official's discretionary decision in writing, to the Contract Building Officer and the permit applicant/aggrieved person within thirty (30) days after receiving notice of the decision. The notification shall also inform the permit applicant/aggrieved person that the decision of the Contract Building Official can be appealed in accordance with ORS 455.475.

§ 92.019 Right of Entry. When necessary to make an inspection to enforce any of the provisions of this Code and the Specialty Codes, or when the Contract Building Official and/or the Building Inspector has reasonable cause to believe that there exists in any building or upon a premises a condition which is contrary to or in violation of this Code which makes the building or premises unsafe, dangerous or hazardous, the Contract Building Official and/or the Building Inspector may enter the building or premises at all reasonable times to inspect or to perform the duties imposed by this Code, provided that if such building or premises be occupied, that credentials be presented to the occupants and entry requested. If such building or premises be unoccupied, the Contract Building Official and/or the Building Inspector shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. Should entry be refused, the Contract Building Official shall have recourse to the remedies provided by State law to secure entry.

§ 92.020 Occupancy Violations. When a building or structure or building service equipment therein regulated by this Code and the Specialty Codes is being used contrary to the provisions of such Codes, the Contract Building Official may order such use discontinued by written notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the Contract Building Official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of such Codes.

§ 92.021 Authority to Disconnect Utilities. The Contract Building Official or his/her designee, shall have the authority to disconnect a utility service or energy supplied to the building, structure or building service equipment therein regulated by this Code or the Specialty Codes in case of emergency where necessary to eliminate an immediate hazard to life or property. The Contract Building Official shall, whenever possible, notify the serving utility, the owner and occupant of the building, structure or building service equipment of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner and occupant of the building, structure or building service equipment in writing of such disconnection immediately thereafter.

§ 92.022 Abatement

A. *Authority to Abate.* A condition caused or permitted to exist in violation of this Code or the Specialty Codes is a public nuisance which may be abated by any of the procedures set forth by City Ordinance or State Statute.

B. *Authority to Condemn Building Service Equipment.*

1. When the Contract Building Official ascertains that building service equipment regulated in the Specialty Codes has become hazardous to life, health or property, or has become unsanitary, the Contract Building Official shall order, in writing, that such building service equipment be disconnected, removed and replaced. The notice itself shall fix a time limit for compliance with such order. Defective building service equipment shall not be repaired and/or maintained after receiving such notice.

2. When such equipment or installation is to be disconnected, a written notice of such disconnection and causes therefore shall be given within twenty-four (24) hours to the serving utility, the owner and occupant of such building, structure or premises.

3. When any building service equipment is maintained in violation of the Specialty Codes and in violation of a notice issued pursuant to the provisions of this Section 92.022, the Contract Building Official shall institute appropriate action to prevent, restrain, correct, or abate the violation.

§ 92.023 Connection After Order to Disconnect

Persons shall not make connections from an energy, fuel or power supply nor supply energy or fuel to building service equipment which has been disconnected or ordered to be disconnected by the Contract Building Official or the use of which has been ordered to be discontinued by the Contract Building Official until the Contract Building Official authorizes the reconnection and use of such equipment.

§ 92.024 Liability

A. The Contract Building Official charged with the enforcement of this Code and the Specialty Codes, acting in good faith and without malice in the discharge of his or her duties, shall not thereby be rendered personally liable for damage that may accrue to persons or property as a result of an act of omission in the discharge of the assigned duties.

B. A suit brought against the Contract Building Official or employee because of such act or omission performed by the Contract Building Official or employee in the enforcement of the provisions of this Code or enforced by the Code Enforcement Agency shall be defended by the City until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the City.

C. Where the Contract Building Official is a contracted service, the contractor will defend, indemnify and hold harmless the City, its officials, employees and agents from any claims, suits, or action arising out of acts by the contractor, his or her employees, agents, and subcontractors that are outside the scope of the Contract Agreement while on duty as a Contract Building Official for the City, or that are as a result of negligence on the part of the contractor, his or her employees, agents, and subcontractors.

D. The Code shall not be construed to relieve from or lessen the responsibility of any persons owning, operating or controlling a building, structure or building service equipment therein for damages to persons or property caused by defects, nor shall the Code Enforcement Agency or the City be held as

assuming such liability by reason of the inspections authorized by this Code or permits or certificates issued under this Code.

§ 92.025 Unsafe Buildings, Structures or Building Service Equipment

A. Buildings or structures regulated by this Code and the Specialty Codes which are structurally inadequate or have inadequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life are, for the purpose of this Chapter 92, unsafe buildings.

B. Building service equipment regulated by such Code and Specialty Codes, which constitute a fire, electrical or health hazard, or an unsanitary condition, or is otherwise dangerous to human life is, for the purpose of this Chapter 92, unsafe. Use of buildings, structures or building service equipment constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is, for the purpose of this Chapter 92, an unsafe use.

C. Parapet walls, cornices, spires, towers, tanks, statuary, and other appendages or structural members which are supported by, attached to, or a part of a building and which are in a deteriorated condition or otherwise unable to sustain the design loads which are specified in the Building Code are hereby designated as unsafe building appendages.

D. Unsafe buildings, structures or appendages and building service equipment are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in the Dangerous Buildings Code or such alternate procedures as may be adopted by the City. As an alternative, the Contract Building Official or other employee or official of the City, as designated by the City Council, may institute other appropriate action to prevent, restrain, correct, or abate the violation.

§ 92.26 Appeals

A. All appeals shall be forwarded to the Contract Building Official at:

Northwest Code Professionals
144 E. 14th Ave
Eugene, OR 97401

With a copy to the City Administrator at:

Dunes City Administrator
P. O. Box 97
Westlake, OR 97493-0097.

B. When any appeal is received, the person aggrieved shall be notified that he or she has the option of the local appeals process, or to appeal to the Chief Inspector of the Department of Consumer and Business Services.

C. Any appeal of a decision arising from a plans examination or an inspection shall be reviewed by the Contract Building Official. The appeal may be verbal or in writing. There is no cost for this initial appeal. A decision is generally rendered within three (3) business days of the request.

§ 92.027 Appeal of Discretionary Decision of Contract Building Official

A. An applicant for a building permit may appeal a decision made by a Contract Building Official under authority established pursuant to ORS 455.148, 455.150 or 455.467. The following apply to an appeal under this subsection:

1. An appeal regarding the interpretation or application of a particular Specialty Code provision shall be made first to the appropriate Specialty Code Chief Inspector of the Department of Consumer and Business Services. The decision of the Department Chief Inspector may be appealed to the appropriate Advisory Board. The decision of the Advisory Board may only be appealed to the Director of the Department of Consumer and Business Services if codes in addition to the applicable specialty code are at issue.

2. If the appropriate Advisory Board determines that a decision by the Department Chief Inspector is a major code interpretation, then the Inspector shall distribute the decision in writing to all applicable Specialty Code public and private inspection authorities in the State. The decision shall be distributed within Sixty (60) day after the Board's determination, and there shall be no charge for the distribution of the decision.

B. Except as provided in subsection A. of this Section, an applicant for a building permit may appeal the decision of a Contract Building Official on any matter relating to the administration and enforcement of this Chapter to the Department. The appeal must be in writing. A decision by the Department on an appeal filed under this subsection is subject to judicial review as provided in ORS 183.484.

C. If an appeal is made under this section, an inspection authority shall extend the plan review deadline by the number of days it takes for a final decision to be issued for the appeal.

D. In accordance with OAR 918-020-250, the City will establish a Local Appeals Board, as necessary, to hear an appeal of the Contract Building Official's discretionary decision.

1. The Local Appeals Board shall consist of:

a. The City Council and Mayor;

b. The Building Official of Lane County, Oregon, or in the event the Lane County Building Official is not available, then the Building Official of Douglas County, and

c. An individual who engages in the business of building design or construction may be a member of the local board, but may not hear an appeal of a

contract building official's discretionary decision concerning a project that involves a business, or competitor of a business that:

- i. The individual owns or manages or for which the individual provides services as an employee, agent or contractor; or
- ii. A family member or a member of the individual's household owns or manages or for which the family member of the member of the household provides services as an employee, agent or contractor.

E. The Local Appeals Board will not include any Contract Building Official.

§ 92.028 Local Appeals Board Rules of Procedure

The City Council shall, by Resolution, adopt rules of procedure for conducting the business of the Local Appeals Board. All Local Appeals Board decisions and findings shall be made in writing to the appellant with a duplicate copy to the Contract Building Official.

§ 92.029 Limitations of Authority

The Local Appeals Board shall have no authority relative to interpretation of the administrative provisions of the Building Codes or the administrative provisions of the Specialty Codes nor shall the Council be empowered to waive requirements of either the Building Codes or the Specialty Codes.

§ 92.030 Appeal Procedures

A. *Appeal Contents.* Any recipient aggrieved by a notice of civil penalty may, within fourteen (14) days after receipt of the notice, appeal in writing to the Local Board of Appeals. The written appeal shall be accompanied by an appeal fee in an amount set by Resolution and shall include:

1. The name and address of the appellant;
 2. The nature of the matter being appealed;
 3. The reason appellant claims the Contract Building Official's determination is incorrect;
- and
4. The appellant's desired determination of the appeal.

If appealed, any civil penalty shall become final, upon issuance of the Board of Appeals' decision affirming the Contract Building Official's assessment.

B. *Hearing Date and Notice.* Unless the appellant and the City agree to a longer period, an appeal shall be heard by the Local Board of Appeals, within thirty (30) days of the receipt of appellant's notice of intent to appeal. At least ten (10) days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

C. *Hearing Procedure.* The Local Board of Appeals shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Local Board of Appeals deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The burden of proof shall be on the Contract Building Official. The rules of evidence as used by courts of law do not apply.

D. *Decision.* The Local Board of Appeals shall issue a written decision within ten (10) days of the hearing date.

E. *Fee Refundability.* Other than as provided in this Section 92.031, the appeal fee is non-refundable. If the Contract Building Official's assessment is not affirmed, the Local Board of Appeals may refund all or a part of the appeal fee upon appellant's motion at the time of hearing.

F. *Appeal to the Department of Consumer and Business Services Advisory Board.* In accordance with ORS 455.690, any person aggrieved by the final decision of the Local Appeals Board, or a subordinate officer of the Department of Consumer and Business Services as to the application of any provision of a Specialty Code may, within thirty (30) business days after the date of the decision, appeal to the appropriate Department of Consumer and Business Services Advisory Board. The appellant shall submit all requisite fees with the request for appeal. The final decision of the involved City or State officer shall be subject to review and final determination by the appropriate Department of Consumer and Business Services Advisory Board as to technical and scientific determinations related to the application of the Specialty Code involved.

§ 92.031 Violations and Penalties

A. *Violation.* It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy, or maintain any building, structure or building service equipment or cause or permit the same to be done contrary to or in violation of this Code and/or the Specialty Codes.

B. *Penalties.* Violation of a provision of this Code shall be subject to an administrative civil penalty not to exceed \$5,000 for each offense, or in the case of a continuing offence, not more than \$1,000 for each day of the offense, and shall be processed in accordance with the procedures set forth in this Chapter 92.

C. *Cumulative Remedies.* The penalties and remedies provided in this Chapter 92 are not exclusive and are in addition to other penalties and remedies available under this Code, other applicable City Ordinances, and State law.

§ 92.032 Contract Building Official – Authority to Impose Administrative Civil Penalty

A. *Civil Penalties.* Upon a determination by the Contract Building Official that any person, firm, corporation, or other entity however organized, has violated a provision of this Chapter 92, or any rule thereunder, the Contract Building Official may issue a notice of civil violation and impose upon the violator and/or any other responsible person an administrative civil penalty as provided by this Chapter

92. For purposes of this Chapter 92, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, also includes the owner or owners. This authority in no way precludes the Contract Building Official from attempting to secure voluntary compliance prior to issuance of an order to correct the violation.

B. *Order to Correct.* Prior to issuing a notice of civil violation and imposing an administrative civil penalty under this Chapter 92, the Contract Building Official shall issue an order to correct a violation (Order to Correct) to one (1) or more of the responsible persons. Except where the Contract Building Official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five (5) calendar days.

C. *Notice of Civil Violation.* Following the date or time by which the correction must be completed as required by an Order to Correct, the Contract Building Official shall determine whether such correction has been completed. If the required correction has not been completed by the date or time specified in the Order, the Contract Building Official may issue a notice of civil violation and assess an administrative civil penalty to each responsible person to whom an Order to Correct was issued.

D. *Knowing, Intentional or Repeat Violations.* Notwithstanding Section 92.030(B), the Contract Building Official may issue a notice of civil violation and assess an administrative civil penalty without having issued an Order to Correct where the Contract Building Official determines that the violation was knowing, intentional, or a repeat of a similar violation.

E. *Penalty Consideration.* In assessing an administrative civil penalty authorized by this Section 92.032, the Contract Building Official shall consider:

1. The person's cooperativeness and past history in taking steps to correct the violation;
2. Any prior violations of this Code, of the Specialty Codes, or other City Ordinances;
3. The gravity and magnitude of the violation;
4. Whether the violation was repeated or continuous; and
5. Whether the violation was caused by an unavoidable accident, negligence, or an international act.

F. *Notice Requirements.* A notice of civil violation issued under this Section 92.030 shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three (3) days after the date mailed if to an address within this State, and seven (7) days after the date mailed if to an address outside this State. Every notice shall:

1. Describe the alleged violation, including any relevant code provision numbers, ordinance numbers, or other identifying references;

2. State that the City intends to assess a civil penalty for the violation and state the amount of the civil penalty and other penalties imposed;

3. State the date on which the Order to Correct was issued and the time by which correction was required, or, if the penalty is imposed pursuant to Section 92.030(D) of this Code, a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated.

4. State that the party may challenge the assessment of civil penalty to the Board of Appeals; and

5. Describe the process and the deadline for informing the City that the party is challenging the assessment of the civil penalty.

G. *Appeal.* Any person, firm, corporation, or other entity however organized, who is issued a notice of civil penalty may appeal the penalty to the Local Appeals Board. The provisions of Sections 92.025 through 92.028 and 92.030 of this Code shall govern any requested appeal.

H. *Penalty Final.* If no appeal is timely filed with the Board of Appeals, a civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal.

I. *Continuing Violations.* Each day the violator fails to remedy the Code violation shall constitute a separate violation.

J. *Additional Penalties.* The civil administrative penalty authorized by this Section 92.030 shall be in addition to:

1. Assessments or fees for any costs incurred by the City in remediation, cleanup or abatement, and

2. Any other actions authorized by law, provided that the City shall not issue a Notice of Violation pursuant to Chapter 36 of the Dunes City Code for a violation of any of the provisions of this Chapter 92.

§ 92.033 Unpaid Penalties

A. *Penalty Collection.* Failure to pay an administrative penalty imposed pursuant to this Code within ten (10) days after the penalty becomes final shall constitute a separate violation. The Contract Building Official is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by Section 92.032(B) below, other provisions of this Code, or by State Statute.

B. *Assessment Lien.* If an administrative civil penalty is imposed on a responsible person because of a violation of any provisions of this Code resulting from a prohibited use or activity on real property and the penalty remains unpaid thirty (30) days after such penalty becomes final, the Contract Building Official shall assess the property the full amount of the unpaid fine and shall enter such an assessment as a lien in the City's lien docket. At the time such an assessment is made, the Contract Building Official shall notify the responsible person that the penalty has been assessed against the real property upon

which the violation occurred and has been entered in the City's lien docket. The lien shall be enforced in the same manner as all City liens. Interest shall commence from the date of entry of the lien in the lien docket.

C. *Additional Penalties.* In addition to enforcement mechanisms authorized elsewhere in this Code, failure to pay an administrative civil penalty imposed pursuant to this Chapter 92 shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

§ 92.034 Permits Required. Except as specified in Chapter 93 of the Dunes City Code of Ordinances, no building, structure or building service equipment regulated by this Code and the Specialty Codes shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate, appropriate permit for each building, structure or building service equipment has first been obtained from the Contract Building Official.

§ 92.35 Phased and Deferred Permitting

Phased and/or deferred permit submittals will require a pre-application meeting and Contract Building Official and the Qualified Employee of the City approval. No approvals will be allowed until the Department is satisfied that the application is complete. Phased and/or deferred permits shall be charged an administrative fee of an additional 25 Percent (25%) of the plan review fee requirements of OAR 918-050-0100 and the approved City fee schedule.

§ 92.036 Excavation and Grading Permits

A. Excavation and Grading associated with site preparation for construction of new buildings or structures shall be regulated by the Contract Building Official with inspections to be done by the Building Inspector. Any such grading and excavation permits issued associated with the site preparation for construction of new buildings or structures will be issued as building permits and processed accordingly and are regulated by the Oregon Building Codes. All Excavation and Grading done in Dunes City must comply with the Dunes City Erosion and Sediment Control Codes contained in Title XIV of the Dunes City Code, violations of which are administered by the Dunes City Code Enforcement Officer.

B. Excavation and Grading permits associated with all other activities including, but not limited to, septic system installation or repair, and driveways, will not be issued as building permits but will be issued as a City Public Works permit and all associated fees will not be part of the dedicated fund permit revenues regulated by the Oregon Building Codes Division. Fees for such permits shall be set by Resolution of the City Council. Inspections will be done by the City Public Works Maintenance Supervisor, or his or her designee. If, in the opinion of the Contract Building Official, it is necessary, the Contract Building Official may request the City Engineer to review a proposed project and make recommendation. Fees and costs associated with the City Engineer's review shall be paid by the applicant.

C. Design standards and methods of grading and excavation must conform with this Code, the Specialty Codes, and any other provisions of the Dunes City Code of Ordinances.

§ 92.037 Application for Permit. To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the City for that purpose. Applications shall provide the minimum information required by the Oregon Specialty Codes.

§ 92.38 Permit Process for Applications that require Plan Review

A. An applicant submits a fully completed permit, together with an original and two (2) copies of all site plans and supporting documentation, if required. Office staff may assist the applicant by providing the property map and tax lot number, but the applicant, alone, must fill out the permit application. Documents may be submitted by mail, in person, or by email. It is the permit applicant's responsibility to have approved plans and supporting documents at the job site for use by the Building Inspector.

B. The Qualified Employee will ensure any licensed contractor in the State of Oregon complies with State licensing requirements, as well as all other administrative and judicial aspects of code enforcement. Contractor applicants must also hold a current and valid Dunes City Business License prior to processing any permit application. When required, plans examiners will verify if plans, specifications, and calculations have been stamped by a registered design professional in accordance with the laws governing the practice of Architecture and Engineering.

C. The Qualified Employee reviews all documents submitted to ensure all necessary documents have been submitted. If not, the Qualified Employee contacts the applicant via telephone or email to request the additional documentation.

D. The Qualified Employee checks to ensure the activities proposed to be conducted are not on land that is zoned for Forestry activities only. If so, the Qualified Employee will notify the applicant that they must first obtain a permit from the Oregon Department of Forestry.

E. The Qualified Employee checks to ensure the activity proposed to be conducted does not trigger the need for a Department of Environmental Quality (DEQ) 1200-C permit. If it does, the Qualified Employee notifies the applicant that the documentation and permit will not be submitted until such time as a DEQ 1200-C permit is issued.

F. The Qualified Employee reviews the documents to ensure the proposed activity is done in the FEMA flood zone. If work is being done in the FEMA flood zone, the Qualified Employee will notify the applicant of the need to apply for a permit to work in the FEMA flood zone pursuant to Chapter 153 of the Dunes City Code (as adopted in Ordinance No. 153, February 12, 2020).

G. The Qualified Employee reviews the documents to determine if the work is being done in a suspected or known wetland, riparian, or shoreland zone. If so, the Qualified Employee will submit a Wetland Land Use Notification Form to the Oregon Department of State Lands (DSL) and will notify the applicant that the application will not be submitted to the Building Official for review until all of the DSL requirements have been met.

H. Once all documentation is received, including any additional permits required from State and Federal Agencies, the Qualified Employee reviews the documents to ensure compliance with Dunes City

Code requirements. If not, the Qualified Employee notifies the applicant of the City Code violations and what is needed to correct them.

I. Once Dunes City Qualified Employee review is fully complete, the permit application and supporting documents are scanned and posted into the electronic permit tracking system for review and approval. The applicant is notified that the review process is usually complete in 7 to 10 days, however, if there are holidays or vacations planned, it could take longer. If reviewed plans are not received within the stated time period, the Qualified Employee will follow up with the Building Inspector to inquire as to when the review will be complete. The Qualified Employee will relay that information to the applicant.

J. When the approval has been granted by the Contract Building Official, the Qualified Employee will notify the applicant to pay for the permit. Payment can be made in person via cash, check or credit card, or over the telephone by credit card. Evidence of the payment is provided to the City Administrator for entry into the City's books of account and for deposit as needed.

§ 92.039 Retention of Plans

One (1) set of approved plans, specifications and computations shall be retained by the Contract Building Official for a period of not less than seven (7) years from the date of completion of the work covered therein and as prescribed by rule or law, and one (1) set of approved plans and specifications shall be returned to the applicant and shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

§ 92.040 Validity of Permit

A. The issuance 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 Code or the Specialty Codes, or of any other Ordinance of the City.

B. The issuance of a permit based on plans, specifications and other data shall not prevent the Contract Building Official from thereafter requiring the correction of errors in such plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this Code or the Specialty Codes, or of any other Ordinance of the City.

§ 92.041 Expiration

Every permit issued by the Contract Building Official under the provisions of the Specialty Codes shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced within one hundred and eighty (180) days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred and eighty (180) days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one-half (1/2) 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 (1) year. In order to renew action on a permit after expiration, the permittee shall pay a full permit fee.

§ 92.042 Transfer of Building Permit

A building permit shall only be transferable when authorized by the owner of the property, in writing.

§ 92.043 Fees

Fees shall be assessed in accordance with the provisions of this Chapter 92 or as set forth in the fee schedule adopted by the City Council by Resolution.

§ 92.044 Permit Fees

A. The fee for each permit shall be in accordance with uniform fee methodology prescribed by the State of Oregon and the fee schedule adopted by the City Council by Resolution.

B. The determination of value or valuation under any of the provisions of this Code or the Specialty Codes shall be made by the Contract Building Official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems, stormwater runoff retention and drainage facilities, and other permanent equipment.

§ 92.045 Plan Review Fees

A. When submittal documents are required, a plan review fee for the Contract Building Official shall be paid at the time of permit issuance. In addition to any Plan Review fee collected by the Contract Building Official, the City shall collect a plan review fee in an amount determined by Resolution of the City Council from time to time to offset costs of in-house review of plans by City staff.

B. The plan review fees specified in this section are separate fees from the permit fees and are in addition to the permit fee.

C. When submittal documents are incomplete or changed so as to require additional plan review, or when the project involves deferred submittal items, an additional plan review fee shall be charged.

D. Plans requiring a fire-life safety review as required by ORS 479.155(2) and OSSC 106.3 shall be assessed an additional fee of forty percent (40%) of the permit fee.

§ 92.046 Expiration of Plan Review

A. Applications for which no permit is issued within one hundred and eighty (180) days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Contract Building Official.

B. The Contract Building Official may extend the time for action by the applicant for a period not exceeding one hundred and eighty (180) days on written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. An application shall not be extended more than once.

C. An application shall not be extended if this Code or any other pertinent laws or Ordinances have been amended subsequent to the date of application. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

§ 92.047 Building Surcharge

In addition to all other fees associated with each permit, a Building Surcharge shall be assessed in the amount of seven percent (7%) of the permit fee or the sum of Twenty-five Dollars (\$25.00), whichever is greater.

§ 92.048 Investigation and Investigation Fee

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

B. *Investigation Fee.* An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then subsequently issued. The investigation fee shall be the actual or average cost of investigation to ensure the unpermitted work complies with the State Building Code. The payment of such investigation fee shall not exempt an applicant from compliance with all other provisions of either this Code or the Specialty Codes nor from the penalty prescribed by law. Permits for emergency repairs obtained within five (5) business days after commencement of the repair are not subject to the investigation fee.

§ 92.049 Fee Refunds and Waivers

The Contract Building Official may authorize refunding of a fee paid hereunder for Contract Building Official services which was erroneously paid or collected.

A. The Contract Building Official may authorize refunding of not more than eighty percent (80%) of the permit fee paid when an application for a permit for which fees have been paid is withdrawn or cancelled before any work has been done or any inspections made.

B. The Contract Building Official may authorize refunding of not more than eighty percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any examination time has been expended.

C. The Contract Building Official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

D. The City Administrator may authorize refunding or waiving all or a portion of permit fees collected on behalf of the City.

§ 92.050 Inspections in General

A. Construction or work for which a permit is required shall be subject to inspection by the Contract Building Official and the construction work shall remain accessible and exposed for inspection purposes until approved by the Contract Building Official.

1. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the Contract Building Official nor the City shall be liable for expense entailed in the removal or replacement of any material required to allow the inspection.

B. The Contract Building Official may implement additional or alternate inspection procedures or requirements by written administrative rules.

C. Approval as a result of an inspection shall not be construed to be an approval of any violation of the provisions of this Code or of other Ordinances of the City.

D. A survey of the lot may be required by the Contract Building Official to verify the structure is located in accordance with the approved plans. All costs associated with the survey shall be paid by the applicant or property owner. The Contract Building Official may verify Building Code required minimum setbacks for the fire safety requirements of the Building Code. It shall be the responsibility of the owner and permit applicant to verify the correct property lines by survey prior to construction of or addition to any regulated building or structure.

E. The issuance or granting of a permit or the approval of any inspections by the Contract Building Official shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the Oregon Specialty Codes or of any other Ordinance of the City or other laws. Permits or inspections presuming to give authority to violate or cancel the provisions of the Oregon Specialty Codes, code, or other Ordinances of the City or other laws shall not be valid.

§ 92.051 Job Address and Inspection Record Card Posting

A. Work requiring a permit shall not be commenced until the permit holder or agent of the permit holder shall have posted the job site address in a readily visible location to identify the construction site for inspectors and public safety officials to easily locate the job address. Failure to post the job address in a readily visible location may result in a re-inspection fee equal to the minimum hourly rate on the fee scheduled adopted by the City Council.

B. Work requiring a permit shall not be commenced until the permit holder or agent of the permit holder shall have posted or otherwise made available an inspection record card such as to allow the Contract Building Official or Building Inspector conveniently to make the required entries thereon regarding inspection of the work. This card shall be maintained and made available by the permit holder until final approval has been granted by the Contract Building Official.

§ 92.052 Connection to Utilities

A. *Energy Connections.* Persons shall not make connections from a source of energy, fuel or power to the building service equipment which is regulated by the Specialty Codes and for which a permit is required by this Code until approved by the Building Inspector.

B. *Temporary Connections.* The Building Inspector may authorize the temporary connection of the building service equipment to the source of energy, fuel or power for the purpose of testing building service equipment, or for use under a temporary certificate of occupancy.

§ 92.049

§§ 92.053 through 92.099 are reserved.