City of Benson
City Council Communication

Regular Meeting **January 28, 2013**

To: Mayor and Council Agenda Item # 3

From: Luis Garcia Jr., CBO, CSBA, Building Official/ Zoning Administrator

Subject:

Resolution 4-2013 of the Mayor and Council of the City of Benson, Arizona, declaring as a Public Record those Certain Documents filed with the City Clerk and entitled "Amended Chapter 7, 'Development Services'" and "Chapter 7.1 'Administrative Hearings'"

Discussion:

Proposed updating to the City Code to consolidate Chapter 7 and Article 9-2 of Chapter 9 into one chapter titled *Development Services*. The Building, Planning and Zoning Departments chapters of the City Code have been long in need of an update to create a more concise and user-friendly code. This update clarifies old provisions and adds new core provisions that were lacking in the previous editions.

Also included is Chapter 7.1 Administrative Hearings, which establishes a process where alleged violations can be heard administratively without burdening the City court system. This chapter was included to support compliance and open communication between the City and responsible persons.

Following two worksessions with the City Council, Staff was directed to present the proposed updates to Council for consideration.

To adopt the proposed Code change, Council must adopt the change by an ordinance, which must be published. However, there is a provision that enables a City to adopt the provisions of a code "by reference", saving on publication costs. In order to do this, the Council must adopt a resolution declaring such provisions as a public record; three copies must be filed in the office of the City Clerk and kept available for public use and inspection. The ordinance, adopting these changes by reference, must then be published in full and will notify the public of a City Code change.

Staff Recommendation:

Approval of Resolution 4-2013

RESOLUTION 4-2013

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING AS A PUBLIC RECORD THOSE CERTAIN DOCUMENTS FILED WITH THE CITY CLERK AND ENTITLED "AMENDED CHAPTER 7, 'DEVELOPMENT SERVICES'" AND "CHAPTER 7.1 'ADMINISTRATIVE HEARINGS'"

BE IT HEREBY RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA:

That certain documents entitled "Amended Chapter 7, 'Development Services'" and "Chapter 7.1 'Administrative Hearings'", each dated January 28, 2013, three copies of each which are on file in the office of the City Clerk, are hereby declared to be a public record, and such copies are ordered to remain on file with the City Clerk for public inspection.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 28th day of January, 2013.

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TONEY D. KING, SR., Mayor

ATTEST:

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VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

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MICHAEL J. MASSEE, City Attorney

CHAPTER 7 DEVELOPMENT SERVICES

ARTICLE 7-1 DEVELOPMENT SERVICES

7-1-1 Creation
7-1-2 Divisions of Department
7-1-3 Advice and Assistance
7-1-4 Director of Development Services

Section 7-1-1 Creation

A. There is hereby created the Development Services Department, an executive department of the City. It shall consist of the Director of Development Services, who shall be the head of the Department, and all the officers and employees assigned thereto. All officers and employees shall perform their duties subject to the supervision of the Director of Development Services.

B. The Director of Development Services ("Director") shall supervise his or her department in accordance with the applicable Human Resource Administration Policies, and shall exercise the powers and perform the duties as are customarily conferred and required by this code, applicable ordinance, resolution, or lawful directive. The position of the Director of Development Services is declared as classified service, and he or she shall be appointed and removed by the City Manager and shall serve and receive the compensation as shall be determined in accordance with Chapter 3 of the Benson City Code.

C. In accordance with A.R.S. § 9-461.03, the Development Services Department is designated as the planning agency for the City.

Section 7-1-2 Divisions of Department

The Director of Development Services shall have the authority to create such divisions as are necessary and appoint and remove division heads subject to the ratification of the City Manager. The divisions created under this Article shall consist of the following:

A. Planning and GIS Division

B. Zoning Division

C. Building Safety Division

Section 7-1-3 Advice and Assistance

The Director of Development Services shall provide technical and operational assistance to, and cooperate with, all other departments, boards, commissions, officers or other official entities of the City.

CHAPTER 7 DEVELOPMENT SERVICES

Section 7-1-4 Director of Development Services

The Director of Development Services shall:

A. Supervise the preparation and/or the updating of the City of Benson General Development Plan, specific plans and the other plans and studies as are necessary and appropriate and shall assume the powers and duties under law as the City's director of its Planning Agency.

B. Administer and enforce the provisions of the adopted Zoning Regulations and shall assume the powers and duties under law as the City's Zoning Administrator.

C. Act as executive secretary for the Planning and Zoning Commission.

D. Act as executive secretary to the Board of Adjustment.

E. Administer and enforce the provisions of the adopted Building Construction and Safety Codes and shall assume the powers and duties under law as the City's Building Official.

CHAPTER 7 DEVELOPMENT SERVICES

ARTICLE 7-2 ADMINISTRATION, INSPECTIONS AND PERMIT ISSUANCE

7-2-1 Director of Development Services – Duties
7-2-2 Inspections
7-2-3 Permit Required
7-2-4 Other Permit Requirements
7-2-5 Standard Plans
7-2-6 Permit Application Contents
7-2-7 Permit Validity
7-2-8 Permit Application Review – Actions by Director of Development Services
7-2-9 Permit Issuance – Actions by Director of Development Services
7-2-10 Property Boundary Requirements
7-2-11 Certificate of Occupancy
7-2-12 Temporary Certificate of Occupancy
7-2-13 Unfinished Buildings and/or Structures
7-2-14 Compliance with City Business License Regulations

Section 7-2-1 Director of Development Services – Duties

A. The Director of Development Services and such inspectors as designated by the City Manager shall be responsible for enforcing the provisions of the City's Zoning Regulations, adopted Building Codes and such other ordinances and City Code provisions that regulate the use, construction and maintenance of property, abatement of nuisances and other duties as assigned by the City Manager.

B. The Director of Development Services shall administer and enforce all provisions of the above ordinances according to their terms.

Section 7-2-2 Inspections

The Director of Development Services or any duly authorized official may, in the discharge of his duties, or where there is 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 code which makes the structure or premises unsafe, dangerous or hazardous, may enter any premises, building or other structure during normal working hours to:

A. Inspect the same for compliance with the adopted codes and regulations of the City in connection with any application made under the terms of this Chapter, or for any investigation as to whether or not any portion of such premises, building or other structure is being used in violation of this Chapter. The Building Official shall be authorized to have concealed work exposed for inspection to determine whether the concealed work complies with the building code;

B. Inspect for compliance with the adopted codes and regulations of this City, in connection with any application made under terms of this Chapter, any installation of fuel gas piping or electrical distribution and service entrance equipment and affix a final inspection approval in the form of a "green tag" thereto.

    1. Following the final inspection the Building Official shall advise the supplier or serving public utility that the service is in compliance with the adopted building safety codes and affix a "green tag" to the service.

2. It is unlawful for any supplier or public utility service company to supply fuel gas or electricity to a new, temporary or permanent location or to a service location involving reconstructed facilities (any facility for which a permit has or has not been issued to amend, delete or add any portion either for repair of damage of for change of use or occupancy) until such “green tag” is affixed as required in this Chapter.

C. It is the permittee’s responsibility to call for all inspections, including final inspection. Except where a Temporary Certificate of Occupancy is issued pursuant to this Chapter, it is a violation of this Chapter to use, occupy or operate the site or structure without a Certificate of Occupancy, which shall not be issued without passing final inspection.

D. Except for inspections requested by a property owner or agent, the Director of Development Services or designee shall, before entering and conducting an inspection on any premises, comply with the following procedures:

1. Present photo identification and request entry.

2. On initiation of the inspection, state the purpose of the inspection and the legal authority for conducting the inspection.

3. Disclose any applicable fee.

4. Except for a food or swimming pool inspection, afford an opportunity to have an authorized on-site representative of the regulated person accompany the inspector on the premises, except during confidential interviews.

5. Provide notice of the right to have:

    a. Copies of any original documents taken from the premises by the inspector during the inspection.

    b. A split or duplicate of any samples taken during the inspection if the split or duplicate of any samples, where appropriate, would not prohibit an analysis from being conducted or render an analysis inconclusive.

    c. Copies of any analysis performed on samples taken during the inspection.

6. Inform each person whose conversation with the inspector during the inspection is recorded, that the conversation is being recorded.

7. Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.

8. If the person whose property is being inspected has not received a written or electronic document setting forth the above procedural rights regarding inspections, the Director of Development Services or his designee shall provide such written notice of the above procedural rights upon initiation of the inspection

as well as the name and telephone number of a contact person within the Department to answer any questions regarding the inspection.

9. The Director of Development Services or his designee shall obtain the signature of the person whose property is being inspected, or his designated representative, on the writing described in subsection (8) above indicating that the person or on-site representative has read the writing and is notified of the due process rights set forth therein. The Department shall maintain a copy of this signature with the inspection report.

10. The Director of Development Services or his designee shall provide a copy of, or electronic access to, the inspection report to the person whose property is being inspected or his representative either at the time of inspection or within 30 working days after the inspection.

11. The inspection report shall note any deficiencies identified during the inspection. The Director of Development Services shall provide the person whose property is being inspected with an opportunity to correct said deficiencies unless any of the following apply:

    a. The deficiency was committed intentionally.

    b. The deficiency is not correctable within a reasonable period of time determined by the Director of Development Services.

    c. There is evidence of a pattern of non-compliance.

    d. A risk to any person, the public health, safety or welfare or the environment indicates that correction is not possible.

12. The person whose property was inspected shall notify the appropriate contact person within the department when any deficiency that has been identified during an inspection has been corrected. Within 30 days of receipt of such notice, the Director of Development Services or his designee shall determine whether the property is now in substantial compliance with relevant codes and City standards.

13. The Director of Development Services or his designee shall provide the person whose property is being inspected with information regarding his administrative appeal rights for any final decision based on the results of the inspection, including the name and telephone number of the person to contact within the department to initiate such an appeal.

E. Where consent to enter and inspect is denied or cannot be obtained, neither the Director of Development Services nor his designee shall enter in or upon the premises without a court order issued by a court of competent jurisdiction, which may include the City Magistrate Court.

CHAPTER 7 DEVELOPMENT SERVICES

Section 7-2-3 Permit Required

A. Prior to commencing any construction for which a building permit is required under this Chapter, a building permit shall be obtained from the Building Official. The Building Official shall collect all applicable fees including plan review fees, permit fees, development or impact fees for construction, and any other fees which may be imposed according to the current comprehensive fee schedule of the City, separate code provisions, or by contract.

B. Depending on the type of construction, the Building Official may also require proof of compliance with any inspections, testing or reviews by other governmental agencies as a condition of permit issuance. Failure by the applicant to comply with any codes or conditions will void the permit.

Section 7-2-4 Other Permit Requirements

A. All applications for zoning use permits shall be governed by Article 3 of the Zoning Regulations.

B. Demolition permits, sanitary sewer connection permits, right-of-way work permits or any other construction-related permits required by any code or ordinance of the City shall be made in the office of Development Services on forms supplied therein, together with a sketch containing sufficient information for the enforcement of the applicable City codes.

C. All permits shall be obtained prior to start of construction or other work or activity for which a permit is required and the placard prominently displayed upon site throughout the construction, work or other activity.

D. A temporary contractor's construction yard requires a building permit, which will be granted provided it is in the immediate vicinity of the construction site and is enclosed on all sides by a fence or wall not less than six feet in height above grade. The yard and fence must be removed following the completion of the contractor's construction. The permit is revocable if the yard or fence is maintained in an unsanitary, unsightly or dangerous manner, or is otherwise a nuisance. If the temporary construction yard is located adjacent to a residential zone, it shall observe quiet hours from 8 p.m. to 6 a.m.

E. All new construction, reconstruction or exterior remodeling of buildings along Fourth Street, between Ocotillo Street on the west and the railroad overpass on the east, shall have an exterior design which appears substantially similar to the style generally found in rural commercial districts during the period of 1880 to 1920. The City of Benson Historic Preservation Commission shall function as a design review authority for the delineated area.

F. No building or structure that has been wholly or partially erected on any premises shall be moved to or placed upon any other premises until a permit for the removal and relocation has been issued by the Building Official. Any such building or structure shall conform to all provisions of City codes and regulations in the same manner as a new building or structure.

Section 7-2-5 Standard Plans

A. Standard Plan Policy

1. Standard plans shall be reviewed for compliance with the City's current adopted codes. A unique standard plan number shall be assigned upon approval. This shall be valid until such time as the City's adopted codes are revised. At such time, a new plan shall be submitted for review that conforms to the code changes. A new review and plan fee shall be required for this plan change.

2. "Inverted plans" shall require a separate review, plan review fee and plan number.

3. Once reviewed and approved, a new review, standard plan number and plan review fee shall be required if any of the changes listed below are made to the standard plan on file:

    a. Basic building and/or option sizes;

    b. Structural plan and/or calculations;

    c. Interior bearing and/or non-bearing wall locations;

    d. Window and door sizes and/or locations;

    e. Electrical, mechanical, and/or plumbing systems.

4. Once reviewed and approved, review and revision plan review fees shall be required if any of the changes listed below are made to the standard plan on file:

    a. Structural plans and/or calculations to address field construction issues;

    b. Individual truss calculations to address field construction issues;

    c. Minor electrical, mechanical and/or plumbing changes to address field construction issues.

5. Multiple identical buildings on lots shall be required to pay the initial sixty-five percent standard plan review fee for the first building (if not already on file), and the site specific fifty percent review fee for each additional building.

B. Submittal Requirements – Standard Plan

1. An application, two sets of plans, structural and truss calculations (commercial buildings require four sets of plans). All possible options shall be included on the plans and calculations. If applicable, plan sheets, structural calculations and truss calculations shall be stamped by the design registrant. One set shall be returned as approved for copying, and one set shall remain on file.

2. If stamped by a registrant, a letter of approval for plans to be used as a standard plan shall be required.

C. Submittal Requirements – Site Specific Plans

1. A site specific application referencing the standard plan number, one set of plans, structural and truss calculations, two eight and one-half inch by eleven inch site plans, and any other additional site specific related information (commercial buildings require three sets of plans). Options to be built shall be clearly identified on all submitted documents by clouding the optional areas and circling the option reference.

2. Once the proposed work has been reviewed and approved, one set of plans, structural and truss calculations, and one site plan, stamped "approved," shall be returned to the applicant along with a copy of the permit and an inspection card. The approved site plan and building plans and calculations shall be on site and available for all inspections.

3. Structures found by field inspection to not be constructed to the approved standard plan, shall be issued a stop work order and a new review with fees shall be required.

D. Plan Review Fees

1. Each "standard plan" review fee shall be based on sixty-five percent of the building permit fee, as established in the City's currently adopted fee schedule. If options that change square footages are included on the plans, the fees shall be based on the largest possible combination.

2. Each "site specific" review fee shall be based on fifty percent of the building permit fee, as established in the City's currently adopted fee schedule. If options are included on the plans, the fees shall be based on the options being built.

3. Each "revision" review fee shall be based on the currently adopted fee schedule.

Section 7-2-6 Permit Application Contents

The following information is required in connection with an application for a building permit:

A. Street address (if any) and legal description of the property, and dimensions thereof;

B. Nature of the proposed use of the structure and premises and cost of structures;

C. Dimensions, area and height of each improvement;

D. Location of existing and proposed structures on the lot, and spacing between same;

E. Location of utilities and sanitary facilities serving such improvements;

F. Written certification by the applicant that the sidewalks situated adjacent to the property for which the permit is being requested, are free of breaks and cracks;

G. Such other information as the inspector may require for the purpose of determining whether the application conforms with the requirements of this Chapter.

Section 7-2-7 Permit Validity

No permit presuming to give authority to violate any of the provisions of this Chapter or any existing law shall be issued, and if issued shall not be valid except insofar as the work or use which it authorizes is lawful and permitted. In all other instances the permit is valid, provided:

A. A placard is openly displayed at the improvement site during construction, repair or alteration in a manner and location that it will be clearly visible from the street;

B. Construction is commenced within six months of date of issuance and diligently pursued thereafter;

C. Any requirements or stipulations conditional upon which the permit was issued are complied with;

D. In addition to the permit placard, the permittee must have available on site a copy of the approved site plan and construction plans, as applicable, for reference by inspectors;

E. Failure of the permittee to prominently display the placard as set forth herein, or have a set of construction or site plans available on site for reference by inspectors may result in failed inspections, fines and/or revocation of said permit by the Building Official.

Section 7-2-8 Permit Application Review – Actions by Director of Development Services

A. Neither the Director of Development Services, Building Official or Zoning Administrator shall base in whole or in part a decision to deny a permit on a requirement or condition that is not specifically authorized by statute, rule, ordinance or code.

B. The Director of Development Services or his designee shall review a permit application and issue a decision to grant or deny the permit either in writing or electronically within the timeline set by the applicable exhibit located at the end of the chapter, of receipt of an administratively-complete permit application.

C. Within the timeline set by the applicable exhibit located at the end of the chapter, of receipt of any application, the Director of Development Services or his designee shall notify the applicant if there is an administrative deficiency to the application. If upon this initial review the Director of Development Services or his designee determines that the application is complete, he shall provide the applicant with notice of administrative completeness. If the application requires other departments in addition to Development Services to review the application, the Director of Development Services shall obtain said review for administrative completeness within the timeline set by the applicable exhibit located at the end of the chapter.

D. If the Director of Development Services or his designee determines that an application is not administratively complete, he shall provide the applicant with a comprehensive list of the specific deficiencies in a written or electronic notice. Upon issuing such a notice, the timeframe set forth in subsection (B) above is suspended until such time the Director of Development Services receives the missing information from the applicant, at which point the Director of Development Services has additional days to review the application for administrative completeness.

E. If the Director of Development Services does not issue a notice of administrative deficiencies with the timeframe of subsection (C) above, the application shall be deemed to be administratively complete.

F. During the substantive review timeframe of subsection (B), the Director of Development Services or his designee may make one comprehensive written or electronic request for additional information. The applicant and the Director of Development Services may agree in writing to allow for supplemental requests for information. If the Director of Development Services makes a written or electronic request for additional information, the substantive review timeframe of subsection (B) above is suspended until the applicant submits the requested information.

G. The applicant and the Director of Development Services may agree in writing to extend the timeframes of subsections (B) and (C) above.

H. Any denial of an application shall include specific reasons justifying the denial with references to the statutes, ordinances, codes or substantive policy statements of the Department and an explanation of the applicant's right to an administrative appeal of the denial. The notice regarding administrative appeal rights shall include the number of working days in which the applicant must file a protest challenging the denial and the name and telephone number of a Department contact person who can answer questions regarding the appeals process.

I. If the Director of Development Services fails to either issue the permit or notice of denial of permit within the timeframe of subsection (B), then the City shall refund to the applicant all fees charged for the permit and shall continue working on the permit review.

Section 7-2-9 Permit Issuance – Actions by Director of Development Services

For each permit issued, the Director of Development Services shall provide:

A. To the applicant, a fee receipt and a place card of a distinctive and easily identifiable color which shall state the permit number, the date issued and the work authorized thereby;

B. To the assessor, one copy of the permit, containing the necessary information as outlined herein;

C. To the Finance Director, one copy of the plan review fee receipt and one copy of the permit fee receipt;

D. To the Building Official's files, one copy of the fee receipt and one copy of the permit date and drawing.

Section 7-2-10 Property Boundary Requirements

If upon inspections by the City of building setback lines, a reasonable doubt is believed to exist by the City as to the accuracy of the setback, the City shall then have the right to require the setback in question to be surveyed by an Arizona licensed land surveyor and provide the City

with a result of survey in eight and one-half inch by eleven inch format indicating the building is in compliance with the required setbacks.

Section 7-2-11 Certificate of Occupancy

A. No person, firm or corporation shall occupy any new building or structure for which a building permit is required, in whole or in part, until a Certificate of Occupancy has been issued by the Building Official. Application for a Certificate of Occupancy shall be coincidental with the application for a building permit.

B. Prior to the issuance of a Certificate of Occupancy, the applicant for the building permit must submit to the Building Official a certificate of guarantee, to be issued by a pest-control agency licensed by the Arizona Office of Pest Management. The certificate of guarantee shall indicate that the soil on the lot which is the subject of the building permit has been treated for the prevention of termite infestation.

C. At the completion of vertical construction and prior to issuance of a Certificate of Occupancy, the Building Official shall inspect the condition of the sidewalks situated adjacent to the property for which the Certificate of Occupancy is being requested. It is a precondition for issuance of a Certificate of Occupancy that the sidewalks conform to the minimum concrete workmanship standards for licensed contractors as approved and adopted by the State of Arizona Registrar of Contractors Office.

D. After having received notice that the building, structure or premises, or part thereof, has been completed and is ready for use or occupancy, the Building Official or authorized designee shall make a final inspection thereof to determine whether the construction has been completed in conformity with the provisions of this Chapter. If the construction is found to be in conformity, the Building Official shall issue a Certificate of Occupancy therefore within five (5) business days.

Section 7-2-12 Temporary Certificate of Occupancy

A. The Building Official may only issue a Temporary Certificate of Occupancy if the following conditions have been met:

    1. No substantial hazard will result from occupancy of any building or portion thereof before the same is completed; and

    2. The applicant has posted a financial assurance or security with the City in a principal amount equal to the estimated cost of the required off-site and onsite improvements as determined by the City Engineer and Building Official. Said financial assurance or security shall guarantee completion of the improvement work, and it shall also be approved as to form by the City Attorney prior to final acceptance by the City.

B. The Building Official shall specify in the Temporary Certificate of Occupancy the date set for compliance with all applicable City codes, but at no time shall the date set for compliance be more than sixty (60) days from the date the Temporary Certificate of Occupancy is issued.

Section 7-2-13 Unfinished Buildings and/or Structures

A. Whenever work has commenced on a building or structure for which a permit has been issued, and said permit has expired pursuant to the applicable provisions of this Chapter, the person or responsible party for the property upon which the structure is located, upon receipt of notice in writing from the Building Official, shall within thirty days from the date of such written notice, obtain a new permit to complete the work and diligently pursue the work to completion, or within said thirty days, obtain a demolition permit and shall remove or demolish the building or structure within one hundred twenty days from the date of written notice.

B. Notwithstanding the applicable provisions of the International Codes and/or National Electric Code and this section, whenever work on any building, structure, addition, alteration, appendage or repair has commenced, the exterior walls and roof shall be completed in accordance with the approved plans including but not limited to roofing, fenestration and finish materials including paint, within two years of commencing construction. In the absence of evidence to the contrary, the date of the first inspection shall establish the date that construction commenced.

C. Unfinished buildings and structures in violation of this section shall be deemed a public nuisance and abated in accordance with law.

Section 7-2-14 Compliance with City Business License Regulations

A. No permit shall be issued to any person, firm, corporation, partnership or joint venture engaged in the business of construction contracting, as defined in Chapter 8A of the City Code, unless the construction contractor has been issued a valid business license by the City of Benson under the provisions of Chapter 8 of this Code.

B. No permit shall be issued to any person, firm, corporation, partnership or joint venture, however legally constituted, who has been determined by the Finance Director to owe the City transaction privilege tax pursuant to the provisions of the City Tax Code, unless the applicant for a building permit has entered into a written agreement relating to payment of the tax obligation with the City, and is, at the time the building permit has been applied for, current in making all payments required under the terms of such agreement.

CHAPTER 7 DEVELOPMENT SERVICES

ARTICLE 7-3 INTERNATIONAL CODES

7-3-1 Adoption
7-3-2 Annual Review

Section 7-3-1 Adoption

A. The following public documents are hereby adopted by reference as if fully set forth herein as the City's Building and Safety Codes:

1. the International Building Code,
2. the International Residential Code,
3. the International Mechanical Code,
4. the International Plumbing Code,
5. the International Fuel Gas Code,
6. the International Fire Code,
7. the International Energy Conservation Code,
8. the International Existing Building Code, and
9. the International Code Council Electrical Code – Administrative Provisions, all of which are 2006 editions, as amended, published by the International Code Council, Inc.;
10. the National Electrical Code, 2005 Edition, published by the National Fire Protection Association, as amended; and
11. the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, as published by the International Conference of Building Officials, as amended;
12. certain documents known as Amendments to the Uniform Plumbing Code – Standards for Low Flow Plumbing Fixtures.

B. Three copies of the above public documents are on file with the City Clerk.

Section 7-3-2 Annual Review

The documents adopted pursuant to this article shall be reviewed annually by the Building Official and the Board of Appeals and any discrepancies noted or changes recommended shall be provided to the Council by the Building Official.

CHAPTER 7 DEVELOPMENT SERVICES

ARTICLE 7-4 PUBLIC NUISANCES AND PREMISES MAINTENANCE

7-4-1 General Provisions
7-4-2 Definitions
7-4-3 General Requirements
7-4-4 Graffiti Prevention, Prohibition and Removal
7-4-5 Creating, Causing or Maintaining a Public Nuisance

Section 7-4-1 General Provisions

A. Purpose and Scope.

1. The purpose of this Section is to promote the health, safety and welfare of the citizens of Benson, Arizona, and to protect neighborhoods against hazardous, blighting and deteriorating influences or conditions that contribute to the downgrading of neighborhood property values by establishing minimum standards for the condition of the exterior of buildings and by establishing requirements for maintenance of all residential and nonresidential buildings, structures of whatever kind, and vacant and improved land.

2. This Section shall apply to all buildings, structures and lands within the City of Benson without regard to the use, the date of construction, improvement or alterations.

3. This Section shall be fairly and reasonably applied to promote the maintenance of all existing buildings and land in the City of Benson. The intent is to insure that individuals and families do not suffer undue hardship.

4. This Section shall not require changes in existing buildings and utilities when alterations were installed and have been maintained in accordance with the City of Benson Building Safety Codes in effect at the time of construction or alteration of the subject building or utilities.

5. Requirements necessary for strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the Director of Development Services.

Section 7-4-2 Definitions

Where terms are not defined in this Chapter, they shall have the meanings ascribed to them in other chapters of this Code, including but not limited to the Building Codes adopted elsewhere in this City Code including but not limited to: building, electrical, fire, housing, mechanical, plumbing, swimming pools and zoning codes and the code for the abatement of dangerous buildings. Words not defined shall be given their normal, ordinary meaning.

1. *"Accessory use areas"* Those areas and buildings around a dwelling, which provide space for amenities and facilities, including but not limited to pay phones, picnic areas, recreation areas, laundry rooms, recreation rooms and refuse collection facilities.

2. *"Accumulation of inoperable vehicles"* Two (2) or more inoperable vehicles upon a residential lot, or upon a commercial or industrial lot where the primary business does not involve the service of vehicles or the storage of inoperable vehicles.

3. *"Agent"* A person authorized by the owner of a rental-housing unit to make or order repairs or service to the unit and authorized to receive notices on behalf of the owner.

4. *"Blight or blighted"* Unsightly conditions including accumulation of debris; fences characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting; landscaping that is dead, characterized by uncontrolled growth or lack of maintenance, or is damaged; any other similar conditions of disrepair and deterioration; and the exterior visible use or display of tarps, plastic sheeting, or other similar materials as flexible or inflexible screening, fencing, or wall covering upon a residential lot; regardless of the condition of other properties in the neighborhood.

5. *"Debris"* Substance of little or no apparent economic value, including but not limited to deteriorated lumber, old newspapers, furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, car parts, abandoned, broken or neglected equipment, or the scattered remains of items.

6. *"Deteriorated or deterioration"* A lowering in quality of the condition or appearance of a building, structure or premises, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or any other evidence of physical decay, neglect, damage or lack of maintenance.

7. *"Driveway"* A private way that provides access from a street to a building such as a house or garage.

8. *"Dumping ground"* Any area that is used for the storing, leaving, or abandoning of refuse, garbage, waste, earth, rock or debris, including construction, agricultural, landscape, residential, commercial and industrial solid waste.

9. *"Fences, screen walls and/or retaining wall"* Self-standing structures designed to provide semi-privacy, security or bank retention between grade separations.

10. *"Fugitive emissions or fugitive dust"* Any particulate matter that becomes airborne, other than particulate matter that directly or indirectly passes through a stack, chimney, vent or other functionally equivalent opening as a result of human activity.

11. *"Garage sale"* Includes yard sales, carport sales or similar types of sales on the seller's own premises, involving the sale of used or second hand tangible personal property customarily found in and about the residence, and not including property acquired for resale and not for personal use.

12. *"Garbage"* Swill, offal, and any accumulation of spoiled, partially or fully decomposed, rotting or discarded animal, vegetable or other matter that attends the preparation, handling, consumption, storage or decay of plant and animal

matter including meats, fish, fowl, buds, fruits, vegetable or dairy products and their waste wrappers or containers.

13. *"Graffiti"* Initials, slogans, designs or drawings, written, spray-painted, etched or sketched on a sidewalk, wall, building, fence, sign, or any other structure or surface without consent of the owner and visible from a public right-of-way.

14. *"Health hazard"* The presence of any item(s) or condition(s) that adversely impact or jeopardize the well being or health of an individual. Such items or conditions include, but are not limited to, evidence of occupancy without adequate water and sanitation facilities, or may be inclusive of human or animal waste, medical or biological waste, sharps, gaseous or combustible materials, radioactive waste, dangerous or corrosive chemicals or liquids, flammable or explosive materials, friable asbestos, offal and decay matter.

15. *"Imminent hazard"* A condition of real property that places a person's life, health, or property in high risk of peril when such condition is immediate, impending, on the point of happening and menacing.

16. *"Impervious"* Incapable of being penetrated or affected by water or moisture.

17. *"Incipient hazard"* Condition of real property that can become an imminent or health hazard if further deterioration occurs that can cause unreasonable risk of death or severe personal injury.

18. *"Infestation"* The presence or apparent presence of insects, rodents, vermin or noxious pest of a kind or in a quantity that endangers health within or around a dwelling or may cause structural damage to the dwelling.

19. *"Inoperable vehicle"* A vehicle physically incapable of its intended operation or a vehicle that exhibits one (1) or more of the following conditions: wrecked, partially or fully dismantled, abandoned, stripped, substantially damaged, inoperative, scrapped, having the status of a hulk or shell, discarded, or unable to be safely operated; including but not limited to vehicles on blocks or similar devices, with a deflated tire or tires, or from which the engine, wheels or tires have been removed. A vehicle for which required license plates and/or tags have been expired or out of date for more than three (3) months in addition to the collection of dust and/or cobwebs is an indication that a vehicle is inoperable.

20. *"Landscape debris"* Material generated or accumulated as a result of, or moved in the course of, landscape operations. Landscape debris includes, but is not limited to, grass clippings, leaves, branches, vegetative matter, rubbish, soil and rock.

21. *"Leaf blower"* Any device that generates a stream of air that is designed, or used, to move landscape debris.

22. *"Litter"* Decaying or non-decaying solid and semi-solid wastes, including but not limited to both combustible and non-combustible wastes, such as paper, trash, cardboard, waste material, cans, yard clippings, wood, glass, bedding, debris; scrap paving material, discarded appliances, discarded furniture, dry vegetation,

weeds, dead trees and branches, vegetation and trees which may harbor insect or rodent infestations or may become a fire hazard, piles of earth mixed with any of the above or any foreign objects, including inoperable vehicles.

23. *"Off-road vehicle"* A recreational vehicle designed for off-road use and not required to be licensed, including without limitation all-terrain vehicles, motocross cycles, sand rails and dune buggies.

24. *"Ongoing restoration project"* A project involving a single vehicle or machinery that is kept in a clean and neat condition during the term of active repair and rebuilding.

25. *"Owner"* The person, persons or legal entity holding title to the real property. The official records of the Cochise County Assessor's office creates a presumption that the person(s) listed as owner(s) are the true owners, with the exception of a deceased individual, in which case any near relative of the decedent living in or occupying the real property is presumed to be an owner. Joint owners are each individually responsible for complying with the provisions of this Chapter. Where ownership is in the form of a trust, the trustee(s) and trust beneficiaries are each responsible for complying with this Chapter.

26. *"Responsible person"* An owner, tenant, renter, lessor, occupant, lessee, manager, agent (whether employee or independent contractor), lien holder or any fiduciary or person with power of attorney or other person who is occupying or having charge, possession or control of the premises or has authority and ability to act on behalf of, or in the interest of, the owner. When property is held in common by more than one (1) owner, each owner is a responsible person, even when a homeowner's association has been formed to manage and maintain such commonly owned property.

27. *"Rubble"* Broken solid surface fragments usually resulting from the decay or deterioration of a building; miscellaneous mass of broken or apparently worthless materials.

28. *"Screened area, exterior"* An area separated by a permanent non-flexible device to completely conceal one (1) element of a property from other elements or from adjacent or contiguous property. Examples include but are not limited to fencing six (6) feet in height that is made from solid wood, brick or chain link with opaque slats.

29. *"Stabilization or stabilized"* Treatment of ground surfaces with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, grass or other continuous vegetative cover, or any combination of these stabilizers.

30. *"Weeds"* Any vegetation which attains such large or uncontrolled growth as to become, when dry a fire hazard or menace to adjacent property and any vegetation, in excess of ten (10) inches, growing in an uncontrolled manner, which will, if not cut or destroyed, become a fire hazard or menace to adjacent property.

Section 7-4-3 General Requirements

A. Building and structure; exteriors.

1. Exterior surfaces. All exposed exterior surfaces, windows and doors shall be maintained so as to be free of deterioration that is a threat to health and safety, impervious to moisture and weather elements, and shall not otherwise present a deteriorated or blighted appearance. Windows, doors, locks on doors, and hinges must be present and installed properly. These items must be free from deterioration or blighting conditions. Examples of such deterioration and blight may include the following:

    a. Improperly anchored canopies, metal awnings, stairways, exhaust ducts, and overhead extensions;

    b. Exterior windows and doors that are not fitted securely in their frames and are not substantially weather tight or that have inoperable locks;

    c. Paint that is deteriorated, indicated by peeling, flaking, cracking, blistering or mildew, resulting in exposed, bare unprotected surfaces;

    d. Window screening not maintained in good condition;

    e. Boarded window or door openings on an occupied structure;

    f. Boarded window or door openings on an unoccupied structure for three hundred sixty-six (366) days in any two-year period.

2. Roof coverings shall be watertight and weather tight and shall be free of broken, rotted, split, curled or missing roofing material in such amounts as to present a deteriorated appearance.

3. Coolers and their mounting apparatus shall be maintained in a condition free from excessive accumulation of scale, rust, corrosion or mineral deposits. Cooler stands or mounts shall be structurally sound. Unused, deteriorating and unattached evaporative coolers are to be removed from the structure.

B. Fences, screen walls, and retaining walls.

1. All fences, screen walls, and retaining walls on the premises shall be safe, structurally sound and maintained so that they do not constitute a hazard, blight or condition of disrepair. Examples of hazards, blight or conditions of disrepair are inclusive of, but not limited to leaning fences, fences that are missing slats or blocks, graffiti, peeling paint, deterioration of paint or materials, rotting or damaged.

C. Exterior insect, rodent and animal control.

1. All premises shall be kept free from insect and rodent infestation and other noxious pests. This provision shall not require action to disturb the natural or

cultivated activity of bees, rabbits, or other insects and animals where such activity is not a danger or nuisance to any resident or residents of the area, and where other applicable legal requirements are met.

D. Drainage.

1. All premises shall be maintained so as to prevent the accumulation of water when such water causes a hazardous or unhealthy condition, becomes a breeding area for insects, causes soil erosion, or which causes damage to neighboring property.

E. Exterior premises and vacant land.

1. General.

a. All land including exterior premises and vacant land, whether improved or unimproved, shall be maintained free from any accumulation of garbage, debris, rubble, hazardous waste, litter, rubbish, refuse, waste material, or blight, which includes, but is not limited to, graffiti on walls, fences, mail boxes, etc., bottles, papers, glass, cans, organic or inorganic material, the exterior visible use or display of tarps, plastic sheeting, or other similar materials as flexible or inflexible screening, fencing or wall covering upon a residential lot, an accumulation of inoperable vehicles, discarded broken, or inoperable appliances, discarded or broken furniture, broken glass, discarded broken or inoperable equipment, discarded or broken bicycles, bicycle or appliance parts, piles of mixed materials, dry vegetations, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding, excelsior, packing straw, packing hay or other packing material, lumber not neatly piled, lumber stored in front yards, scrap iron, tin and other metal not neatly piled or anything whatsoever in which insects, rodents, snakes or other harmful pests may live, breed or multiply or which may otherwise create a fire or safety hazard.

b. It is unlawful for any business, corporation, firm or responsible person to fail to provide approved litter or trash receptacles for the containment of litter and trash generated within or upon their premises or to allow litter or trash from approved receptacles to become windblown and be disbursed about the area.

c. It is unlawful for any responsible person in charge of any construction or demolition site to cause, maintain or permit the accumulation of any litter or debris on the site before, during, or after completion of the project except in a designated contained area, or to allow any such litter or debris to become windblown and carried or deposited upon any alley, street, public place or adjacent private property.

d. Streets, alleys and sidewalks. The responsible person having control of any land abutting a sidewalk, alley or street shall maintain the sidewalk, alley or street in the same manner as provided in subsections A through

D of this section. The areas required to be maintained pursuant to this subsection are as follows:

1. Any portion of a street, which has been opened for public use, between the curb line, or if there is no curb line the edge of pavement, and the abutting property line including sidewalks.

2. One-half (½) of the width of abutting alleys from the property line to the centerline of the alley.

3. Any portion of a street abutting the boundaries of a parcel of land, which street has not been opened for public use, shall be maintained by those persons who dedicated the street or their successors in interest, including lessees and other persons in control of the land abutting the street; provided that if the abutting land on either side of such street is owned by different persons and each person has an obligation to maintain the street hereunder, then the owner, lessee or other person in control of the land shall only be required to maintain one-half (½) of the width of the street abutting their land.

e. Maintenance of swimming and architectural pools. All swimming and architectural pools, ponds and spas shall be properly maintained so as not to create a safety hazard or harbor insect infestation, or create a visibly deteriorated or blighted appearance. Water shall not be allowed to stagnate, or to become stale or foul through lack of circulation. Fencing or other barriers required for swimming pool and spa enclosures shall be maintained in good condition. All pools shall also be free from visible deterioration or blighted appearance. Architectural pools that contain fish must be maintained to provide for the health of the fish. Dead fish must be removed immediately.

f. Weeds, bushes, trees and other vegetation.

1. All exterior property areas shall be kept free from dry vegetation, tumbleweeds, weeds, bushes and tall grass and trees which present a visual blight upon the area, which may harbor insect or rodent infestations, or dry vegetation which may likely become a fire hazard or result in a condition which may threaten the health and safety or the economic welfare of adjacent property owners or occupants.

2. The responsible person shall remove, restore or repair any landscaping, visible from public property, that is substantially dead, damaged, or characterized by uncontrolled growth, or presents a deteriorated appearance; including but not limited to uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than ten (10) inches; or any dead trees, bushes, shrubs or portions thereof, stumps; or any palm or similar type tree having dead or dry fronds descending downward from the base of the lowest living frond

more than eight (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground.

3. The responsible person must trim all overhanging vegetation to provide a thirteen-foot six-inch minimum height clearance in all streets and alleys, a seven-foot minimum height clearance on all sidewalks, and shall not allow vegetation to protrude more than one (1) foot six (6) inches into the alleyway.

4. The responsible person shall remove any material growing along a public or private right-of-way, access drive, fire lane or utility easement, which by reason of its size, manner of growth or location, constitutes an obstruction, impairs visibility or otherwise endangers any person, improvement or structure.

5. When vegetation extends into a street or alleyway in such a manner that it interferes with the free and safe use of the street or alleyway, the City may immediately trim and cut such vegetation as necessary to remove such interference without notice to the responsible person and without following the abatement procedures set forth in this Code.

2. Dumping.

a. Vacant lots or lands, which have been subject to dumping on more than one (1) occasion, shall be secured to prevent future occurrences of dumping. Methods of securing vacant lots or lands may include the following: permanent fencing; ditch and berm; placing four-foot high posts at four-foot intervals; and other equally effective methods. Signs stating "no dumping" shall be erected in accordance with applicable laws on vacant lots or lands, which have been subject to dumping on more than one (1) occasion.

3. Excavations.

a. Excavations and other like or similar conditions must be filled with clean fill. Excavations shall be maintained in a secure manner so as to prevent a hazard to public health and safety. Any mound made of dirt or debris over five (5) feet in height must be secured in a manner as to prevent a hazard to public health and safety. An excavation or mound is considered secure when:

1. It is protected by a permanent and complete five-foot minimum height enclosure that surrounds the excavation, mound or property.

2. A well, pit, abandoned swimming pool, or similar excavation is completely and permanently covered, fenced securely or protected in an equivalent manner.

Section 7-4-4 Graffiti Prevention, Prohibition and Removal

A. Purpose and intent.

1. It is the purpose and intent of this section to provide a procedure for the prevention, and removal of graffiti from walls, structures or surfaces on public and private property in order to reduce blight and deterioration within the City and to protect the public health and safety.

2. Graffiti is obnoxious, contributes to neighborhood deterioration, provides a communication system for gangs and other vandals, damages property, and constitutes a public nuisance, and must be abated immediately to avoid the detrimental impact of such graffiti on the City and its residents, to disrupt the communication system for gangs and other vandals, and prevent the further spread of graffiti.

B. Graffiti prohibited.

1. All sidewalks, walls, buildings, fences, signs, and other structures or surfaces shall be kept free from graffiti, posters, handbills or circulars when the graffiti posters, handbills or circulars are visible from the street or other public or private property.

2. Notice of violation. If it is determined by the City that graffiti exists on property in violation of this Ordinance, the City shall, in writing, notify the owner of the property or responsible party through the issuance of a notice of violation and providing ten (10) days to abate the graffiti, which notice may be served by certified mail, personal service, or by posting the subject property and publishing the notice in the official City newspaper.

3. Notice of violation - contents. The notice of violation shall identify the property in violation, shall generally describe the location of the graffiti, and direct that the graffiti shall be abated within ten (10) days of receipt of the notice. The notice shall state that in the event the owner or responsible party fails to abate the graffiti within the time period specified in the notice of violation, the City shall abate the graffiti and bill the owner or responsible party for the costs thereof. The notice shall state that the owner or responsible party may appeal the notice as provided for in the Building Safety Code.

4. In the event that the owner or responsible party fails to abate the graffiti as required by the notice of violation, the City may proceed to exercise its enforcement options pursuant to Article 7-5 below or Chapter 7.1. Where a court or hearing officer has ordered the graffiti to be abated and the owner does not timely comply, the City may abate the graffiti with prior notice to the owner, and seek a lien on the property for the cost thereof pursuant to Section 7-5-10.

Section 7-4-5 Creating, Causing or Maintaining a Public Nuisance

A. It is unlawful to maintain or commit a public nuisance or to fail or refuse to perform any legal duty, which results in a public nuisance or relating to the removal of a public nuisance.

B. Public nuisance designated.

1. Anything which is injurious to health, safety or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons, or which unlawfully obstructs the free passage or use, in the customary manner, of any stream, public park, square, street or highway, is a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal.

2. In addition, any violation of this Chapter that is continuous with respect to time is a public nuisance.

C. Public nuisances includes, but are not limited to, any one (1) or more of the following conditions:

1. Exterior areas used or maintained as junkyards or dumping grounds, except:

a. Any automobile wrecking yard or other junkyard where the same are permitted by the City zoning regulations; or

b. The disassembling, repair, rebuilding, storage or keeping of vehicles, machinery or any of the parts thereof on any farm or ranch where such disassembling, repair, rebuilding, storage or keeping are customary and incidental to such farming or ranching activities.

2. Any inoperable vehicle, or parts thereof, outside of or under a roof area not enclosed by walls, doors or windows of any building on any lot, except the safe and neat keeping of:

a. Substantially complete inoperable or unregistered vehicles with inflated tires under the roof area of any building as long as the vehicle is kept covered.

b. A vehicle undergoing repair, titled to the owner or resident of the property, provided that the repair is complete within thirty (30) days after the repair was begun, provided that not more than three (3) such thirty (30) day repairs will be permitted in any twelve (12) month period.

c. Not more than two (2) ongoing restoration projects or inoperable or unregistered vehicles in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the City Code.

d. Lawful commercial activities involving vehicles as allowed by the zoning ordinance.

e. Operable off-road vehicles, under the roof area of any building, or in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the City Code.

3. A single inoperable vehicle in combination with any of the conditions described in this section shall be deemed a violation of this subsection. It is an affirmative defense to a violation of this subsection that the vehicle was registered to a resident of the property, that the vehicle was undergoing repair, and that the total period during which the vehicle was inoperable did not exceed thirty (30) days. This affirmative defense may not be raised more than three (3) times in any combination of civil or criminal proceedings in any one (1) calendar year.

4. Animal waste that is not securely protected from insects and the elements, or that is kept or handled in violation of this code or any other ordinance of the City or the county; provided, that nothing in this subsection shall be deemed to prohibit the use of such animal waste on any farm or ranch in such a manner and for such purposes as are compatible with customary methods of good husbandry or cultivation.

5. Any putrid, unsound or unwholesome bones, meat, hides, skins or the whole or any part of any dead animal, butcher's trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the health officer of the county or this code or any other ordinance of the City.

6. The erection, continuance or use of any building, room or other place in the City that, by noxious exhalations, including but not limited to smoke, soot, dust, fumes or other gases, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public.

7. Allowing fumes and residue from spraying applications to enter the property of another without permission.

8. Burning or disposal of refuse, sawdust or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon the sidewalk, streets, alleys or highways of the City, or to cause or permit the smoke, ashes, soot or gasses arising from such burning which is discomforting or offensive to a reasonable person of normal sensitivity, or to constitute a potential hazard to public health, safety and welfare; provided, that this subsection shall not apply where the person responsible for the action has properly obtained a fire permit from the City fire department or the county health officer.

9. To leave or permit to remain in an unsecured location outside on any property, or within any unoccupied or abandoned building, dwelling or other structure or in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container that has an airtight door or lid, snap lock or other locking device that may not be released from the inside, without first removing

such door or lid, snap lock or other locking device from such ice box, refrigerator or container.

10. Any swimming pool areas that are not enclosed as required by state statute or local building safety code; or any swimming pool, architectural pool or spa that creates a health hazard, harbors insect infestation or presents a deteriorated appearance.

11. Making, causing or permitting to be made any vibration or artificial illumination of such intensity as to interfere substantially and unnecessarily with the use and enjoyment of public or private property by the public, or as to constitute a hazard or threat to the public health, safety or welfare of the people of the City. Nothing herein shall be construed so as to prohibit or cause removal of any lighting system that has been approved and installed in accordance with the Arizona Department of Transportation, or which has been approved and installed in accordance with the sign, subdivision or zoning codes of the City of Benson.

12. Willfully or negligently permitting or causing the escape or flow of water into the public right-of-way in such quantity as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition for such traffic, or to cause damage to the public streets or alleys of the City through the failure or neglect to operate or maintain properly any water facility or device, including, but not limited to, swimming pools, architectural pools, spas, sprinklers, hoses, pipes, ditches, standpipes, berms, valves and gates.

13. Maintaining any privy, vault, cesspool, septic system, sump, pit or like place or thing which is not securely protected from insects or rodents or which is foul or malodorous or detrimental to the health of the public.

14. Maintenance of premises, including buildings, so out of harmony or conformity with the maintenance standards of adjacent properties as to cause complaints and substantial diminution of the enjoyment, use or property values of such adjacent properties.

15. Any sign, cornice, parapet wall, mechanical screen or fence which has become deteriorated or so unstable that it constitutes a hazard to passers-by.

16. Any material, structure, fabrication or vehicle placed on, in or near any public or private right-of-way, sidewalk, access drive, fire lane or easement which prevents the free and unimpeded use thereof shall be considered a public nuisance.

17. Any material growing along a public or private right-of-way, access drive, fire lane or utility easement, which by reason of its size, manner of growth or location, constitutes an obstruction, impairs visibility or otherwise endangers any person, improvement or structure.

18. Abandoned, boarded-up or partially destroyed buildings and buildings left unreasonably in a state of partial construction without active construction occurring.

19. Buildings or structures exhibiting decay, dry rot, termite, rodent or vermin infestation.

20. Unsecured buildings or structures creating hazardous conditions.

CHAPTER 7 DEVELOPMENT SERVICES

ARTICLE 7-5 VIOLATIONS AND ENFORCEMENT

7-5-1 Unlawful Acts
7-5-2 Violation; Responsibility; Penalty
7-5-3 Remedies Not Exclusive
7-5-4 Authority and Duty to Enforce; Right of Entry
7-5-5 Warrants
7-5-6 Notice to Comply
7-5-7 Enforcement Proceedings in City Magistrate Court
7-5-8 Hearing
7-5-9 Penalties
7-5-10 Abatement of Violations; Liens for Costs

The intent of this Article is to encourage the compliance with this Chapter, the Zoning Regulations, and the Building Safety Code. Nothing in this Chapter shall preclude the Director of Development Services from seeking voluntary compliance with the provisions of this Chapter Zoning Regulations or the Building Safety Code, or from proactively or reactively, through warnings, notices to comply, or other such communications, attempt to achieve immediate compliance in the most efficient and effective manner under the circumstances.

Section 7-5-1 Unlawful Acts

A. It is unlawful for any responsible party to erect, construct, change, alter, repair, move, improve, remove, convert, demolish, install, grade, place any structure or fill in excess of fifty cubic yards, or use, occupy or inhabit any building or other structure or any land within any area subject to the provisions of this Chapter without first obtaining the necessary permit or permits from the Development Services Department, where such permit is required.

B. It is unlawful for any responsible party to use, develop, occupy, maintain or fail to maintain any property in violation of the Zoning Regulations or this Chapter.

C. No person shall, by threat or use of violence or physical force, or by threatening to do or doing any other act that can be reasonably anticipated to cause physical harm to any person including the perpetrator, intentionally obstruct, impede, or interfere with any officer, employee, contractor or authorized representative of the City who is engaged in the enforcement or execution of the provisions of this Chapter or the Zoning Regulations.

D. It is unlawful for any person to knowingly give or make a false or fraudulent statement, or knowingly misrepresent a fact, or mislead any City employee or official, when that person is investigating, correcting or abating a violation of this Chapter.

E. Any continuing violation of this Chapter constitutes a public nuisance that may be abated by the City as set forth in this Chapter. Imposition of a fine or penalty assessment shall not relieve the responsible party of the responsibility for abatement of the violation(s) or excuse him/her from liability for any and all costs incurred by the City for abatement.

F. Any person who fails to comply with an order of a court entered pursuant to this Article, or who commits the same violation of this Chapter or the Zoning Regulations within twelve months of having been adjudicated as having committed an unlawful act, or who,

pursuant to Chapter 7.1 of the City Code, has had a final administrative order entered against him and has failed to comply with the administrative order, including paying any sanctions, shall be deemed a habitual offender and may be prosecuted as such.

Section 7-5-2 Violation; Responsibility; Penalties

A. Any person who commits an unlawful act shall be subject to prosecution as set forth herein, and upon entry of a finding of responsible or a guilty verdict, shall be subject to the penalties of this Chapter.

B. Any person who commits an unlawful act shall be guilty of a Class 2 misdemeanor, and upon conviction shall be punishable by a fine not to exceed seven hundred fifty dollars.

C. Any habitual offender as defined in Section 7-5-1(F) above, who commits an unlawful act shall be guilty of a Class 1 misdemeanor, and upon conviction shall be punishable by a fine not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed three months, or by both.

D. As an alternative to criminal prosecution, the Director of Development Services may file a civil complaint in the City Magistrate Court, and any person found civilly responsible for an unlawful act shall be subject to fines of not less than fifty dollars ($50) nor more than one hundred fifty dollars ($150) per violation.

E. As an alternative to a criminal or civil action filed in the City Magistrate Court, the Director of Development Services or designee may issue a citation to any person responsible for any unlawful act and proceed to an administrative hearing pursuant to Chapter 7.1, subjecting the person cited to the sanctions set forth therein.

F. If the violation has not been cured or abated by the time of entry of judgment in a civil action, then in addition to any fine imposed, a judgment shall include an injunction to cure or abate the violation by a date certain. The City Magistrate shall maintain continuing jurisdiction of the action to enforce the injunction according to law, including but not limited to additional daily fines and/or granting an abatement warrant upon motion by the City.

G. Each day that a violation continues shall be a separate offense punishable as prescribed by law.

Section 7-5-3 Remedies Not Exclusive

A. All remedies provided in this Chapter shall be cumulative and not exclusive.

B. The conviction or entry of judgment against any person, firm or corporation under this Chapter or Chapter 7.1 shall not relieve such person from the responsibility to correct such violation, nor prevent enforcement, correction or removal thereof.

C. Initially pursuing administrative remedies pursuant to Chapter 7.1 shall not bar subsequent civil or criminal charges against the person cited administratively, provided that the administrative proceeding has not resulted in a final adjudication or the subsequent civil or criminal charges relate to a separate offense.

Section 7-5-4 Authority and Duty to Enforce; Right of Entry

A. The Director of Development Services is hereby authorized and directed to enforce the provisions of this Chapter by any of the methods provided in this Chapter, Chapter 7.1 or in law. In addition, the Director of Development Services is authorized to make safe any structure or premises, in whole or part, which in the opinion of the Director is an imminent threat to the health or safety of any person or persons due to the conditions of such structure or premises, providing such notice as practical under the circumstances. Such work shall be limited to the minimum work necessary to remove the hazard, or secure the hazard through boarding or fencing.

B. *Right of entry.* The Director of Development Services or his designee may enter in and upon any premises within the City at all reasonable times to inspect the same or to perform any duty imposed upon the Director regarding the enforcement of this City Code, provided that if such premises be occupied or enclosed in such a manner that there is an expectation of privacy within such enclosure, the Director or his designee shall comply with the procedures set forth in Section 7-2-2 (D) and (E).

Section 7-5-5 Warrants

A. Warrant definitions.

1. An "inspection warrant" is a court order, in writing, signed by a judge of a court of competent jurisdiction, including the City Magistrate, directed to a state, county or local official, and authorizing entry into private property to inspect for violations of this Chapter, the Zoning Regulations or other relevant laws and regulations.

2. An "abatement warrant" is a court order, in writing, signed by a judge of a court of competent jurisdiction, authorizing any employee, authorized agent, representative or contractor of the City to enter onto any affected property to abate specified conditions.

B. Issuance.

1. An inspection warrant (court order) may be issued in accordance with article 8 of Chapter 38 of Title 13 of the Arizona Revised Statutes, as amended.

2. If a defendant has been found guilty of a violation of this Chapter and thereafter fails to cure the violation, or has failed to comply with a court order directing that a violation of this Article be abated, then upon motion by the Director of Development Services with prior notice to defendant, an abatement warrant (court order) may be issued pursuant to Section 7-5-10 that allows City agents and/or employees entry upon private property to abate specific conditions in accordance with the abatement order. The cost of such abatement may become a lien upon the property pursuant to Section 7-5-10.

C. Refusal to permit inspection or abatement prohibited; penalty. Any person who willfully refuses to permit an inspection or abatement lawfully authorized by warrant issued pursuant to this article is guilty of a Class 1 misdemeanor punishable as set forth in Section 7-5-2 of this Chapter.

D. Return. An inspection or abatement warrant (court order) must be returned to the judge by whom it was issued within ten (10) working days from its date of execution.

E. Execution of inspection or abatement warrants (court orders).

1. *Occupied property.* In executing an inspection or abatement warrant (court order), the person authorized to execute the court order shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the court order and show the occupant or person in possession of the property the court order or a copy thereof upon request. A copy of the court order shall be left with the occupant or the person in possession.

2. *Unoccupied property.* In executing an inspection warrant or abatement warrant (court orders) on unoccupied property, the person authorized to execute the court order may enter the designated property to the extent necessary to execute the court order. In such case, a copy of the inspection or abatement warrant (court order) shall be conspicuously posted on the property, and the property shall be left in as secure a condition as it was upon entry.

3. City personnel shall maintain records of the condition of the property upon entry, all significant actions taken in execution of the court order, and the condition of property upon leaving. A summary report or copy of these records shall be included in the return of service of the court order filed with court.

Section 7-5-6 Notice to Comply

A. Civil or criminal enforcement actions as set forth in this Article shall commence with a Notice to Comply, unless in the judgment of the Director of Development Services there is an imminent and unreasonable risk to life or property or a willful and deliberate violation of this Chapter or the Zoning Regulations.

B. *Contents of notification.* A notice to comply issued pursuant to this code shall include:

1. Identification of the property in violation;

2. Statement of violation in sufficient detail to allow the owner, occupant, rental agent, property manager or responsible person to identify and correct the problem;

3. Compliance date, which shall be thirty days or other reasonable time period as determined by the Director of Development Services;

4. Name and phone number of the enforcement officer;

5. Range of criminal or civil penalties for failing to correct the violation; and

6. Notice that if the person is found responsible or guilty of a violation of this Chapter or the Zoning Regulations and thereafter fails to cure the violation, then

City may seek to abate the violation and assess a lien against the property for the cost of abatement.

C. *Service of notice.* The notice to comply shall be served by any of the following methods:

1. Delivery in person to the responsible person.

2. Posting on or about the entrance of the premises where the violation occurred. Service by posting the property is deemed complete 24 hours after posting on or about an occupied building and five working days after posting on or about an unoccupied building, structure, or land.

3. By first class mail, postage prepaid, addressed to the responsible person at the last known address. Service by mail is deemed complete three days after deposit in the U.S. mail.

4. Certified mail.

5. Publishing notice to the responsible person or pursuant to any other method authorized by the rules of civil procedure.

D. *Additional notice; notice not required.* Nothing herein shall preclude the Director of Development Services from giving additional verbal or written notice at his discretion but there is no obligation to notify the same person as to a second (or additional) violation which has been the subject of a notice to comply within the previous twelve-month period or if there appears to be a deliberate violation. If the City does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situations.

Section 7-5-7 Enforcement Proceedings in City Magistrate Court

A. After time for compliance as stated in the Notice to Comply has expired, or in the case of a deliberate violation or immediate risk to life or safety, the Director may commence either a civil or criminal action in the City of Benson Magistrate Court.

B. A civil or criminal action is commenced by service of a summons and complaint in the same manner as service of the Notice to Comply.

C. The complaint shall state the name of the defendant(s), the provision of the City Code or Zoning Regulations alleged to be violated, a concise summary of the facts supporting the allegation, the dates or time of the violation(s), whether it is a civil or criminal citation, and if criminal, the class of misdemeanor alleged and the maximum fine or sentence that may be imposed upon a conviction or finding of responsibility.

D. The summons shall notify the defendant of the date by which an appearance in the City Magistrate Court must be made, which in the case of service within the state shall be ten business days, and without the state shall be thirty days.

E. All complaints shall be verified under oath in front of the City Magistrate by a person having knowledge of the facts. For the purposes of this section, a City official may rely

on facts learned by reviewing relevant records maintained in the normal course of operations, either by the City or any other governmental or business entity.

F. A defendant served with a summons and complaint within the state shall appear within ten business days either in person or through counsel before the City Magistrate and shall either admit or deny the allegations of the complaint. If the defendant admits the allegation(s), the City Magistrate may forthwith enter judgment and impose a fine or penalty. If the defendant denies the allegation(s), the City Magistrate shall set the matter for a hearing.

G. A defendant failing to appear in a civil action on or before the date by which the summons directs him to appear, or at the time set for hearing by the City Magistrate, shall be deemed to have admitted the allegations of the complaint and the City Magistrate shall enter judgment of default and impose a civil fine. A default judgment entered pursuant to this section may be set aside pursuant to the rules of civil procedure upon a showing of good cause.

H. The City Magistrate shall issue a warrant pursuant to law for failure to appear when a defendant in a criminal action fails to appear on or before the date by which the summons directs him to appear.

I. Failure of a defendant in a criminal action to appear at the hearing may result in the matter being heard and decided in the defendant's absence pursuant to law.

Section 7-5-8 Hearing

A. In either a civil or criminal action, the hearing shall be set no later than 30 days after the defendant's initial appearance unless the defendant requests and is granted a continuance for good cause shown.

B. A civil hearing shall be conducted pursuant to the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases.

C. If at any time prior to the hearing a defendant appeals to the Board of Adjustment for an interpretation of a relevant provision of the Zoning Regulations, the case shall be stayed pending the outcome of the Board of Adjustment appeal, and the Director may elect to dismiss the case, which shall be without prejudice.

Section 7-5-9 Penalties

A. Upon a finding of guilt or responsibility, the City Magistrate may proceed immediately to impose a sentence or judgment.

B. The sentence or judgment shall be limited by the charge(s) presented in the citation and this Chapter.

C. Notwithstanding Section 7-5-2, a sentence or fine may be suspended in the discretion of the City Magistrate if he finds that the defendant has corrected the violation prior to date of imposition of sentence or entry of judgment.

D. In a civil action, the City Magistrate shall maintain continuing jurisdiction to enforce the judgment. Failure of the defendant to cure the violation within the time specified in the judgment may expose the defendant to additional daily fines and permit the City to seek a court order.

E. The City Magistrate shall not suspend any of the impositions or execution of the sentence or fine except as set forth in this section.

F. Any fines imposed pursuant to a final civil judgment or criminal sentence may be collected and enforced as any other civil judgment.

Section 7-5-10 Abatement of Violations; Liens for Costs

A. The Director is hereby authorized to enter upon land within the City for the purpose of immediately abating or securing a hazardous condition that presents an imminent and unreasonable risk to life or property, providing the owner or occupant thereof such prior notice as is practicable under the circumstances.

B. In all other circumstances that arise to a nuisance or hazardous condition that violate this Chapter or the Zoning Regulations, the Director is authorized to follow the procedures set forth in this Article or Chapter 7.1 for enforcement of a violation of this Chapter or the Zoning Regulations.

C. If the defendant is found responsible in an administrative or civil hearing, or found guilty in a criminal action, and thereafter fails to abate the violation within the time set forth in the order, sentence or judgment, the Director is authorized to move the court for issuance of an abatement warrant (court order).

D. With prior notice to the defendant of the motion, and taking judicial notice of the prior administrative order, civil judgment or criminal sentence, the City Magistrate may issue an abatement warrant without a hearing. An abatement warrant (court order) shall state with specificity the violations that are to be abated on the subject land.

E. Within ten business days of issuance of the abatement warrant (court order), the City may execute the court order as set forth in Section 7-5-5 above.

F. Upon the expiration of the ten days, the City shall file a return of the court order, which shall include the materials set forth in Section 7-5-5 and, where an award for the cost of abatement is sought, proof as to the cost of abatement.

G. A copy of the return of execution of the abatement warrant (court order) shall be provided to defendant, who shall have ten days in which to request a hearing to contest the claimed cost of abatement. Where the copy is provided by mail, defendant shall have an additional three days to request a hearing.

H. Upon request by defendant of a hearing as to costs, the City Magistrate shall set the matter for a hearing at the earliest practical date.

I. Where no hearing as to the cost of abatement has been requested by defendant, the City Magistrate shall review the claim for costs, and to the extent proven, shall enter an award of costs in favor of the City.

J. The City may record an award for abatement costs in any county recorder's office, which shall create a lien on defendant's real property located in that county in the amount of the award.

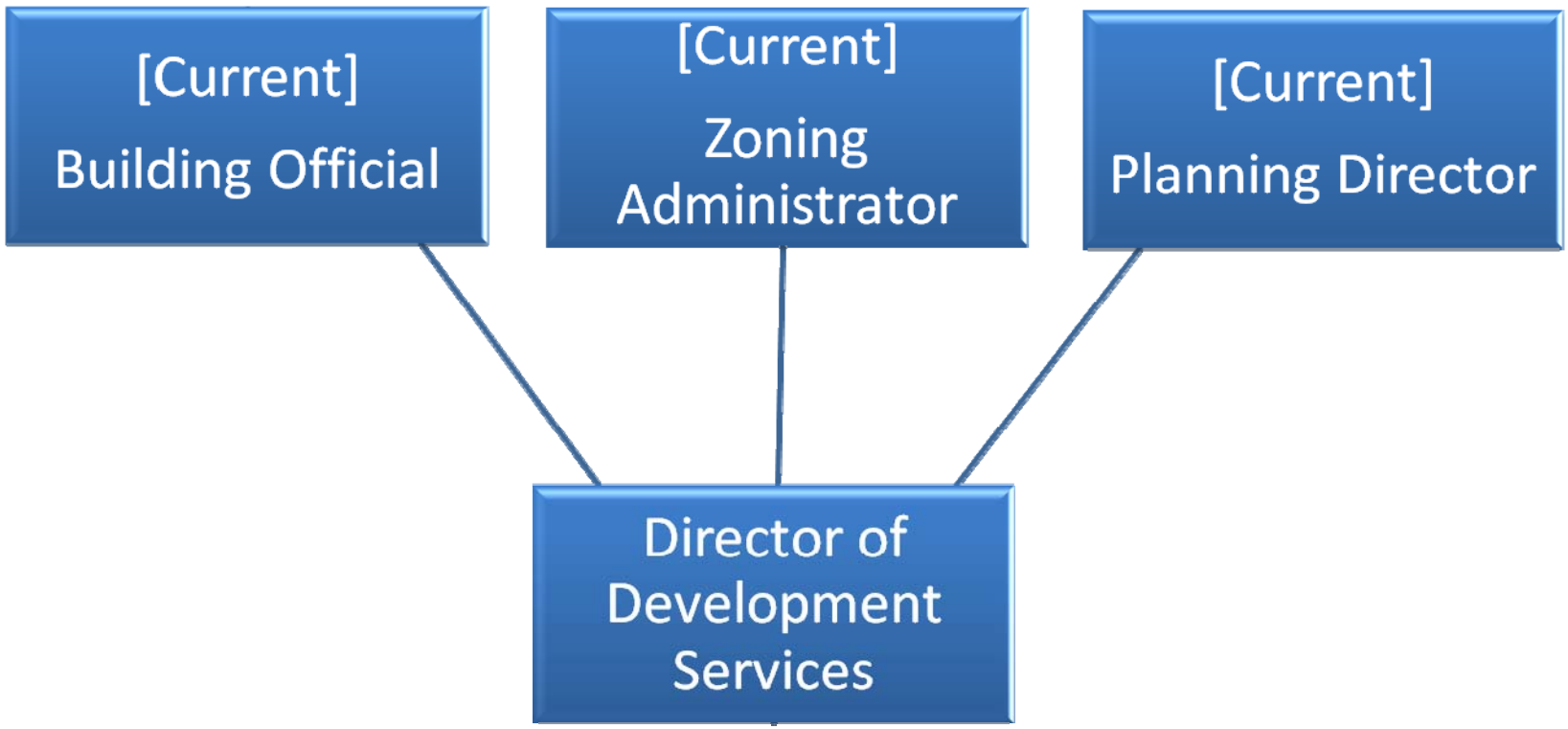
K. The lien shall be inferior only to general tax liens, child support liens, restitution liens and prior recorded mortgages.

L. After recording the lien, the City may file an action to enforce the lien in the superior court. The recorded lien is prima facie evidence of the truth of all matters recited in the lien and the regularity of all the proceedings before the recordation. Upon judgment of foreclosure and order of sale, the Director shall seek direction from the City Council before proceeding to auction of the subject property.

M. A prior recorded lien under this Chapter is not a bar to a later lien. Any number of liens on the same land may be enforced in the same action.

N. Failure to enforce a lien shall not affect its validity.

Department Organization



Building Permit Procedure

Luis Garcia, Building Official phone:520-720-6332 fax:520-720-6338 lgarcia@cityofbenson.com

The following steps are required of the applicant to receive a Building Permit, which is required for:

- any construction, enlargement, alteration, repair, moving, demolition, or change in occupancy of any building or structure regulated by the adopted building codes;
- any erection, installation, alteration, repair, removing, converting, or replacement of any electrical, gas, mechanical or plumbing system regulated by the adopted building codes.

1. Submit a complete Building Permit application and fees.
2. Provide complete documents as required by staff, which may include any or all of the following:
   Two copies of the Site Plan (see Site Plan Requirements worksheet): 24”x36” size
   Two full sets of construction drawings: 24”x36” size
   Two copies of a detailed written scope of work
   Two full copies of any manufacturer’s specifications/shop drawings
   Two full sets of façade renderings: 24”x36” size
   Two copies of the comprehensive sign package: 24”x36” size
   Two copies of landscape plans: 24”x36” size or written description of proposed landscaping
   One copy of the completed Special Inspection Schedule

Residential Permit Applicable Timeframes

Administrative Review Timeframe	10 business days
Substantive Review Timeframe	60 business days
Additional Substantive Review	17 business days
Overall Timeframe	70 business days
Additional 25% Overall	87 business days

Commercial Permit Applicable Timeframes

Administrative Review Timeframe	21 business days
Substantive Review Timeframe	90 business days
Additional Substantive Review	27 business days
Overall Timeframe	111 business days
Additional 25% Overall	138 business days

Upon receipt of the application package, the Director of Development Services or his designee shall review the application and issue a decision to approve or deny the Building Permit, either in writing or electronically, within 60 business days of receipt of an administratively-complete residential permit application or within 90 business days of receipt of an administratively-complete commercial permit application.

Within 10 business days of receipt of a residential building permit application or within 21 business days of receipt of a commercial building permit application, the Director of Development Services or his designee shall notify the applicant if there is an administrative deficiency to the application. If upon this initial review the Director of Development Services or his designee determines that the application is complete, he shall provide the applicant with notice of administrative completeness. If the application requires other departments in addition to Development Services to review the application, the Director of Development Services shall obtain said review for administrative completeness within the above stated timeframes.

If the Director of Development Services or his designee determines that an application is not administratively complete, he shall provide the applicant with a comprehensive list of the specific deficiencies in a written or electronic notice. Upon issuing such a notice, the timeframes set forth above are suspended until such time the Director of Development Services receives the missing information from the applicant, at which point the Director of Development Services has an additional 10 business days for residential applications or 21 days for commercial applications to review said applications for administrative completeness.

If the Director of Development Services does not issue a notice of administrative deficiencies within the timeframes above, the application shall be deemed to be administratively complete.

During the substantive review timeframe of 60 business days for a residential building permit application or 90 business days for a commercial building permit application, the Director of Development Services or his designee may make one comprehensive written or electronic request for additional information. The applicant and the Director of Development Services may agree in writing to allow for supplemental requests for information. If the Director of Development Services makes a written or electronic request for additional information, the substantive review timeframe and the total timeframe are suspended until the applicant submits the requested information.

The applicant and the Director of Development Services may agree in writing to extend the substantive and overall timeframes above, provided that the overall timeframe shall not exceed 25% of the overall timeframe.

The Director of Development Services or his designee shall not base, in whole or in part, a decision to deny a Building Permit on a requirement or condition that is not specifically authorized by statute, rule, ordinance or code. Any denial of an application shall include specific reasons justifying the denial with references to the statutes, ordinances, codes or substantive policy statements of the Department and an explanation of the applicant's right to an administrative appeal of the denial. The notice regarding administrative appeal rights shall include the number of working days in which the applicant must file a protest challenging the denial and the name and telephone number of a Department contact person who can answer questions regarding the appeals process.

If the Director of Development Services fails to either issue the Building Permit or notice of denial of the Building Permit within the timeframe above, then the City shall refund to the applicant all fees charged for the certificate and shall continue working on the certificate review.

The Board of Appeals shall have the power to interpret any word, phrase, or section of adopted Building Codes when there is dispute between the applicant and the Director of Development Services and/or his designee.

Appeals to the Board of Appeals concerning interpretation or administration of the adopted Building Codes may be made by any person aggrieved, by any officer of the municipality, or by any federal, state or county agency, or school board, affected by any decision of the Director of Development Services and/or his designee. Such appeals shall be filed at City Hall within thirty (30) calendar days of the decision. The Director of Development Services and/or his designee shall forthwith transmit to the Board, all papers constituting the record upon which the action appealed was taken.

The Board shall fix a reasonable time for the hearing of an appeal, give public notice thereof as well as due notice to the interested parties, and reach its decision within a reasonable time. At the hearing, any party may appear in person or by agent or attorney. Parties to an appeal shall have the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses as may be required for a full and true disclosure of the facts.

Zoning Compliance Procedure

Michelle Johnson, Planning Tech phone:520-720-6328 fax:520-720-6338 mjohnson@cityofbenson.com

The following steps are required of the applicant to receive a Zoning Compliance Certificate, which is required for:

- any change of use on a parcel,
- any change of use within a structure,
- any construction or installation of a structure that does not require a building permit. The Zoning Compliance Certificate must be approved PRIOR to commencing construction.

1. Submit a complete Zoning Compliance application and fees
2. Provide complete documents as required by staff, which may include any or all of the following:
   - Detailed description of existing and proposed use(s)
   - Site Plan (see Site Plan Requirements worksheet)
   - Sight Triangle Calculation (see Zoning Regulations-Supplemental Regulations)
   - Parking Space Calculation (see Zoning Regulations-Off Street Parking)

Applicable Timeframes

Administrative Review Timeframe	5 business days
Substantive Review Timeframe	10 business days
Additional Substantive Review	3 business days
Overall Timeframe	15 business days
Additional 25% Overall	18 business days

Upon receipt of the application package, the Director of Development Services or his designee shall review the application and issue a decision to approve or deny the Zoning Compliance Certificate, either in writing or electronically, within 10 business days of receipt of an administratively-complete permit application.

Within 5 business days of receipt of any application, the Director of Development Services or his designee shall notify the applicant if there is an administrative deficiency to the application. If upon this initial review the Director of Development Services or his designee determines that the application is complete, he shall provide the applicant with notice of administrative completeness. If the application requires other departments in addition to Development Services to review the application, the Director of Development Services shall obtain said review for administrative completeness within these 5 business days.

If the Director of Development Services or his designee determines that an application is not administratively complete, he shall provide the applicant with a comprehensive list of the specific deficiencies in a written or electronic notice. Upon issuing such a notice, the timeframes set forth above are suspended until such time the Director of Development Services receives the missing information from the applicant, at which point the Director of Development Services has an additional 5 business days to review the application for administrative completeness.

If the Director of Development Services does not issue a notice of administrative deficiencies within the 5 business day timeframe above, the application shall be deemed to be administratively complete.

During the substantive review timeframe of 10 business days, the Director of Development Services or his designee may make one comprehensive written or electronic request for additional information. The applicant and the Director of Development Services may agree in writing to allow for supplemental requests for information. If the Director of Development Services makes a written or electronic request for additional information, the substantive review timeframe and the total timeframe are suspended until the applicant submits the requested information.

The applicant and the Director of Development Services may agree in writing to extend the substantive and overall timeframes above, provided that the substantive review timeframe shall not be extended for more than three additional business days and the overall timeframe does not exceed 25% of the overall timeframe.

The Director of Development Services or his designee shall not base, in whole or in part, a decision to deny a Zoning Compliance Certificate on a requirement or condition that is not specifically authorized by statute, rule, ordinance or code. Any denial of an application shall include specific reasons justifying the denial with references to the statutes, ordinances, codes or substantive policy statements of the Department and an explanation of the applicant's right to an administrative appeal of the denial. The notice regarding administrative appeal rights shall include the number of working days in which the applicant must file a protest challenging the denial and the name and telephone number of a Department contact person who can answer questions regarding the appeals process.

If the Director of Development Services fails to either issue the Zoning Compliance Certificate or notice of denial of the Zoning Compliance Certificate within the timeframe above, then the City shall refund to the applicant all fees charged for the certificate and shall continue working on the certificate review.

The Board of Adjustment shall have the power to interpret any word, phrase, or section of the Zoning Regulations when there is dispute between the applicant and the Director of Development Services and/or his designee.

Appeals to the Board of Adjustment concerning interpretation or administration of the Zoning Regulations may be made by any person aggrieved, by any officer of the municipality, or by any federal, state or county agency, or school board, affected by any decision of the Director of Development Services and/or his designee. Such appeals shall be filed at City Hall within thirty (30) calendar days of the decision. The Director of Development Services and/or his designee shall forthwith transmit to the Board, all papers constituting the record upon which the action appealed was taken.

The Board shall fix a reasonable time for the hearing of an appeal, give public notice thereof as well as due notice to the interested parties, and reach its decision within a reasonable time. At the hearing, any party may appear in person or by agent or attorney. Parties to an appeal shall have the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses as may be required for a full and true disclosure of the facts.

Zoning

Zoning Compliance Permit
Conditional Use Permit
Rezoning
Home Occupation
Board of Adjustment
Plat or replat; tentative and final
GDP amendment
Zoning Reg amendment
Temporary Use
Annexation
Street name
Address Number
Planned Area Development/Master Plan

Building

Residential

- Repair and/or remodel existing structure (utilities, roofing, interior, additions)
- New accessory structures (pools, garages, gazebos, retaining walls, fences, casitas)
- New residential dwelling units SFR
- New residential dwelling units MFR
- New manufactured home set
- Manufactured home accessory structure on a space (garage, awing, shed, walls, fence)

Commercial

- Repair and/or remodel existing structure (utilities, roofing, interior, additions, signage, tenant improvements)
- New accessory structures (walls, fences, trash enclosures, sheds, signs)
- New commercial units size
- New commercial units size
- New multi-tenant commercial units

CHAPTER 7.1 ADMINISTRATIVE HEARINGS

ARTICLE 7.1 ADMINISTRATIVE HEARING PROCESS

7.1-1 Purpose
7.1-2 Applicability
7.1-3 Administrative Hearing Officer
7.1-4 Administrative Consent Orders
7.1-5 Enforcement Officers
7.1-6 Administrative Citations – Contents
7.1-7 Requests for Hearings and Setting Hearings
7.1-8 Administrative Citations – Service
7.1-9 Administrative Citations – Disposition Without a Hearing
7.1-10 Setting Aside a Default Decision
7.1-11 Administrative Citations – Hearings
7.1-12 Administrative Hearing Officer Decision
7.1-13 Record on Appeal
7.1-14 Liens

Section 7.1-1 Purpose

The purposes of this Chapter are:

(1) To create an administrative procedure as an additional code enforcement mechanism for the civil enforcement of ordinances, including specialized administrative citations, informal hearing officer processes, and administrative agreements between the City and a person accused of violation the Code or Zoning Regulations.

(2) To provide a timely, efficient and fair means to address Code violations.

Section 7.1-2 Applicability

A. This Chapter provides for administrative consent orders and citations, which are in addition to all other legal remedies that may be pursued by the City to address violations of the Code or Zoning Regulations.

B. Use of this Chapter is at the sole discretion of the City Manager or designee. The use of this chapter neither limits nor precludes the City from pursuing any other type of enforcement, including but not limited to criminal enforcement.

C. This Chapter shall govern in the event of a conflict between the administrative hearing provisions of this chapter and other chapters of the Code or Zoning Regulations.

Section 7.1-3 Administrative Hearing Officer

A. The City Manager shall appoint one or more administrative hearing officers to adjudicate civil violations of the Code.

B. The administrative hearing officer(s) shall review and accept as appropriate administrative consent orders between the City and citation recipients, and hear and dispose of administrative citations of this Code or the Zoning Regulations.

C. The employment, performance evaluation, compensation and benefits (if any) of the administrative hearing officer(s) shall not be directly or indirectly conditioned upon the amount of administrative citation sanctions upheld by the administrative hearing officer.

Section 7.1-4 Administrative Consent Orders

The City may enter into a written administrative consent order, approved by the administrative hearing officer and signed by a City enforcement officer, with a person accused of violating the Code. The administrative consent order may be enforced as a contract is enforced by other means.

Section 7.1-5 Enforcement Officers

The City Manager or designee, or a certified police officer, may issue an administrative citation under this chapter.

Section 7.1-6 Administrative Citations – Contents

The administrative citation shall:

(1) State the date of violation, or if the date of violation is unknown, then the date the violation is identified;

(2) State the address or a definite description of where the violation occurred;

(3) Notify the recipient with a written description AND statutory or ordinance designation of the violation;

(4) State the action required to correct the violation;

(5) Show the name and signature of the enforcement officer;

(6) Direct the recipient to correct the violation set forth in this Chapter within fifteen (15) days after service of the citation, or request a hearing disputing the violation; and

(7) Notify the recipient that if the recipient fails to correct the violation within fifteen (15) days, or request a hearing disputing the violation, then the administrative hearing officer shall issue a written decision of default against the recipient and impose a sanction as set forth in this Chapter.

Section 7.1-7 Requests for Hearings and Setting Hearings

A. Requests for a hearing disputing the violation must be made in writing to the City's Department of Development Services. Hearing requests must be made or received on or before the date specified in the citation.

B. The Director of Development Services shall coordinate with the administrative hearing officer and set the hearing within twenty (20) working days of the request.

C. The Director of Development Services shall provide the citation recipient with written notice of the date of hearing and shall provide for ADA-compliant accessibility or accommodation as necessary.

Section 7.1-8 Administrative Citations – Service

The Administrative citations shall be served by any of the following methods:

(1) Delivery in person to the responsible person.

(2) Posting on or about the entrance of the premises where the violation occurred. Service by posting the property is deemed complete 24 hours after posting on or about an occupied building and five working days after posting on or about an unoccupied building or structure.

(3) By first class mail, postage prepaid, addressed to the responsible person at the last known address. Service by mail is deemed complete three days after deposit in the U.S. mail.

(4) Certified mail.

(5) Publishing notice to the responsible person or pursuant to any other method authorized by the rules of civil procedure.

Section 7.1-9 Administrative Citations – Disposition Without a Hearing

A. If the recipient corrects the violation within fifteen (15) days of service of the citation, as certified by the City Manager or designee, then no hearing shall be held and the citation shall be entered as upheld by the administrative hearing officer with the person being cited found responsible for the violation(s) as charged.

B. If the recipient fails to correct the violation within fifteen (15) days of service of the citation, and fails to request a hearing disputing the violation, then the recipient has failed to exhaust administrative remedies. The administrative hearing officer shall issue a written decision of default against the recipient as set forth in this Chapter, filing a copy thereof with the Director of Development Services.

C. The Director of Development Services shall mail a copy of the default decision and notice of the right to set aside the default decision to the recipient of the citation by certified mail, return receipt requested. The notice of the right to set aside the default decision shall include the time for making a request to set aside the default decision, and location and manner of making the request.

Section 7.1-10 Setting Aside a Default Decision

A. To set aside a default decision, the recipient must submit in writing a request asking for the default decision to be set aside and the reasons supporting the request to the administrative hearing officer, care of the Director of Development Services.

B. The request to set aside a default decision must be made within a reasonable time of receipt of the default decision, but in no event later than 30 days.

C. If the request to set aside the default decision is contested by the Director of Development Services, the administrative hearing officer shall set the matter for a hearing on the request.

D. The administrative hearing officer may set aside a default decision for good cause.

E. The administrative hearing officer shall set aside a default decision upon a finding that the citation was not properly served.

Section 7.1-11 Administrative Citations – Hearings

A. The administrative hearing officer may continue the hearing date, and may continue any hearing, for cause.

B. If the recipient appears before the administrative hearing officer and admits the allegations, the administrative hearing officer shall issue a written decision, finding against the recipient and impose a sanction as set forth in this chapter.

C. If the recipient appears and denies the allegation, the administrative hearing officer shall hear and decide the matter.

D. No pretrial discovery shall be permitted absent extraordinary circumstances.

E. Immediately before the hearing, both parties shall produce for inspection any exhibits and witness statements that may be offered at the hearing. Failure to produce exhibits and statements may result in: (1) continuing the hearing to permit inspection; and/or (2) denying admission of any evidence not produced.

F. The hearing shall be informal and without a jury, except that testimony shall be given under oath or affirmation, administered by the City Clerk or designee. Only the administrative hearing officer, an attorney for a party, or the recipient may call and examine witnesses. The technical rules of evidence do not apply, except for the statutory provisions relating to privileged communications. The administrative hearing officer may make orders to fairly and efficiently determine the truth and decide the case. The burden of proof shall be on the City to prove the violation(s) by a preponderance of the evidence. The City Clerk or designee shall act as clerk and take charge of all exhibits.

G. The City Clerk shall act on behalf of the City to record the hearing by any method that accurately reproduces what occurs and which is approved by the Arizona Supreme Court.

H. Rule 7 of the Arizona Rules of Procedure in civil traffic violation cases shall govern requests for recusal of the hearing officer.

I. Rules 12 and 13 of the Arizona Rules of Procedure in civil traffic cases shall govern representation by counsel in these proceedings.

CHAPTER 7.1 ADMINISTRATIVE HEARINGS

Section 7.1-12 Administrative Hearing Officer Decision

A. Within fifteen (15) days of the hearing or at the conclusion of the hearing, the administrative hearing officer shall issue a written decision making a finding of responsible or not responsible on each charge in the administrative citation. The written decision shall include:

(1) the reasons for the decision;

(2) an order to correct the violation, if applicable;

(3) the amount of any sanction imposed as set forth in this chapter;

(4) The date by which the recipient must correct the violation and pay the sanction, which date shall not be less than thirty (30) nor more than forty-five (45) days after the decision;

(5) notice that if the recipient does not correct the violation and pay the sanction in time, an additional sanction shall be levied per day until the violation is corrected and the ordered sanction is paid, as set forth in this chapter;

(6) the amount of the additional sanction; and

(7) notice that if the recipient does not pay the sanction and correct the violation in time, the City may take any lawful action to collect the sanction, abate the violation and impose a lien on the recipient's land.

B. The administrative hearing officer shall mail a copy of the decision and notice of the right to appeal to the recipient by certified mail, return receipt requested unless the notice required by this section was provided to the recipient at the conclusion of the hearing. The notice of the right to appeal shall include the time for an appeal, the location and manner of filing an appeal, and reference to the rules governing the appeal.

C. A party aggrieved by the administrative hearing officer's decision may appeal by filing a special action in the nature of a writ of certiorari in the superior court. An appeal shall be taken within thirty (30) days of the date of the administrative hearing officer's decision or shall be waived.

Section 7.1-13 Record on Appeal

A. Within five (5) days after the appeal is filed, the appealing party shall request in writing to the City Clerk for a copy of the record of proceedings. Within thirty (30) days after receipt of this request, the City Clerk shall transmit the record to the superior court and the appealing party.

B. Within ten (10) days of transmittal of the record, the appealing party shall pay for the record. The City Clerk shall notify the superior court and appealing party if failure to make payment has occurred.

C. The parties may stipulate that the appeal may be heard on less than a complete record or upon stipulated facts.

CHAPTER 7.1 ADMINISTRATIVE HEARINGS

Section 7.1-14 Liens

A. If the recipient does not pay the sanction by the date it is due, the City may file an action to place a lien on land in the amount of the sanction. The City may file an action to place a lien on land where the violation occurred or on land owned by the recipient of the violation, or both.

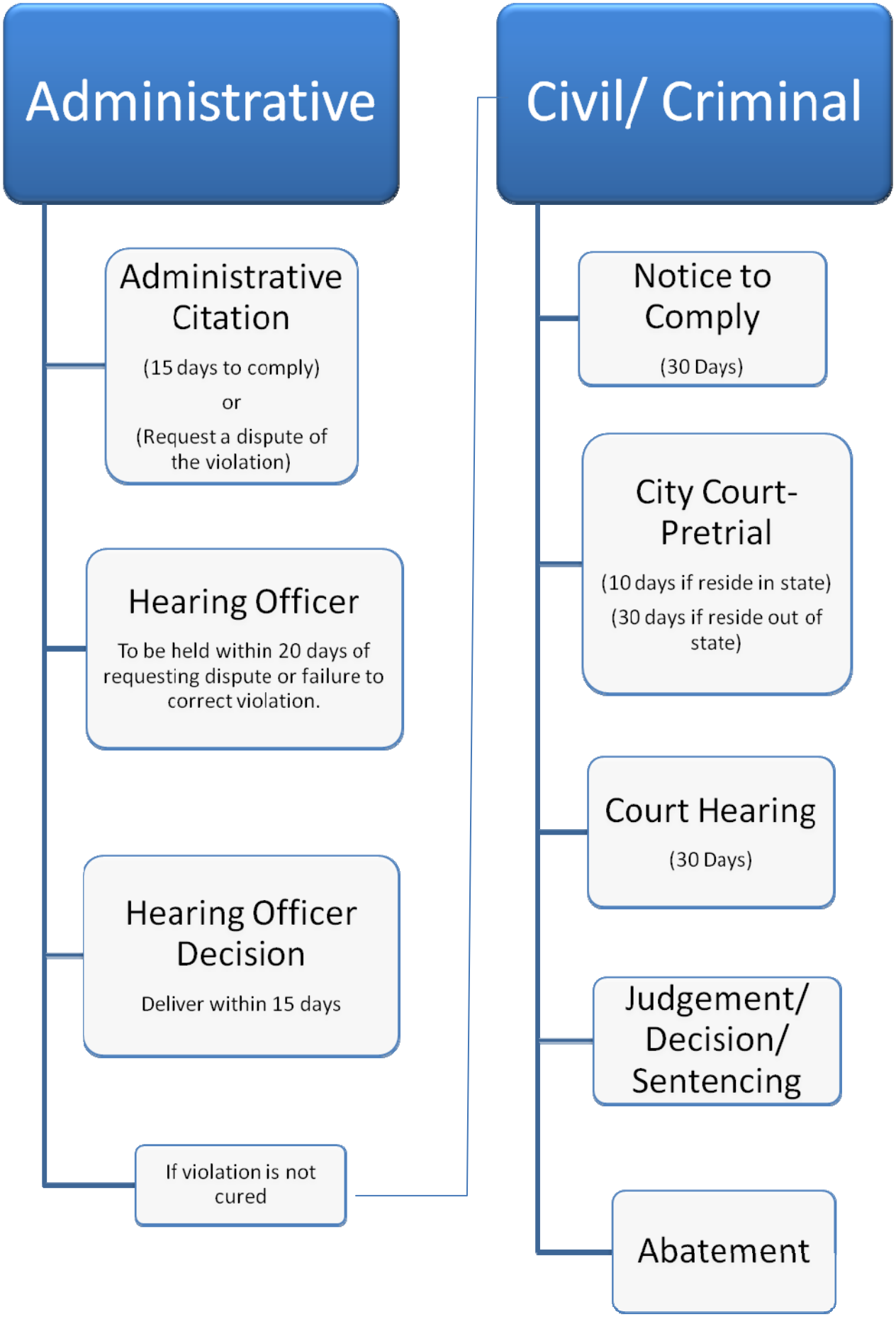
B. The City shall record the lien in the Cochise County Recorder's Office.

C. The lien shall be inferior only to general tax liens, child support liens, restitution liens and prior recorded mortgages.

D. After recording the lien, the City may file an action to enforce the lien in the superior court. The recorded lien is prima facie evidence of the truth of all matters recited in the lien and the regularity of all the proceedings before the recordation. Upon judgment of foreclosure and order of sale, the City shall sale the land to satisfy the lien.

E. A prior recorded lien under this Chapter is not a bar to a later lien. Any number of liens on the same land may be enforced in the same action.

F. Failure to enforce a lien shall not affect its validity.


Administrative
Administrative Citation
(15 days to comply)
or
(Request a dispute of the violation)
Hearing Officer
To be held within 20 days of requesting dispute or failure to correct violation.
Hearing Officer Decision
Deliver within 15 days
If violation is not cured
Civil/ Criminal
Notice to Comply
(30 Days)
City Court-Pretrial
(10 days if reside in state)
(30 days if reside out of state)
Court Hearing
(30 Days)
Judgement/ Decision/ Sentencing
Abatement