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COURT OF APPEALS
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STATE OF WASHINGTON
BY

NO. 34808-0-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

PAUL W. POST, *Appellant*

v

CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS
BUILDING AND LAND USE SERVICES DIVISION,
RISK MANAGEMENT ALTERNATIVES, INC., and
CHARLES SOLVERSON, *Respondents*

RESPONDENTS' RESPONSE BRIEF

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I. INTRODUCTION

Every city faces the problem of substandard and derelict houses. Some properties are in such disrepair as to be uninhabitable. Under a city's police power and pursuant to state law, the respondent City of Tacoma (City) may establish a building code to ensure the public's welfare and safety. In addition, the City has the authority to enforce its building code and to impose civil penalties to encourage compliance with the minimum building standards.

Appellant Paul Post (Post) is a property owner in the City with at least 22 houses that violate the minimum building code. Many of them are in such severe disrepair that they are uninhabitable. Pursuant to state law and the City's code, the City has assessed penalties against Post for his continued failure to comply with the building code.

The Land Use Petition Act (LUPA) under RCW 36.70C, requires a person to appeal a "land use decision" regarding the maintenance and repair of property within 21 days of the date of the final determination. If a party fails to comply with this requirement, his challenge is barred.

Post failed to timely appeal his penalties. As a result, LUPA bars all of Post's claims. In any event, the City's police power and state law authorize the penalties. The City requests the Court to affirm the Superior Court's decision granting summary judgment in its favor.

II. RESTATEMENT OF THE ISSUES

1. LUPA requires that a party seek review of a final land use decision within 21 days of the issuance of that decision. The Hearing Examiner decision upholding the penalties is a land use decision. Post failed to appeal the penalties. Was the Superior Court correct in holding that LUPA bars all of Post's claims?

2. The City's police power is extremely broad and includes the authority to regulate everything essential to the public safety, health, and morals. More specifically, RCW 35.22.280(23) and (35) provide the City with the authority to impose building standards and to impose penalties against those who violate City ordinances. The City's ordinance, TMC 2.01.060, imposes penalties on those who violate the City's building code. Was the Superior Court correct in holding that the City has the authority to impose penalties against Post for failing to comply with the City's building code?

3. a. Procedural due process requires the government provide notice and an opportunity to be heard. The City provided Post detailed notices of the building code violations and thorough information about how to appeal. Did the Superior Court properly hold that the City provided Post with procedural due process?

b. A court will not entertain a substantive due process claim if there is another constitutional provision that provides an explicit textual source of constitutional protection. Post argues that the Eighth Amendment bars the City's penalties because they are excessive. Should the Court refuse to entertain Post's substantive due process claim?

c. The double jeopardy clause prohibits multiple criminal punishments for the same offense. The civil penalties here are not criminal in nature. Did the Superior Court correctly deny Post's double jeopardy claim?

d. The Eighth Amendment prohibits only "excessive fines" that are intended as punishment. The City's penalties are a punishment. Did the Superior Court properly hold that the Eighth Amendment did not prohibit the penalties in this case?

4. a. RAP 10.3(a)(5) requires a party to provide argument and legal authority to support the issues presented for review. If a party fails to do so, the Appellate Court will not to consider the issue. Post failed to make any argument, and failed to cite one case, to support his 42 U.S.C. § 1983 claim. Should the Court decline to address this claim?

b. Even if the Court addresses his 42 U.S.C. § 1983 claim, a party will not prevail on such a claim if there is no underlying constitutional violation. Post did not prove a constitutional violation. Did the Superior Court properly deny Post's 42 U.S.C. § 1983 claim?

5. A party is not entitled to a trial to determine whether the penalties imposed are excessive if there is no genuine issue of material fact. Post did not timely appeal the penalties. Did the Superior Court properly grant summary judgment in this case?

III. COUNTER STATEMENT OF THE CASE

A. Statement of facts[1]

1. Post's properties.

Post owns approximately 41 properties within Pierce County which are currently assessed at more than $5 million. At least 22 of Post's properties located in the City are currently in a state of extreme disrepair and neglect. CP 13, 184. Post does not argue otherwise.

Post has severely neglected his properties since at least 1992 when he told the City he would repair them. CP 17. Some of the neglected properties today are the same ones Post agreed to repair in 1992. CP 17, 188.

2. The City's Minimum Buildings and Structures Code.

Properties located within the City limits must comply with the City's Minimum Building and Structures Code, Tacoma Municipal Code (TMC)

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[1] RAP 10.3(a)(4) requires a party to provide a "fair statement of the facts and procedure relevant to the issues presented for review, without argument." Post inserts several arguments into his statement of the case in violation of this rule. See Brief of Appellant at 9 ("Also, among the individual inspectors, two are extraordinarily aggressive, while the others are much more lenient in varying degrees."); p. 10 ("As a result, the systematic fining is totally arbitrary both on the face of the ordinance and in its implementation."); p. 11 ("Appellant/Plaintiff is totally at the mercy of the individual inspectors as to the appropriateness of the fines or needs for the same.") Not only are such statements inappropriate, they are unsupported by the record.

Chapter 2.01.[2] Under TMC 2.01, structures with specified problems accumulate points depending on the type of violation. For example, a broken or plugged sewer has a maximum of 25 points, improper gas piping garners up to 15 points, when the foundation needs to be replaced a property owner may be cited for 15 points, or when required exit signs and stairs are missing, up to 50 points each could be added. See TMC 2.01 Tables A through E. If the structure reaches a 50-point total, it is classified as substandard. TMC 2.01.060.C.4. If the building has at least 50 points and has more serious problems, such as certain structural hazards or hazardous wiring or pluming, the building will be deemed derelict and unfit for human occupancy. TMC 2.01.060.E.1. Nine of the 22 properties here were found to be substandard; thirteen of the 22 are derelict and uninhabitable. CP 233.

3. Initial notices of violations and rights to appeal.

The City has engaged in a very long process to try to encourage Post to comply with the building codes and standards. In 1999, the City inspected many of Post's properties for compliance with TMC 2.01. For 22 properties in violation of the minimum standards, the City sent Notice of Violation

[2] For the Court's convenience, TMC 2.01 is attached.

letters to Post notifying him that the properties were either substandard or derelict. CP 13, 48, 53, 59, 65, 71, 76, 83, 88, 95, 102, 107, 114, 122, 131, 134, 136, 142, 150, 157, 165, 173, 181, 317-34.[3] These notices described the violations and also advised Post how to seek administrative review of the violation notice. CP 317-18; TMC 2.01.060.D.4 and D.6.b (for substandard buildings) and TMC 2.01.060.E.3.a and E.5 (for derelict buildings). Post was given 30 days to respond to the notice and to negotiate a schedule with the City for correcting the problems. Id. The City did not assess penalties with the initial Notices of Violation. See TMC 2.01.060.D.4 and E.3.

For one of Post's properties, the City cited him for missing smoke detectors, pigeon infestation, lacking heat to all habitable rooms, and requiring the exit stairs to be replaced. CP 319-28.[4]

One repair schedule Post agreed to was for property at 713 South 17th Street. The schedule shows that Post had 9 months to clean up the yard, repair the foundation, replace the bathroom sink and repair the

[3] One example of such a notice can be found at CP 317-334.

[4] The City provided color copies of Post's properties to the Superior Court. But in the transmission of clerk's papers to this Court, only black and white copies were provided. The City has attached color copies to its brief of some of the color photographs it supplied to the Superior Court.

flooring. Post also had 6 months to paint the exterior, replace doors, and provide heat to the bathrooms. CP 354.

4. Additional penalties and right to appeal.

Post did not respond to at least two of the initial notices of violation. CP 48, 53. But for most of his other properties, Post agreed to work schedule, and inspection dates. CP 59, 65, 71, 76, 83, 88, 95, 102, 107, 114, 122, 131, 134, 136, 165, 181. Post continuously failed to comply with the schedules. CP 9, 17, 43, 139.

After Post did not respond to the violations or did not complete timely repair his properties, the City issued first penalties on the substandard or derelict properties in the amount of $125.00 per property. CP 335; TMC 2.01.060.D.4.b and E.3.b. These penalties are intended to be for "remedial purposes" only. TMC 2.01.064.D.4.b and E.3.b.

Again, Post was given the opportunity to appeal. CP 335; TMC 2.01.060.D.6.b and E.5.b. In every instance but one, (CP 150) Post

failed to timely appeal the initial Notices of Violation or the first penalty assessment of $125.00 per property. CP 9, 43, 139, 315, 394.[5]

5. The City's re-inspections and additional penalties.

Pursuant to the City's code and the work schedules with which Post agreed, the City continued to inspect Post's properties. If the properties were still in violation of the code, the City sent letters stating the assessment of additional penalties—increased to $250—in accordance with the procedure set forth in TMC 2.01.060.D.4.b and E.3.b, and Table F. See CP 13, 48, 53, 59, 65, 71, 76, 83, 88, 95, 102, 107, 114, 122, 131, 134, 136, 142, 150, 157, 165, 173, 181, 317-34. No new violations were issued. That is, the additional penalties imposed directly related to the original violations.

When Post still did not repair properties or work with the City on new work schedules and the properties were still substandard or derelict, the City imposed second, third, and fourth penalties. TMC 2.01.060.D.4.c-e and E.3.c-e. And then finally, the City began imposing penalties for consecutive

[5] In the one case he did appeal for 711 South 17th Street, both the Hearing Examiner and the Superior Court affirmed the City's penalties. Post did not appeal the Superior Court's ruling. See Pierce County Superior Court Cause No. 04-2-13665-8; CP 9. The Court may take judicial notice of the status of that case. ER 201.

days at a time. Under TMC 2.01.060.D.4.f and E.3.e, "the owner may be assessed a civil penalty every calendar day commencing with the fifth civil penalty issued for failure to respond to the letters, and to negotiate a schedule with" the City. (Emphasis added.) Although the City's code permits the City to impose fines "for every calendar day" until the property owner responds with a repair schedule and repairs the properties, the City imposed penalties only on work days when repairs can be accomplished. CP 140. Further, the City fined Post only when it inspected the property and did not impose any fines when Post was in compliance with his work schedules. CP 9. Weeks or months sometimes went by without the City assessing any penalties at all. CP 71, 83, 88, 95, 114.

The process of imposing penalties is long. For example, it took the City from March 2004 through February 2005 to impose penalties totaling $6,000 on one property. CP 142, 317-54.

Once the penalties amounted to at least $1000, the City was required to file a "Certificate of Complaint" with the Pierce County Auditor to be attached to the title of the property. TMC 2.01.060.D.4.f and E.3.g.

6. Amount of penalties.

The City has repeated this lengthy process of imposing penalties against other Post properties. While Post repaired a few properties, most remain in disrepair. The City imposed penalties in the amount of around $4,000 for those properties with less problems (CP 48, 53, 59, 134, 142, 157), around $10,000 to $15,000 for other properties (CP 65, 71, 76, 83, 88, 95, 102, 131, 136, 157) and up to $60,000 or $79,000 for the worst properties. CP 107, 114, 122, 142, 165, 179, 181. By the middle of 2005, Post owed $117,500 to the City and an additional $265,000 to a collection agency acting on the City's behalf. CP 185. At one point, Post promised to make substantial monthly payments on his penalty assessments. But Post failed to fully comply with this agreement, too. CP 558. Post has paid only about $140,000. CP 558.[6]

7. Increased crime, neighbors' complaints, and staff time.

The derelict and substandard properties Post owns are linked to high numbers of calls for service and are associated with increased crime. CP 18-

[6] Post claims that he "paid approximately $300,000 in fines. (CP 1-4, CP 23-26)." See Brief of Appellant at 7. None of those clerk's papers support his contention.

19, 189-90. Neighbors have complained about Post's properties countless times, at least as far back as 1991. CP 8, 9-10, 17-18, 43, 45, 188-89.

City staff has spent hundreds of hours—the equivalent of one-half a full time employee—dealing with Post properties and with complaints, and trying to encourage Post to comply with the building code. CP 13, 19, 184.

B. Statement of Procedure

Many years after the first penalties were imposed, Post tried to appeal them. CP 275. But Post was required to appeal the notices of violation or the first penalty within 30 days of their issuance. See TMC 2.01.060.D.6.b and E.5.b. Thus, his appeals were untimely and the City denied his appeals. Id.

In March 2005, Post filed a lawsuit against the City asserting numerous claims concerning the City's penalties on his properties. CP --.[7] After Post amended his complaint (CP 293), the City filed a counterclaim asserting that Post still owed approximately $411,000 in penalties.

After cross motions for summary judgment, the Superior Court granted summary judgment in favor of the City. CP 560-64. The Superior Court held that Post failed to exhaust his administrative remedies under

[7] The City just designated the original complaint in its Supplemental Designation of Clerks' Papers.

RCW 36.70C; that the City's penalties did not constitute excessive fines under either the United States or Washington State constitutions, did not constitute double jeopardy, did not violate Post's substantive or due process rights, or his civil rights under 42 U.S.C. § 1983; and that the penalties did not exceed its authority under RCW 7.80.010. The Superior Court thus dismissed all of Post's damages claim and his amended complaint. CP 563-64.

IV. ARGUMENT

A. Standard of Review.

The facts are not in dispute. On appeal from an order granting summary judgment, the Court engages in the same inquiry as the Superior Court. Benjamin v. Washington State Bar Ass'n, 138 Wn.2d 506, 515, (1999). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kruse v. Hemp, 121 Wn.2d 715, 722 (1993); CR 56(c). In addition, this Court may affirm the Superior Court's decision on any basis established by the pleadings and proof. LaMon v. Butler, 112 Wn.2d 193,

200-01 (1989) The City requests this Court to affirm the Superior Court's decision in favor of the City.

B. The Superior Court properly held that Post's claims are barred under the Land Use Petition Act.

Post failed to comply with the jurisdictional requirements of RCW 36.70C, the Land Use Petition Act (LUPA). As a result, all of his claims are barred.

LUPA dictates how a party can appeal a "final determination" of a land use decision. RCW 36.70C.020(1). LUPA is "the exclusive means of judicial review of land use decisions." RCW 36.70C.020(1). It was enacted to establish uniform and expedited appeal procedures. RCW 36.70C.010. A land use petition must be filed "within twenty-one days of the issuance of a land use decision." A land use petition is barred unless it is timely filed and served. RCW 36.70C.040(2); James v. Kitsap County, 154 Wn.2d 574, 583 (2005).

1. A final determination to impose penalties is a land use decision.

Post does not challenge that a Hearing Examiner's decision to affirm the penalties is a land use decision. RCW 36.70C.020(2)(b) defines

"land use decision" as a "final determination" by the City on the "enforcement by a local jurisdiction of ordinances regulating the . . . maintenance, or use of real property." In this case, the penalties imposed directly relate to the maintenance of real property. As such, the City Hearing Examiner's final determination to impose penalties constitutes a land use decision subject to LUPA.

2. Post failed to appeal his penalties.

If Post disagreed with the notice of violation and first penalty, he was required to request a review by Building Official. TMC 2.01.060.D.6, E.5. If he disagreed with that decision, Post needed to appeal to the City's Hearing Examiner. TMC 2.01.060.D.6, E.5. After exhausting his administrative remedies—which Post was required to do before filing a LUPA action (see RCW 36.70C.060(2)(d); Chelan County v. Nykreim, 146 Wn.2d 904, 938 (2002))—Post could seek judicial review under LUPA. To do so, Post was required to file a LUPA action within 21 days of the Hearing Examiner's decision.

Post simply failed to timely appeal the notices of violation or the first penalty notices. CP 9, 43, 139, 150, 315, 394.[8] Thus, he did not exhaust his administrative remedies and failed to comply with LUPA.

A recent appellate decision confirms that if a party does not comply with the LUPA filing requirements, his case is barred. In Richards v. City of Pullman, No. 24542-0-III, slip. Op. (Sept. 12, 2006), the City of Pullman issued a notice of violation to the Richards advising them that their construction violated the building code. The Richards did not timely file an administrative appeal. As a result, "review of the notice of violation and order to correct or cease activity was unavailable under LUPA." Id. at 3.

Just as in Richards, Post failed to comply with LUPA. Consequently, the Superior Court properly dismissed Post's case.

3. Even if Post requests damages, LUPA still applies to the remainder of the case.

That Post requested the return of the penalties does not render LUPA inapplicable. RCW 36.70C.030(c) provides that LUPA does not

[8] As stated above, in the one case he did appeal, the Superior Court affirmed the City's penalties. Post did not appeal further. Thus, res judicata bars Post from challenging penalties on that property. See e.g., In re Estate of Black, 153 Wn.2d 152, 170 (2004).

apply to "claims provided by any law for monetary damages or compensation." Post initially requested the City return the penalties. See Brief of Appellant at 35. But he agreed to dismiss this request. CP 501-02, 564.[9] Since this case does not involve any request for money, Post cannot use it as a basis for avoiding LUPA.

To the extent that the Post did request damages, he argues the City should return the penalties paid because the City made "an erroneous interpretation of the law," the decision to impose penalties was "clearly erroneous," and the decision violates his "constitutional rights." All of these are standards for granting relief under LUPA. RCW 36.70C.130(1)(b), (d), and (f). So even if Post requested damages, he requests them because the City allegedly failed to follow state law. That challenge must be brought under LUPA.

[9] There appears to be some inconsistency about the Court's dismissal of Post's damage claims. One order states that only his "seventh" cause of action and related damage claim is dismissed with prejudice. CP 501. But Post also claimed damages related to other causes of action. See CP 298. However, the final order granting summary judgment states "that all claims for damages having been previously dismissed without prejudice. . . ." CP 564. Post clearly interprets these orders as providing all claims for "money damages" were dismissed. See Brief of Appellant at 35.

The state Supreme Court agrees. In James v. Kitsap County, developers challenged the legality of impact fees as a condition of issuing a permit. The Court held that challenging the legality of the impact fees and requesting the return of those fees is subject to LUPA and "is not reviewable unless a party challenges that decision within 21 days of its issuance." 154 Wn.2d at 586.[10]

Even if the Court agrees that Post requested damages, this does not exclude his entire lawsuit from LUPA. Rather, the Superior Court is to consider all the other claims under LUPA and "if appropriate, preside at a trial for damages or compensation." See RCW 36.70C.030(1)(c).

4. The Hearing Examiner is not a court of limited jurisdiction.

Post is also wrong when he claims that LUPA does not apply because the City's Hearing Examiner is a "court of limited jurisdiction." Brief of Appellant at 37. LUPA provides that "when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter."

[10] Moreover, Post is wrong when he distinguishes James by stating that "RCW 82.02 [a statute involved in that case] specifically allows enforcement under LUPA." Brief of Appellant at 35. RCW 82.02 contains no such provision.

RCW 36.70C.020(1)(c). The City is not required to enforce TMC 2.01 in a court of limited jurisdiction.

Moreover, there is no legal authority—and Post does not cite to any—to support the conclusion that the City's Hearing Examiner is a court of limited jurisdiction. In fact, the legislature has the sole authority to establish limited jurisdiction courts. Wash. Const., Art. IV, § 1. Limited jurisdiction courts are created by statute, and the legislature has not chosen the City's Hearing Examiner as such a court. See RCW 3.02.[11]

5. LUPA applies to final determinations.

Post seems to imply that the notices of penalties were interim decisions not subject to LUPA. Brief of Appellant at 37. LUPA applies to a "final determination" of a land use decision. RCW 36.70C.020(1). Post was required to appeal the notice of penalties to the Hearing Examiner, which he failed to do. The Hearing Examiner's decision would then have been a "final determination" subject to LUPA.

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[11] Because the City's authority to issue penalties does not arise from RCW 7.08 as outlined below, Post's argument that RCW 7.08 requires the City to pursue penalties in a court of limited jurisdiction is not persuasive. See Brief of Appellant at 37-38. Moreover, RCW 7.08 does not provide the City Hearing Examiner authority to hear appeals regarding penalties. Brief of Appellant at 38. Rather, the City's code, TMC 2.01.060.D.6 and E.5 dictate the appellate procedure to the Hearing Examiner.

Moreover, Post's reliance on two cases to assert LUPA does not apply is unconvincing. See Brief of Appellant at 36-37. In WCHS, Inc. v. City of Lynnwood, 120 Wn. App. 668 (2004), the Court held that an interim denial of a permit was not a "final decision" reviewable under LUPA. There is no "interim" decision here. In addition, any alleged "failures of the notice" in WCHS did not take "the action out of the LUPA requirements" as Post claims. Brief of Appellant at 37.

Post is flatly wrong when he claims that the Court in Pacific Rock Envtl v. Clark County held that "LUPA does not apply to interlocutory decisions." See brief of Appellant at 26. In that case, the Court held that a discovery order was not a land use decision reviewable under LUPA. But the Court specifically stated that "By this holding we do not foreclose all interlocutory review." 92 Wn. App 777, 782, n.2 (1998).

LUPA is the "exclusive means" for Post to seek judicial review of the penalties imposed. He simply failed to comply with LUPA. As a result, the Superior Court properly dismissed Post's case.

If the Court rules that Post's claims are barred because he failed to comply with LUPA, then the Court need not consider any other of Post's

arguments. However, in the event the Court does not rule the LUPA bars Post's claims, the City will address each of Post's claims.

C. The Superior Court properly held that TMC 2.01.060 is a valid exercise of the City's authority.

1. TMC 2.01.060 is presumed constitutional.

Municipal ordinances, like statutes, are presumed constitutional. Carrillo v. City of Ocean Shores, 122 Wn. App. 592, 602 (2004). "Every presumption must be indulged in favor of constitutionality." City of Seattle v. Montana, 129 Wn.2d 583, 592 (1996). A person who attacks the constitutionality of a municipal ordinance bears the burden of showing the validity of the enactment beyond a reasonable doubt. Seattle v. State, 100 Wn.2d 232, 238 (1983). Where a court is asked to review a legislative decision, the applicable standard of review is the "arbitrary and capricious" test. Teter v. Clark County, 104 Wn. 2d 227, 234 (1985). A legislative determination will be sustained if the Court can reasonably conceive of any state of facts to justify that determination. Teter, supra at 234-235; see also, Carrillo, 122 Wn. App. at 602. Thus, TMC 2.01.060 is presumptively valid. Post has a heavy burden of proving otherwise.

2. TMC 2.010.060 is reasonable.

The purpose of the City's Minimum Building and Structures Code is obvious. It is for "The protection of the health, safety,, and welfare of occupants and that of the general public...." TMC 2.01.020. The code is intended to establish the "minimum" standards for basic security and safety and to encourage the maintenance and improvement of property within the City. TMC 2.01.020.

To meet these purposes, the City established a lengthy process by which to obtain compliance from property owners. The process starts with a complaint (or some other reason to believe that a violation of the code exists), followed by an inspection and then a Notice of Violation if appropriate. TMC 2.01.060.A. Property owners have 30 days to respond to the City to either dispute the notice or to negotiate a repair schedule. TMC 2.01.060.D.4 and 6, and E.3 and 5. Only if the property owner fails to respond, or if violations still exist after the owner fails to comply with an agreed upon repair schedule, does the City begin to impose penalties. TMC 2.01.060.D.4.b and c and E.3.b and c.

The City decided that imposing penalties, initially $125 and then $250 per day, is a measured and effective way to gain compliance with the building code. The City also decided that a reasonable and systematic approach is to impose the same amount of the penalties per day regardless of the number of points accumulated for the violations and regardless of whether the property is considered substandard and derelict. Such a system provides for a simple, consistent, and practical approach to imposing penalties and to ultimately gain compliance.

At various times, Post had at least 22 properties that were deemed either substandard or derelict. Post either did not respond at all to the City's letters, or agreed to a repair schedule with which he consistently failed to comply. CP 17, 43, 139. Post's properties were in extreme disrepair. Most of them were in such poor condition as to be uninhabitable. CP 65, 71, 76, 83, 88, 102, 107, 114, 131, 134, 136, 142, 181. Because Post failed to respond, or repeatedly failed to comply with the agreed-upon work schedules, the City imposed penalties.

Post asserts that the TMC 2.01.060 does not envision the City imposing fines "$250 per day forever." Brief of Appellant at 11-12. In

one way, Post is correct. Penalties are intended to encourage a property owner to comply with the minimum building standards. As a result, if a property owner complies with the code, the City would not impose the penalties "forever." On the other hand, there is nothing in state law, or in the TMC, to limit the amount of penalties the City may impose.

Post argues that the "inference" behind TMC 2.01.060 requiring the certificate of complaint after the fines amount $1000 "is that the City will be cut off from continuing the process of daily fines after one week of assessment." Brief of Appellant at 12, 15, 39. This is not how the City reads its code. "It is a well established rule of statutory construction that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement." City of Olympia v. Thurston Co. Bd. of Comm'rs, 131 Wn. App. 85, 97 (2005). Limiting the total fines to $250 or $1250 as Post suggests is just nonsensical. This would encourage, at best, only those few extremely civic-minded individuals for whom even a warning would suffice. Moreover, a property owner might choose a $1250 penalty over a more expensive, but critically needed, repair, such as installing heat or fire

alarms, ridding a home of rat infestation, or replacing front steps. Such severely restricted penalties would not encourage property owners to comply with the minimum building standards.

The City's main goal with the notices of violation and with the penalties is to gain compliance with *minimum* safety and building codes. As a result, the Superior Court properly upheld the City's penalties.

3. TMC 2.01.060 is a valid enactment pursuant to the City's police power.

TMC 2.01 was adopted pursuant to the police power of the City to protect the health, safety and welfare of its citizens as granted by the Washington State Constitution, Article XI, § 11. That constitutional provision states that any city "may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."

The City's police power is broad. "It is universally conceded to include everything essential to the public safety, health, and morals...." Weden v. San Juan County, 135 Wn.2d 678, 691 (1998) (emphasis in original; citation omitted); see also 6A McQuillin Municipal Corporations, § 24.09 (3rd ed. 1989); Hugh D. Spitzer, Municipal Police Power in

Washington State, 75 Wash. L. Rev. 495, 517 (2000). The police power is firmly rooted in the history of this state, and its scope has not declined. Weden, 135 Wn.2d at 692. As a result of such broad authority, courts will find an ordinance consistent with Article XI, § 11 of the state constitution unless: (1) the ordinance conflicts with some general law; (2) the ordinance is not a reasonable exercise of the City's police power; or (3) the subject matter of the ordinance is not local. Id. at 692-93.

Post does not argue that TMC 2.01.060 is inconsistent with some general law, or that the subject matter of the ordinance is not local. Post seems to argue that the enforcement mechanism (i.e. penalties) under TMC 2.01.060 is not a reasonable exercise of the City's police power. An ordinance will be upheld unless it is "clearly unreasonable, arbitrary or capricious." Weden, 135 Wn.2d at 700.

There can be little question that building regulations and related penalties are for the health, safety, and welfare of the public. The City has chosen a reasonable approach of imposing penalties to gain compliance with the building and safety regulations. As a result, TMC 2.01 is fully consistent with the City's police power under Article XI, § 11.

4. TMC 2.01.060 wholly complies with state law.

Additionally, state law allows the City, as a first class city under RCW 35.22, to regulate buildings to make sure they are safe.

RCW 35.22.280(23) authorizes the City:

> To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition.

Thus, the City, "has direct legislative authority to regulate in order to maintain safe housing." Margola Assocs. v. City of Seattle, 121 Wn.2d 625, 635 (1993); see also 7A McQuillin Municipal Corporations, § 24.504 - 24.505 (3rd ed. 1989). This authority granted by the state legislature under RCW 35.22.280(23) has existed for well over 100 years. See Laws of 1890, p. 221, section 5.[12]

There are only five appellate cases citing to RCW 35.22.280(23) (or its former reference as RCW 35.22.280(24).[13] None discuss whether

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[12] Even if argument regarding this state law was not presented to the Superior Court, this Court may affirm the Superior Court's ruling on any ground adequately supported by the record. State v. Costich, 152 Wn.2d 463. 477 (2004).

[13] RCW 35.22.280(23) was formerly referred to as RCW 35.22.280(24). See Laws of 1977, ex.s. ch. 316, § 20.

RCW 35.22.280(23) permits a city to impose penalties for failing to comply with a city's minimum building code and standards. Thus, the Court should review the statute as a whole and glean the legislative intent from the words of the statute itself. United States v. Hoffman, 154 Wn.2d 730, 737 (2005).

RCW 35.22.280(23) specifically permits the City to "cause" all such buildings which are in a dangerous condition "to be put in safe" condition." While this may be awkwardly stated, it confers the City with authority to enforce the building standards. Otherwise, the City could not "cause" dangerous buildings to be safe. By using such broad language to permit enforcement, the state legislature authorized the City to enforce compliance as it reasonably sees fit. Here, the City chose to establish a penalty system to encourage compliance and protect the public.[14]

[14] The Supreme Court of West Virginia agrees. In State Line Sparkler v. WV, Ltd., 418 S.E.2d 585 (W.Va. 1992), the Court addressed whether a county had the authority to impose penalties for violating the building code when the state legislature did not specifically authorize penalties. By providing the county with the authority to enforce its building code, "the legislature has, by implication, granted counties the power to enforce violations of building code ordinances by imposing a fine." Id. at 275-76.

In addition, the legislature all provided a catch-all provision in RCW 35.22.280(35) which provides that a first class city has the power:

> To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. . . Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation.

(Emphasis added). Under this authority, the City can impose a civil penalty for behavior that is dangerous to public health and safety.

Although no case law exists which explicitly answers the question of whether a city can impose penalties on a property owner for failing to comply with minimum building standards, the language in RCW 35.22.280(35) is quite clear: If a person violates an ordinance dealing with public health or safety, a city can provide that such violation constitutes a civil violation and can impose "monetary penalties." Here, TMC 2.01 and

the related penalties in TMC 2.01.060 unquestionably deal with public health and safety. Thus, the City has the authority to impose monetary penalties.[15]

Post misstates the holding in Rivett v. City of Tacoma, 123 Wn. 2d 573 (1994) when he states that state law does not authorize the City to impose penalties and that imposing penalties "was ruled both by the trial court and the Supreme Court to be in violation of the due process clause of the Washington State Constitution, Article 1, Section 3." Brief of Appellant at 17. The Court in Rivett was faced with an entirely different issue. The issue was whether the City could require abutting property owners to indemnify the City for all damages paid to a person injured on a sidewalk. The Rivett case had nothing to do with imposing penalties for violating the City's building code. Consequently, it does not support Post's claim.

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[15] Post's discussion to the City's nuisance code is largely irrelevant to the court's interpretation of the building code in this case. See Brief of Appellant at 16. But to be accurate, contrary to Post's assertion, the City's code does not limit penalties for violating the nuisance ordinance for "one charge" with a maximum penalty of $1000.00. Brief of Appellant at 12-13. TMC 8.30A.060.G imposes similar civil penalties for violating the nuisance code--$125 for the first penalty, and $250 for subsequent penalties. There is no maximum amount, unless the City pursues a criminal remedy. TMC 8.30.100. Moreover, each day constitutes a separate violation. Id.

5. The City's penalties are consistent with RCW 7.08.

Contrary to Post's assertion, the City does not rely on RCW 7.08 ("Civil Infractions") for authority to impose penalties under TMC 2.01. Brief of Appellant at 13, 18. Rather, the City has consistently asserted that the penalties in RCW 7.08 are "analogous" to the penalties here and that RCW 7.08 does not limit the City's ability to impose civil penalties (CP 267, 547-48) as Post had argued previously. CP 202, 204.

RCW 7.08 deals with civil infractions. It is intended to permit jurisdictions to decriminalize minor offenses and to instead impose civil infractions. RCW 7.08.005. The maximum amount for each monetary penalty is $250.00. RCW 7.08.120(1). In that sense, as the City argued before, the penalties imposed under TMC 2.01.060 are similar.

RCW 7.08 does not prohibit, or limit in any way, the amount of penalties the City may impose. RCW 7.08.010(5) states that "Nothing in this chapter prevents any city, town, or county from hearing or determining civil infractions pursuant to its own system established by ordinance." That is precisely what we have here—a separate penalty

system established to encourage compliance with the building code. As a result, RCW 7.08 does not prohibit the City's penalties in this case.

Although imposing penalties against Post may not have had the intended effect of gaining his compliance with the building and safety codes, imposing penalties is usually an effective and practical means of gaining compliance, and for protecting the public and the occupants of these houses. Both the City's broad police power and state law authorize the City to establish building regulations and an effective means to enforce them.

D. The Superior Court properly held that the City did not violate Post's constitutional rights.

Post alleges that the City violated his right to due process as guaranteed by the Fourteenth Amendment, the Fifth Amendment double jeopardy clause, and the "excessive fines" clause of the Eighth Amendment. Post fails to prove the City violated any of these provisions.

All of Post's constitutional challenges should be analyzed under the United States constitution, and not the state constitution. This is because Post has failed to analyze whether any particular state constitutional provision provides for any greater protection than the analogous federal constitutional provision. A party who claims that the

state constitution provides for greater protection than the federal constitution must engage in an extensive analysis – called the Gunwall analysis – before the Court will consider the state constitutional claims. State v. Gunwall, 106 Wn.2d 54, 61-62 (1986). If a party fails to engage in a Gunwall analysis, then the Court will not review the state constitutional arguments. E.g., In re Personal Restraint of Gronquist, 138 Wn.2d 388, 406, n. 12 (1999); State v. Ortiz, 119 Wn.2d 294, 301 (1992) (noting the six Gunwall factors must be addressed before it will undertake state constitutional analysis). Consequently, this Court should analyze Post's constitutional claims under the federal constitution only.

1. The Superior Court properly held that the City did not violate Post's substantive or procedural due process rights.

The Fourteenth Amendment of United States Constitution prohibits state action that would deprive "any person of life, liberty, or property without due process of law." "The burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Usery v. Turner Elkhorn, 428 U.S. 1, 15, 96 S. Ct. 2882, 49 L. Ed. 2d. 752 (1976).

a. The Superior Court correctly held that the City did not violate Post's procedural due process rights.

There is little question that Post is entitled to procedural due process here—money is a property interest protected by procedural due process. Town of Castle Rock v. Gonzales, 545 U.S. 748, 125 S. Ct. 2796, 2823, 162 L. Ed. 2d 658 (2005). Once it is determined that due process applies, the question remains what process is due. Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Due process is flexible and calls for such procedural protections as the particular situation demands. Id. The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings "as are adequate to safeguard the right for which the constitutional protection is invoked. If that is preserved, the demands of due process are fulfilled." Anderson Nat. Bank v. Luckett, 321 U.S. 233, 246, 64 S. Ct. 599, 88 L. Ed. 692 (1944). Measured by this standard, the City fully afforded Post due process.

For the 22 Post properties in violation of TMC 2.01, the City sent Notice of Violation letters to Post notifying him that the properties were

either substandard or derelict. CP 13, 48, 53, 59, 65, 71, 76, 83, 88, 95, 102, 107, 114, 122, 131, 134, 136, 142, 150, 157, 165, 173, 181, 317-34. One example is a letter the City sent Post advising him that one property was inspected and found to violate TMC 2.01. CP 317-18. An attachment to the letter is ten pages and provides thorough details about the violation. CP 319-28. For example, the City notified Post that the property was missing smoke detectors, the exit stairs needed to be replaced, there was pigeon infestation, and that heat was not provided to all habitable rooms.

The City also described how Post could obtain review of the Notice of Violation if he disagreed with it. CP 317-18. The City attached excerpts of TMC 2.01.060.E, which again detailed what Post could do if he disagreed with the Notice of Violation. CP 329-334. Therefore, Post's claim that the City's "notice does not even indicate the basis of the fine or any right to a hearing" and that he "did not receive notice of the offense he is charged with" and "had no opportunity to be heard" is remarkable. Brief of Appellant at 26. Indeed Post admits as such when he states that the "initial notice also attaches a copy of TMC 2.01.060 which indicates to

the property owner he or she may appeal the fine or assessment of the condition of the property within 30 days." Brief of Appellant at 6.

TMC 2.01.060 clearly permits a property owner to appeal the initial notice of violation or the first penalty. Because any and all of subsequent penalties here directly related only to those violations cited in the original notice of violation and first penalty, Post could not appeal the subsequent penalties. See TMC 2.01.060.D.6.b and E.5.b. To allow a property owner to appeal each subsequent penalty—which are based only on the original violations—would essentially permit them to re-litigate the same underlying violation indefinitely.

The notices clearly provided Post with details of the violations. The City also specifically told Post how he could appeal the notices of violation or the first penalty. Post just generally chose to ignore the letters. Thus, Post cannot prove the City violated his rights to due process.

b. The Superior Court also correctly held that the City did not violate Post's substantive due process rights.

The Court should not address Post's substantive due process claim because he specifically relies on another explicit constitutional provision,

namely the Eighth Amendment "excessive fines" clause. The United States Supreme Court has been very clear: "Where a particular amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." Albright v. Oliver, 510 U.S. 266, 273, 127 L. Ed. 2d 114, 114 S. Ct. 807 (1994). This rule applies when the explicit constitutional provision is the Eighth Amendment. See United States v. Lanier, 520 U.S. 259, 272, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997).

Post claims that the Eighth Amendment prohibits the penalties in this case. And the due process clause in the Fourteenth Amendment "makes the Eighth Amendment's prohibition against excessive fines and cruel and unusual punishments applicable to the States." Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 433, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001). Because another explicit textual source of

constitutional protection applies here, the Court should not even address Post's substantive due process claim.[16]

2. The penalties do not violate the double jeopardy clause.

The double jeopardy clause of the Fifth Amendment to the United States Constitution does not apply here for one critical reason: The double jeopardy clause only prohibits the imposition of multiple criminal punishments for the same offense. The penalties for Post's substandard or derelict buildings are not criminal punishments.

The United States Supreme Court has unequivocally held that the double jeopardy clause "protects only against the imposition of multiple *criminal* punishments for the same offense." Hudson v. United States, 522 U.S. 93, 99, 118 S. Ct. 488, 493, 139 L. Ed. 2d 450 (1997) (emphasis in original). Post has not even attempted to argue that the penalties here stem from a criminal violation. Nor has Post engaged in any analysis to show

[16] Even if the Court were to address Post's substantive due process claim, he will not prevail. The United States Supreme Court clearly holds that "where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for and determination of courts, but for that of the legislative body on which rests the duty and responsibility of decision." Standard Oil Co. v. City of Marysville, 279 U.S. 582, 584, 49 S. Ct. 430, 73 L. Ed. 856 (1929). Furthermore, TMC 2.01 will be upheld as long as it is not "clearly arbitrary and unreasonable, having no substantial relation to public health, safety, morals, and general welfare." Euclid v. Ambler Realty Co., 272 U.S. 365, 395, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

that the penalties are criminal in nature. Without proving the penalties are criminal, the double jeopardy clause, or the criminal cases Post cites (See Brief of Appellant at 27-29) do not apply.

Post may attempt to argue that the penalties are criminal. But again, the United States Supreme Court has decided this question—civil penalties are generally not a criminal punishment.

In Hudson, the United States imposed monetary penalties against several bankers who violated banking laws. The issue in that case was whether the monetary penalties constituted punishment for purposes for the double jeopardy clause. "Whether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction. A court must first ask whether the legislature, 'in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.'" Hudson, 522 U.S. at 99. Even in those cases where the legislature has indicated an intention to establish a civil penalty, courts have inquired further whether the statutory scheme was so punitive either in purpose or effect, as to "transform what was clearly intended as a civil

remedy into a criminal penalty." Id, at 99.[17] "Only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." Id. at 100.

The Court in Hudson noted that the Legislature "expressly provide[d] that such penalties are 'civil'" and that monetary penalties have not "historically been viewed as punishment." Id. at 103-04. Although the Court recognized that the penalties were intended as deterrence, "the mere presence of this purpose is insufficient to render a sanction criminal." Id. at 105. To hold otherwise "would severely undermine the Government's ability to engage in effective regulation . . . ." Id. If a sanction must be 'solely' remedial (*i.e.*, entirely nondeterrent) to avoid implicating the Double Jeopardy Clause, then no civil penalties are beyond the scope of the Clause." Hudson, 522 U.S. at 102 (internal citations omitted).

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[17] In making a detailed examination of whether an ordinance is civil or criminal, the factors listed in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-169, 9 L. Ed. 2d 644, 83 S. Ct. 554 (1963), provide useful guideposts, including: (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of *scienter*; (4) whether its operation will promote the traditional aims of punishment -- retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned.

Ultimately, the Court held that 'there is little evidence, much less the clearest proof that we require, suggesting that the . . . penalties. . . are 'so punitive in form and effect as to render them criminal despite Congress' intent to the contrary." Id. at 104. As a result, the Court held that that the civil penalties were not criminal punishment.

Post cannot meet "the clearest proof" required to show the civil penalties here are a criminal punishment. As in Hudson, here the City expressly noted that the penalties are civil. See e.g. TMC 2.01.060.D.4.b-e and 2.01.060.E.3.b-e (referring to "civil penalties"); CP 336 ("Civil Infraction Penalty Assessment".) Moreover, there is no indication that these penalties were historically viewed as punishment. The penalties are not intended to punish, but are intended to establish minimum standards for construction and safety, and encourage compliance with safety codes. TMC 2.01.020. Nothing in TMC 2.01 even remotely suggests the penalties are intended to be criminal. Thus, just as the penalties in Hudson, the penalties here are strictly civil.

Moreover, even if Post relies on the amount of penalties he faces as proof that the penalties are in fact a punishment, he still will not prevail.

The Court in Hudson states that it must "evaluat[e] the statute on its face" and not "assess the character of the actual sanctions imposed" to determine whether the civil penalties amount to a criminal punishment. Hudson, 522 U.S. at 101.

Curiously, Post relies on three old out-of-state cases to support his double jeopardy claim that have nothing to do with the double jeopardy clause at all. Brief of Appellant at 29-31. See City of New Orleans, v. Mangiarisina, 71 So. 886 (La. 1916) (dismissing plaintiff's arguments about an ordinance requiring new construction to be "rat-proofed"); Wright v. City of Guthrie, 1 P.2d 162 (Ok. 1931) (upholding the court upheld a city's zoning law that prescribed a violation for each day a zoning violation was permitted); City of Cincinnati v. McKinney, 137 N.E.2d 589 (Oh. 1955) (upholding a sentence for petit larceny when the sentence was based, in part, on the defendant's prior convictions). Because none of these cases discuss, or even mention, the double jeopardy clause, they do not support Post's double jeopardy arguments.

The double jeopardy clause does not apply because the penalties are not criminal. Consequently, it does not bar the penalties against Post.

3. The Superior Court properly held that the City's fines are not excessive in violation of the Eighth Amendment.

Although the United States Supreme Court appears to assume that the Eighth Amendment excessive fines clause of the United States Constitution applies to civil penalties[18], the amendment does not prohibit the penalties in this case. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This provision does not bar the penalties because the penalties are not intended to punish Post.

a. The Eighth Amendment does not prohibit the penalties here because they do not constitute punishment.

The excessive fine clause does not prohibit penalties unless the imposition of penalties is intended to punish, rather than serve a "remedial" purpose. Austin v. United States, 509 U.S. 602, 611, 113 S. Ct. 2801, 125 L.Ed.2d 488 (1993). A "remedial" sanction is one that removes dangerous items from society, or attempts to make the

[18] See Hudson, 522 U.S. at 103; but see United States v. Bajakajian, 524 U.S. 321, 356, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998) ("Perhaps civil fines may not be subject to scrutiny [under the Eighth Amendment] at all.") (Kennedy, J. dissenting).

government whole. United States v. Mackby, 339 F.3d 1013, 1019 (9th Cir. 2003).

Here, the City's code explicitly states that the penalties are for "remedial purposes" only. TMC 2.01.064.D.4.b and E.3.b. The buildings code is intended for the "protection of the health, safety, and welfare of occupants and that of the general public" by establishing minimum standards for construction, heating, sanitation, security, fire, and life safety in structures, and encouraging the maintenance and improvement of the City's existing buildings. TMC 2.01.020. Thus, since the penalties are remedial, the Eighth Amendment does not prohibit the penalties here.[19]

b. Even if the excessive fines clause does apply, the penalties are not excessive.

Even if the penalties constitute a punishment, they are not excessive. "The touchstone of the constitutional inquiry under the

[19] While Post may now attempt to argue that the penalties are indeed punishment for Eighth Amendment purposes, this specific issue was not presented to the Superior Court—Post merely assumed that the penalties were punishment. As a result, the Court should decline to address whether the penalties are in fact a punishment. See RAP 2.5(a); State v. Canfield, 154 Wn.2d 698, 707 (2005)(holding that appellate courts generally will not consider issues raised for the first time on appeal). Should the Court wish to address this issue, the City would like an opportunity to submit additional evidence, under RAP 9.11, to support its claim that the penalties are remedial. Such additional evidence is "needed to fairly resolve the issues on review" and "would probably change the decision being reviewed." RAP 9.11(a)(1) and (2).

Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture [or penalties] must bear some relationship to the gravity of the offense that it is designed to punish." United States v. Bajakajian, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). A court must consider the harm that the violation caused, or could cause, and compare the amount of the penalties to the gravity of the offense. Only if the amount of the penalties are grossly disproportional to the gravity of the offense, do they violate the excessive fines clause. Id. at 336-37, 339.[20]

Here, the Superior Court properly held that the penalties imposed are not excessive in violation of the Eighth Amendment, particularly considering the potential harm to the occupants of Post's properties. Although the City has imposed a large amount of penalties on a few properties, most of the penalties on various properties total less than $15,000 each. CP 48, 53, 59, 65, 134, 142, 150, 157. The City imposed these penalties because Post failed to repair his properties. For example, on one property with only $3500 in accumulated penalties, Post was cited

[20] Post's reliance in State v. WWJ Corp., 138 Wn.2d 595 (1999) to support his excessive fines claim is curious. The Court did not hold that the fines in that case were excessive: "Since the record contains insufficient date to enable this court to grasp the gravity of [Plaintiff's] offenses, we cannot determine the merits of [Plaintiff's] excessive fines claims." Id. at 605-06.

for failing to install stairs and replace broken windows, because the foundation was structurally unsound, the bathroom was in complete disrepair, some rooms did not have heat, the house was infested with pigeons, and many rooms were missing smoke detectors. CP 319- 328.

These violations are serious and directly affect the safety of the public and of the occupants of the houses. Post suggests that the $2000 penalties for soliciting a prostitute that were upheld in Ross v. Duggan, 402 F.3d 575 (2004) were "much more serious" than the penalties imposed here for "unpainted houses." Brief of Appellant at 23. But Post is quite mistaken. Many of Post's properties are in such extreme disrepair as to be inhabitable. TMC 2.01.060.E; CP 233, 327. The penalties imposed represent a measured response to a pattern of dangerous and harmful conduct, or lack thereof. Because of the seriousness of these violations and potential significant harm to the occupants, the penalties are not grossly disproportionate to the offenses.

Courts applying the Eighth Amendment to civil penalties almost uniformly find the penalties to be constitutional. See e.g., Qwest Corp. v. Minn. PUC, 427 F.3d 1061 (8th Cir. 2005) (upholding a $25.95 million

penalty because of the harm caused by Qwest's failure to comply with the Telecommunications Act); United States v. Gurley, 384 F.3d 316 (6th Cir. 2004) (holding that a $1.9 million penalty was not excessive for violating the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for seven years); and United States v. Mackby, 339 F.3d 1013 (9th Cir. 2003) (upholding a $729,454.92 judgment after Macky submitted 8499 false Medicare claims).[21]

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[21] See also Traficanti v. United States, 227 F.3d 170 (4th Cir. 2000) (holding that a $40,000 penalty for food-stamp trafficking was not excessive); Balice v. United States Department of Agriculture, 203 F.3d 684, 698-99 (9th Cir. 2000) (recognizing the importance of a stable almond market and upholding a $225,500 civil fine for violations of a federal law dealing with record keeping for almond growers); Vasudeva v. United States, 214 F.3d 1155, 1161-62 (9th Cir. 2000) (upholding civil monetary penalties of $13,200 and $39,840 for trafficking in food stamps finding because trafficking in food stamps is a serious offense that defrauds the government and undermines the viability of an important government program for the needy); United States v. Lippert, 148 F.3d 974 (8th Cir. 1998) (upholding a civil penalty of $352,000 against a contractor who received kickbacks where the penalty was double the amount of the kickbacks); Pharaon v. Bd. Of Governors of the Fed. Reserve Sys., 135 F.3d 148 (D.C. Cir. 1998) ($37 million civil penalty imposed upon individual for participating in foreign banks' violations of the Bank Holding Company Act did not violate the excessive fines clause because the penalty was in proportion to the violation); Cole v. United State Dept. of Agriculture, 144 F.3d 803 (11th Cir. 1998) (civil penalty of nearly $400,000 against tobacco farmer did not violate the excessive fines clause where the penalty was proportional to a legitimate governmental purpose); In Re Bilzerian, 153 F.3d 1278 (11th Cir. 1998) ($33 million civil judgment for disgorgement of profits did not violate the excessive fines clause); United States v. Emerson, 107 F.3d 77 (1st 1997) (civil penalty of $185,000 imposed on pilot for taking unauthorized flights not an excessive fine, even though there was no serious personal injury).

Courts invalidate penalties under the excessive fines clause in only the rarest of cases. One of the few cases where a court invalidated a civil penalty under the excessive fines clause is United States ex rel. Smith v. Gilbert Realty Co., Inc., 840 F.Supp. 71 (E.D. Mich. 1994). In that case, the court reduced a civil penalty under the False Claims Act from $290,000 to $35,000, where the actual loss was only $1,630. The Court held that the full penalty, at a ratio of 178 to 1, was excessive, and reduced it to $35,000—still a ratio of 21 to 1.

The violations in this case are serious and they are extreme. Thus, the penalties are not disproportionate, and certainly not "grossly disproportionate," to the violations. Consequently, the Superior Court correctly held that the penalties did not violate the Eighth Amendment.

E. Post's 42 U.S.C. §1983 claim fails as a matter of law because he did not establish a constitutional deprivation.

Post raises these constitutional claims under 42 U.S.C. § 1983. But he spends exactly one sentence in his appellate brief stating 42 U.S.C. § 1983 applies. Brief of Appellant at 40-41. RAP 10.3(a)(5) requires a party to provide "argument in support of the issues presented for review, together with citation to legal authority. . . ." Because Post failed

to make any argument or cite one case, the Court should decline to address this claim. See e.g., City of Bremerton v. Sesko, 100 Wn. App. 158, 162 (2000) (holding that since a party failed to support an argument with relevant authority, the Court declined to consider the issue.)

In any event, Post cannot establish a § 1983 claim. To establish a cause of action under § 1983, Post must demonstrate (1) that a person has deprived the plaintiff of a federal constitutional or statutory right, and (2) that the person acted under color of state law. The City does not dispute that it was acting within its authority when it imposed penalties against Post. The only question then is whether the City deprived Post of a federal constitutional or statutory right.

42 U.S.C. § 1983 does not confer any substantive rights; it is merely a statutory vehicle by which individuals can seek to enforce their federal statutory and constitutional rights. Wilson v. Garcia, 471 U.S. 261, 278, 105 S.Ct. 1938 (1985). In order to determine whether the plaintiffs can meet the elements of their § 1983 action, the court must look to the substantive law upon which the claim is based. As explained above,

Post did not prove that the City violated the United States Constitution. As a result, Post cannot prevail on a 42 U.S.C. § 1983 claim.

F. The Superior Court properly granted summary judgment to the City.

The Superior Court properly granted summary judgment in the City's favor. The Superior Court found that there was no genuine issue of material fact in this case, and that the City was entitled to judgment as a matter of law. CP 563-64.

Although Post petitioned the Superior Court for summary judgment requesting that TMC 2.01.060 be found unconstitutional, (CP 436-37), he also asserted that if the Superior Court found the ordinance to be constitutional, a trial was necessary to determine whether the fines were "excessive." CP 461. Post is barred from challenging the validity of the fines and thus he is not entitled to a trial.

The reason the Superior Court held that there was no genuine issue of material fact was because Post "failed to comply with the procedural requirements of RCW 36.70C" (LUPA) by failing to file his action within 21 days of the final determinations. CP 564. As explained above in subsection B, Post simply failed to comply with the LUPA procedural

requirements. Post had the opportunity to challenge each notice of violation and each first penalty and argue the penalties were excessive. He simply failed to do so. Consequently, he is barred from challenging the validity of the penalties imposed and he is not entitled to a trial.

V. CONCLUSION

Post failed to timely appeal his notices of violation or the first penalties. As a result of his failure to comply the LUPA requirements, all of his claims are barred. In any event, the penalties the City imposed are well within its police power and are statutorily authorized. The City requests the Court to affirm the Superior Court's summary judgment order in its favor.

DATED this 16 day of November, 2006.

ELIZABETH A. PAULI, City Attorney

By: Debra E. Casp
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WSB #26354
Assistant City Attorney
Attorney for Respondent

Chapter 2.01

MINIMUM BUILDING AND STRUCTURES CODE

Sections:

2.01.010 Title.
2.01.020 Purpose.
2.01.030 Scope.
2.01.040 Additions, alterations, and change of use.
2.01.050 Definitions.
2.01.060 Administration and Process.
2.01.070 Minimum building requirements.
2.01.080 Repair standards.
2.01.090 Unoccupied or vacant building standards.
2.01.100 *Repealed.*

2.01.010 Title.

This Title shall be known as the "Minimum Building and Structures Code," and is referred to herein as "this chapter." (Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 21454 § 1; passed Aug. 29, 1978: Ord. 17842 § 1; passed May 18, 1965: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.020 Purpose.

The purpose of this chapter is for the protection of the health, safety, and welfare of occupants and that of the general public by:

A. Establishing minimum standards for basic equipment and facilities for construction, light, ventilation, heating, sanitation, security, fire, and life safety in structures.

B. Encouraging the maintenance and improvement of the City's existing buildings, structures, yards, streets, neighborhoods, and other property.

C. Avoiding the closure or abandonment of buildings and the displacement of occupants.

D. Encouraging the use of innovative and economical materials and methods of construction while maintaining minimum levels of safety in buildings in the City.

E. Promoting maintenance of existing property by recognizing differences between new and existing structures as long as an equal level of safety can be achieved.

F. Providing for administration and enforcement of this chapter. (Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 21454 § 2; passed Aug. 29, 1978: Ord. 16384 § 2; passed June 29, 1959: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.030 Scope.

The provisions of this chapter shall apply to all buildings and the properties on which they are located, including, but not limited to, residential, commercial, and industrial uses. Buildings in existence at the time of the adoption of this chapter may have their existing use or occupancy continued, if such use or occupancy was legal at the time of the adoption of this chapter, provided such use is not changed in intensity from its original purpose and such continued use is not dangerous to the life, health, safety, or welfare of the occupants or the general public. Buildings in which the use is changed to a use of equal or less intensity as set forth in the UCBC may be permitted without full compliance with the Building Code, provided the building complies with this chapter and the UCBC for said use. (Ord. 26715 § 1; passed Oct. 17, 2000: Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.040 Additions, alterations, and change of use.

A. General. Buildings and structures to which additions, alterations, or changes of use are made shall comply with the applicable requirements of the Building Code for new facilities, except as specifically provided in this section. See the Building Code for provisions requiring installation of smoke detectors in existing Group R Occupancies.

B. When Allowed. Additions or alterations shall not be made to an existing building or structure which will cause the existing building or structure to be in violation of any of the provisions of the Building Code or this chapter, nor shall such additions or alterations cause the existing building or structure to become unsafe. An unsafe condition shall be deemed to have been created if an addition or alteration will cause the existing building or structure to become structurally unsafe or overloaded; will lessen or render unsafe existing egress systems complying with the requirement for the use in effect at the time the building was constructed, and approved by a certificate of occupancy; or will reduce required fire resistance or will otherwise create conditions dangerous to human life.

Additions or alterations shall not be made to an existing building or structure when such existing building or structure is not in full compliance with the provisions of the Building Code.

EXCEPTIONS:

1. When such addition or alteration will result in the existing building or structure being no more hazardous based on life safety, fire safety, and sanitation, than before such additions or alterations are undertaken, and such addition or alteration is in compliance with the UCBC. (See the Building Code for Group H, Division 6 Occupancies.)

2. Alterations of existing structural elements, or additions of new structural elements, which are not required by this chapter or the Building Code and which are initiated for the purpose of increasing the lateral-force-resisting strength or stiffness of an existing structure need not be designed for forces conforming to the Building Code, provided that an engineering analysis is submitted to show that:

a. The capacity of existing structural elements required to resist forces is not reduced, and

b. The lateral loading to required existing structural elements is not increased beyond their capacity, and

c. New structural elements are detailed and connected to the existing structural elements as required by the Building Code, and

d. New or relocated non-structural elements are detailed and connected to existing or new structural elements as required by the Building Code, and

e. An unsafe condition as defined above is not created.

C. Non-structural. Alterations or repairs to an existing building or structure which are non-structural and do not adversely affect any structural member or any part of the building or structure having required fire resistance may be made with the same materials of which the building or structure is constructed.

D. Glass Replacement. The installation or replacement of glass shall be as required for new installations.

E. Restoration of Buildings. Restoration of buildings shall be in accordance with the applicable provisions of the Building Code and this chapter.

F. Buildings Designated as Historic Landmarks or Located in Historically Designated Areas. Buildings or structures which are designated as Historic Landmarks or are located in designated Historic Districts shall require the approval of the City of Tacoma Landmarks Preservation Commission before making additions, repairs, or alterations to the building or structure, or before demolishing the building or structure. (Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 16384 § 3; passed Jun. 29, 1959: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.050 Definitions.

For the purpose of this chapter, certain terms, phrases, words, and their derivatives shall be construed as specified in this section. Terms, phrases, and words used in the singular include the plural, and the plural the singular. Terms, phrases, and words used in the masculine gender include the feminine, and feminine the masculine.

Where terms, phrases, and words are not defined herein, their definition shall be taken from the Building Code and, if not defined therein, shall have their ordinary accepted meaning within the context which they are used. *Webster's Third New International Dictionary of the English Language, Unabridged,* copyright 1986, shall be considered as providing ordinary accepted meanings.

"Accessory structure" is any structure which is incidental and subordinate to the main building(s) and is located on the same property as the main building. Accessory structures may be attached to or detached from the main structure. Examples of accessory structures include: garages, carports, sheds, and other similar buildings; decks, awnings, heat pumps, fences, trellises, flag poles, tanks, towers, exterior stairs and walkways, and other exterior structures on the property.

"Accessory use" is a use customarily incidental and subordinate to the main building or principal use and located on the same lot therewith.

"Apartment house" is any building, or portion thereof, which contains three or more dwelling units and, for the purpose of this chapter, includes condominiums.

"Approved" (as to materials and types of construction) refers to approval by the Building Official as the result of investigation and tests conducted by the Building Official, or by reason of accepted principles or tests by recognized authorities, or technical or scientific organizations.

"Basement" is any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement, unless such floor level qualifies as a first story as defined herein.

"Bathroom" is a room used for personal hygiene and which contains a water closet, a lavatory, and either a bathtub or a shower.

"Bathtub" is a container for personal washing, large enough to allow the person to sit partially submerged in water.

"Blight" is a condition of deterioration, dilapidation, decay, or substandard maintenance of buildings,

structures, and/or properties which constitutes a menace to the health, safety, or welfare of the public or which negatively affects the value of surrounding property.

"Blighting conditions" are violations of this chapter, the Building Code, or other City ordinances, which are determined by the Building Official to be detrimental to the health, safety, or welfare of the public.

"Boarding house" is a lodging house in which meals are provided.

"Building" is any structure used or intended for supporting or sheltering any use or occupancy.

"Building, existing" is a building erected prior to the adoption of this chapter, or one for which a legal building permit has been issued.

"Building Code" shall mean the Building Code as adopted and amended by Chapter 2.02 of the Tacoma Municipal Code.

"Building Inspector" is an authorized representative of the Building Official, whose primary function is the inspection of buildings and/or the enforcement of the City ordinances, assigned to the Building and Land Use Services Division for administration and enforcement.

"Building Official" shall mean the Manager of the Building and Land Use Services Division of the Public Works Department of the City of Tacoma, charged with the administration and enforcement of the Building Code, or his or her duly authorized representatives.

"Ceiling height" shall be the clear vertical distance from the finished floor to the finished ceiling.

"Certificate of complaint" is a Findings of Fact and Order, or other document, filed with the Pierce County Auditor, stating the property is in violation of Chapter 2.01 of the Tacoma Municipal Code.

"Congregate residence" is any building, or portion thereof, which contains facilities for living, sleeping, and sanitation, as required by this chapter, and may include facilities for eating and cooking for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, or fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels, or lodging houses.

"Court" is a space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on three or more sides by walls of a building.

"Dangerous buildings or structures" means, for the purpose of this chapter, any building or structure having conditions or defects which exist to the extent that the life, health, property, or safety of the public or its occupants are endangered. Specific conditions which determine whether a building is dangerous are listed in Table E -- Dangerous Buildings and Structures, in Section 2.01.060.

"Derelict buildings or structures" means, for the purposes of the chapter, any building or structure where conditions exist which make the building or structure unfit for human occupancy. Specific conditions which determine whether a building or structure is derelict are listed in Table D -- Derelict Buildings or Structures, in Section 2.01.060.

"Dormitory" means:

A. A college or university residence hall, including sorority or fraternity buildings; or

B. A room containing three or more beds and serving as communal sleeping quarters.

C. See also congregate residence.

"Dwelling" is any building or portion thereof which contains not more than two dwelling units.

"Dwelling unit" is any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by this chapter, for not more than one family, or a congregate residence for ten or less persons.

"Efficiency dwelling unit" is a dwelling unit containing only one habitable room.

"Enforcement" is the administrative process, within the legal authority of federal, state, and local law, that permits the Building and Land Use Services Division to assure compliance with the provisions of this chapter.

"Exit" is a continuous and unobstructed means of egress to a public way and shall include, but is not limited to, intervening aisles, doors, doorways, gates, corridors, exterior exit balconies, ramps, stairways, pressurized enclosures, horizontal exits, exit passageways, exit courts, and yards.

"Exterior property area" is the open space on the premises and on public property abutting the premises under the control of the owner or on-site manager of such premises.

"Extermination" is the elimination of insects, rodents, vermin, or other pests at or about the affected building.

"Family" is an individual or two or more persons related by blood or marriage, or a group of not more than five persons (excluding household employees) who need not be related by blood or marriage, living together in a dwelling unit.

"Final order" means any order of the Board of Building Appeals, Hearing Examiner or Hearing Officer, where an appeal is not taken within the time provided by law.

"Fire Chief" is the head of the Fire Department or a duly authorized representative.

"Floor area" is the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

"Grade" (adjacent ground level) is the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building.

"Graffiti" is any unauthorized writing, painting, drawing, inscription, figure, or mark of any type that has been placed upon any property through the use of paint, ink, chalk, dye markers, objects, or any other substance capable of marking property.

"Guest" is any person renting or occupying a room for living or sleeping purposes.

"Guest room" is any room or rooms used, or intended to be used, by a guest for sleeping purposes. Every 100 square feet of superficial floor area in a dormitory is a guest room.

"Habitable space" or "habitable room" is space in a structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

"Health Officer" is the Director of the Tacoma-Pierce County Health Department, or his or her duly authorized representatives.

"Hearing Officer" is the Director of the Public Works Department, or a duly authorized representative.

"Hotel" is any building containing six or more guest rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied, for sleeping purposes by guests. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention home, or other institution in which human beings are housed and detained under legal restraint.

"Improper" shall mean unsuitable, inappropriate, or not up to acceptable minimum standards.

"Infestation" is the presence of insects, rodents, vermin, or other pests to a degree that is harmful to the building or its occupants.

"Inspection" is the examination of property by the Building Official, or his or her duly authorized representative, for the purpose of evaluating its condition as provided by this chapter.

"Interested party" is any person or entity that possesses any legal or equitable interest of record in a property, including, but not limited to, the holder of any lien or encumbrance on the property.

"Kitchen" shall mean a room used, or designed to be used, for the preparation of food.

"Lavatory" is a fixed wash basin connected to hot and cold running water and the building sanitary waste system and used primarily for personal hygiene.

"Licensed care" shall include buildings, structures, or portions thereof, used for the business of providing licensed care to clients in one of the following categories regulated by either the Washington Department of Health or the Department of Social and Health Services:

A. Adult family home.

B. Adult residential rehabilitation facility.

C. Alcoholism - intensive inpatient treatment service.

D. Alcoholism - detoxification service.

E. Alcoholism - long-term treatment service.

F. Alcoholism - recovery house service.

G. Boarding home.

H. Group care facility.

I. Group care facility for severely and multiple handicapped children.

J. Residential treatment facility for psychiatrically impaired children and youth.

EXCEPTION: Where the care provided at an alcoholism detoxification service is acute care similar to that provided in a hospital, the facility shall be classified as a hospital.

"Local agent" is a person, firm, corporation, or other legal entity:

A. Whose principal residence and/or property management office, and place of receiving mail, is located either within Pierce County or within a 50-mile radius of the Tacoma Municipal Building;

B. Who is the person, firm, or corporation designated by the owner to receive official mail from the City regarding maintenance of the property and actions taken by the City under this chapter; and

C. Who is authorized by the owner to act on behalf of the owner in such matters.

"Lodging house" is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor, or otherwise.

"Maintenance" means keeping property in proper condition.

"Motel" (See Hotel).

"Nuisance" is any of the following:

A. Any public nuisance known at common law or as defined by legal court, especially nuisances defined in Chapter 8.30 of the Tacoma Municipal Code.

B. Whatever is dangerous to human life or is detrimental to health.

"Occupancy" is the lawful purpose for which a building, or part of a building, is used or intended to be used.

"Occupant" is any person (including owner or on-site manager) occupying a structure or portion of a structure.

"On-site manager" is any person on site, representing the owner, who has charge, care, or control for the day-to-day operations of a building or portion of a building offered for occupancy.

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

"Person" is a natural person, his or her heirs, executors, administrators, or assigns, and also includes a firm, partnership, or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

"Plumbing" or "plumbing fixture" is any water heating facilities, water pipes, vent pipes, garbage or disposal units, lavatories, water closets, urinals, bathtubs, shower baths, installed clothes-washing machines or other similar equipment, catch basins, sanitary waste systems, storm sewer systems, vents, or other similarly supplied fixtures, together with all connections to water, gas, sewer, or vent lines.

"Posted" is the placement of official notice that a building or structure is in violation of this chapter. The notice is attached to the building or structure and states "MUST NOT BE OCCUPIED."

"Recreational vehicle" is a vehicle constructed to be licensed for operation on streets, highways, and waterways. Recreational vehicles are designed to provide accommodations for sleeping, and may have cooking facilities, water closets, sinks, lavatories, showers, and similar plumbing facilities. The four classifications of recreational vehicles are:

A. Motor Home. A self-motorized recreational vehicle.

B. Residential or Travel Trailer. A recreational vehicle designed to be towed by a motorized vehicle, including fifth-wheel trailers.

C. Campers. A recreational unit designed to be installed in and used while in the bed of a truck.

D. Boats on Trailers.

"Resident" is a person who lives or dwells in a residential structure or similar buildings, including, but not limited to, dwelling units, apartments, congregate care homes, licensed care homes, hotels, motels, convalescent homes, and nursing homes.

"Residential property" is any property zoned for exclusive residential use or any property containing a residential structure.

"Residential rental property" is any property within the City containing a dwelling unit for which payment of money, goods and/or services is rented or leased to an individual or group of individuals.

"Residential structure" is any building containing one or more dwelling units, or any accessory structure related to a dwelling unit.

"Restoration" means to return a building or structure to a state of utility through alterations and/or repairs. As applied to historic structures, it includes the preservation of those portions or features that are of historical, architectural, and cultural value.

"Roof" is an exterior element of a building, sloped less than 60 degrees from the horizontal, which provides weather protection to the spaces below.

"Secured" refers to a building which is sealed to unauthorized third-party entry.

"Service room" is any room used for storage, bath, or utility purposes, and not included in the definition of habitable rooms.

"Shaft" is an interior space, enclosed by walls or construction, extending through one or more stories or basements which connects openings in successive floors, or floors and roof, to accommodate elevators, dumbwaiters, mechanical equipment, electrical

equipment, or similar devices, or to transmit light or ventilation air.

"Shall," as used in this chapter, is mandatory.

"Sink" is a fixed basin connected to hot and cold running water and a drainage system and primarily used for the preparation of food and the washing of cooking and eating utensils.

"Shower" is a compartment which is designed for the purpose of full personal washing of a person in the standing position.

"Skylight" is a glazed opening in a roof. Skylights can be either fixed or operable.

"Sleeping room" is any room designed, built, or intended to be used for sleeping purposes.

"Smoke detector" is an approved, listed device that senses visible or invisible particles of combustion.

"Story" is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet above grade, as defined herein, for more than 50 percent of the total perimeter, or is more than 12 feet above grade, as defined herein, at any point, such usable or unused under-floor space shall be considered as a story.

"Street" is any thoroughfare or public way which has been dedicated or deeded to the public for public use.

"Substandard Property," for the purpose of this chapter, shall mean a building or property where conditions exist which make the building substandard. Specific conditions which determine whether a building or property are maintained in a substandard manner are listed in Table B--Substandard Property, and/or Table C--Fire and Life Safety Hazards, in Section 2.01.060. A substandard building or property may be occupied when, in the opinion of the Building Official, the conditions are not an immediate threat to the safety of the occupants.

"Swimming pool" is an artificial basin, chamber, or tank constructed of impervious material, having a depth of 18 inches or more, and used or intended to be used for swimming, diving, or recreational bathing.

"Toilet". See "water closet".

"Transient occupancy" is the occupancy of a dwelling unit in a hotel where the following conditions are met:

A. Occupancy is charged on a daily basis and is payable no less frequently than every two weeks;

B. The operator provides maid and linen service on a regular basis;

C. The period of occupancy does not exceed 30 days; and

D. If the occupancy exceeds five days, the occupant has a business address or a residence other than at the hotel.

"UCBC" is the Uniform Code for Building Conservation, as adopted and amended by the City of Tacoma in Chapter 2.02 of the Tacoma Municipal Code.

"Unoccupied" is the condition where a building is not being used at present, but there is the general appearance of an intent to reoccupy the building in the future. Furnishings may or may not have been removed.

"Unsecured" refers to any building or structure in which doors, windows, or apertures are open or broken so as to allow unauthorized third-party entry.

"Vacant" is the condition where a building is not being used at present, and there is a general appearance of abandonment.

"Vermin" is an all inclusive term used to define unwanted, non-human, biological life and shall include, but not be limited to, mice, rats and other rodents, ants, fleas, lice, termites and other insect-like pests, pigeons and other birds, and other biological pests.

"Walls" shall be defined as follows:

A. "Bearing wall" is any wall meeting either of the following classifications:

1. Any metal or wood stud wall which supports more than 100 pounds per lineal foot of superimposed load.

2. Any masonry or concrete wall which supports more than 200 pounds per lineal foot superimposed load, or any such wall supporting its own weight for more than one story.

B. "Exterior wall" is any wall or element of a wall, or any member or group of members, which defines the exterior boundaries or courts of a building and which has a slope of 60 degrees or greater with the horizontal plane.

C. "Faced wall" is a wall in which the masonry facing and backing are so bonded as to exert a common action under load.

D. "Nonbearing wall" is any wall that is not a bearing wall.

E. "Parapet wall" is that part of any wall entirely above the roof line.

F. "Retaining wall" is a wall designed to resist the lateral displacement of soil or other materials.

"Water closet" is a flushable plumbing fixture connected to running water and a drainage system and used for the disposal of human waste.

"Water closet compartment" is a room containing only a toilet or only a toilet and lavatory.

"Window" shall mean a glazed opening, including glazed doors, which open upon a yard, court, or a vent shaft open and unobstructed to the sky.

"Window well" is a soil-retaining structure at a window having a sill height lower than the adjacent ground elevation.

"Workmanship" is the quality or mode of execution for building construction normal to the building industry trades.

"Yard" is an open, unoccupied space other than a court, unobstructed from the ground to the sky, except where specifically provided by this chapter, on the lot on which a building is situated. (Ord. 26715 § 2; passed Oct. 17, 2000 Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 24503 § 1; passed Dec. 12, 1989: Ord. 19217 § 1; passed Oct. 13, 1970: Ord. 16384 § 4; passed Jun. 29, 1959: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.060 Administration and Process.

A. Initial Filing of Complaint.

An initial enforcement determination shall be undertaken against buildings or properties, whenever:

1. The Building Official, the Public Works Director, the Director of the Tacoma-Pierce County Health Department, the Police Chief, or the Fire Chief, or their duly authorized representatives, have reason to believe that a violation of this Code exists.

2. A complaint is filed with the City of Tacoma Building and Land Use Services Division by any person, provided that where complaints have been filed by tenants, that the tenant first exhaust all remedies provided through the Washington State Landlord Tenant Act. Complaints may be received either verbally or in writing.

B. Inspection and Evaluation of Buildings and Property.

When a complaint has been filed, or there are other reasons pursuant to normal enforcement of the Tacoma Municipal Code, the Building Official shall inspect the building and property. Based on the inspection, the Building Official shall then determine whether the building and/or property is in violation of this chapter and the degree of violation. All properties where an evaluation inspection is performed shall be evaluated against the standards of "Substandard Property" listed in Table B, "Fire and Life Safety Hazards" listed in Table C, "Derelict Buildings or Structures" listed in Table D, and "Dangerous Buildings or Structures" listed in Table E. Substandard Properties shall be assigned violation points, in accordance with Table B and Table C, and the provisions of Subsection C, Violation Tables. In addition, violations listed in Table C, "Fire and Life Safety Hazards," shall be referred to the Building Official, the Fire Chief, and/or the Electrical Inspection Manager, as appropriate, for evaluation as to whether immediate action is necessary. The standards against which properties shall be evaluated are set forth in Section 2.01.070, Minimum Building Requirements.

C. Violation Tables.

During the evaluation inspection, and any subsequent inspections of the building and property, the Building Official shall note each violation and evaluate the property in accordance with Table B, Table C, Table D, and Table E. Once all violations are listed, and if it is determined that the property is substandard, the points, as listed in Table B and Table C, for each violation listed against the property, shall be totaled to determine the degree of violation. The course or action shall be in accordance with Table A.

Where a building or structure contains violations listed in Table D, Derelict Buildings or Structures, the building or structure shall be declared a Derelict Building or Structure and processed according to the procedures set forth in Subsection E, Derelict Buildings or Structures Procedures.

Where a building or structure contains violations listed in Table E, Dangerous Buildings or Structures, that building or structure shall be declared a Dangerous Building or Structure and processed according to the procedures set forth in Subsection F, Dangerous Buildings or Structures Procedures.

Groups of buildings on the same property may be processed under a single complaint process.

D. Substandard Property Procedures.

1. General. Where all violations are unrelated to the buildings and structures on the property, the complaint against the property shall be processed under the applicable provisions of the Tacoma Municipal Code.

2. Standard Property. Property which has been inspected and evaluated, and which received 24 or less violation points, shall be considered standard property and in compliance with this chapter, and no action shall be taken. The complaint shall be closed and all accumulated documentation filed.

3. Non-Standard Property Warning. The owner of property which, by an external inspection, is evaluated as being maintained in a substandard condition and receives 25 to 49 violation points, shall be considered non-standard property and sent a letter describing the substandard conditions and the appropriate actions for mitigating these conditions. The owner shall be advised, in writing, that the property is in a declining state, and that if conditions worsen, more formal mitigating actions will be undertaken. Once the advisory letter is sent, the complaint shall be closed and all accumulated documentation filed. The property shall be reinspected one year from the date of the letter and the property shall be reevaluated to determine whether additional enforcement procedures need to be taken.

4. Substandard Property Notification and Penalties.

a. When any property has been evaluated, by inspection, as being "Substandard Property" and receives 50 or more violation points, the owner shall be notified by letter, sent by both first-class mail and by certified mail, return receipt requested, describing the violations and the appropriate actions for mitigating these violations. The owner shall be given 30 calendar days from the receipt of the letter to respond to the letter, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

b. In the event a valid response is not received in the allotted time, a civil penalty or penalties, in accordance with the first penalty assessment in Table F, shall be assessed. These penalties are intended to be only for remedial purposes. A new letter, stating the assessment of penalties, shall be sent in accordance with the procedures set forth above. The owner shall be given 30 calendar days from the receipt of the second letter to respond to the letter, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

c. In the event a valid response is not received in the allotted time, an additional civil penalty or penalties, in accordance with the second penalty assessment in Table F, shall be assessed. A new letter, stating the additional assessments of penalties, shall be sent in accordance with the procedures set forth above. The owner shall be given 14 calendar days from the receipt of the third letter to respond to the letter, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

d. In the event a valid response is not received in the allotted time, an additional civil penalty or penalties, in accordance with the third penalty assessment in Table F, shall be assessed. A new letter, stating the additional assessments of penalties, shall be sent in accordance with the procedures set forth above. The owner shall be given 7 calendar days from the receipt of the fourth letter to respond to the letter, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

e. In the event a valid response is not received in the allotted time or the agreed-upon schedule has been violated, an additional civil penalty or penalties, in accordance with the Fourth Penalty and Subsequent Assessments in Table F, shall be assessed. A new letter, stating the additional assessments of penalties, shall be sent in accordance with the procedures set forth above. The owner may be assessed a civil penalty every calendar day commencing with the fifth civil penalty issued for failure to respond to the letters, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

f. The process described in Subsection (e) above shall be repeated on a regular schedule and may be assessed every calendar day until such time as there is a valid response, each time assessing penalties in accordance with the Fourth Penalty and Subsequent Assessments in Table F. In the event that no response is received, and penalties have accumulated in excess of $1,000.00, the City shall file a Certificate of Complaint with the Pierce County Auditor, to be attached to the title of the property. A copy of the Certificate of Complaint shall be sent to the property owner, and all tenants, if different from the owner.

g. Penalties shall be billed to the owner. Penalties unpaid after 60 calendar days shall be referred to a collection agency, approved by the City of Tacoma, for collection.

5. Reinspection and Penalties. Once a valid response is received and a schedule is set, the property shall be reinspected in accordance with the agreed-upon schedule, or every 90 calendar days, to assess that progress is being made in correcting the violations and adhering to the agreed upon schedule. If progress, in accordance to the schedule, is not being made to the satisfaction of the Building Official, penalties shall be assigned, in accordance with Table F, based on the number of previous penalties that have been assessed while waiting for a valid response. At each inspection of the property, the number of violations shall be reassessed and the status of the action shall either remain in the present category or shifted to either the Derelict or Dangerous Buildings or Structures categories based on whether any of the violations are listed in Table D, Derelict Buildings or Structures, or Table E, Dangerous Buildings or Structures. Once an enforcement action is undertaken, it shall be continued until all outstanding violations have been corrected.

Once the building, structure, and property violations have been corrected, the case shall be closed and, if appropriate, a final report relative to the action placed in the City's files, and any Certificates of Complaint filed with the Pierce County Auditor against the title of the property, shall be removed by the City on payment of any assessed penalties and any costs incurred by the City for securing the property.

6. Review by the Building Official.

a. General. A person, firm, or corporation to whom a Notice of Violation for a Substandard Building(s), or a civil penalty, pursuant thereof, may request an administrative review of the Notice of Violation for a Substandard Building(s) or for the first civil penalty assessed pursuant to enforcement.

b. How to Request Administrative Review. A person, firm, or corporation may request an administrative review by the Building Official of the Notice of Violation for a Substandard Building(s) or the first civil penalty assessed, by filing a written request with the Building and Land Use Services Division of the Department of Public Works within 30 calendar days of the first notification date of violations or the notification date of the first assessed penalty. The request shall state in writing the reasons the Building Official should review the Notice of Violation or the issuance of the civil penalty. Failure to state the basis for the review in writing shall be cause for dismissal of the review. Upon receipt of the request for administrative review, the Building Official shall review the information provided.

c. Decision of Building Official. After considering all of the information provided, including information from the code enforcement officer and the City Attorney, or his/her designee, the Building Official shall determine whether a violation has occurred, and shall affirm, vacate, suspend, or modify the Notice of Violation for the Substandard Building(s) or the amount of any monetary penalty assessed. The Building Official's decision shall be delivered in writing to the appellant by first-class mail and by certified mail, return receipt requested.

7. Appeals to the Hearing Examiner. Appeals of the Decision resulting from the Building Official's Review shall be made to the Hearing Examiner within 30 calendar days of the receipt of the Building Official's Decision. The Hearing Examiner, upon receipt of a properly filed appeal, shall set a hearing date, and the appellant shall be notified of the hearing date by first-class mail and by certified mail, return receipt requested. Proceedings in regard to appeals filed under this section shall be conducted in accordance with the requirements of Tacoma Municipal Code 1.23 and Office of the Hearing Examiner Rules of Procedure for Hearings. The Hearing Examiner shall issue Findings of Fact and Order, based on the hearing, in writing, delivered to the appellant by first-class mail and by certified mail, return receipt requested.

E. Derelict Buildings or Structures Procedures.

1. General. This section shall apply to all buildings, structures, and properties, residential or commercial, which have been evaluated as being Derelict Buildings or Structures, in that the building or structure contains one or more violations listed in Table D, Derelict Buildings or Structures. By definition, Derelict Buildings or Structures are unfit for human occupancy.

2. Posting and Placement of Utility Restraint. Derelict Buildings or Structures shall be posted "MUST NOT BE OCCUPIED." See Subsection G, Posting of Buildings. Simultaneously, utility restraints shall be placed on such buildings or structures. See Subsection H, Utility Restraints.

Buildings, which are posted, shall not be occupied for any purpose until repaired to eliminate the violations listed in the Notice of Violation, to the satisfaction of the Building Official. In addition, the building shall only be authorized to be entered for preparing a time schedule and a repair plan to be submitted to the Building and Land Use Services Division for approval. Upon approval of the time schedule and repair plan, the owner or his/her representatives will be authorized to enter the building to effect repairs. No other entry or occupancy of the building shall be permitted until the

repairs are completed and approved by the Building Official.

3. Owner Notification and Penalties.

a. The owner shall be notified that the building, structure, or property has been found to be in violation of this chapter and is Derelict. The owner shall be given 10 calendar days from the receipt of the notice to secure the building, in accordance with Section 2.01.090, Unoccupied or Vacant Building Standards. The notice shall include the standards for securing an unoccupied or vacant building. The owner shall be given 30 calendar days from the receipt of the notice to respond to the Building Official to negotiate a plan of action. In addition, such notification will state that either an Eminent Domain Condemnation proceedings or a Dangerous Building proceedings may be initiated if there is not a workable plan and schedule submitted or substantial improvement of the property does not occur in substantial compliance with the agreed upon plan and schedule. Such proceedings may result in the loss of the building(s) and property or the demolition of the building(s).

b. In the event a valid response is not received in the allotted time, a civil penalty or penalties, in accordance with the first penalty assessment in Table F, shall be assessed. These penalties are intended to be only for remedial purposes. A new letter, stating the assessment of penalties, shall be sent in accordance with the procedures set forth above. The owner shall be given 30 calendar days from the receipt of the second letter to respond to the letter, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

c. In the event a valid response is not received in the allotted time, an additional civil penalty or penalties, in accordance with the second penalty assessment in Table F, shall be assessed. A new letter, stating the additional assessments of penalties, shall be sent, in accordance with the procedures set forth above. The owner shall be given 14 calendar days from the receipt of the third letter to respond to the letter, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

d. In the event a valid response is not received in the allotted time, an additional civil penalty or penalties, in accordance with the third penalty assessment in Table F, shall be assessed. A new letter, stating the additional assessments of penalties, shall be sent in accordance with the procedures set forth above. The owner shall be given 7 calendar days from the receipt of the fourth letter to respond to the letter, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

e. In the event a valid response is not received in the allotted time or the agreed-upon schedule has been violated, an additional civil penalty or penalties, in accordance with the Fourth Penalty and Subsequent Assessments in Table F, shall be assessed. A new letter, stating the additional assessments of penalties, shall be sent in accordance with the procedures set forth above. The owner may be assessed a civil penalty every calendar day, commencing with the fifth civil penalty issued for failure to respond to the letters, and to negotiate a schedule with the Building and Land Use Services Division for correcting the violations to the satisfaction of the Building Official.

f. The process described in Subsection (e) above shall be repeated on a regular schedule and may be assessed every calendar day until such time as there is a valid response, each time assessing penalties in accordance with the Fourth Penalty and Subsequent Assessments in Table F. In the event that no response is received and penalties have accumulated in excess of $1,000.00, the City shall file a Certificate of Complaint with the Pierce County Auditor to be attached to the title of the property. A copy of the Certificate of Complaint shall be sent to the property owner and all tenants, if different from the owner.

g. Penalties shall be billed to the owner. Penalties unpaid after 60 calendar days shall be referred to a collection agency, approved by the City of Tacoma, for collection.

4. Response to Notification. The response to the City shall be the development of a written schedule for repairing the building, jointly agreed upon by the owner and the City. The schedule shall include:

a. Time for developing and submitting acceptable construction plans, specifications, and calculations for the repair of the building or structure, in accordance with the provisions of Subsection 7, Buildings Declared Derelict.

b. Time for actually repairing the building or structure once a building permit has been issued. Such time line may include intermediate progress goals, as appropriate.

Once an acceptable schedule has been determined and agreed to, construction plans, specifications, and calculations for the repair of the building or structure shall be developed and submitted to the City for approval with the time limits set by the schedule. Once

the plans and specifications have been approved for permit, the permit shall be obtained within 14 calendar days of notification that the permit is ready. The work authorized by the permit shall proceed according to a schedule jointly agreed upon by the owner and the City, verified by inspection. Such schedule shall comply with the Building Code provisions governing the expiration of permits.

EXCEPTIONS:

1. The Building Official may agree, for sufficient reason, to accept an alternate time schedule for the repair of the building.

2. The Building Official may grant extensions to the time schedule for sufficient reasons on written request. Such requests must be filed with the Building Official prior to the deadlines set for the completion of the construction.

If, in the event, after the initial contact, any of the following occur:

a. the owner and the City cannot agree upon a schedule, or

b. the owner does not submit plans and specifications for approval, according to the schedule, for the repair of the building, or

c. the owner fails to obtain the permits in a timely manner when they are ready to be issued, or

d. the owner fails to start repairs, or

e. the owner, once having started repairs, fails to meet intermediate progress goals, the Building and Land Use Services Division shall notify the owner of non-compliance, by first-class mail and by certified mail, return receipt requested, and assess penalties in accordance with Table F. This procedure shall be repeated in accordance with Subsection 3 above (Owner Notification and Penalties) until progress, satisfactory to the Building Official, is made. In the event that the owner does not respond to the notices and penalties have accumulated in excess of $1,000.00, the City shall file a Certificate of Complaint with the Pierce County Auditor to be attached to the title of the property. A copy of the Certificate of Complaint shall be sent to the property owner and all tenants, if different from the owner.

At each inspection of the property, the violations shall be reassessed and the status of the action shall either remain in the present category or shifted to the Dangerous Building category of enforcement if violations listed in Table E, Dangerous Buildings or Structures, are present. Once an enforcement action is undertaken, it shall be continued until all outstanding violations have been corrected.

Once the building, structure, and property violations have been corrected to the satisfaction of the Building Official, the case shall be closed and, if appropriate, a final report relative to the action placed in the City's files, and any Certificates of Complaint filed with the Pierce County Auditor against the title of the property shall be removed by the City on payment of any assessed penalties and any costs incurred by the City for securing the property.

5. Reviews by the Building Official.

a. General. A person, firm, or corporation to whom a Notice of Violation for a Derelict Building(s), or a civil penalty, pursuant thereof, may request an administrative review of the Notice of Violation for a Derelict Building(s) or for the first civil penalty assessed pursuant to enforcement.

b. How to Request Administrative Review. A person, firm, or corporation may request an administrative review by the Building Official of the Notice of Violation for a Derelict Building(s) or the first civil penalty assessed, by filing a written request with the Building and Land Use Services Division of the Department of Public Works within 30 calendar days of the first notification date of violations or the notification date of the first assessed penalty. The request shall state in writing the reasons the Building Official should review the Notice of Violation or the issuance of the civil penalty. Failure to state the basis for the review in writing shall be cause for dismissal of the review. Upon receipt of the request for administrative review, the Building Official shall review the information provided.

c. Decision of Building Official. After considering all of the information provided, including information from the code enforcement officer and the City Attorney, or his/her designee, the Building Official shall determine whether a violation has occurred, and shall affirm, vacate, suspend, or modify the Notice of Violation for the Derelict Building(s) or the amount of any monetary penalty assessed. The Building Official's decision shall be delivered in writing to the appellant by first-class mail and by certified mail, return receipt requested.

6. Appeals of the Decision of the Building Official to Hearing Examiner.

Appeals of the Decision resulting from the Building Official's Review shall be made to the Hearing Examiner within 30 calendar days of the receipt of the Building Official's Decision. The Hearing Examiner,

upon receipt of a properly filed appeal, shall set a hearing date, and the appellant shall be notified of the hearing date by first-class mail and by certified mail, return receipt requested. Proceedings in regard to appeals filed under this section shall be conducted in accordance with the requirements of Tacoma Municipal Code 1.23 and Office of the Hearing Examiner Rules of Procedure for Hearings. The Hearing Examiner shall issue Findings of Fact and Order, based on the hearing, in writing, delivered to the appellant by first-class mail and by certified mail, return receipt requested.

7. Buildings Declared Derelict. When a building or structure, or any aspect of a building or structure, is Derelict and Substandard by the definitions set forth in Section 2.01.050, Table B, Table C, and Table D of this chapter, those aspects which were declared Derelict and Substandard shall be repaired to the minimum building requirements set forth in Section 2.01.070, and the minimum standards of repair set forth in Section 2.01.080 of this chapter, as directed by the Building Official.

8. Alternate Procedures. Where Derelict Building Proceedings undertaken against a property have extended over a period of time to where it is necessary to file a Certificate of Complaint with the Pierce County Auditor, the Building Official may undertake one of the two following procedures to mitigate the Derelict Status of the Building:

a. Procure the Property through Eminent Domain: Where the property undergoing the Derelict Building Procedure is of sufficient value to be repairable, the Building Official may obtain the property through eminent domain, pursuant to the provisions of the Revised Code of Washington (RCW) 35.80A.

b. Start Dangerous Building Proceedings: Where the property undergoing the Derelict Building Procedure is in a state where it is more economical to demolish the building(s) on the property, the Building Official may initiate Dangerous Building Proceedings pursuant to Tacoma Municipal Code 2.01.060.F and Table E of this chapter.

F. Dangerous Buildings or Structures Procedures.

1. General. This section shall apply to all buildings, structures, and properties, residential or commercial, which have been evaluated as being Dangerous Buildings and Structures in that the building or structure contains one or more violations listed in Table E, Dangerous Buildings or Structures. Dangerous Buildings or Structures, by definition, are unfit for human occupancy, are potentially dangerous to life and limb, and/or are in a condition where it is unfeasible to repair.

2. Posting and Placement of Utility Restraint. Dangerous buildings or structures shall be posted "MUST NOT BE OCCUPIED." See Subsection G, Posting of Buildings. Simultaneously, utility restraints shall be placed on such buildings or structures. See Subsection H, Utility Restraints.

Buildings, which are posted, shall not be occupied for any purpose until repaired to eliminate the violations listed in the Notice of Violation, to the satisfaction of the Building Official. In addition, the building shall only be authorized to be entered for preparing a time schedule and a repair plan to be submitted to the Building and Land Use Services Division for approval. Upon approval of the time schedule and repair plan, the owner or his/her representatives will be authorized to enter the building to effect repairs. No other entry or occupancy of the building shall be permitted until the repairs are completed and approved by the Building Official.

3. Owner Notification. The owner shall be notified that the building, structure, or property has been found to be in violation of this chapter and is dangerous. The owner shall be given 10 calendar days from the receipt of the notice to secure the building, in accordance with Section 2.01.090, Unoccupied or Vacant Building Standards. The notice shall include the standards for securing a vacant building. The owner shall be given 30 calendar days from the receipt of the notice to respond to the Building Official to negotiate a plan of action.

EXCEPTION: Where there is an imminent danger to life or property, the building can be secured by the order of the Building Official, Police Chief, Fire Chief, or Director of the Tacoma-Pierce County Health Department, and the cost assessed to the owner in accordance with the provisions of RCW 35.80.030(h).

The response to the City shall be a written plan for repairing or demolishing the building. The written response shall include a schedule, jointly agreed upon by the owner and the City, for the repair or demolition of the building or structure. The schedule shall include:

a. Time for developing and submitting acceptable construction plans, specifications, and calculations for the repair or demolition of the building or structure.

b. Time for actually repairing or demolishing the building or structure once a building permit has been issued. Such time line may include intermediate progress goals, as appropriate.

Once acceptable construction plans, specifications, and calculations for the repair or demolition of the building or structure have been submitted to the City and have

been approved for permit, the permit shall be obtained within 14 calendar days of notification that the permit is ready. The work authorized by the permit shall proceed according to the schedule jointly agreed upon by the owner and the City. Such schedule shall comply with the Building Code provisions governing the expiration of permits.

EXCEPTIONS:

1. The Building Official may agree for sufficient reason to accept an alternate time schedule for the repair or demolition of the building.

2. The Building Official may grant extensions to the time schedule for sufficient reasons, on written request. Such requests must be filed with the Building Official prior to the deadlines set for the completion of the construction.

In event of any of the following, the City shall prepare a Dangerous Building Complaint against the building and property, in accordance with Subsection 4, Contents of Dangerous Building Complaints, and schedule a hearing in accordance with Subsection 5, Hearing Procedures:

a. There is no response from the owner to the notification.

b. The response to the notification by the owner is negative.

c. An agreement cannot be reached in respect to the extent of the repairs of the building or the time schedule for the repair or demolition of the building.

d. The owner defaults on the time schedule for obtaining the necessary permits and beginning construction or demolition.

e. The owner, once having started construction or demolition, does not substantially adhere to the agreed-upon schedule, or abandons the construction or demolition.

Once the building, structure, and property violations have been corrected to the satisfaction of the Building Official, the case shall be closed and, if appropriate, a final report relative to the action placed in the City's files, and any Certificates of Complaint, Dangerous Building Complaints, or Findings of Fact and Order filed with the Pierce County Auditor against the title of the property shall be removed by the City on payment of any assessed penalties and any costs incurred by the City for securing the property.

4. Contents of Dangerous Building Complaints. The complaint issued by the Building Official must be in writing and shall be sent by first-class mail and by certified mail, return receipt requested, to all persons having any interest in and to the property, as shown by the records of the Pierce County Auditor, of any building or structure found by the Building Official to be a Dangerous Building within the definition set forth in Section 2.01.050, and Table E, Dangerous Buildings or Structures; provided, that if the whereabouts of any of such persons is unknown and the same cannot be ascertained by the Building Official in the exercise of reasonable diligence, and the Building Official makes an affidavit to that effect, the serving of such complaint upon such persons may be made by sending a copy of the notice by first-class mail and by certified mail, return receipt requested, to each such person at the address of the taxpayer of the property as shown on the last equalized tax assessment roll of Pierce County. If the address of the building involved in the proceeding is different from the address of the taxpayer listed on the tax assessment roll, and the whereabouts of any person in interest is unknown, then a copy of the complaint shall also be mailed by first-class mail and certified mail, return receipt requested, to such person or persons. The complaint shall contain, among other things, the following information:

a. Name of owner or other interested persons, as provided herein above.

b. Street address and legal description of the property on which said building is located.

c. General description of type of building, wall, or structure deemed unsafe or substandard.

d. A complete itemized statement or list of particulars which caused the building, wall, or structure to be a Dangerous Building, as defined in Section 2.01.050, and Table E, Dangerous Buildings or Structures.

e. Whether or not said building should be vacated by its occupants, and the date of such vacation.

f. Whether or not the statement or list of particulars, as provided for in Subsection 4.d above, can be removed or repaired.

g. Whether or not the building constitutes a fire menace.

h. Whether it is reasonable to repair the building or whether the building should be demolished.

i. If the building is on the Historic Landmark Registry or is in a Historic District, the complaint shall provide the procedural requirements of the Landmark Preservation Commission for repair or demolition.

j. A notice that a hearing shall be held before the Hearing Officer in the City Council Chambers in the Tacoma Municipal Building, not less than 10 days nor

more than 30 days after the serving of such complaint on all interested parties, as recorded by the Pierce County Auditor, and posting, and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person or otherwise, and to give testimony at the time of the hearing.

k. That a copy of such complaint shall also be filed with the Pierce County Auditor, which filing shall have the same force and effect as other legal notices provided by law. The filing of a complaint is the same as filing a Certificate of Complaint.

5. Hearing Procedures.

a. The Hearing Officer shall convene the hearing at the time specified in the Dangerous Building complaint. The City shall present its case through the City Attorney, or his/her assistant, who shall be authorized to call witnesses and conduct cross-examinations. The building or property owner, or his/her legal representative, shall present his/her case and is authorized to present witnesses and conduct cross-examinations. The agenda for the hearing shall essentially be according to the following:

1. Hearing Officer calls the hearing to order.

2. Introductions of the Hearing Officer, plaintiffs, defendants, and other parties of interest.

3. City Attorney presents the City's case.

4. Defendant presents his/her case.

5. City provides rebuttal.

6. Defendant provides rebuttal.

7. Hearing Officer presents final comments and adjourns hearing.

b. The Hearing Officer shall issue a Findings of Fact and Order. The Findings of Fact and Order shall contain the following:

1. Name of owner or other interested parties, as listed by the Pierce County Auditor.

2. Street address and legal description of the property on which the building is located.

3. General description of type of building, wall, or structure deemed dangerous or substandard.

4. A complete itemized statement or list of particulars which caused the building, wall, or structure to be a Dangerous Building, as defined in Section 2.01.050 and Table E, Dangerous Buildings or Structures.

5. Whether or not the building is vacant, and the date of such vacation, if known.

6. Whether or not the statement or list of particulars, as provided for in paragraph 4.d above, can be removed or repaired.

7. Whether or not the building constitutes a fire menace.

8. Whether it is reasonable to repair the building or structure or whether the building or structure should be demolished.

9. Whether the building is on the Historic Register or within a Historically Designated Area, and the procedures required by the Historic Preservation Commission.

The Order shall provide specific instructions on whether the building or structure is to be demolished or repaired, and a time frame for doing so. In the event the building is on the Historic Register or is within a Historically Designated Area, the time schedule shall as much as possible take into account Landmark Preservation Commission procedures. In the event the building is to be repaired, specific direction shall be provided as to the extent of repairs necessary to remove the violations listed against the building or structure. In addition, a building, structure, or property that is declared dangerous shall comply with the requirements set forth in Subsection 8, Buildings Declared Dangerous.

6. Appeals to the Board of Building Appeals. The Findings of Fact and Order shall also state that appeal of the Findings of Fact and Order issued by the Hearing Officer shall be made to the Board of Building Appeals, as established and governed by Chapter 2.17 of the Tacoma Municipal Code. Appeals shall be filed within 30 calendar days of receipt of the Findings of Fact and Order.

The Findings of Fact and Order shall be sent to all interested parties, as listed by the Pierce County Auditor as having interest in the property, by both first-class mail, and by certified mail, return receipt requested.

In the event that an appeal is filed to the Board of Building Appeals, a hearing shall be scheduled and all interested parties shall be notified by first-class mail and by certified mail, return receipt requested. The Board of Building Appeals shall hold the hearing no sooner than 10 calendar days from the date of the filing of the appeal in accordance with the rules established by Chapter 2.17 of the Tacoma Municipal Code, and shall follow the same agenda used for the hearing held by the Hearing Officer.

The Board of Building Appeals shall make a recommendation based on the hearing within

50 calendar days of the filing of the appeal to the Hearing Officer, who shall issue a new Findings of Fact and Order based on the Board of Building Appeals recommendation, and shall so notify the appellant using the same procedure for notification as used for the original Findings of Fact and Order, within 60 calendar days of the filing of the appeal.

7. Appeals of Findings of Fact and Order Based on Recommendation of Board of Building Appeals. The new Findings of Fact and Order shall state that an appeal of the Findings of Fact and Order issued by the Hearings Officer, based on the recommendation of the Board of Building Appeals, shall be made directly to Pierce County Superior Court within 30 calendar days of the date of the Findings of Fact and Order. Such appeal shall be de novo.

8. Buildings Declared Dangerous. When it is determined in a hearing, convened in accordance with the provisions of Subsection 5 above, Hearing Procedures, that a building or structure, or any aspect of a building or structure, is dangerous by the definition set forth in Section 2.01.050 and Table E, Dangerous Buildings or Structures, of this chapter, such building or structure shall be:

a. Demolished, or

b. Those aspects which were declared dangerous in the hearing shall be repaired to the minimum building requirements set forth in Section 2.01.070 of this chapter, as directed by the Hearing Officer, and the following items shall be complied with whether or not they are addressed in the Dangerous Building Complaint:

1. Exiting facilities, including doors, corridors, stairs, exit enclosures, and smoke-proof enclosures, shall be brought into full compliance with the Building Code. Stairways with risers not exceeding 7-1/2 inches in height, and treads not less than 10 inches in depth, which are in good condition and otherwise meet the Building Code's requirements, do not have to be rebuilt.

2. The fire resistance of all building elements, in regard to the required type of construction, shall be brought into full compliance with the Building Code; provided that, in buildings which have full sprinkler systems, the outside fire-resistive membrane on exterior walls may not be required.

3. If required by the Building Code, automatic fire sprinkler systems shall be installed.

4. If required by the Building Code or by the Fire Code, as adopted and amended by the City of Tacoma, fire alarm systems shall be installed and shall meet all requirements of the Building Code and the Fire Code, as adopted by the City of Tacoma.

5. The building shall be brought into structural compliance with the Building Code, except that the building shall be considered as complying with the seismic structural requirements if it can withstand the forces specified by the Uniform Code for Building Conservation, as adopted and amended in the Building Code in Chapter 2.02 of the Tacoma Municipal Code.

6. The building shall be brought into compliance with provisions of the Washington State Barrier Free Code for new construction.

7. The building shall be brought into compliance with the Washington State Energy Code.

EXCEPTION: Exterior stud frame walls need only be provided with insulation which can be accommodated by the stud depth of the wall.

If the Hearing Officer declares a building dangerous, he/she shall make a recommendation on whether the building should be demolished or repaired. The recommendation shall be based on the estimated costs of repair in relation to the existing value of the building, as determined by the Pierce County Assessor. The Pierce County Assessor shall be requested to make an assessment of the value of the building specifically for the dangerous building action. If the cost of repairs exceeds 50 percent of the assessed value of the building, the Hearing Officer shall recommend that the building be demolished.

G. Posting of Buildings.

If a building is determined to be in violation of this chapter to an extent that it fails to provide the amenities which are essential to decent living or the building is unsafe, unsanitary, or structurally unsound, the building shall be posted for non-occupancy.

The notice posted on the building shall identify the location of the building by street address, the date on which the building was posted, the signatures of the Building Official and the inspector who posted the notice onto the building, and a telephone number and street address where the inspector can be contacted. The notice shall also state the violation and penalties for removal of the notice from the building.

The notice posted on the building shall state that the building "MUST NOT BE OCCUPIED" and shall be affixed to all doors, if accessible, or a minimum of being posted on the main door facing the address street. The "MUST NOT BE OCCUPIED" portion of the notice shall be of letters of sufficient size to be read from the public way.

H. Utility Restraints.

When a building is determined as being in violation of this chapter and is unfit for human occupancy, a utility restraint may be placed against the property by the Building Official, restraining the utility providers from providing utilities to the building. Dangerous buildings or structures and derelict buildings or structures, which are not occupiable and are posted "MUST NOT BE OCCUPIED," shall have utility restraints placed on them. The utility restraint shall be recorded with the Tacoma Public Utilities Department or other utility providers. The utility restraint shall not be released until the building is repaired or demolished. Once the building has been repaired or demolished, the Building Official shall record with the Tacoma Public Utilities Department, or other utility providers, a written release granting utility service to the building or property. The utility restraint shall not interfere with any Code enforcement action taken by the Tacoma Public Utilities Department or other utility providers.

EXCEPTION: Limited utilities may be permitted to be supplied to the property for facilitating the repairs, at the discretion of the Building Official.

I. Emergency Cases.

Where, in the opinion of the Building Official, it appears there is an imminent danger to the life or safety of any person occupying or being admitted to a building or structure, the Building Official shall cause the immediate vacation of the building, in whole or in part, as is necessary, to mitigate the danger to life. The Building Official shall also order the barricading of public sidewalks, streets, or alleys as necessary to protect the public, and shall secure the building from unauthorized entry, and cause the immediate bracing or repair of the building as necessary to protect the public, or, if that is not possible, to have the building or structure demolished. The costs of such emergency vacation, bracing, repair, or demolition of such building or structure shall be assessed to the owner in accordance with the provisions of RCW-35.80.030(h).

J. Permits.

No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure, or cause or permit the same to be done, without first obtaining all permits required by the Tacoma Municipal Code and the laws of the State of Washington.

K. Duties of the City Attorney.

The City Attorney, or his or her assistant, shall:

1. Prosecute all persons failing to comply with the terms of the notices provided for and/or the order provided for in Section 2.01.060.

2. Represent the City of Tacoma at hearings before the Hearing Examiner in regard to appeals filed relative to decisions issued by the Building Official pertaining to Substandard Buildings.

3. Represent the City of Tacoma at hearings before the Hearing Examiner in regard to appeals filed to the Finding of Fact and Order issued by the Building Official pertaining to Derelict Buildings.

4. Represent the City of Tacoma at hearings before the Board of Building Appeals in regard to appeals filed to the Finding of Fact and Order issued by the Building Official pertaining to Dangerous Buildings.

5. Represent the City of Tacoma at hearings before superior court in regard to appeals filed to the Finding of Fact and Order issued by the Hearing Examiner pertaining to Substandard Buildings.

6. Represent the City of Tacoma at hearings before superior court in regard to appeals filed to the Finding of Fact and Order issued by the Hearing Examiner pertaining to Derelict Buildings.

7. Represent the City of Tacoma at hearings before superior court in regard to appeals filed to the Finding of Fact and Order issued by the Building Official, based on the recommendation of the Board of Building Appeals pertaining to Dangerous Buildings.

8. Bring suit to collect costs incurred by the City of Tacoma in repairing or causing to be vacated or demolished the Dangerous Buildings.

L. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a distinct and independent provision, and such holdings shall not affect the validity of the remaining portions hereof.

TABLES:

TABLE A
POINT LIMITS

Number of Points	Abatement Category/Process
24 or Less	No Violations
25 to 49	Advisory Letter with No Penalty
50 or More	Formal Notification of Infractions and Pending Penalties

TABLE B
SUBSTANDARD PROPERTY

EXTERIOR PROPERTY VIOLATIONS

Item No.	Violation	Maximum Points
1	Unsightly or Overgrown Ground Cover, Trees, or Shrubbery	5
2	Garbage/Junk/Debris in Yard	15
3	Abandoned or Inoperable Vehicles in Yard	15
4	Graffiti on Buildings, Fences, or Other Structures	25
5	Missing or Unreadable Address Numbers or Apartment Numbers	10
6	Exterior Stairways (In Yards) Need Repair or Replacement	15
7	Exterior Stairways (In Yards) Need Handrails/Guardrails	10
8	Exterior Sidewalks, broken, buckled, or deteriorated	15
9	Retaining Wall Needs Repairing or Replacing	10
10	Broken or Plugged Sewer	25

EXTERIOR BUILDING VIOLATIONS

Item No.	Violation	Maximum Points
11	Accessory Structure Needs to be Repaired or Demolished	25
12	Accessory Structures Need Painting	5
13	Chimney(s) Needs to be Repaired or Removed	15
14	Roofing Needs Repair	10
15	Roofing Needs Replacing	15
16	Gutters Need to be Repaired or Replaced	5
17	Exterior Walls Need to be Repaired	15
18	Exterior Walls Need Siding Repaired	10
19	Foundations Need Repair	10
20	Foundations Need Replacing	15
21	Porch, Deck, or Balcony Needs to be Repaired, Replaced or Removed	15
22	Porch, Deck, or Balcony Needs Guardrail	15
23	Porch, Deck, or Balcony Needs Guardrail Repaired/Replaced	10
24	Overhangs or Cornices Need Repairing or Replacing	15
25	Window Glass Needs Replacement	10
26	Window Frames Need Repair or Replacement	15
27	Exterior Doors and/or Door Framework Needs to be Repaired or Replaced	10
28	Peeling or absence of paint or weather protection on exterior walls, decks, stairs, porches, and other exterior surfaces	5
29	Improper Use of Recreational Vehicles	50
30	Improper placement or use of cargo containers	50
31	Use of Semi-Trailers for storage	50

INTERIOR VIOLATIONS

Item No.	Violation	Maximum Points
32	Inadequate Number of Electrical Convenience Outlets	10
33	Electrical Convenience Outlets or Switches do not have Device Plates	5
34	Improper water closets, lavatories, bathtubs, showers, or other plumbing fixtures	15
35	Insufficient number of water closets, lavatories, bathtubs, showers or other plumbing fixtures as required by the size or occupant load of the occupancy	10
36	All lavatories, sinks, bathtubs or similar fixtures where the spigot outlet is below the level of the basin rim, and any other fixtures where cross-connection or back-siphonage is possible	25
37	Substandard Kitchen	15
38	Substandard Laundry	15
39	Plumbing piping or fixtures of non-approved materials	10
40	Leaking Plumbing Piping (Supply and/or Waste)	15
41	Sagging or Improperly Supported Piping	5
42	Clogged or Inoperative Plumbing Piping	15
43	Appliances, including solid-fuel-burning appliances, which have been installed without proper clearances to combustible materials	25
44	Unlisted appliances which have been illegally installed	25
45	Improper Gas Piping	15
46	Missing Temperature/Pressure Relief Valve on Water Heater	25
47	Inadequate or deteriorated heating or mechanical equipment	25
48	Inadequate Supply of Combustion Air for Fuel Fired Equipment	15
49	Window Locks Missing or Inoperative	15
50	Door Locks Missing, Inoperative, or Illegal	15
51	Interior Doors Need Repair	5
52	Weather Stripping of Doors and/or Windows Missing or Needs Repair	5
53	Deteriorated brick, concrete, or stone masonry, or detached veneer	15
54	Deteriorated wood building materials due to inadequate wood to earth clearance	10
55	Deteriorated or crumbling plaster or gypsum board	10
56	Flaking, scaling, or peeling of wallpaper, paint, or other interior wall coverings	10
57	Infestations of Vermin (See Definitions)	25
58	No Windows or Inadequate Window Area to Provide Natural Light	15
59	Inadequate or no ventilation (either natural or mechanical ventilation)	15
60	Room and space dimensions less than required by this chapter	15
61	Dampness, mold and/or mildew within the building	10
62	Lack of or inadequate garbage and rubbish storage and disposal	10
63	Exit Signs are not Provided With Two Sources of Power	25
64	Exit Path Lighting is not Provided With Two Sources of Power	25
65	Exit Stairs have Incorrect Rise and Run	25
66	Access to Electrical Panels is Inadequate	15
67	Floor Surfacing Needs Repair	25

68	Floor Framing Needs Repair	25
69	Wall Surfacing Needs Repair	15
70	Wall Framing Needs Repair	15
71	Ceiling Surfacing Needs Repair	15
72	Ceiling and/or Roof Framing Needs Repair	15
73	**Overcrowding:** Any building or portion thereof, where the exiting is insufficient in number, width, or access for the occupant load served, or where the number of occupants in sleeping rooms exceeds the number permitted by the area of the sleeping room	25

UNOCCUPIED OR VACANT BUILDING STANDARDS VIOLATIONS

Item No.	Violation	Maximum Points
74	Exterior Openings are not properly secured in accordance with Section 2.01.090	50
75	Weather protection is not adequate to prevent deterioration of the building	50
76	There is debris within the building or on the premises, which creates a fire-hazard or a nuisance	50
77	Fire alarms or Fire Sprinkler Systems are inoperable	50
78	Adequate heat is not provided to protect the sprinkler system from freezing	50
79	Sewer lines are not capped	50
80	The owner does not inspect the property and keep the property from looking uncared for	50

TABLE C
FIRE AND LIFE SAFETY HAZARDS

Item No.	Violation	Maximum Points
1	Exit Doors Have Improper Hardware	15
2	Required Corridors Are Not of One-Hour Construction	50
3	Corridor Doors Are Not Properly Rated (or Equivalent)	50
4	Corridor Doors Don't Have Closers	50
5	Corridor Doors Have Improper Hold Open Devices	25
6	Corridor Doors Don't Have Gasketting	25
7	Corridor Door Frames Need to be Repaired or Replaced	50
8	Transoms Above Corridor Doors are not Sealed or Fire-Rated	50
9	Exit Paths Are Not Properly Illuminated	50
10	Required Exit Signs are Missing	50
11	Required Exit Signs are not Illuminated	50
12	Exit Stairs Need to be Repaired or Replaced	50
13	Exit Stairs Need to be Provided With Handrails/Guardrails, or Handrails/Guardrails Need Repair or Replacement	50
14	Exit Stairs Are Missing or Have Improper Landings	50
15	Stair Width is Too Narrow	25
16	Stairs Need to be Enclosed in a Fire Rated Shaft	50
17	Stair Enclosures are not of the Proper Fire Rating	50
18	Doors to Stair Enclosure are Missing or are Blocked Open	50

19	Doors to Stair Enclosures Do Not Meet Required Fire Assembly Requirements, or Fire Assembly Needs Replacement or Repair	50
20	Exit Windows From Sleeping Rooms not Provided	50
21	Exit Windows From Sleeping Room Too Small in Area or Dimension	50
22	Exit Windows From Sleeping Room Have Too High a Sill Height	50
23	Improper or Hazardous Wiring	50
24	Missing or Inoperative Unit Smoke Detectors	50
25	Missing or Inoperative Fire Extinguishers	50
26	Improper Storage, Building Clutter, or other Fire Hazards	25
27	Required Fire Sprinkler System Inoperative or Missing	50
28	Fire Resistive Occupancy Separation or Area Separation Walls need to be repaired or replaced	25
29	Fire resistive construction needs repair or replacement	25
30	Lack of, inoperable, or inadequate fire alarm system	50

TABLE D
DERELICT BUILDINGS OR STRUCTURES

Item No.	Violation
1	**Interior Environment Violations,** which shall include, but not be limited to, the following, if required specifically by the occupancy classification for the use of the building: a. Lack of, or inadequate ventilation. b. Infestation by insects, vermin, or rodents.
2	**Structural Hazards**, Structural hazards which constitute a danger to life and limb, but are of limited extent, and are repairable. These shall include, but not be limited to, the following: a. Cracked or crumbling concrete or masonry foundation walls, footings, or posts, or deteriorated or rotting wood foundations or wood posts. b. Flooring or floor supports which are defective, deteriorated, or of insufficient size to carry imposed loads with safety. c. Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective materials or deterioration, or are of insufficient size to carry imposed loads with safety. d. Members or supports of ceilings and roofs, or other horizontal members which sag, split, or buckle due to defective material or deterioration, or are of insufficient size to carry imposed loads with safety. e. Fireplaces or chimneys which list, bulge, or settle due to defective materials or deterioration, or are of insufficient size or strength to carry imposed loads with safety. f. Exterior cantilever walls or parapets, appendages attached to or supported on the exterior of a building located adjacent to a public way or other space used by pedestrians which are not constructed, anchored, and braced to be able to withstand earthquake forces. g. Exterior walls located adjacent to a public way or other space used by pedestrians, which are not constructed, anchored, and braced to be able to withstand earthquake forces.
3	**Hazardous or inadequate wiring** which presents an immediate danger to life or limb: a. Wiring which is inadequately sized for the presently imposed electrical loads. b. Wiring where, due to improper ground, lack of insulation, or other conditions, short circuits can occur. c. Damaged, missing, or insufficient electrical convenience outlets, electrical components, or equipment.

4	**Hazardous or inadequate plumbing** which present a hazard to health, or do not provide minimum acceptable amenities for occupancy: a. Lack of, or inoperable water closets, lavatories, bathtubs, showers, or other plumbing fixtures as required for the occupancy. b. Lack of hot and/or cold running water to plumbing fixtures. c. Lack of, or inadequate water heating facilities. d. Plumbing piping and fixtures improperly installed. e. Plumbing piping and connections which leak, are plugged, or otherwise are inoperative. f. Plumbing fixtures which are not properly connected to the waste and vent system, or which are cracked, inoperative, or leak. g. Lack of or inadequate sewage disposal/or connection of plumbing fixtures thereto.
5	**Hazardous mechanical equipment** which present a hazard to health, life, or limb, or do not provide minimum acceptable amenities for occupancy: a. Lack of or inadequate heating facilities. b. Mechanical equipment with undersized vents or chimneys. c. Fuel-fired equipment with insufficient combustion air. d. Mechanical equipment which, because of lack of maintenance or improper installation, constitutes a fire hazard.
6	**Faulty Weather Protection:** Indications of which shall include, but not be limited to, the following: a. Holes, including broken windows or doors; breaks; cracked, loose, or rotted boards or timbers; and any other conditions in exterior walls and weather-exposed exterior surfaces or attachments which might admit rain or dampness to the interior portions of the walls or occupied spaces of the building. b. Deteriorated or missing roof covering material and flashing. c. Standing water in crawl spaces or basements. d. Deteriorated or rotted stairs, porches, balconies, or decks.
7	**Fire Hazard:** Any conditions which, in the opinion of the Fire Chief, constitute a distinct hazard to life or property.
8	**Faulty Materials or Construction:** Faulty materials are defined as all materials not specifically allowed or approved by the Building Code in effect at the time of construction, or this chapter. Faulty materials also include approved materials which are used improperly. Faulty Construction is defined as materials assembled using improper or substandard workmanship.
9	**Hazardous or Unsanitary Premises:** Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials, and similar materials or condition which constitute fire, health, or safety hazards.
10	**Inadequate Exits:** All buildings or portions thereof not provided with exit facilities as required by the Building Code, except those buildings or portions thereof whose exit facilities are safe and conformed with all applicable laws at the time of their construction.
11	**Inadequate Fire-Protection or Fire-Fighting Equipment:** All buildings or portions thereof which are not provided with fire-resistive construction, fire extinguishing systems, or smoke detection equipment as required by the Tacoma Municipal Code.
12	**Improper Occupancy:** Buildings or portions thereof, where the use or character of its occupancy has changed from the original approved design or intended use, without a recorded action reviewed by the Building Official.

TABLE E
DANGEROUS BUILDINGS OR STRUCTURES

Item No.	Violation
1	Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size, or is not arranged as to provide safe and adequate means of exit in case of fire or panic.
2	Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is racked, warped, buckled, settled, worn, loose, torn, or otherwise is in such condition as to not provide safe and adequate means of exit in case of fire or panic.
3	Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code in effect at the time the building was constructed.
4	Whenever any portion, member, or appurtenance thereof is likely to fail, become detached, dislodged, or collapse and thereby injure persons or damage property.
5	Whenever any portion of a building, any member, appurtenance, or ornamentation on the exterior thereof has deteriorated, or been damaged so as to be no longer capable of withstanding wind pressures or seismic forces specified in the Building Code in effect at the time the building was constructed.
6	Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
7	Whenever the building or structure, or any portion thereof, is likely to partially or completely collapse because of: (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) deterioration, decay, or inadequacy of its foundation; or (v) any other cause.
8	Whenever, for any reason, the building or structure, or any portion thereof, is unsafe for the purpose for which it is being used.
9	Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
10	Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of a supporting member or members, or 50 percent damage or deterioration of non-supporting members, including wall coverings.
11	Whenever the building or structure has been so damaged by fire, wind, earthquake, flood, or other causes, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for transients or vandals; or (iii) a place for performing criminal or unlawful activities.
12	Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or this chapter, or of any law or ordinance of this state or jurisdiction relating to the condition, location, or structure of buildings.
13	Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member, or portion less than 50 percent [or in any supporting part, member, or portion less than 66 percent] of the (i) strength; (ii) fire-resisting qualities or characteristics; or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.

14	Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, or arrangement, inadequate light, air, or sanitation facilities, or otherwise, is determined to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
15	Whenever any building or structure, because of dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined to be a fire hazard.
16	Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
17	Derelict Buildings where Alternate Procedures have been undertaken pursuant to the provisions of Section 2.01.060.D.8.b.

TABLE F
PENALTIES

Penalty Assessment	Penalty Amount
First Penalty Assessment	$125
Second Penalty Assessment	$250
Third Penalty Assessment	$250
Fourth Penalty Assessment and Subsequent Assessments	$250

(Ord. 27027 § 1; passed Dec. 10, 2002: Ord. 26715 § 3; passed Oct. 17, 2000: Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 20530 § 2; passed Aug. 26, 1975: Ord. 17517 § 1; passed Jan. 2, 1964: Ord. 16384 § 5; passed Jun. 29, 1959: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.070 Minimum building requirements.

No owner shall maintain, or permit to be maintained, any property which does not comply with the requirements of this chapter. All property shall be maintained to the Building Code requirements in effect at the time of construction. Alterations or repairs shall meet the minimum standards in this section and the repair standards set forth in Section 2.01.080, Repair Standards.

A. Display of Address Number.

Address numbers posted shall be the same as the number assigned by the City of Tacoma Building and Land Use Services Division. All buildings shall have address numbers posted in a conspicuous place on contrasting background so they may be read from the street or public way. Tenant spaces in buildings shall be clearly numbered or lettered, in a logical and consistent manner.

B. Foundations.

Building foundation systems shall adequately support the building. Those parts of the system constructed of wood shall be free from deterioration or dry rot. Concrete and masonry elements shall be integral without substantial fracturing or cracks.

Exterior walls shall be supported on a continuous concrete or masonry foundation, or an engineer-designed foundation system, which accounts for both vertical and lateral (earthquake and wind) loads, shall be provided. In absence of a continuous masonry or concrete foundation, an approved skirting system shall be provided to prevent the entrance of rodents and other animals to the crawl space or under-floor area of the building.

The building shall be anchored to the foundation system in an approved manner.

Under-floor areas shall be ventilated by an approved mechanical means or by openings in the exterior foundation walls to provide natural ventilation.

C. Floors.

Floors shall be even, without breaks or holes, and constructed of materials of adequate strength to support the dead loads of the floor materials and the live loads required by the Building Code in effect at the time the building was built. Floors shall be reasonably level.

D. Exterior Walls.

Exterior walls and exposed exterior surfaces shall be structurally sound, and shall form a weather-tight barrier to the outside elements.

Exterior walls shall comply with the Building Code in effect at the time the building was built for fire resistance, parapets, and opening protection.

E. Windows and Glazing.

Windows and glazing shall be in good condition and maintain a weather barrier against the elements. All glazing shall be uncracked and unbroken. Operable windows shall be able to operate in the manner in which they were designed, and shall not be painted closed or otherwise bind in a manner rendering them inoperable. Sash weights and cords shall be intact and in good condition if needed for the operation of the windows. Frames and sashes shall be free of deteriorated or rotted materials.

F. Roofs.

Roof structures shall be structurally sound and free of deteriorated or rotted materials. Roofing shall be weather tight and provide protection to the interior of the building from outside elements. Roof drainage shall be directed to approved locations. Roofs shall be maintained in good repair.

Roof systems shall be provided with adequate ventilation to prevent deterioration.

An attic where the ceiling or roof is constructed of combustible materials and which has a vertical height of 30 inches or more shall be provided with an access opening as required by the Building Code in effect at the time the building was built.

G. Exterior Stairs, Ramps, Porches, and Decks.

Every exterior stair, ramp, porch, deck, or other exterior appurtenances, including guardrails and handrails, shall be constructed of materials of sufficient strength to perform the function for which it is designed and to carry the live and dead loads prescribed by the Building Code in effect at the time the building was built. All material shall be kept in sound condition and good repair. Replacement of materials shall be made as necessary of flooring treads, risers, stringers, decking, and other materials that show excessive wear are broken, warped, loose, or deteriorated. Weather-exposed surfaces shall be protected in an approved manner.

H. Exits.

All buildings shall be provided with exits in accordance with the Building Code.

EXCEPTION: Exiting systems which met the Building Code at the time that the building or structure was constructed, which have been maintained in good condition and do not pose a danger to life, in the opinion of the Building Official, may be accepted as an alternative to the Building Code.

Exits shall terminate at a public street or shall terminate to a place of refuge which is sufficiently large enough to receive all the occupants in the structure, and which is no less than 60 feet from the building or structure.

I. Doors, Latches, and Locks.

All exit doors shall comply with the Building Code in effect at the time the building was built for width and height and shall be openable from the inside without a key or special knowledge. All doors serving an occupant load of 50 or more shall swing in the direction of egress.

Doors serving an occupant load of less than ten, as calculated by the Building Code, may have dead bolts, provided they are provided with a thumb operator, knob, or equivalent on the inside. Dead bolts which require keys to be operated from the inside are not permitted.

Doors serving occupancies classified as Group A (Assembly), Group E (Educational or Day Care), Group H (Hazardous), and Group I (Institutional) shall be provided with panic hardware when serving occupant loads of 50 or more as calculated by the Building Code, or when otherwise required by the Building Code.

J. Corridors.

Corridors shall be constructed in accordance with the provisions of the Building Code in effect at the time the building was built. Corridors shall terminate at doors to the exterior of the building or to doors leading to stair enclosures or to doors passing through horizontal exits, as defined by the Building Code. Exits from corridors shall not pass through intervening rooms except for lobbies and waiting areas constructed to corridor standards as defined by the Building Code in effect at the time the building was built.

K. Stairways and Stair Enclosures.

Stairs shall be constructed as required by the Building Code. Stairs shall be enclosed when required by the Building Code in effect at the time the stair enclosure was built.

EXCEPTIONS:

1. Stairways constructed prior to July 1, 1988, which serve occupant loads of ten or more, but which have risers in excess of 7 inches but not exceeding

7.5 inches, and/or have treads with a depth less than 11 inches but not less than 10 inches measured from tread nose to tread nose.

2. Buildings and structures which have fire escapes which have been maintained and tested in accordance with the Building Code and the Fire Code. See Subsection Q, Fire Escapes, of this chapter.

L. Ramps.

Ramps shall be constructed as required by the Building Code.

EXCEPTION: Existing ramps which do not exceed a slope of one vertical to eight horizontal (12.5 percent) and which conformed to the Building Code in effect at the time the building or structure was constructed may be used for exiting purposes, provided there are landings at the top and the bottom of the ramp which have lengths equal to the width of the ramp, or 36 inches, whichever is greater. The length of such landings do not need to exceed 44 inches.

M. Guardrails.

Unenclosed floor and roof openings, open and glazed sides of stairways, landings and ramps, balconies or porches, which are more than 30 inches above grade or floor below, and roofs used for other than service of the building shall be protected by a guardrail.

EXCEPTION: Guardrails need not be provided at the following locations:

1. On the loading side of loading docks.

2. On the auditorium side of a stage, raised platforms, and other raised floor areas, such as runways, ramps, and side stages used for entertainment or presentation; along the side of an elevated walking surface, when used for the normal functioning of special lighting or for access and use of other special equipment; at vertical openings in the performance area of stages.

3. Along vehicle service pits not accessible to the public.

Height. The top of guardrails shall meet the requirements of Building Code in effect at the time the guardrail was built, but need not exceed 42 inches in height.

EXCEPTIONS:

1. The top of guardrails for Group R, Division 3 and Group U, Division 1 Occupancies, and interior guardrails within individual dwelling units, Group R, Division 3 congregate residences and guest rooms of Group R, Division I Occupancies, do not need to exceed 36 inches in height.

2. The top of guardrails on a balcony immediately in front of the first row of fixed seats and which are not at the end of an aisle may be 26 inches in height.

3. The top of guardrails for stairways, exclusive of their landings, may have a height as specified in the Stairway Handrails section of this chapter.

Openings. Open guardrails shall have intermediate rails or an ornamental pattern such that complies with the Building Code in effect at the time the guardrail was built. If the guardrail is new or needs to be reconstructed, the intermediate rails or ornamental pattern shall comply with the presently adopted Building Code. If the existing guardrail does not have intermediate rails or an ornamental pattern, intermediate rails or an ornamental pattern shall be provided which complies with the presently adopted Building Code.

N. Stairway Handrails.

Stairways shall have handrails on each side, and every stairway required to be more than 88 inches in width shall be provided with not less than one intermediate handrail for each 88 inches of required width. Intermediate handrails shall be spaced approximately equally across with the entire width of the stairway.

EXCEPTIONS:

1. Stairways less than 44 inches in width or stairways serving one individual dwelling unit in Group R, Division 1 or Division 3 Occupancies, or a Group R, Division 3 congregate residence, may have one handrail.

2. Private stairways 30 inches or less in height may have handrails on one side only.

3. Stairways having less than four risers and serving one individual dwelling unit in Group R, Division 1 or Division 3, or a Group R, Division 3 congregate residence, or serving Group U Occupancies, need not have handrails.

The top of handrails and handrail extensions shall meet the requirements of the Building Code in effect at the time the stairway was built, but in no case shall be less than 30 inches nor more than 38 inches above the nosing of treads and landings. Handrails shall be continuous the full length of the stairs. Handrail ends shall be returned or shall terminate in newel posts or safety terminals.

The handgrip portion of handrails shall meet the requirements of the Building Code in effect at the time the stairway was built. The handgrip portion of handrails shall have a smooth surface with no sharp corners.

Handrails projecting from a wall shall have a space of not less than 1-1/2 inches between the wall and the handrail.

Handrails used to protect the open side of stairways or landings shall be provided with intermediate rails or an ornamental pattern, when the drop from the stairs or landing is 30 inches or more to the ground or surface below. The intermediate rails or patterns shall be as required by the Building Code under which it was constructed. If such handrail is new or being replaced, it shall meet the requirements of the presently adopted Building Code. If such handrail is existing, but is not provided with intermediate rails or ornamental pattern, intermediate rails or an ornamental pattern shall be provided to comply with the presently adopted Building Code.

O. Exit Path Lighting.

General. Except within individual dwelling units, guest rooms, and sleeping rooms, exits shall be illuminated at any time the building is occupied, with light having intensity of not less than 1.0 foot-candle at floor level.

EXCEPTION: In auditoriums, theaters, concert or opera halls, and similar assembly uses, the illumination at floor level may be reduced during performances to not less than 0.2 foot-candle.

Sources of Power. The power supply for exit illumination shall normally be provided by the premises' wiring system. Emergency backup power or power on separate circuits shall be in accordance with the Building Code in effect at the time the lighting was installed.

P. Exit Signs.

Where Required. When two or more exits from a story are required, exit signs shall be installed at stair enclosure doors, horizontal exits, and other required exits from the story. When two or more exits are required from a room or area, exit signs shall be installed at the required exits from the room or area and where otherwise necessary to clearly indicate the direction and path of egress.

EXCEPTIONS:

1. Main exterior exit doors, which obviously and clearly are identifiable as exits, need not be signed when approved by the Building Official.

2. Group R, Division 3, and individual units of Group R, Division 1 Occupancies.

3. Exits from rooms or areas with an occupant load of less than 50 when located within a Group I, Division 1.1, 1.2, or 2 Occupancy, or a Group E, Division 3 day-care occupancy.

Graphics. The color and design of lettering, arrows, and other symbols on exit signs shall be in high contrast with their background. Words on the signs shall be in block letters 6 inches in height with a stroke of not less than 3/4 inch, or in accordance with the Building Code in effect at the time the original signs were installed.

Illumination. Signs shall be internally or externally illuminated in accordance with the Building Code in effect at the time the exit signs were installed.

Power Supply. Current supply to one of the lamps for exit signs shall be provided by the premises' wiring system. Power to the other lamp shall be from storage batteries or an on-site generator set, and the system shall be installed in accordance with the Electrical Code or in accordance with the Building Code in effect at the time the exit signs were installed.

Q. Fire Escapes.

New fire escapes shall not be permitted to be installed. Existing fire escapes complying with this section may be accepted by the Building Official as one of the required exits. The fire escape shall not be the primary or the only exit. Fire escapes shall not take the place of stairways required by the codes under which the building was constructed. Fire escapes shall be subject to re-inspection as required by the Building Official. The Building Official shall require documentation to show compliance with the requirements of this section.

Fire escapes shall comply with the following:

1. Access from the corridor shall not be through an intervening room.

EXCEPTION: Access through an intervening room may be permitted if the intervening door is not lockable and an exit sign is installed above the door which will direct occupants to the fire escape. Such intervening rooms shall not be storage rooms, mechanical equipment rooms, kitchens, or similar spaces, and shall be common to the building in general and not part of a tenant space.

2. All openings in an exterior wall below or within 10 feet, measured horizontally, of an existing fire escape serving a building over two stories in height,

shall be protected by a self-closing fire assembly having a three-fourths-hour fire protection rating. When located within a recess or vestibule, adjacent enclosure walls shall be of not less than one-hour fire-resistive construction.

3. Egress from the building shall be by an opening having a minimum clear width and height of not less than 29 inches. Such openings shall be openable from the inside without the use of a key or special knowledge or effort. The sill of an opening giving access to the fire escape shall be not more than 30 inches above the floor of the building or balcony. The top of the frame of the opening giving access to the fire escape shall be not less than 59 inches above the floor.

4. Fire escape stairways and their balconies shall support their dead load plus a live load of not less than 100 pounds per square foot or a concentrated load of 300 pounds placed anywhere on the balcony or stairway so as to produce the maximum stress conditions. The stairway shall have a slope not to exceed 60 degrees from the horizontal and shall have a minimum width of 18 inches. The stairway shall be provided with a top and intermediate railing on each side. Treads shall not be less than 4 inches in width, and the rise between treads shall not exceed 10 inches. All stairway and balcony railings shall support a horizontally applied force of not less than 50 pounds per lineal foot of railing or a concentrated load of 200 pounds placed anywhere on the railing so as to produce the maximum stress conditions.

5. Fire escape balconies shall not be less than 44 inches in width with no floor openings greater than 5/8 inch in width except the stairway opening. Stairway openings in such balconies shall not be less than 22 inches by 44 inches. The guardrail of each balcony shall not be less than 36 inches high with not more than 9 inches between intermediate rails.

6. Fire escapes shall extend to the roof or provide an approved gooseneck ladder between the top floor landing and roof when serving buildings four or more stories in height having roofs with a slope not exceeding 4 in 12. Such ladders shall be designed and connected to the building to withstand a horizontal force of 100 pounds per lineal foot; each rung shall support a concentrated load of 500 pounds placed anywhere on the rung so as to produce the maximum stress conditions. All ladders shall be at least 15 inches in clear width, be located within 12 inches of the building, and shall be placed flat wise relative to the face of the building. Ladder rungs shall be 3/4 inch in diameter and shall be located 10 inches to 12 inches on center. Openings for roof access ladders through cornices and similar projections shall have minimum dimensions of 30 inches by 33 inches.

7. The lowest balcony shall not be more than 18 feet from the ground. Fire escapes shall extend to the ground or be provided with counter-balanced stairs reaching the ground.

8. Fire escapes shall be kept clear and unobstructed at all times and shall be maintained in good working order. Fire escape stairways, balconies, railings, and ladders shall be visually inspected annually and shall be subjected to a stress test every five years in accordance with the provisions of Chapter 3.02 of the Tacoma Municipal Code. Fire escapes failing the stress test shall be repaired or removed from the building, as directed by the Fire Chief. If the fire escape is removed from the building, it shall be replaced with stairways meeting all requirements for stairways in new construction.

9. The fire escape shall have clearance from electrical service conductors as required by the Electrical Code.

R. Exits for Sleeping Rooms.

All sleeping rooms below the fourth story in buildings shall be provided with two exits. One of the exits may be a window opening onto a public way or into a court or yard which provides access to a public way. Such exit window shall provide a net openable area of 5.7 square feet with a minimum clear width of 20 inches and a minimum clear height of 24 inches, and a maximum sill height of 44 inches measured from the floor of the sleeping room.

EXCEPTIONS:

1. In buildings constructed prior to May 26, 1981, existing window with a net openable area of 5 square feet, a minimum clear width of 22 inches, a minimum clear height of 22 inches, and a maximum sill height of 48 inches measured from the floor of the sleeping room, shall be deemed to meet the exit window requirement. Where the window frame is to be replaced, this exception shall not apply, except as necessary to fit within the rough framed opening, in which case the opening dimensions shall be maximized. (Note: If a new opening needs to be created or an existing opening needs to be enlarged to provide an exit window from a sleeping room, this exception shall not apply.)

2. Where the sill height exceeds the maximum specified, including when Exception 1 applies, a landing with a minimum depth of 24 inches and width equal to the width of the window and frame, but not less than 36 inches, may be provided directly below the exit window within the sleeping room, provided:

stairs shall be provided to the landing if its height exceeds 12 inches above the sleeping room floor, and that the landing and stairs do not decrease the minimum required dimensions of the sleeping room below those required by this chapter and the Building Code.

3. The size of egress windows below the fourth floor opening onto a court yard may be modified by the Building Official or the Fire Chief.

Escape and rescue windows with a finished sill height below the adjacent ground elevation shall have a window well. Window wells at escape or rescue windows shall comply with the following:

1. The clear horizontal dimensions shall allow the window to be fully opened and provide a minimum accessible net clear opening of 9 square feet, with a minimum dimension of 36 inches.

2. Window wells with a vertical depth of more than 44 inches shall be equipped with an approved permanently affixed ladder or stairs that are accessible with the window in the fully open position. The ladder or stairs shall not encroach into the required dimensions of the window well by more than 6 inches.

Bars, grilles, grates, or similar devices may be installed on emergency escape or rescue windows, doors, or window wells, provided:

1. The devices are equipped with approved release mechanisms which are openable from the inside without the use of a key or special knowledge or effort; and

2. The building is equipped with smoke detectors installed in accordance with the Building Code.

S. Minimum Room Dimensions for Residential Buildings.

1. Ceiling heights. Habitable space shall have a ceiling height of not less than 7 feet 6 inches, except as otherwise permitted in this section. Kitchens, halls, bathrooms, and toilet compartments may have a ceiling height of not less than 7 feet measured to the lowest projection from the ceiling. Where exposed beam ceiling members are spaced at less than 48 inches on center, ceiling height shall be measured to the bottom of these members. Where exposed beam ceiling members are spaced at 48 inches or more on center, ceiling height shall be measured to the bottom of the deck supported by these members, provided that the bottoms of the members are not less than 7 feet above the floor.

If any room in a building has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the area thereof. No portion of the room measuring less than 5 feet from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.

If any room has a furred ceiling, the prescribed ceiling height is required in two-thirds the area thereof, but in no case shall the height of the furred ceiling be less than 7 feet.

EXCEPTION: The Building Official may permit lower ceiling heights where existing conditions make the strict compliance with this section impractical.

2. Floor area. Dwelling units and congregate residences shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Sleeping rooms shall be increased in floor area by a minimum of 50 square-feet for each occupant in excess of two. Efficiency dwelling units shall comply with the requirements of Subsection T.

3. Width. Habitable rooms, other than a kitchen, shall not be less than 7 feet in any dimension.

T. Efficiency Dwelling Units.

An efficiency dwelling unit shall conform to the requirements of the Building Code in effect at the time the building was constructed, except as herein provided:

1. The unit shall have a living room of not less than 220 square feet of superficial floor area. An additional 100 square feet of superficial floor area shall be provided for each occupant of such unit in excess of two.

2. The unit shall be provided with a separate closet.

3. The unit shall be provided with a kitchen sink, cooking appliance, and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this chapter shall be provided.

4. The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.

U. Residential Dwelling or Dwelling Unit Room Arrangement.

Rooms in dwellings and dwelling units containing two or more sleeping rooms shall be arranged in such a manner that bathroom or water closet compartment

access is provided without traveling through a sleeping room.

EXCEPTION: Where each bedroom has its own bathroom facilities.

Rooms in dwellings or dwelling units shall be so arranged that access to all sleeping rooms can be made directly without traveling through other sleeping rooms, bathrooms, or water closet compartments.

Dwellings and dwelling units shall be self-contained, with access to all portions being possible without leaving the dwelling or dwelling unit.

V. Overcrowding, Residential Buildings.

For single family dwellings and duplexes, the maximum number of residents of each dwelling unit shall not exceed the gross area divided by 300, rounded to the nearest whole number. Bedrooms will accommodate two persons with a minimum size of 70 square feet, with no dimension being less than 7 feet. An additional 50 square feet shall be provided for each person in excess of two.

For multiple family dwellings buildings with three or more units, the maximum number of residents of each dwelling unit shall not exceed the gross area divided by 200, rounded to the nearest whole number. Bedrooms will accommodate two persons with a minimum size of 70 square feet, with no dimension being less than 7 feet. An additional 50 square feet shall be provided for each person in excess of two.

Children less than one year of age shall not be considered in applying the above provisions.

W. Smoke Detectors and Fire Alarm Systems.

1. Smoke detectors.

a. General. Dwelling units, congregate residences, and hotel or lodging house guest rooms that are used for sleeping purposes shall be provided with smoke detectors. Detectors shall be installed in accordance with the approved manufacturer's instructions.

b. Additions, alterations, or repairs to Group R Occupancies. When the valuation of an addition, alteration, or repair to a Group R Occupancy exceeds $1,000.00 and a permit is required, or when one or more sleeping rooms are added or created in existing Group R Occupancies, smoke detectors shall be installed in accordance with the Building Code.

EXCEPTION: Repairs to the exterior surfaces of a Group R Occupancy are exempt from the requirements of this section.

c. Power source. In new construction, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source, and shall be equipped with a battery backup. The detector shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than those required for over-current protection. Smoke detectors may be solely battery operated when installed in existing buildings; or in buildings without commercial power; or in buildings which undergo alterations, repairs or additions regulated by the Building Code.

d. Location within dwelling units. In dwelling units, a detector shall be installed in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story, and in dwellings with basements, a detector shall be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a detector shall be installed on each level. When sleeping rooms are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches or more, smoke detectors shall be installed in the hallway and in the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

e. Location in efficiency dwelling units, congregate residences and hotels. In efficiency dwelling units, hotel suites, and in hotel and congregate residence sleeping rooms, detectors shall be located on the ceiling or wall of the main room or each sleeping room. When sleeping rooms within an efficiency dwelling unit or hotel suite are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. When actuated, the detector shall sound an alarm audible within the sleeping area of the dwelling unit or congregate residence, hotel suite, or sleeping room in which it is located.

2. Fire Alarm Systems.

a. Group R, Division 1 Occupancies shall be provided with an approved manual and automatic fire alarm system in apartment houses three or more stories in height or containing 16 or more dwelling units, in hotels three or more stories in height or containing 20 or more guest rooms, and in congregate residences

three or more stories in height or having an occupant load of 20 or more. A fire alarm and communication system shall be provided in Group R, Division 1 Occupancies located in a high-rise building.

EXCEPTIONS:

1. A manual fire alarm system need not be provided in buildings not over two stories in height when all individual dwelling units and contiguous attic and crawl spaces are separated from each other and public or common areas by at least one-hour fire-resistive occupancy separations and each individual dwelling unit or guest room has an exit directly to a public way, exit court, or yard.

2. A separate fire alarm system need not be provided in buildings which are protected throughout by an approved supervised fire sprinkler system having a local alarm to notify all occupants. The alarm signal shall be a distinctive sound which is not used for any other purpose other than the fire alarm. Alarm-signaling devices shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by 15 decibels minimum, or exceeds any maximum sound level with a duration of 30 seconds minimum by 5 decibels minimum, whichever is louder. Sound levels for alarm signals shall be 120 decibels maximum.

For the purposes of this section, area separation walls shall not define separate buildings.

b. Occupancies Other Than Group R. Fire alarm systems shall be provided in all other buildings other than Group R occupancies in accordance with the provisions of the Building Code and Fire Code in effect at the time the building was constructed, or when last substantially renovated, remodeled, extended, or altered.

X. Kitchen Facilities.

Each dwelling unit shall be provided with a kitchen. The kitchen area shall contain:

1. A sink with hot and cold running water.

2. Space for a stove or hot plate.

3. Space for a refrigerator.

4. Adequate counter space for food preparation and dish washing.

5. Adequate storage space for kitchen utensils and food.

6. Adequate floor space.

Kitchens shall be provided with light and ventilation meeting the minimum standards set forth in this chapter.

Communal kitchens shall be permitted only in rooming house or boarding homes. Such communal kitchens shall be located within a room accessible to the occupants of each guest room sharing the use of the kitchen without going outside the rooming house or boarding home, or going through a unit of another occupant.

Commercial kitchens shall comply with the Mechanical Code in effect at the time the kitchen was constructed, and the requirements of the Tacoma-Pierce County Health Department. Commercial kitchens shall be provided with grease hoods and grease traps or interceptors when determined necessary.

Y. Laundry Facilities.

All residential buildings shall provide facilities for the washing of clothes in accordance with the provisions of the codes in force at the time the building was constructed. In an apartment house, where laundry facilities are not provided for each unit, means such as laundry trays or washing machines shall be provided elsewhere on site and shall be available to tenants.

Z. Electrical System and Lighting.

All occupied buildings shall be connected to an approved source of electrical power. An approved source of electrical power shall be Electrical Utilities authorized to furnish electrical power within the limits of the City of Tacoma.

All electrical equipment, components, and wiring shall be installed and maintained in a safe manner in accordance with applicable codes. All electrical equipment shall be listed by an approved testing and/or listing agency. All damaged or missing electrical components or equipment shall be replaced, repaired, or removed as appropriate.

The electrical system shall be safe and not be a shock or fire hazard to the occupants of the building. Services shall be adequately sized and provided with fuses, breakers, and other appropriate safety equipment. Wiring shall be maintained in a safe condition.

Exit facilities and other hallways and stairs shall be provided with supplied and operable lighting capable of providing a minimum of one foot-candle lighting intensity at floor level. Emergency power shall be

provided if required by the code under which the building was constructed.

Every habitable room shall contain at least two supplied and operable electrical convenience outlets, or one supplied electric convenience outlet and one supplied and operable light fixture.

Every kitchen, furnace room, and laundry room shall contain at least one supplied electric convenience outlet and one supplied and operable light fixture.

Every bathroom, rest room, and toilet compartment shall contain at least one supplied and operable electric light fixture. In addition, every room containing lavatories shall be provided with at least one convenience outlet.

AA. Heating and Mechanical Equipment.

Heating equipment shall be provided to heat every dwelling and guest room, and shall have the capacity to heat all habitable rooms to 70 degrees Fahrenheit with an ambient outside temperature of 20 degrees Fahrenheit. Such equipment shall be in compliance with the Mechanical Code and the Building Code. Solid-fuel-burning appliances and portable heating devices shall not be used to provide the primary heat for the dwelling or guest rooms.

BB. Water Heating Equipment.

Every dwelling or dwelling unit shall have water heating equipment which is properly installed and maintained in safe and good working condition. Such equipment shall be provided with piping to distribute the hot water to all locations required by the Building, Plumbing, and Mechanical Codes and this chapter. Water heating equipment shall be capable of heating water to 120 degrees Fahrenheit in quantities to permit a reasonable amount of hot water to be drawn at every required kitchen sink, lavatory, bathtub, or shower on demand. Hot water heating equipment shall have its thermostat set no lower than 120 degrees Fahrenheit, and shall be provided with all safety equipment prescribed by the Plumbing and Mechanical Codes. Water-heating equipment required by this section shall be independent of the building heating system.

CC. Light and Ventilation.

1. Lighting. All occupied portions of buildings shall be provided with natural or artificial light.

All habitable rooms in residential dwelling buildings or dwelling units shall be provided with natural light.

Natural light shall be provided for each room by windows and/or skylights which combine to have a minimum area of one-tenth (1/10) of the floor area of the room or combination of rooms being considered.

Artificial light shall be provided with electrical fixtures wired to house power provided by a supply utility which provide a minimum light intensity of 1.0 foot-candle at floor level. Existing lighting which met the Building Code in effect at the time the building was constructed, has been maintained in safe condition, and which provides the minimum 1.0 foot-candle at floor level is deemed as meeting this section. New lighting shall be required to meet the Washington State Energy Code.

Adjacent rooms may be considered as one room, provided that the opening in the wall between the two rooms provide a minimum clear opening of one-tenth (1/10) of the floor area of the interior room, 25 square feet, or one-half of the area of the wall between the rooms, whichever is greater.

2. Ventilation. All occupied portions of buildings shall be provided with natural or mechanical ventilation.

Natural ventilation shall be by means of openable windows, doors, skylights, or other approved openings to the exterior of the building. Natural ventilation shall be provided at a rate of one-twentieth (1/20) of the floor area of the space or combination of spaces being considered.

Existing mechanical ventilation meeting the requirements of the Building and Mechanical Codes in effect at the time the building was constructed shall be considered satisfactory. New or revised mechanical ventilation shall meet the requirements of the Washington State Ventilation and Indoor Air Quality Code.

DD. Solid-Fuel-Burning Appliances.

Solid-fuel-burning appliances shall be listed by an approved testing and/or listing agency, and shall be installed in accordance with their listings for clearances, chimneys, and floor protection.

EXCEPTION: Unlisted solid-fuel-burning appliance installations which existed prior to 1977, and which are in good condition, may remain, provided:

1. The clearances to combustible materials are in accordance with Tables 3-A and 3-B of the 1994 Uniform Mechanical Code.

2. The installation meets the requirements of the Building Code in effect at the time of the installation.

Solid-fuel-burning appliances shall not be used as the primary heating source for dwelling units.

EXCEPTION: Solid-fuel-burning furnaces with an approved ducted heat distribution system, and an automatic fuel delivery system.

EE. Chimneys.

Every smoke pipe and every chimney shall remain adequately supported and free from obstructions and shall be maintained in a condition which ensures there will be no leakage or back-up of noxious gases. Every chimney shall be reasonably plumb. Loose bricks or blocks shall be rebonded. Loose or missing mortar shall be replaced. Unused openings into the interior of the structure must be permanently sealed using approved materials. Chimneys used for approved gas appliances shall be lined with approved materials.

Masonry chimneys supported on chimney brackets ("shelf chimneys") shall be removed, or the chimney shall be modified to provide an approved support system.

FF. Plumbing.

Supply, waste, and vent plumbing piping shall be in good condition and free from leaks. Waste piping shall be adequately sized to safely convey waste water to the City Sewer or to other approved plumbing waste disposal systems. Vent piping shall be adequately sized and configured to prevent siphoning of plumbing fixture traps. All plumbing fixtures shall be in good condition, free from cracks and leaks, and shall be properly connected to the waste and vent system of the building.

GG. Number of Plumbing Fixtures.

Dwelling Units: Every dwelling unit shall be provided with a kitchen sink, a water closet, a lavatory (bathroom sink), and either a bathtub or a shower.

Lodging Houses: Lodging Houses shall be provided with a minimum of a kitchen sink, a water closet, a lavatory (bathroom sink), and a bathtub or a shower, provided that, where the bathtub or shower is provided in the same room as a water closet and lavatory, that there shall be an additional water closet and lavatory in the building in a different location.

Apartment Houses, Hotels, and Motels: Each apartment house dwelling unit, hotel unit, or motel unit shall be provided with a water closet, a lavatory (bathroom sink), and a bathtub or a shower.

EXCEPTION: Apartment houses, hotels, and motels existing prior to January 1, 1961, which contain communal toilet and bathing facilities rather than facilities for each unit, may continue operation without requiring modification, provided:

1. There are separate toilet and bathing facilities for each sex.

2. Toilet and bathing facilities shall be separate from each other or of adequate size to permit simultaneous use.

3. The men's toilet facilities shall contain:

Water Closets: One for every ten guest rooms, or fraction thereof, but not less than one.

Urinals: One for every 25 guest rooms, or fraction thereof, but not less than one.

Lavatories: One for every 12 guest rooms, or fraction thereof, but not less than one.

4. The women's toilet facilities shall contain:

Water Closets: One for every eight guest rooms, or fraction thereof, but not less than one.

Lavatories: One for every 12 guest rooms, or fraction thereof, but not less than one.

5. The bathing facilities for each sex shall contain:

One shower and bathtub combination and, in addition, shall provide one additional shower for every eight guest rooms over eight.

Dormitories: Dormitories shall provide toilet facilities in accordance with the exception listed for Hotels and Motels.

Commercial and Industrial Buildings: Commercial and Industrial Buildings shall be provided with toilet facilities for each sex. Each toilet facility shall be provided with a minimum of one water closet and one lavatory. In addition, each men's toilet facility shall also be provided with a urinal where there are more than four persons using the facility.

EXCEPTIONS:

1. Commercial and Industrial buildings may provide a single toilet facility with a lockable door where four or less persons are employed.

2. Restaurants with seating for 24 or less patrons may provide a single toilet facility with a lockable door.

The number of fixtures provided in each of the toilet facilities for commercial and industrial buildings shall meet the requirements set forth in the Building Code.

EXCEPTION: Toilet facilities which provided adequate fixtures in accordance with the Plumbing Code in effect when the building was constructed.

HH. Sanitation.

1. Floors. In other than dwelling units, toilet room floors shall have a smooth, hard, nonabsorbent surface, such as Portland cement, concrete, ceramic tile, or other approved material which extends upward onto the walls at least 5 inches.

2. Walls. Walls within 2 feet of the front and sides of urinals and water closets shall have a smooth, hard, nonabsorbent surface of Portland cement, concrete, ceramic tile, or other smooth, hard, nonabsorbent surface to a height of 4 feet, and except for structural elements, the materials used in such walls shall be of a type which is not adversely affected by moisture.

EXCEPTIONS:

1. Dwelling units and guest rooms.

2. Toilet rooms which are not accessible to the public and which have not more than one water closet.

3. Hardware. In all occupancies, accessories such as grab bars, towel bars, paper dispensers, and soap dishes, provided on or within walls, shall be installed and sealed to protect structural elements from moisture.

4. Bathtub and Shower. Bathtub and shower enclosures in all occupancies shall be finished as specified in items 1 and 2 above, to a height of not less than 70 inches above the drain inlet. Materials other than structural elements used in such walls shall be of a type which is not adversely affected by moisture.

5. Water Closet Room Separation. A room in which a water closet is located shall be separated from food preparation or food storage rooms by tight-fitting doors.

II. Infestation.

Every building shall be kept free from infestations of vermin. Where infestations of vermin are found, they shall be promptly eliminated by extermination. After elimination of infestations, proper precautions shall be taken to prevent reinfestations. (See definition of vermin.)

JJ. Accessory Structures.

All accessory structures shall be maintained structurally safe and sound and in good repair. All exterior surfaces of accessory structures shall be of a material specifically for use in such a weather-exposed location. Accessory structures shall not be used for the storage of garbage or rubbish unless such garbage or rubbish is placed in an approved container or stored in a manner so as not to constitute a health or safety hazard.

An accessory structure shall contain no habitable space. No person shall occupy or allow another to occupy an accessory structure for living purposes. Plumbing shall not be permitted in an accessory structure, except as permitted by the Tacoma Land Use Regulatory Code.

Accessory buildings are not permitted on building lots separate from the main building, except as permitted by the Tacoma Land Use Regulatory Code. Detached accessory buildings located on a site where the main building has been removed may remain on the lot for up to a year, without the main building being replaced.

EXCEPTION: With the permission of the Building Official, accessory buildings may remain on a building lot where the main building has been destroyed for longer than one year, for sufficient reasons, presented to the Building Official in writing.

KK. Accessibility for the Physically Disabled.

All buildings shall be in compliance with the provisions of the Washington State Code for Barrier Free Design that were in effect at the time the building was constructed. Additions, renovations and/or remodeling of existing buildings shall meet the requirements of the present Washington State Code for Barrier Free Design as it applies to existing buildings and to the specific project.

LL. Exterior Maintenance.

1. Buildings. The exterior of buildings shall be maintained in a manner which appears neat and orderly. Weatherproofing elements, such as roofing and siding, shall be firmly attached and in good condition. Glazing and exterior doors shall be intact and in good repair. Painted surfaces shall be fully covered and all peeling or blisters shall be scraped and repainted.

2. Sidewalks and Paving. The owner shall be responsible for maintaining sidewalks and other paving on the property. Sidewalks and other paving on the property shall provide a reasonably even surface without potential hazards.

3. Exterior Property Areas, Yards, and Courts. The owner shall be responsible for maintaining all exterior property areas, yards, and courts in a reasonably neat, clean, and sanitary condition. Property areas shall be maintained free from any accumulation of garbage, litter, debris, overgrown, or noxious vegetation, or other conditions which constitute a nuisance as

defined by Chapter 8.30 of the Tacoma Municipal Code. For the purposes of this section, owners shall be responsible for maintaining the property to the centerline of abutting public streets and alleys, pursuant to Chapter 9.17 of the Tacoma Municipal Code.

MM. Recreational Vehicles or Other Vehicles.

No recreational vehicles, as defined by this chapter, or other vehicles shall be used for the purpose of living, sleeping, cooking, or any similar use while parked on public or private property.

NN. Cargo Containers and Semi-Trailers.

1. Except as permitted by the City of Tacoma Land Use Regulatory Code, cargo containers shall not be permitted to be used as storage buildings.

2. Semi-trailers shall not be used for storage buildings. (Ord. 26715 § 3A; passed Oct. 17, 2000: Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 20530 § 3; passed Aug. 26, 1975: Ord. 18914 § 1; passed Sept. 2, 1969: Ord. 17517 § 1; passed Jan. 2, 1964: Ord. 16384 § 6; passed Jun. 29, 1959: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.080 Repair standards.

It is recognized that, in order to maintain the properties as required by this chapter, repairs will need to be made. Repairs, renovations, alterations, and additions in general will be required to meet the applicable codes in effect at the time they are undertaken, with the minimum acceptable standard of repair being made to bring the building or element of a building up to at least the minimum standards listed in Section 2.01.070 of this chapter. The following provisions provide guidelines for these repairs, renovations, alterations, and additions which, when undertaken, require meeting a higher standard or repair than just meeting the minimum requirements set forth in Section 2.01.070 of this chapter.

In the case of where there is a change of use or where there is a substantial renovation as defined by the Building Code, all work shall be in accordance with the Building Code and the UCBC, as adopted and amended by the City of Tacoma in Chapter 2.02 of the Tacoma Municipal Code.

A. Foundations.

When an existing foundation system supporting the exterior walls of a building is a post and beam system, and is found by inspection to be substandard, it shall either be replaced with a continuous concrete or masonry foundation system or shall be analyzed by an engineer as to its structural adequacy to support vertical and lateral loads and shall be modified according to the engineering report to correct deficiencies.

EXCEPTION: Skirting and other non-structural material, or occasional deteriorated or damaged structural members, may be replaced with the approval of the Building Official.

The building shall be anchored to the foundation system in an approved manner.

In crawl space construction using combustible materials, a minimum clearance of 18 inches shall be provided between the dirt and the floor joists or flooring, and 12 inches between the dirt and floor beams. The dirt shall be covered by a 6-mil black polyethylene or approved equivalent moisture barrier. When the above under-floor clearances are required, access to the under-floor area shall be provided. Access to under-floor areas shall be provided with a minimum 18-inch by 24-inch opening, unobstructed by pipes, ducts, and similar construction. All under-floor access openings shall be effectively screened or covered. Pipes, ducts, and other construction shall not interfere with the accessibility to or within under-floor areas.

EXCEPTION: When proper under-floor clearance is not provided under an existing building, the Building Official may permit the required clearance to be provided only where plumbing or other equipment is located, provided there is at least adequate clearance to prevent deterioration of materials or where the wood is pressure treated with approved wood preservatives.

Under-floor areas shall be ventilated by an approved mechanical means or by openings in the exterior foundation walls.

Mechanical Ventilation: Mechanical ventilation shall meet the Building Code requirements.

Natural Ventilation: If the under-floor space is to be provided ventilation by openings in the foundation walls, such openings shall have a net area of not less than 1 square foot for each 150 square feet of under-floor area. Openings shall be located as close to corners as is practical and shall provide cross-ventilation. The required area of such openings shall be approximately equally distributed along the length of at least two opposite sides. They shall be covered with corrosion-resistant wire mesh with 1/4-inch square mesh openings.

B. Floors.

Floors which are required to be repaired or reconstructed shall, as nearly as possible, follow the requirements of the Building Code for materials, floor loads, support, bracing, sheathing, and nailing. Where it is not practical, in the opinion of the Building Official, to repair or replace a floor to new building code standards, he/she may approve an alternate level of compliance, which is no less than that required by the Building Code in effect at the time the building was built.

C. Exterior Walls.

Exterior walls and exposed exterior surfaces shall be structurally sound, and shall form a weather tight barrier to the outside elements.

Deteriorated or dry rotted elements of exterior walls shall be replaced or repaired. Siding and weather-resistant coatings or coverings shall be maintained in good condition.

Exterior walls which are opened for repair shall be insulated as required by the Energy Code.

New or rebuilt exterior walls shall comply with the Building Code for fire resistance, parapets, and opening protection.

D. Windows and Glazing.

Broken glazing (panes of glass) may be replaced with new glazing that matches the broken glass in thickness, thermal performance, fire resistance, and strength, provided that safety glazing shall be used to replace broken glass in all locations where safety glazing is required by the Building Code.

All new windows (glazing and frames) shall meet the Building Code for fire protection due to location relative to the property lines, safety glazing where glass is subject to impact as defined in the Building Code, and the thermal requirements of the Energy Code for building envelope and type of heating.

EXCEPTION: In Group R, Division 3 Occupancies where new windows are provided with no modifications to the existing wall framing, the fire protection rating of the new windows shall be at least equal to the windows being replaced.

E. Roofs.

Roof structures shall be structurally sound. Roofing shall be weather tight and provide protection to the interior of the building from outside elements. Roof drainage shall be directed to approved locations. Deteriorated or dry-rotted materials shall be replaced or repaired. Roofs shall be maintained in good repair.

Where ventilation is being added to roof systems, the aggregate net ventilation area shall be provided at a rate of 1/150 of the ceiling area.

EXCEPTION: Where the outlet vents are 3 feet or more above the inlet vents, the aggregate net roof ventilation area may be reduced to 1/300 of the ceiling area.

The vent area shall be divided evenly between the inlet and outlet vents. Vents shall be so located to provide cross ventilation and to avoid creating unventilated areas. The openings shall be covered with corrosion-resistant metal mesh with mesh openings of 1/4-inch in dimension.

Where attic access openings need to be provided, the opening shall be located in a corridor, hallway, or other readily accessible location. Attics with a maximum vertical height of less than 30 inches need not be provided with access openings. The attic access opening shall not be less than 22 inches by 30 inches. Thirty-inch minimum clear headroom in the attic space shall be provided at or above the access opening.

F. Doors, Latches, and Locks.

All new doors serving an occupant load of ten or more, as calculated by the Building Code, shall have a minimum width of not less than 36 inches and a minimum height of not less than 6 feet 8 inches, and shall be openable from the inside without a key or special knowledge. All doors serving an occupant load of 50 or more shall swing in the direction of egress.

Doors serving an occupant load of less than ten, as calculated by the Building Code, may have dead bolts, provided they have a thumb operator, knob, or equivalent on the inside. Dead bolts which require keys to be operated from the inside are not permitted.

Doors serving occupancies classified as Group A (Assembly), Group E (Educational or Day Care), Group H, (Hazardous), and Group I (Institutional) shall be provided with panic hardware when serving occupant loads of 50 or more, as calculated by the Building Code, or when otherwise required by the Building Code.

G. Corridors.

New, reconstructed, or remodeled corridors shall be constructed in accordance with the provisions of the Building Code.

EXCEPTION: Existing duct penetration provided with fire dampers in accordance with the Building Code in effect at the time the building or structure was constructed do not need to be updated to the smoke/fire dampers required by the Building Code.

Newly established required corridors shall not have dead ends which exceed 20 feet, and corridors shall terminate at doors to the exterior of the building or to doors leading to stair enclosures or to doors passing through horizontal exits, as defined by the Building Code. Exits from corridors shall not pass through intervening rooms, except for lobbies and waiting areas constructed to corridor standards as defined by the Building Code.

H. Stairways and Stair Enclosures.

New or rebuilt stairs shall be constructed as required by the Building Code. New stairs shall be enclosed, when required by the Building Code.

I. Guardrails.

New guardrails, and guardrails which need to be replaced, shall meet all the requirements set forth for guardrails in the Building Code.

J. Stairway Handrails.

Where stairways are missing handrails, handrails shall be provided which meet all the requirements of the Building Code.

K. Exit Path Lighting.

Exit path shall be illuminated at all times the building or structure is occupied. Exit path lighting shall provide a minimum illumination at floor level of 1.0 foot-candle. Where exit path lighting in existing buildings is missing or is required to be upgraded, it shall meet the following requirements:

General. Except within individual dwelling units, guest rooms, and sleeping rooms, exits shall be illuminated at any time the building is occupied with light having intensity of not less than 1.0 foot-candle at floor level.

EXCEPTION: In auditoriums, theaters, concert or opera halls, and similar assembly uses, the illumination at floor level may be reduced during performances to not less than 0.2 foot-candle.

Separate Sources of Power. The power supply for exit illumination shall normally be provided by the premises' wiring system. In the event of its failure, illumination shall be automatically provided from an emergency system for Group I, Divisions 1.1 and 1.2 Occupancies, and for all other occupancies where the exiting system serves an occupant load of 100 or more.

Emergency systems shall be supplied from storage batteries or an on-site generator set and the system shall be installed in accordance with the requirements of the Electrical Code.

L. Exit Signs.

Where exit signs in existing buildings are missing or are required to be upgraded, they shall meet the following requirements:

Where Required. When two or more exits from a story are required, exit signs shall be installed at stair enclosure doors, horizontal exits, and other required exits from the story. When two or more exits are required from a room or area, exit signs shall be installed at the required exits from the room or area and where otherwise necessary to clearly indicate the direction and path of egress.

EXCEPTIONS:

1. Main exterior exit doors, which obviously and clearly are identifiable as exits, need not be signed when approved by the Building Official.

2. Group R, Division 3, and individual units of Group R, Division 1 Occupancies.

3. Exits from rooms or areas with an occupant load of less than 50 when located within a Group I, Divisions 1.1, 1.2, or 2 Occupancy, or a Group E, Division 3 day-care occupancy.

Graphics. The color and design of lettering, arrows, and other symbols on exit signs shall be in high contrast with their background. Words on the sign shall be in block letters 6 inches in height with a stroke of not less than 3/4 inch.

Illumination. Signs shall be internally or externally illuminated by two electric lamps or shall be of an approved self-luminous type. When the luminance on the face of an exit sign is from an external source, it shall have an intensity of not less than 5.0 foot-candles from either lamp. Internally-illuminated signs shall provide equivalent luminance.

Power Supply. Current supply to one of the lamps for exit signs shall be provided by the premises' wiring system. Power to the other lamp shall be from storage batteries or an on-site generator set, and the system shall be installed in accordance with the Electrical Code.

(Note: Refer to Building Code for high-rise buildings and for amusement structures.) (Ord. 26380 § 1;

passed Mar. 16, 1999: Ord. 17842 § 2; passed Mar. 18, 1965: Ord. 15742 §§ 1-13; passed Nov. 13, 1956)

2.01.090 Unoccupied or vacant building standards.

A. Intent.

It is the intent of this section that buildings which are unoccupied or vacant shall present a neat and orderly appearance, and, as much as possible, will appear occupied or ready for occupancy. If a building is to remain unoccupied or vacant for a period of time, it shall meet the following standards:

1. All exterior openings shall be properly secured as outlined in Subsection C below, Standards for Securing Buildings. Openings shall be secured by the normal building amenities, including, but not limited to, doors, shutters, grills, and window glazing, which can be considered appropriate for securing an occupied building. If it becomes necessary to temporarily secure openings by covering them with structural paneling, the use of the paneling shall be limited to a maximum of 30 calendar days. Where it becomes impractical to secure buildings using the normal security measures, the Building Official may permit the use of medium density overlay or other approved materials, installed in the window frames and painted with a glossy paint of such color to simulate glazing. In such case, the paneling or other approved materials shall blend with the exterior finish of the building, to provide the building with a neat and tended appearance.

2. The building shall be properly weather-protected to prevent deterioration of the exterior and interior of the building. This weather protection shall be approved by the City and shall include the roof and wall assemblies.

3. All miscellaneous debris which constitutes a fire hazard shall be removed from the building and property, and the property shall be left in such condition as to not be in violation of the City of Tacoma's Nuisance Ordinance, Chapter 8.30 of the Tacoma Municipal Code. The property shall remain nuisance free at all times.

4. All buildings which have automatic fire sprinklers systems and/or fire alarm systems shall have such systems maintained in operable condition at all times.

5. Adequate heat shall be maintained within an unoccupied or vacant building to prevent plumbing and automatic fire sprinkler systems from freezing, or alternatively the plumbing, automatic fire sprinkler systems, or any other element in the building sensitive to freezing may be winterized in an approved manner.

6. All sewer lines shall be capped. (When approved by the Building and Land Use Services Division, this may be accomplished by providing an approved plug at the fixtures within the building.)

7. The owner shall inspect the property periodically to assure that the property remains in compliance with this chapter. In the event that the unoccupied building does not conform to this standard, the Building Official may order the owner to inspect the property, according to a specific schedule, and to provide written reports that the inspections have been performed and that the property is in compliance with these standards.

B. Procedures for Securing Buildings.

1. Vacant Buildings.

Once a building is determined to be vacant and is open to unauthorized third-party entry, the Building Official shall make reasonable effort to contact the owner to have the building secured. If the owner cannot be contacted with reasonable effort, the City of Tacoma shall secure the building. If such building is presenting an immediate danger to the health, safety, and welfare of the public, or is requested to be immediately secured by the Building Official, the City of Tacoma Police Department, the City of Tacoma Fire Department and/or the Tacoma-Pierce County Health Department, the Building Official shall immediately cause the building to be secured. In the event that the City of Tacoma secures the building, all costs incurred shall be assessed to the owner of the property.

2. Occupied Buildings.

If a building is occupied and determined by the City of Tacoma to be in violation of this chapter and presents an immediate danger to the health, safety, and welfare of the occupants or the public, the building shall be ordered vacated by the Building Official, and the Building Official shall cause the building to be immediately secured from unauthorized third-party entry. In the event that the City of Tacoma secures the building, all costs incurred shall be assessed to the owner of the property.

C. Standards for Securing Buildings.

To secure a building, all doors, window openings, or other openings on floors accessible from grade shall be closed and locked, or shuttered to prevent third-party entry, to the satisfaction of the Building

Official. (Ord. 26715 § 4; passed Oct. 17, 2000: Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 15742 § 1-13; passed Nov. 13, 1956)

2.01.100 Residential Building Rental Registration Program.

Repealed by Ord. 27154

(Ord. 27154 § 1; passed Oct. 21, 2003: Ord. 26715 § 5; passed Oct. 17, 2000: Ord. 26380 § 1; passed Mar. 16, 1999: Ord. 25560 § 1; passed Aug. 23, 1994: Ord. 15742 § 9; passed Nov. 13, 1956)

Chapter 2.02

BUILDING CODE

2.02.010 Adoption of International Building, Residential, and Existing Building Codes.
2.02.020 Title.
2.02.030 Flood plain.
2.02.040 International Plumbing Code.
2.02.050 Amendment by deletion from the 2003 IBC.
2.02.060 General amendments.
2.02.065 Washington State Building Code Council amendments deleted from the City of Tacoma adoption of the 2003 International Building Code.
2.02.070 Washington State Building Code Council amendments.
2.02.080 Amendment to IBC Section 105.2 - Work exempt from permit.
2.02.090 Amendment to IBC Section 105.5 - Expiration.
2.02.100 Amendment to IBC Section 113 - Violations.
2.02.110 Amendment by addition of a new IBC Section 116 - Certificate of completion.
2.02.120 Amendment by addition of a new IBC Section 117 - Off-site improvements.
2.02.130 Amendment to IBC Section 403.12 - Stairway door operation.
2.02.140 Amendment to Table 503 - Allowable height and building areas.
2.02.150 Amendment to Section 504.2 - Automatic sprinkler system increase.
2.02.160 Amendment to Section 508.2 - Special provisions.
2.02.165 Amendment to IBC Section 903.2.10.1 by addition of a new Subsection 4 - Special amusement buildings.
2.02.170 Amendment to IBC Section 1019 by addition of a new Subsection 1019.1.9 - Re-entry requirements.
2.02.180 Amendment to IBC Section 1503.4 - Roof drainage.
2.02.190 Amendment to IBC Section 1608 - Snow loads.
2.02.200 Amendment to IBC Section 2405 by addition of a new Subsection 2405.6 - Location of sloped glazing and skylights.
2.02.210 Chapter 29 - Plumbing systems.
2901 Plumbing Code.
2902 General.

NO. 34808-0-II

IN THE COURT OF APPEALS

STATE OF WASHINGTON

DIVISION II

PAUL W. POST

Appellant

v

CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS, BUILDING AND LAND USE SERVICES DIVISION; RISK MANAGEMENT ALTERNATIVES, INC., and CHARLES SOLVERSON

Respondents

AFFIDAVIT OF SERVICE OF RESPONDENTS CITY OF TACOMA AND CHARLES SOLVERSON'S RESPONSE BRIEF

ELIZABETH A. PAULI, City Attorney

DEBRA E. CASPARIAN
Attorney for Respondents City of Tacoma and Charles Solverson

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Tacoma, Washington 98402
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Fax: (253) 591- 5755
WSB #26354

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

Molly D. Schmidt, being first duly sworn on oath, deposes and states:

I am a citizen of the United States over the age of 18 and competent to be a witness herein.

On the 16th day of November, 2006, I caused to be mailed, postage prepaid, a copy of *RESPONDENTS' RESPONSE BRIEF and this AFFIDAVIT OF MAILING* to:

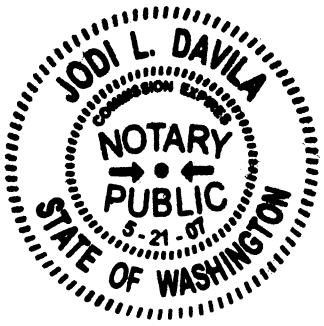
EVERETT HOLUM, P.S.
EVERETT HOLUM, #700
633 North Mildred Street, Suite G
Tacoma, WA 98406

Filed an original and one copy with:
The Court of Appeals
Division II
950 Broadway, #300
Tacoma, WA 98402

Molly D. Schmidt

Subscribed and sworn to before me this 16th day of

November, 2006.

Jodi L Davila

Printed name: JODI L DAVILA
NOTARY PUBLIC in and for the State,
of Washington, residing at Puyallup
My commission expires: 5-21-07