

FILE OF COUNCIL

No. \_\_\_\_\_ of 2014

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PRESENTED IN CITY COUNCIL \_\_\_\_\_, 2014  
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**AN ORDINANCE AMENDING CHAPTER 7 OF THE WILKES-BARRE CITY CODE  
OF ORDINANCES**

WHEREAS, it is the desire and intention of City Council to pass legislation within the City of Wilkes-Barre and amend Chapter 7 of the City of Wilkes-Barre Code of Ordinances in its entirety; and

WHEREAS, the City of Wilkes-Barre intends to create an Ordinance and establish rules and procedures which afford residents and property owners the appropriate and Constitutionally-mandated due process rights guaranteed by the United States Constitution; and

WHEREAS, nothing in this Ordinance or in any section is intended to abridge any rights of any citizen, person or entity; and

WHEREAS, the purposes of this Ordinance is to protect the health, safety and welfare of the residents, commuters, and visitors of and to the City of Wilkes-Barre, and to enhance the community by providing a clean and appropriate place to live and work; and

WHEREAS, no portion of this Ordinance, in whole or in part, is intended or designed to discourage or prohibit any person from contacting law enforcement and/or any entity regarding any safety issue, including, but not limited to, issues regarding domestic violence; and

WHEREAS, no portion of this Ordinance, in whole or in part, is intended to unfairly penalize any person who is a victim of domestic violence; and

WHEREAS, the City of Wilkes-Barre encourages and welcomes contact with the Wilkes-Barre City Police Department and any other City Office as this Ordinance is designed to enhance communication between and among the citizens, residents, and commuters of the City of Wilkes-Barre and between and among City departments to enhance the health, safety and welfare of the people of this City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wilkes-Barre, and it is hereby ordained by the authority of the same that:

SECTION 1. The entirety of Chapter 7 of the City of Wilkes-Barre Code of Ordinances is hereby amended as follows:

**ARTICLE I – IN GENERAL**

**Secs. 7-1 – 7-15 – Reserved**

**ARTICLE II. BUILDING REGULATIONS**

**Sec. 7-16. - Scope.**

- (a) *Enactment.* Be it ordained by the City Council, and it is hereby ordained by authority of the same, that the following divisions, sections and subsections providing for the establishment of the building inspection office, its organization, the qualifications and duties of its personnel, and providing for matters concerning, affecting or relating to construction, alteration, repair, removal, demolition, the equipment, use, occupancy, location and maintenance of buildings or structures erected or about to be erected and the lands appurtenant thereto, and providing for permits, fees and the licensing of various contractors, and providing for the establishment of a board of appeal, the appointment of its members, their terms of office, their powers and duties, and prescribing penalties for the violation of these building regulations are hereby enacted.
- (b) *Short title.* This article may be cited as "The Building Regulations of the City of Wilkes-Barre," hereinafter referred to as the "Building Regulations."
- (c) *The effective date.* The provisions of the building regulations and rules and regulations of the office of building inspection interpreting such provisions shall become effective as provided in the ordinance adopting the building regulations.
- (d) *The intent.* The building regulations are hereby declared to be remedial and shall be constructed to secure the beneficial interests and purposes thereof, which are public safety, health and welfare, by providing a system of specifications, regulations and inspections to ensure the structural safety and the incombustibility of buildings constructed, reconstructed, altered, enlarged, repaired or maintained within the city. In providing a system of specifications, regulations and inspections for the setting out, construction, alteration, repair, maintenance, occupation, sanitation, ventilation, heat, light and power facilities, air conditioning, sprinkler and refrigeration systems, water supply, toilet facilities, drainage, use and inspection of all buildings, parts of buildings, including the walls and foundations thereof, constructed, erected, altered, designed, maintained or used in whole or in part for human habitation or occupation, or for the conduct

of any and all business and commercial enterprises and for the sanitation and inspection of the land or lands appurtenant thereto, it is the intent and purpose to further protect the health, safety and welfare of the general public of the city.

- (e) Legislative. If any section, subsection, sentence, clause or phrase of the building regulations is for any reason declared to be invalid, such decision shall not affect the validity of the remaining portions herein. The city council hereby declares that it would have passed the remaining parts of the building regulations and the remaining sections, subsections, sentences, clauses or phrases irrespective of any one or more sections, subsections, sentences, clauses or phrases which have been ruled invalid.
- (f) Interchangeability. Words used in the present tense include the future; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular.
- (g) Terms defined in other codes. Where terms are not defined in this article and are defined in the articles pertaining to the building, electrical, plumbing or mechanical codes, such terms shall have the meanings ascribed to them as in those codes.
- (h) Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.
- (i) All new work to conform:
  - (1) It shall be unlawful to maintain, occupy or use a building or structure, or part thereof, that has been erected or altered in violation of the provisions of these building regulations.
  - (2) No building or structure shall be occupied unless it is in a safe and habitable condition as prescribed in these building regulations. Rainwater shall be so drained and conveyed therefrom as to prevent dampness in walls and ceilings.
  - (3) Nothing in these building regulations shall prohibit the raising or lowering of a building to meet a change of grade in the street on which it is located, provided that the building is not otherwise altered.
- (j) Buildings and structures affected:

- (1) The provisions of these building regulations apply to buildings or structures and their equipment and appurtenances on land or over water and to construction, paving or grading, including vaults, areas or street encroachments however placed, excepting, however, public streets.
- (2) These provisions shall also apply to municipal, county and state buildings as they do to private buildings, except as may be otherwise specifically provided for by statute or ordinance.
- (3) The provisions of these building regulations covering the maintenance of buildings shall apply to all buildings now existing or hereafter erected. All buildings shall be maintained in a safe condition and all devices or safeguards required by these building regulations at the time a building is erected, altered or repaired shall be maintained thereafter in good working order.

**Sec. 7-17. - Office of Building Inspection.**

(a) Organization:

- (1) There is hereby created and established an office of building inspection which shall be under the direction of the Mayor of the City of Wilkes-Barre and/or his/her designee.
- (2) The office of building inspection shall provide the following inspections:
  - a. Building
  - b. Plumbing
  - c. Electrical
  - d. Rental
  - e. Buyer notification
  - f. Additional inspections as deemed necessary by the administration or by the building code official with the approval of the administration.
- (3) The Office of Building Inspection shall also be known as the Office of Code Enforcement and shall be under the direction of the Director of Operations of the City of Wilkes-Barre.

(b) Qualifications for the Building Code Official. The Building Code Official shall be governed by the qualifications requirements of the Uniform Construction Code and the Department of Labor and Industry of the Commonwealth of Pennsylvania.

**Sec. 7-18. - Reserved.**

**Sec. 7-19. - Permits and inspections.**

- (a) Reserved:
- (b) Issuance of permits:
  - (1)—(6) Reserved.

(7) *Permits to be issued to licensed electricians, plumbers or contractors; exceptions.* All electrical, plumbing and general construction work performed under any permit shall be done by a licensed electrician, plumber or contractor, except, however, a person may perform electrical, plumbing and general construction work on a structure which he is the owner, (and provided that the structure he is working on is his primary residence,) and further provided that he does not employ or engage for compensation of any form any person or persons to assist him and provided further that he has first secured the necessary permits from the office of building inspection. All such work performed by the owner of a structure must conform to the same requirements governing licenses electricians, plumbers or contractors.

The purpose of this exception is to allow a property owner to work on his own property and get assistance from family and friends. It is also meant to prevent a property owner from securing a building permit and then hiring an unlicensed contractor to perform the work.

- (8) Expiration and revocation of permits:
  - a. Reserved.
  - b. Working without permits. Any person who shall perform any work in or about the structure without first securing a permit for such work shall be issued a stop work order and shall be liable for a fine of five hundred dollars (\$500.00) if paid within ten (10) days. If the fine is not paid or appealed within ten (10) days, the fine shall be increased to \$1,000.00.. Each day that such violation shall continue shall constitute a separate offense and shall be liable for a fine of not more than one thousand dollars (\$1,000.00).

1. Within ten (10) days of the issuance of the fine by the City of Wilkes-Barre, the offender may appeal to the Construction Appeals Board with payment of \$100. If the offender cannot afford to file the appeal, the offender must apply for *in forma pauperis* status through the Office of Code Enforcement. All provisions for appeals are outlined in the provisions of this Chapter relative to the appropriate appeals board, as well as under the appropriate provisions of the Uniform Construction Code of the Commonwealth of Pennsylvania as amended.

(c) Reserved:

(d) *Fees for permits.* The following fees shall be paid for all permits issued by the office of building inspection for construction, plumbing or mechanical, and electrical work, excluding the electrical work identified in subsection (e) below:

<i>Cost of work involved</i>	<i>Fee</i>
0 to \$2,499.99	\$55.00
2,500.00 to 4,999.99	110.00
5,000.00 to 7,499.99	165.00
7,500.00 to 9,999.99	220.00

For each one thousand dollars (\$1,000.00) or portion thereof of work involved over and above the sum of nine thousand nine hundred ninety-nine dollars and ninety-nine cents (\$9,999.99) an additional fee of two and one tenths (2.1) percent per one thousand dollars (\$1,000.00) of work shall be charged.

(All fees listed above will require an additional feeper permit to cover the Commonwealth of Pennsylvania's fee under the Uniform Construction Code.)

(e) Fees for electrical service inspections and wiring inspections:

(1) Electrical service inspections—new and repair:

Inspection	Fee
Up to 200 amps	\$90.00
Over 200 amps to 400 amps	120.00
Over 400 amps to 1,000 amps	138.00
Over 1,000 amps	169.00
Reinspection of existing service up to 200 amps for PPL hookup	69.00
Reinspection of existing service	106.00

over 200 amps for PPL hookup	
Service exceeding 1 meter for each additional meter	8.00 per meter

(2) Electrical wiring inspections for in-ground swimming pools:

Inspection	Fee
Private in-ground pool .....	\$90.00
Public in-ground pool .....	106.00

Any re-inspection necessary due to failure (e.g. rental, building, plumbing, electrical, HVAC, etc) will be assessed an additional fifty dollar (\$50.00) fee.

(f) Sewer tap and tie-in fees – In addition to the fees outlined below, the property owner(s) shall be responsible for any and all costs and fees, including construction costs, for any street/pave cuts, and other contractor invoices for such work performed from the main to the structure, as applicable for new construction. The fees for sewer taps and tie-ins are as follows:

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Description	Sewer Tap-in Fee	Tie-in Fee
Single-family dwelling (Existing)	\$500.00	\$315.00 (with existing lateral)
Single-family dwelling (Constructed)	625.00	\$375.00 (with constructed lateral)
Apartments, each unit (Existing)	375.00	\$125.00 (with existing lateral for each unit)
Apartments, each unit (Constructed)	315.00	\$625.00 (with constructed lateral for each unit)
Small stores and shops .....	315.00	\$250.00
Large department stores .....	1395.00	\$625.00
Large department stores with cafeteria/restaurant .....	3100.00	\$625.00
Restaurant .....	1550.00	625.00
Diner .....	930.00	625.00
Bar .....	930.00	625.00
Bar and restaurant .....	2480.00	625.00
Bus stations .....	2170.00	625.00
Meat processing plants .....	3720.00	625.00
Brewery or bottling .....	5580.00	625.00
Theaters .....	1550.00	625.00
Churches .....	775.00	625.00
Schools .....	\$150.00 for each water	650.00

	closet, urinal or shower	
Hotel, motel or boarding/rooming house .....	\$150.00 for each water closet or urinal	650.00
Hotel or motel with restaurant .....	\$150.00 for each water closet or urinal, plus 400.00	650.00
Laundromat or laundry .....	\$150.00 for each washer	650.00
Office building or factory .....	\$250.00 for each water closet or urinal.	650.00

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(g) Fees for all roof, floor and area drains:

Fees (per 1,000 Description .....sq. ft.)	
Roof drains for all buildings .....	\$200.00
Floor and area drains for all buildings .....	100.00

(h) Storm sewer tap-in fees:

Description	Tap-in Fees
Storm sewer tap-in for all buildings .....	\$620.00

(i) *Other provisions.* For any building or property using excessive amounts of water or drainage, the fee shall be set by resolution of the Wilkes-Barre City Council.

(j) **Plan Review Fees**                      The fees for Plan Review are set forth below:

- Plan review up to \$3,000,000 - 0.0013 X cost of building (\$250.00 minimum)
- Plan review \$3,000,000 to \$6,000,000 - \$3,900.00 plus 0.0005 X amount over \$3,000,000
- Plan review over \$6,000,000 - \$5,400.00 plus 0.0004 X amount over \$6,000,000
- Plan review for electrical - 25% of building fee
- Plan review for mechanical - 25% of building fee
- Plan review for plumbing - 25% of building fee
- Plan review for energy - 25% of building fee
- Plan review for accessibility - 25% of building fee

- Sprinkler review by number of heads - 1 to 100 = \$275.00

101 to 200 = 325.00

201 to 300 = \$350.00

301 to 400 = \$375.00

401 to 500 = \$425.00

501 and over = \$500.00 + \$0.33 per head

**Sec. 7-20. - Licenses.** Electrical License / Master Plumbing & Heating license / Master Plumber License / General Contractor License / Jobber License (hereinafter referred to as “trade” or “trade license”):

(a) Issuance of licenses:

(1) Requirements for Licenses of all disciplines:

a. Required for contractors. Every person engaged in the business of constructing, altering or repairing, demolishing buildings, except those persons who are constructing, altering, repairing or demolishing a building exclusively owned, used and occupied as a residence by themselves, as further defined in these building regulations, shall before engaging in such occupation obtain a license therefor from the office of building inspection after successful completion of an appropriate examination. Prior to the issuance of a permit the licensed contractor must submit the following documents to the office of building inspection:

1. A certificate of insurance, naming the City of Wilkes-Barre as certificate holder, establishing that such contractor is currently covered by a reputable insurance company acceptable to the office of building inspection and the City of Wilkes-Barre covering such contractor in the amount of not less than three hundred thousand dollars (\$300,000.00), being single limit or split limit for bodily injury and property damage. Such certificate shall be for continuous coverage. In the event that the insurance is canceled, the office of building inspection shall be notified in writing within thirty (30) working days by such insurance company;
2. A certificate of worker's compensation insurance, naming the City of Wilkes-Barre as certificate holder. In the event that a contractor is not obligated to maintain worker's compensation insurance

because he does not employ any individuals, he shall be required to file a contractor affidavit form with the office of building inspection, affirming that he is not obligated to maintain worker's compensation insurance; and

3. Their federal or state employer identification number.

A license shall not be transferable or assignable. Examinations for licenses shall be given a minimum of two (2) times each calendar year. Every person licensed under this article shall give immediate notice of any change in his home or business address.

- b. Renewal of license. All contractors' licenses shall be issued solely by the Building Code Official or his/her designee and shall be valid for the period from examination until the beginning of the next licensing year and renewed annually without re-examination. Prior to issuing a permit, a licensed contractor must submit the following documents to the office of building inspection:

1. A certificate of insurance, naming the City of Wilkes-Barre as certificate holder, establishing that such contractor is currently covered by a reputable insurance company acceptable to the office of building inspection and the City of Wilkes-Barre covering such contractor in the amount of not less than three hundred thousand dollars (\$300,000.00), being single limit or split limit for bodily injury and property damage. Such certificate shall be for continuous coverage. In the event that the insurance is canceled, the office of building inspection shall be notified in writing within thirty (30) working days by such insurance company;

2. A certificate of worker's compensation insurance, naming the City of Wilkes-Barre as certificate holder. In the event that a contractor is not obligated to maintain worker's compensation insurance because he does not employ any individuals, he shall be required to file a contractor affidavit form with the office of building inspection, affirming that he is not obligated to maintain worker's compensation insurance; and

3. Their federal or state employer identification number.

- c. Failure to renew license. The contractor will be required to pay, in addition to the normal license fee, a late charge of twenty-five dollars (\$25.00), made

payable to the City of Wilkes-Barre, within this forty-five-day late period. A contractor who has failed to renew his license within the forty-five-day late period will be given one (1) year from the date his license expired to renew his license; however, he will be required to pay, in addition to the normal license fee, a late charge of one hundred dollars (\$100.00), made payable to the city. After one (1) year, the license will be void and the contractor will be required to pay all fees for prior, unpaid years, together with applicable late fees.

d. Suspension of license. Any contractor's license issued to any person may be suspended by the building inspector if, after a thorough and proper investigation, it is determined that:

1. Such license was partially or wholly procured by or through nondisclosure, misstatement or misrepresentation; or
2. If a previously imposed penalty shall not have met with full compliance; or
3. The holder of such license has repeatedly and/or willfully violated any of the provisions of these building regulations. Repeated violations is hereby defined as a minimum of three (3) separate offenses within a period of five (5) years under this article for which the licensee or offender has either pleaded guilty or has been found guilty by a district justice or other court of competent jurisdiction.

The Building Code Official or his/her designee, prior to invoking a suspension of a license, shall first cause to be served upon such licensee by certified or registered mail a written notice of suspension or revocation of license, as the case may be, setting forth in specific terms and language the nature of the repeated violations, the times thereof and places of occurrence.

On a first offense, a contractor's license shall be suspended for a period of one to three (3) months. On a second offense, a contractor's license shall be suspended for a mandatory six (6) months. A third offense shall constitute an immediate revocation of a contractor's license.

Any person aggrieved by the suspension of such license may take an appeal to the board of appeal within ten (10) working days from the notice of license suspension. The board of appeal shall convene a hearing as prescribed in section 7-18.

If during the time of suspension a contractor's license is eligible for renewal, the contractor will be exempt from meeting the license renewal provisions as defined in subsection (1)b. above for the entire time period the license is suspended. Within thirty (30) working days from the date the suspension is removed by the building inspector, the license renewal provisions as defined in subsection (1)b. above shall apply. In the event that the contractor fails to renew his license within thirty (30) working days from the date the suspension was removed, the provisions outlined in subsection (1)c. above shall apply.

e. Revocation of license. Any contractor's license issued to any person may be immediately revoked by the building inspector if, after a thorough and proper investigation, it is determined that:

1. The holder of the license has willfully or negligently damaged or caused to be damaged a building or structure which has caused the building or structure to be in a dangerous or unsafe condition which poses a threat to the safety and welfare of its inhabitants; or
2. The holder of the license has repeatedly and/or willfully ignored stop work order(s) issued by the building inspector.

Any contractor's license which has been revoked by the building inspector shall not be reactivated.

Any person aggrieved by the revocation of such license may take an appeal to the board of appeal within ten (10) working days from the notice of license suspension or revocation. The board of appeal shall convene a hearing as prescribed in section 7-18.

f. Use of license by another prohibited. No person licensed under these provisions shall take out a permit in his or its own name for use by a person not licensed as required herein to perform any construction within the city under penalty of forfeiture of his or its license.

- g. Use of unlawful advertisement prohibited. It shall be unlawful for any person to use the sign of a contractor or any advertisement pertaining thereto or engaged in the business of constructing, altering or repairing buildings within the limits of the city.
- h. Temporary license. The Building Code Official or his/her designee may issue the appropriate temporary contractor's license to any person, provided the work to be performed shall be located on one property and shall not be of a continuous nature, upon presentation of the following:
1. A completed application for the appropriate temporary license, duly signed by the person requesting a temporary license;
  2. A certificate of insurance, naming the City of Wilkes-Barre as certificate holder, establishing the contractor is currently covered by a reputable insurance company acceptable to the Office of Building Inspection and the City of Wilkes-Barre covering the contractor in the amount of not less than three hundred thousand dollars (\$300,000.00), being single limit or split limit for bodily injury and property damage. The certificate shall be for continuous coverage. In the event that the insurance is canceled, the office of building inspection shall be notified in writing within thirty (30) working days by the insurance company;
  3. A certificate of worker's compensation insurance, naming the City of Wilkes-Barre as certificate holder. In the event that a contractor is not obligated to maintain worker's compensation insurance because he does not employ any individuals, he shall be required to file a contractor affidavit form with the office of building inspection, affirming that he is not obligated to maintain worker's compensation insurance;
  4. Their federal or state employer identification number; and
  5. Two (2) letters from architects or engineers he has been associated with, stating the length of time of their association, type of work performed and their recommendation; or
  6. Two (2) letters from the building inspector in a first, second or third class city that operates under a recognized building code where he

has worked, stating the length of time he has worked in their community, the type of work performed, the code the community currently operates under and their recommendation.

Contractors that comply with any of the above or a combination of the requirements listed above will be granted the applicable temporary license according to the qualifications set forth by their letters of recommendation.

In the event that the holder of the temporary license wishes to complete additional work on the same property not previously included on the original permit, the Building Code Official or his/her designee may issue a second permit.

The fee for a temporary, one-time contractor's license shall be the same as the permanent license fee referenced in section 7-21.

The temporary, one-time license shall be valid until such time as the construction, alteration or repair of the building or structure identified on the building permit is complete but for no more than one year. The Building Code Official or his/her designee may extend a temporary, one-time license beyond one year; however, the holder of the temporary, one-time license will be required to renew such license each year. The renewal fee for a temporary, one-time contractor's license shall be the same as the permanent license fee referenced in section 7-21.

In the event an employee of a company has already pulled a temporary license, the license may or may not be granted to a subsequent employee of the company at the discretion of the Building Code Official or his/her designee based on the nature of the work to be performed (i.e. whether it is the continuation of the same project, which may be permitted). If a new project is being commenced with the same company, the employee shall not be permitted to obtain a temporary license.

- i. Holdover. No holdover license is permitted.
- j. Journeyman electrical contractors who have failed to renew their license within the forty-five-day late period will be given one (1) year from the date his license expired to renew his license; however, he will be required to pay,

in addition to the normal license fee, a late charge of fifty dollars (\$50.00), made payable to the city. After one (1) year, the license will be void and the journeyman electrical contractor will be required to pay all fees for all prior, unpaid years, together with late fees in order to attain license status.

- k. Journeyman plumber contractors who have failed to renew their license within the forty-five-day late period will be given one (1) year from the date his license expired to renew his license; however, he will be required to pay, in addition to the normal license fee, a late charge of fifty dollars (\$50.00), made payable to the city. After one (1) year, the license will be void and the journeyman plumber contractor will be required to pay all fees for all prior, unpaid years, together with late fees, in order to attain license status.

(b) Specification and definition of licenses:

(1) Construction licenses:

***Blacktop and paving contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the blacktop and paving business.

***Demolition and excavation contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the demolition and excavation business.

***General contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to perform alterations and repairs along with new construction of buildings and commercial buildings in any amount.

***Jobbing contractor.*** (Including but not limited to Ceiling and Drywall Contractors and Overhead Door Contractors). Any person who possesses the necessary qualifications, training and technical knowledge to perform alterations and repairs on residential and light commercial buildings along with new construction of buildings up to or equal to a two (2) car garage or an addition on a home. Work is limited to an amount not to exceed seventy-five thousand dollars (\$75,000.00). Permits for the construction of a new home shall not be issued to a jobbing contractor.

***Mason contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the masonry and concrete business.

***Roofing and siding contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the business of installing, constructing and repairing of roofs and siding.

**Sign contractor.** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the business of constructing, altering and repairing of signs.

**Swimming pool contractor.** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the business of installing above ground and inground swimming pools.

(2) Electrical licenses:

**Master electrician.** Any person who possesses the necessary qualifications, training and technical knowledge to plan, lay out and supervise the installation of electrical wiring, apparatus or equipment for light, heat or power. Also, he shall be capable of doing such work according to plans and specifications furnished to him and in accordance with standard rules and regulations governing such work.

**Residential electrician.** Any person who possesses the necessary qualifications, training and technical knowledge to plan, lay out and supervise the installation of electrical wiring, apparatus or equipment for light, heat or power in residential buildings limited to a maximum of four (4) dwelling units under one roof. Work may not be performed in nonresidential buildings nor in mixed-use buildings where a single electrical service is utilized for the entire building. Residential electricians are restricted to the installation of 400-amp single-phase services or less for a maximum of four (4) dwelling units under one roof and in buildings of not more than three (3) stories.

**Journeyman electrician.** Any person who possesses the necessary qualifications, training and technical knowledge to install electric wiring apparatus or equipment for light, heat or power. Also, he shall be capable of doing such work according to plans and specifications furnished to him and in accordance with standard rules and regulations governing such work.

(3) Plumbing and mechanical licenses:

**Master plumber.** Any person who possesses the necessary qualifications, training and technical knowledge to plan, lay out and supervise the installation of plumbing apparatus and equipment.

**Journeyman plumber.** Any person who possesses the necessary qualifications, training and technical knowledge to install plumbing apparatus or equipment. Also,

he shall be capable to doing such work according to plans and specifications furnished to him and in accordance with standard rules and regulations governing such work.

***Heating (HVAC) and air conditioning contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to install heating and air conditioning apparatus or equipment. Also, he shall be capable to doing such work according to plans and specifications furnished to him and in accordance with standard rules and regulations governing such work.

***Sprinkler contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to install sprinkler equipment and systems. Also, he shall be capable to doing such work according to plans and specifications furnished to him and in accordance with standard rules and regulations governing such work.

***Refrigeration contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to install refrigeration equipment.

***Sewer service contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the sewer service business.

***Storage tanks and pump contractor.*** Any person who possesses the necessary qualifications, training and technical knowledge to engage in the business of installing, construction and repairing storage tanks and pumps.

(c) Qualifications to secure a license without examination:

(1) Specialty Licenses:

a. To secure a license in one of the construction trades listed below, no written examination is required; however, the applicant must meet, to the satisfaction of the Building Code Official or his/her designee, the criteria listed in subsection (1)b. and c. below:

1. Ceilings and drywall.
2. Drilling.
3. Overhead door.
4. Ornamental steel.
5. Plaster and stucco.
6. Sandblast, steam cleaning and waterproofing.
7. Telecommunications.

- b. Criteria. To secure one of the licenses listed above, a person must complete a "Request for License Application." The following information must accompany this application:
1. Evidence of a minimum of two (2) years of practical experience in the trade in which he is requesting a license;
  2. A certificate of insurance, naming the City of Wilkes-Barre as certificate holder, establishing that the contractor is currently covered by a reputable insurance company acceptable to the office of building inspection and the City of Wilkes-Barre covering the contractor in the amount of not less than three hundred thousand dollars (\$300,000.00), being single limit or split limit for bodily injury and property damage. The certificate shall be for continuous coverage. In the event that the insurance is canceled, the office of building inspection shall be notified in writing within thirty (30) days by the insurance company;
  3. A certificate of worker's compensation insurance, naming the City of Wilkes-Barre as certificate holder. In the event that a contractor is not obligated to maintain worker's compensation insurance because he does not employ any individuals, he shall be required to file a contractor affidavit form with the office of building inspection, affirming that he is not obligated to maintain worker's compensation insurance;
  4. Their federal or state employer identification number; and
  5. Two (2) letters of recommendation from one of the persons listed below. The letter of recommendation must indicate the number of years associated with the applicant, type of work performed, and their recommendation:
    - i. Previous employer in the trade in which the applicant is requesting a license;
    - ii. Architect or engineer who has been associated with the applicant; or

- iii. Building inspector from a first, second or third class city that operates under a recognized building code where the applicant has a current license to perform the work for which he is requesting a license from the City of Wilkes-Barre.
  - c. Exceptions. To secure a license in the asbestos removal or elevator and wheelchair lift trades, a person must also provide evidence of a valid Commonwealth of Pennsylvania certification.
- (d) Qualifications to secure a license requiring an examination:
  - (1) Construction license. To secure a license in one of the following construction trades, a person must meet the criteria established for the type of license listed below and must successfully pass a written examination prescribed by the contractor examination board of the city:
    - a. Blacktop and paving. A blacktop and paving contractor shall be a person who can provide evidence of a minimum of two (2) years of practical experience in the blacktop and paving trade.
    - b. Demolition and excavation. A demolition and excavation contractor shall be a person who can provide evidence of a minimum of two (2) years of practical experience in the demolition and excavation trade.
    - c. General. A general contractor shall be a person who has held a jobbing contractor's license with the city for a period of four (4) years.
    - d. Jobbing. (including, but not limited to roofing and siding) A jobbing contractor shall be a person who can provide evidence of a minimum of two (2) years of practical experience in the building construction trade.
    - e. Mason. A master mason contractor shall be a person who has held a probationary mason's license with the city for a period of two (2) years.
    - f. Structural steel. A structural steel contractor shall be a person who can provide evidence of a minimum of two (2) years of practical experience in the structural steel trade.

- g. Swimming pool (aboveground and in-ground). A swimming pool (aboveground and in-ground) contractor shall be a person who can provide evidence of a minimum of two (2) years of practical experience in the installation of above and in-ground swimming pools.
- (2) Plumbing and mechanical license. To secure a license in one of the following plumbing or mechanical trades, a person must meet the criteria established for the type of license listed below and must successfully pass a written examination prescribed by the contractor examination board of the city:
- a. Journeyman plumber. A journeyman plumber shall be a person who has passed a valid examination.
  - b. Master plumber. A master plumber shall be a person who has passed a valid examination.
  - c. Heating (HVAC) and air conditioning. A heating and air conditioning contractor shall be a person who has passed a valid examination.
- (3) Electrical licenses. To secure a license in one of the following electrical trades, a person must meet the criteria established for the type of license listed below and must successfully pass a written examination prescribed by the contractor examination board of the city:
- a. Journeyman electrician. A journeyman electrician shall be a person who can provide evidence of a minimum of four (4) years of practical experience in the electrical trade.
  - b. Master electrician. A master electrician shall be a person who has passed a valid examination.
  - c. Residential electrician. A residential electrician shall be a person who has passed a valid examination.
- (e) License which will no longer be provided by the city:
- (1) Contractor licenses:
- a. Jobbing license required. The following licenses previously issued by the city will no longer be issued after the effective date of the enactment of this

article. Any person wishing to do business within the trades listed below will be hereafter required to secure a jobbing license:

1. Modular units.
2. Replacement windows.
3. Building movers.

(f) Working in the city without a license. In the event that a person is working in the city without a license or with an expired license (one that is not renewed) shall be issued a stop-work order and shall be liable for the following fines:

First offense: Five hundred dollars (\$500.00)

Second offense within one (1) year of first offense: One thousand dollars (\$1,000.00).

Third offense within one (1) year of second offense: One thousand dollars (\$1,000.00) and a suspension of the right to work within the City of Wilkes-Barre for one (1) year commencing with the payment of the one thousand dollar (\$1,000.00) fine for the third offense.

Said fines shall be applicable to the contractor and all subcontractors working on the same job.

**Sec. 7-21. - License, examination and holdover fees.**

The following fees shall be charged for the examination and licensing, including holdovers, of all construction, electrical, plumbing and mechanical contractors:

Licensee	Examination Fee	License Fee	Holdover Fee
Contractors:			
Blacktop and paving .....	150.00	200.00	80.00

Demolition and excavation .....	150.00	200.00	80.00
General .....	150.00	200.00	80.00
Jobbing .....	150.00	200.00	80.00
Mason .....	150.00	200.00	80.00
Swimming pool (above and in-ground) .....	150.00	200.00	80.00
Specialty License	150.00	200.00	80.00
Electricians:			
Journeyman electrician .....	50.00	25.00	10.00
Master electrician .....	150.00	200.00	80.00
Residential electrician .....	150.00	200.00	80.00
Plumbers/mechanical contractors:			
Journeyman plumber	150.00	25.00	10.00
Master plumber .....	150.00	200.00*	80.00*
HVAC and air conditioning .....	150.00	200.00*	80.00*
Sprinkler .....	N/A	200.00	80.00
Sewer service .....	N/A	200.00	80.00
Tanks and pumps .....	N/A	200.00	80.00

\* In the instance that a master plumbing license is being sought simultaneously with a HVAC and air conditioning license, the total fee will be \$200.00. If they are not properly secured at the same time, the total amount will be \$200.00 per license.

**Sec. 7-22. - Examination requirements.**

- (a) All examinations for all disciplines shall be administered by the City of Wilkes-Barre, in consultation with the director of operations, the administration and the building code official. The City of Wilkes-Barre shall require testing for all disciplines, including, but not limited to, electrician, plumber, and contractors.

- (b) The examinations for each discipline shall be provided by a reputable company, such as Experior, and shall form the basis of the testing standards for the City of Wilkes-Barre. The said testing shall be administered at City Hall, or such other place designated by the administration, by the designated city agent(s).

**Sec. 7-23. - Alterations and repairs to existing buildings.**

Except as provided in this section, existing buildings when altered or repaired as herein specified shall be made to conform to the full requirements of these building regulations for new buildings:

- (1) *Damages exceeding fifty (50) percent.* If the building is damaged by fire or any other cause to an extent in excess of fifty (50) percent of the physical value of the building before the damage was incurred [sic]
- (2) *Increase in size.* If the building is increased in floor area or number of stories, the entire building shall be made to conform with the requirements of these building regulations in respect to means of egress, fire safety, light and ventilation.
- (3) *Part change in use.* If a portion of the building is changed in occupancy or to a new use group and that portion is separated from the remainder of the building with the required vertical and horizontal fire divisions complying with the fire grading provisions of the Uniform Construction Code, then the construction involved in the change shall be made to conform to the requirements for the new use and occupancy and the existing portion shall be made to comply with the exit requirements of the Uniform Construction Code.
- (4) *Physical value.* In applying the provisions of this section, the physical value of the building shall be determined by the building inspector based on current replacement costs, labor and materials included.

**Sec. 7-24. - Change in existing use.**

It shall be unlawful to make any change in the use or occupancy of any structure which would subject it to any special provisions of these building regulations without approval of the building inspector and his certification that such structure meets the intent of the provisions of law governing building construction for the proposed new use and occupancy and that such change does not result in any greater hazard to public safety or welfare.

## Sec. 7-25. - Unsafe buildings.

- (a) Removal or repair of buildings. Whenever any building, structure or part thereof or appurtenances thereto shall have been declared dangerous or unsafe by the building inspector or his designee or the fire inspector, the building shall, unless made safe and so certified by the building inspector, be demolished, taken down or removed.
- (b) Notice of unsafe buildings:
  - (1) Upon receipt of information that a building or structure is dangerous or unsafe, the building inspector shall make, or cause to be made, an inspection, and if it is determined that a dangerous or unsafe condition exists, the building inspector shall serve or cause to be served upon the owner or some one of the owners, executors, administrators, agents, lessees or other person who may have a vested or contingent interest in the building a written notice describing the unsafe or dangerous condition and ordering the same to be made safe and secure or removed within five (5) working days after notice has been issued relative to the hazardous condition, as may be deemed necessary by the building inspector.
  - (2) If the person to whom such notice and order is addressed cannot be found after diligent search, then such notice and order shall be sent by registered mail to the last known address of such person and a copy of such notice shall be posted in a conspicuous place on the premises to which it relates. Such mailing and posting shall be deemed adequate service.
- (c) Disregard of notice. If the person served with a notice or order to remove or repair an unsafe building or structure should fail within the time frame specified by the building inspector to comply with the requirements thereof, the building inspector shall advise the city solicitor or the proper prosecuting authority of all the facts in the case, and shall institute an appropriate action in the courts to compel a compliance.
- (d) Emergency work. In case there shall be, in the opinion of the building inspector's office, actual and immediate danger of failure or collapse of a building or structure or any part thereof so as to endanger life or property, the building inspector shall cause the necessary work to be done to render the building or structure, or part thereof, temporarily safe, whether the procedure described in this section has been instituted or not.
- (e) Vacating buildings and closing streets. When a building or structure is in an unsafe condition so that life is endangered thereby, the building inspector shall order and require the occupants to vacate the same forthwith. The building inspector, when necessary for the public safety,

shall temporarily close sidewalks, streets, buildings, structures and places adjacent to such building or structure and prohibit the same from being used.

- (f) Labor and materials. For the purposes of this section, the building inspector, when authorized by the mayor, the mayor's designee or Wilkes-Barre City Council, whichever is deemed appropriate, may employ such labor and purchase such materials as may be necessary. Any costs incurred shall be paid out of the city treasury on certification of the building inspector.
- (g) Recovery of costs. The city attorney or other prosecuting authority shall institute proper actions against the owner of premises for the recovery of costs incurred by the building inspector in the performance of emergency work.
- (h) Coverage by UCC. Anything which is not covered and any authority not specifically granted herein shall be governed by the Pennsylvania Uniform Construction Code as amended.

#### **Sec. 7-26. - Violations.**

- (a) Notices.
  - (1) Whenever the building, plumbing and/or electrical inspector is satisfied that a building or structure, or any work in connection therewith, the erection, construction or alteration, execution of which is regulated, permitted or forbidden by these building regulations, is being erected, constructed or altered in violation of the provisions or requirements of these building regulations or in violation of a detailed statement or plan submitted and approved thereunder, the inspector shall serve a written notice or order upon the person responsible therefor directing discontinuance of such illegal action and the remedying of the condition that is in violation of the provisions or requirements of these building regulations.
  - (2) In case such notice or order is not promptly complied with, the building, plumbing and/or electrical inspector shall request the city attorney or other proper prosecuting authority to institute an appropriate action or proceeding at law or in equity to restrain, correct or remove such violation, or the execution of work thereon, or to restrain or correct the erection or alteration of, or to require the removal of, or to prevent the occupation or use of the building or structure erected, constructed or altered, in violation of, or not in compliance with the provisions of these building regulations or with respect to which the requirements thereof, or of any order or direction made pursuant to provisions contained therein, shall not have been complied with.

- (b) Stopping work. Whenever in the opinion of the building, plumbing and/or electrical inspectors that the defective, illegal or unauthorized work taking place in violation of any provision or requirement of these building regulations, including, but not limited to, failure to secure a building permit and/or contractor's license to perform work in the City of Wilkes-Barre, the appropriate inspector shall order all work in connection therewith to immediately stop. The stop work order shall be in writing and shall be given to the owner of the property involved or to the owner's agent or to the person doing the work and shall state the conditions under which the work will be permitted to resume.
- (c) Penalties.
- (1) Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform by the building, plumbing and/or electrical inspector to remove a violation or unsafe condition, shall be liable to a fine of not more than one thousand dollars (\$1,000.00) for each offense. Each day that the violation or unsafe condition shall continue shall constitute a separate offense and shall be liable to a fine of not more than one thousand dollars (\$1,000.00).
- (2) The owner of a building, structure or premises where anything in violation of these building regulations shall be placed or shall exist and an architect, builder, contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of such violation shall each be guilty of a separate offense and upon conviction thereof shall be liable to a fine of not more than one thousand dollars (\$1,000.00) for each offense. Each day that the violation or unsafe condition shall continue shall constitute a separate offense and shall be liable to a fine of not more than one thousand dollars (\$1,000.00).
- (d) Construction Appeals Board. The Construction Appeals Board shall be comprised of the same members as the Uniform Construction Code Appeals Board, as set forth in Section 7-279 of this Code. This Board shall address appeals related to any construction matter, licensing issue or any construction code violation issue, as well as the violation of any section of this Code not under the jurisdiction of another appeals board. All appeals must be filed within ten (10) days of the issuance of any notice, denial and/or fine. The forms for appeal are available on the City's website and/or in the Office of Code Enforcement. The cost for an appeal is \$100.00 which shall be refunded in its entirety if, and only if, the Board rules in favor of the appellant on all counts. In the event that an appellant cannot afford the appeal fee, the appellant can apply for *in forma pauperis* status and the Building Code Official, together with the Office of City Attorney shall make a determination as to the financial viability of the appellant to make payment. It shall be presumed for purposes of this Code that the appellant is able to make payment. Failure to file within the ten (10) day period, shall

cause the right of appeal to be waived. In the event the tenth (10<sup>th</sup>) day ends on a weekend or a legal holiday, the appeal date is extended to the next working day until 4:30 PM.

- (e) Abatement. The imposition of the penalties herein prescribed shall not preclude the city attorney from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation, or to prevent the occupancy of a building, structure or premises, or to prevent an illegal act, conduct, business or use in or about any premises.
- (f) Coverage by UCC. Anything which is not covered and any authority not specifically granted herein shall be governed by the Pennsylvania Uniform Construction Code as amended.

### **Sec. 7-27. - Demolition and excavation.**

- (a) Documentation prior to issuance of a permit. Prior to the issuance of a building permit, a person engaged in the demolition and excavation trade shall provide to the building inspection office:
  - (1) Evidence from the gas, water and electric utility companies that the utility lines have been disconnected.
  - (2) The name and address of the licensed and authorized landfill that will be used to dispose of the demolition materials.
- (b) Validity. All residential demolition permits are valid for thirty (30) days from the date of issuance, unless extended by the Building Code Official in writing.
- (c) Safeguards. During demolition, the contractor shall provide adequate safeguards for the protection of the public, workmen on the site and surrounding properties.
- (d) Work restrictions. During demolition, the following restrictions shall apply:
  - (1) No work shall be performed between the hours of 6:00 p.m. and 7:00 a.m., prevailing time, Sunday through Saturday.
  - (2) All foundations, basement walls, floor slabs and footers shall be removed. When basement walls and basement partitions are used as backfill, it shall be spread out over the site in an even layer when incorporated with finer material as not to leave any voids. No masonry material larger than six (6) inches through its largest

dimension or more than twelve (12) inches long will be permitted in the backfill on the demolition site.

- (3) The backfill for each building shall consist of clean earth, free from any demolition debris. The top six (6) inches of backfill shall consist of clean earth, free from organic material, paper, glass, wood or metal. The backfill shall be brought up to the original grade of the ground adjacent to the structure and any open lot. All operations in connection with the grading of the backfill shall be performed and completed in such a manner as to insure proper drainage.
- (4) The contractor shall prevent or control all dust which may result from any demolition operation by the use of water, including, if necessary, the use of booster pumps adequate to supply water to the point of origin of the dust to the satisfaction of the building inspector.
- (5) Burning of any material whatsoever on the demolition site is prohibited.
- (e) Final inspection. It shall be the duty of the building inspector to make or cause to be made a final inspection and examination of the demolition site. The owner or contractor shall notify the building inspector when the demolition site is ready for such inspection.
- (f) Compliance with municipal, state and federal requirements. It shall be the responsibility of the contractor to ensure that the work is done in accordance with all municipal, state and federal rules and regulations, codes and laws, as may govern such operations.

**Secs. 7-28—7-30. - Reserved.**

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## **DIVISION 2. BUILDING CODE**

### **Sec. 7-31. - Uniform Construction Code administration and enforcement.**

The City of Wilkes-Barre hereby elects to administer and enforce the provisions of the Pennsylvania Construction Code Act, Act 45 of 1999, 35 P.S. §§ 7210.101-7210.1103 as amended from time to time, and its regulations.

The Uniform Construction Code, contained in 34 Pa. Code, Chapters 401-405, as amended from time to time, is hereby adopted and incorporated herein by reference as the municipal building code of the City of Wilkes-Barre.

Administration and enforcement of the Code within the City of Wilkes-Barre shall be undertaken in any of the following ways as determined by governing body of the City of Wilkes-Barre from time to time by resolution:

- (1)  
By designation of an employee of the City of Wilkes-Barre to serve as the municipal code official to act on behalf of the City of Wilkes-Barre.
- (2)  
By the retention of one (1) or more construction code officials or third party agencies to act on behalf of the City of Wilkes-Barre;
- (3)  
By agreement with one (1) or more other municipalities for the joint administration and enforcement of this Act through an intermunicipal agreement;
- (4)  
By entering into a contract with another municipality for the administration and enforcement of this Act on behalf of the City of Wilkes-Barre;
- (5)  
By entering into an agreement with the Pennsylvania Department of Labor and Industry for plan review, inspections and enforcement of structures other than one-family or two-family dwelling units and utility and miscellaneous structures.

A Board of Appeals shall be established by resolution of the governing body of the City of Wilkes-Barre in conformity with the requirements of the relevant provisions of the Code, as amended from time to time, and for the purpose set forth therein, If at any time enforcement and administration is undertaken jointly with one (1) or more other municipalities, said board of appeals shall be established by joint action of participating municipalities.

All building code ordinances or portions of ordinances which were adopted by this City of Wilkes-Barre on or before the date of this Ordinance, are hereby superseded by this Ordinance.

All relevant ordinances, regulations and policies of the City of Wilkes-Barre not governed by the Code shall remain in full force and effect.

Fees assessable by the City of Wilkes-Barre for the administration and enforcement undertaken pursuant to this section and the Code shall be established by the governing body by resolution from time to time.

If any section, subsection, sentence, or clause of this section is held, for any reason, to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this section.

All other ordinances or parts thereof inconsistent herewith, be and the same are hereby repealed.

**Sec. 7-32. - Reserved.**

**Sec. 7-33. - Amendments.**

The following sections are in addition to the Pennsylvania Construction Code, as follows:

(a) Section 2.0. Depth of footings.

Frost protection: Except where erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than one hundred (100) square feet (9.30 m<sup>2</sup>) in area or ten (10) feet (3,048 mm) in height shall extend a minimum of three (3) feet below the grade line and spread footings of adequate size shall be provided where necessary to distribute properly the load within the allowable loadbearing value of the soil. Alternatively, such structures shall be supported on piles where solid earth or rock is not available. Footings shall not bear on frozen soils unless such frozen condition is of a permanent character.

(b) Wood-burning boilers are prohibited for use and/or installation in the City of Wilkes-Barre.

**Sec. 7-34. - Penalty for violation of Pennsylvania Uniform Construction Code or any City Code under this section not specifically defined.**

A violation of the Pennsylvania Uniform Construction Code or any City Code under this section not specifically defined, shall carry with it a penalty not exceeding one thousand dollars (\$1,000.00) per violation and each day the violation continues to exist shall be considered a separate violation subject to this penalty. In addition to the penalty provided for herein, any person violating the building code adopted above is subject to a term of imprisonment not to exceed ninety (90) days.

**Secs. 7-35—7-40. - Reserved.**

**DIVISION 3. RESERVED**

**DIVISION 4. RESERVED**

**DIVISION 5. RESERVED**

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**ARTICLE III. HOUSING CODE**

**DIVISION 1. -GENERALLY**

**Sec. 7-75. - Short title.**

The short title of this article shall be the "City Housing Code."

**Sec. 7-76. - Purpose.**

The purpose of this article is to protect the health, safety and welfare in buildings used for dwelling purposes as hereinafter provided by:

- (1) Establishing minimum standards for basic equipment and facilities for light, ventilation, space heating and sanitation; for safety from fire, for space, use and location; for safe and sanitary maintenance; for cooking equipment in all dwelling and multifamily dwellings now in existence;
- (2) Fixing the responsibilities of owners, operators and occupants of dwellings and multifamily dwellings;
- (3) Providing for administration, enforcement and penalties.

**Sec. 7-77. - Definitions.**

- (a) Where terms are not defined in this section and are defined in the basic codes of the city they shall have the meanings ascribed to them in the basic codes of such other city codes as applicable.

(b) Where terms are not defined under the provisions of the basic construction codes they shall have ascribed to them their ordinarily accepted meanings or such as the context herein imply.

(c) The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

**Agent** means a person authorized by another to act for him, one entrusted with another's business.

**Agreement of sale** means a contract to be performed in the future and if fulfilled, results in a sale; it is preliminary to sale and is not a sale.

**Alter or alteration** means any change or modification in construction or occupancy of a building or use of land.

**Approved** as applied to a material, device or method of construction shall mean approved by the enforcement officer under the provisions of this article, or approved by other authority designated by law to give approval in the matter in question.

**Basement** means the portion of the building partly underground, having half or more than half of its clear height above the average grade of the adjoining ground.

**Basic construction code** means the basic construction code officially adopted by the City Council, or such other code as may be officially designated by the city council for the regulation of construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of buildings and structures.

**Boardinghouse:** A structure or portion thereof which contains rooming units which are rented or leased, with the occupants of such units being nontransient, and utilizing such location as a legal place of residence. The term "boardinghouse" shall specifically exclude the following:

- (1) Dwelling;
- (2) Dwelling unit;
- (3) Dormitory;
- (4) Hotel;
- (5) Motel; and
- (6) Bed and breakfast facility.

**Cellar** means the portion of the building partly underground, having half or more than half of its clear height below the average grade of the adjoining ground.

**Certificate of occupancy** means a statement form provided by the Building Code Official and/or his/her designee which states the dwelling has sufficiently complied with the provisions and regulations of the housing and zoning ordinances of the city.

**Dwelling** shall mean any house or building or portion thereof which is used or intended to be used in whole or in part as a home, residence, or sleeping or living place of one or more human beings, either permanently or transiently; and includes any building that could be or would be intended to be used for such purposes except for its state of disrepair.

**Multi-family apartment house** means a building containing more than two (2) dwelling units.

**Dormitory** means a building arranged or used for lodging six (6) but not more than twenty (20) individuals and having common toilet and bathroom facilities.

**Dwelling unit**: One or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate bathroom and toilet facilities and separate cooking facilities for exclusive use by the family residing therein.

**Enforcement officer** shall mean the official designated herein or otherwise charged with the responsibilities of administering this article, or his authorized representatives.

**Exterior property areas** means the open space on the premises and adjoining property under the control of owners or operators of such premises.

**Extermination** means the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poison spraying, fumigating, trapping, or by any approved pest elimination methods.

**Family**: One or more persons occupying a dwelling unit and living together as a single nonprofit housekeeping unit. Foster children placed into the care and custody of a family shall be deemed to be a member of the family. A group in excess of four (4) individuals who are not related by blood, marriage or legal adoption shall not be deemed to constitute a family.

**Floor area** shall mean the total area of all habitable space in a building or structure.

**Garbage** means the animal and vegetable waste resulting from handling, preparation, cooking and consumption of food.

**Group residence**: A dwelling unit which is shared under congregate living arrangements by more than four (4) persons who are residents of the dwelling unit by virtue of their need to receive supervised services limited to health, social and/or rehabilitative services provided by a person or persons or their licensed or certified agents, a governmental agency or their licensed or certified agents, a responsible corporation or their licensed or certified agents, a partnership or their licensed or certified agents or any other legal entity. Such services shall be provided in a family-like environment to persons who are in need of supervision and/or specialized services in a residential setting.

The following shall not be deemed to constitute a group residence:

- (1) A boardinghome and/or personal care boardinghome.
- (2) A facility providing shelter and/or rehabilitative care or treatment of persons for alcoholism and/or an addiction to a controlled substance.
- (3) A facility for persons released from or under the jurisdiction of a governmental bureau of corrections or similar institution.

**Habitable room** means a room or enclosed floor space arranged for living, eating and sleeping purposes (not including bathrooms, water closet compartments, laundries, pantries, foyers, hallways and other accessory floor spaces).

**Infestation** means the presence, within or contiguous to a dwelling unit, multi-family dwelling unit, rooming house, rooming unit, or premises, of insects, rodents, vermin or other pests.

**Nonconforming use** means a use, whether of land or a structure, which does not comply with the applicable use provisions of the zoning ordinance, or in an amendment to such, where such use was lawfully in existence prior to the enactment of the zoning ordinance or such amendment.

**Occupant** means any person over one year of age (including owner or operator) living and sleeping in a dwelling unit or having actual possession of said dwelling unit or rooming unit.

**Openable area** means that part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

**Operator** means any person who has charge, care or control of a building or part thereof, in which dwelling units or rooming units are let or offered for occupancy.

**Owner** shall mean any person who, alone or jointly or severally with others:

- a. Shall have legal or equitable title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- b. Shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this ordinance, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

**Plumbing or plumbing fixtures** means water heating facilities, water pipes, gas pipes, garbage and disposal units, waste lavatories, bathtubs, shower baths, installed clothes washing machines or other similar

equipment, catch basins, drains, vents or other similarly supplied fixtures, together with all connections to water, gas, sewer or vent lines.

**Premises** means a lot, or parcel of land including the buildings or structure thereon.

**Property Manager** means an individual or company which is licensed by the Commonwealth of Pennsylvania to be a property manager, and who is a licensed real estate broker. A Property Manager must meet the qualifications and license requirements of the Commonwealth of Pennsylvania, and applicable exceptions as set forth under state law.

**Public area** means an occupied open space adjoining a building and on the same property, that is permanently maintained accessible to the bureau of fire and free of all encumbrances that might interfere with its use by the bureau of fire.

**Purchaser** means one who acquires real property in any other mode than by descent.

**Purchaser acknowledgement form** means form provided by the Building Code Official and/or his/her designee that offers the purchaser the right to review the Building Inspection Report of the dwelling offered for sale.

**Repair** means the replacement of existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the building or work that would affect or change required exit facilities, a vital element of an elevator, plumbing, gas piping, wiring, or heating installation. The term "repair" or "repairs," shall not apply to any change of construction.

**Required** means required by some provision of this article.

**Roominghouse**: A structure or portion thereof which contains rooming units which are rented or leased, with the occupants of such units being nontransient and utilizing such location as a legal place of residence. The term "roominghouse" shall specifically exclude the following:

- (1) Dwelling;
- (2) Dwelling unit;
- (3) Dormitory;
- (4) Hotel;
- (5) Motel; and
- (6) Bed and breakfast facility.

**Rooming unit**: A room or rooms in a roominghouse and/or boardinghouse forming a single habitable unit intended for living quarters but lacking separate bathroom and toilet facilities and/or cooking facilities for exclusive use by the occupant or occupants of the rooming unit.

**Rubbish** means combustible and noncombustible waste materials except garbage, and the term shall include the residue from burning wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, and dust and other similar material.

**Sale** means a contract between two (2) parties called respectively the seller and buyer (or purchaser) by which the former in consideration of the payment or promise of payment of a certain price of money, transfers to the latter the title and the possession of property.

**Supplied** means installed, furnished or provided by the owner or operator.

**Temporary housing** shall mean any tent, trailer or other structure used for human shelter which is designated to be transportable and which is not attached to the ground, or to another structure or to any utility system on the same premises for more than thirty (30) consecutive days.

**Transfer** means to convey possession or control of property from one party to another.

**Ventilation** shall mean the process of supplying and removing air by natural or mechanical means to or from any space.

Mechanical: Ventilation by power-driven vehicles.

Natural: Ventilation by opening to outer air through windows, skylights, doors, louvers, or stacks without wind-driven devices.

Adequate mechanical ventilation for bathrooms and water closet compartments shall mean a ventilation system providing at least six (6) air changes per hour which is either operated continuously or automatically energized when the rooms are in use and is approved by the chief enforcement officer.

Adequate mechanical ventilation for habitable rooms shall mean a ventilation system providing at least two (2) air changes per hour when in operation and is approved by the chief enforcement officer.

**Yard** means an open unoccupied space on the same lot with a building extending along the entire length of a street or rear or interior lot line.

Whenever the words "multi-family dwelling," "residence building," "dwelling unit," "rooming house," "rooming unit," or "premises" are used in this article, they shall be construed as though they were followed by the words, "or any part thereof."

**Sec. 7-78. - Matters covered.**

The provisions of this article shall apply to all structures used for human habitation, which are now, or may become in the future, substandard with respect to structure, protection against fire hazard, equipment or maintenance, inadequate provisions for light and air, lack of proper heating, insanitary conditions and overcrowding or otherwise may be deemed to constitute a menace to the safety, health or welfare of their occupants except as provided in section 7-80(e). The existence of such conditions, factors or characteristics adversely affect public safety, health and welfare and lead to the continuation, extension and aggravation of urban blight. Provision for adequate protection of the public, therefore, requires the establishment and enforcement of these minimum housing standards.

**Sec. 7-79. - Travel trailers and mobile homes.**

All mobile homes intended for occupancy within the city shall comply with the standards approved by the United States of America Standards Institute A 119.1—1969 and NFPA 501 B-1968, or shall provide satisfactory evidence that the structural, electrical, plumbing and heating elements of such homes meet or exceed the minimum requirements of the building, electrical, plumbing and housing codes of the city. The area, grounds or parcels on which these units are located, insofar as they are applicable thereto and not in conflict with, shall comply with the requirement of this article and the zoning ordinance of the city.

Division 3 shall apply to the occupants and owners of mobile units and mobile home courts.

**Sec. 7-80. - Application.**

(a)

Generally. Every portion of a building or premise used for or intended to be used for residential purposes shall comply with the provisions of this article, irrespective of when such building shall have been constructed, altered or repaired, except as hereinafter provided.

(b)

Application of basic construction codes. Any alterations to buildings, or changes of use therein, which may be caused directly or indirectly by the enforcement of this article shall be done in accordance with applicable sections of the basic construction codes of the city.

(c)

Conflict with other ordinances. Except as provided in subsection (a), in any case where a provision of this article is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the city existing on the effective date of this article, the provision which establishes the higher standard for the promotion and protection of the safety and health of the people shall prevail. In any case where a provision of this article is found to be in conflict with a provision of any other ordinance or code of the city existing on

the effective date of this article which establishes a lower standard for the promotion, and protection of the safety and health of the people, the provisions of this article shall prevail, and such other ordinances or codes are hereby declared to be repealed to the extent that they may be found in conflict with this article.

(d)

Existing buildings. This article establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of building, equipment or facilities.

(e)

Existing remedies. Nothing in this article shall be deemed to abolish or impair existing remedies of the city or its officers or agencies relating to the removal or demolition of any buildings which are deemed to be dangerous, unsafe or unsanitary.

#### **Sec. 7-81. - Enforcement authority.**

(a) Enforcement officer. It shall be the responsibility of the chief housing officer, herein referred to as the enforcement officer, within the Bureau of Operations to enforce the provisions of this article. Except for subsection (b) of this section, wherever the term enforcement officer is used herein, it shall be deemed to mean the Director of Operations, the Assistant Director of Operations or his/her authorized representative.

(b) Administrative rules and regulations. The enforcement officer is hereby authorized and empowered to promulgate such written rules and regulations as he may deem necessary for the proper administration and enforcement of this article; provided, however, such rules and regulations shall not be in conflict with any of the provisions of this article, nor in any way alter, amend or supersede any of the provisions thereof.

The enforcement officer shall file a certified copy of all rules and regulations which he may promulgate in his office and in the office of the clerk.

Such rules and regulations promulgated and filed by the enforcement officer pursuant to this article shall have the same force and effect as the provisions of this article, and the penalty for violation thereof shall be the same as the penalty for violation of the provisions of this article.

(c) Investigations. The enforcement officer shall, when the public interest so requires, make investigations in connection with matters referred to in this article and render written reports on the same.

(d) *Coordination of enforcement.* Inspection of premises and the issuing of orders in connection therewith, under the provisions of this article shall be the exclusive responsibility of the enforcement officer. Wherever, in the opinion of the enforcement officer it is necessary or desirable to have inspections of any condition by any other department, he shall arrange for this to be done in such a manner that the owners or occupants of buildings shall not be subjected to visits by numerous inspectors nor to multiple or conflicting orders. No order for correction of any violation under this article shall be issued without the approval of the enforcement officer and it shall be the responsibility of that official before issuing any such order to include the other corrective actions for violations cited under related codes.

(e) *Administration liability.* Except as may be otherwise provided by statute or local law or ordinance, no officer, agent or employee of the city charged with the enforcement of this article shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this article.

No person who institutes, or assists in the prosecution of, a criminal proceeding under this article shall be liable to damages hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission. Any suit brought against any officer, agent or employee of the city, as a result of any act required or permitted in the discharge of his duties under this article, shall be defended by the legal representative of the city until the final determination of the proceedings therein.

## **Sec. 7-82. - Inspections.**

(a) The enforcement officer will make or cause to be made inspections to determine the conditions of dwellings, dwelling unit, multifamily dwellings, boardinghouse, roominghouse, group residence, and premises to carry out the provisions of this code in order to safeguard the safety, health and welfare of the public under the provisions of this code.

(b) The enforcement officer is authorized, as permitted by law, to enter any dwelling unit, multifamily dwelling, boardinghouse, roominghouse, group residence, or premises at any reasonable time for the purpose of performing his duties under the code. The owner, operator, or occupant of every dwelling, multifamily dwelling, dwelling unit, boardinghouse, roominghouse, group residence, or the person in charge thereof, shall give the enforcement officer, as permitted by law, free access and to all parts thereof and to the premises on which it is located between the hours of 9:00 a.m. to 4:30 p.m., Monday through Friday, unless another time is agreed to by the occupant and the department for purposes of inspection, examination and survey.

**Secs. 7-83—7-85. - Reserved.**

**Sec. 7-86. - Penalty for violation of housing code.**

A violation of the city's housing code, set out herein in this article, shall carry with it a penalty not exceeding one thousand dollars (\$1,000.00) per violation and each day the violation continues to exist shall be considered a separate offense subject to their penalty. In addition to the penalty provided for herein, any person violating the housing code adopted above is subject to a term of imprisonment not to exceed ninety (90) days.

**Secs. 7-87—7-96. - Reserved.**

## **DIVISION 2. ENVIRONMENTAL, SPACE AND OCCUPANCY REQUIREMENTS**

**Sec. 7-97. - Minimum standard for basic equipment and facilities.**

(a) *Generally.* No person shall occupy as owner-occupant or let or sublet to another for occupancy any dwelling or dwelling unit, nor shall any vacant dwelling building be permitted to exist which does not comply with this article and for which a valid certificate for occupancy has not been issued. Further, if there is no provided electricity and/or provided approved heat source, it may not be used as a dwelling unit.

(b) *Sanitary facilities required.* Every dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, and a water closet all in good working condition and properly connected to an approved public water and sewer system. Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions.

(c) *Location of sanitary facilities.* All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The water closet, tub or shower and lavatory shall be located in a room or rooms affording privacy to the user.

(d) *Bathroom floors.* Every toilet and bathroom floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be kept in a clean and sanitary condition.

(e) Hot and cold water supply. Every dwelling unit shall have connected to the kitchen sink, lavatory and tub or shower an adequate supply of both cold and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply capable of drawing one gallon per minute from each tap.

(f) Water heating facilities. Every dwelling shall have water heating facilities which are properly installed and maintained in a safe and good working condition and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than one hundred thirty (130) degrees Fahrenheit. Such water heating facilities shall be capable of meeting the requirements of this subsection when the dwelling units' heating facilities required under the provisions of this ordinance are not in operation. All water heating facilities or devices shall be equipped with pressure or temperature relief as required by the city plumbing code.

(g) Cooking and heating equipment. All cooking and heating equipment and facilities shall be installed in accordance with the building, gas or electrical code and shall be maintained in a safe and good working condition.

(h) Heating facilities. Every dwelling unit shall have supplied heating facilities which are properly installed, are maintained in safe and good working conditions, and are capable of safely and adequately heating all habitable rooms, and bathrooms in every dwelling unit located therein to a temperature of at least seventy (70) degrees Fahrenheit, at a distance three (3) feet above floor level when outside temperature is ten (10) degrees Fahrenheit.

Every space heater shall comply with all of the following requirements:

(1) Every space heater burning solid, liquid or gaseous fuels shall:

- a. Be properly vented to a chimney or duct leading to outdoor space;
- b. Have a fire resistant panel beneath it;
- c. Be equipped with insulation sufficient to prevent overheating of any nonfire resistant surface within two (2) feet;
- d. Have its smoke pipe equipped with guards properly constructed of fire resistant material at the point where the pipe goes through a wall, ceiling, or partition;
- e. Comply with all the requirements of the building code and fire prevention code.

(2) Every electric space heater shall comply with the applicable standard of Underwriting Laboratory and be connected with a source of electric power of sufficient capacity to safely energize the heater in accordance with the city electrical code. However, no space heater(s) may be used as a sole source of heat in a dwelling.

(i) *Cooking facilities.* Every dwelling unit shall contain at least one supplied kitchen coal stove, gas stove, or electric stove providing at least two (2) top burners and an oven, not necessarily in the same unit, in good order and repair and properly connected to the appropriate utility system. Portable cooking equipment employing liquid fuel is prohibited.

(j) *Garbage storage or disposal and rubbish storage facilities.* Every dwelling or multi-family dwelling and every dwelling unit shall be supplied with an approved garbage disposal facility; which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit; or an incinerator unit, to be approved by the enforcement officer, in the structure for the use of the occupants of each dwelling unit; or an approved outside garbage container placed and accessible for municipal or private garbage collection. In dwellings containing no more than three (3) units it shall be the responsibility of the occupants of dwelling units to furnish the receptacles required for the temporary storage of rubbish and garbage until removal from the premises.

Every dwelling, multi-family dwelling and dwelling unit shall be supplied with approved containers and covers for storage of rubbish, and the owner, operator or agent in control of a rooming house or multi-family dwelling shall be responsible for the removal of such rubbish and garbage.

**Secs. 7-98—7-112. - Reserved.**

### **DIVISION 3. – RESPONSIBILITIES OF PERSONS**

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**Sec. 7-113. Scope.**

Occupants of dwellings, multifamily dwellings, and dwelling units, and owners or operators of boardinghouses, roominghouses and group residences shall be responsible for maintenance thereof as provided in this division.

**Sec. 7-114. Responsibility of occupants.**

- (a) *Cleanliness.* Every occupant of a dwelling unit shall keep that part of the dwelling unit and premises thereof which he occupies, controls, or uses in a clean and sanitary condition.
- (b) *Disposal of rubbish.* Every occupant of a dwelling unit shall dispose of all his rubbish in a clean and sanitary manner by placing it in the rubbish containers required by section 7-97(j).

- (c) *Disposal of garbage.* Every occupant of a dwelling unit shall dispose of his garbage in a clean and sanitary manner by placing it in the garbage disposal facilities, or if such facilities are not available, by removing all nonburnable matter and securely wrapping such garbage and placing it in tight metal garbage storage containers as required by section 7-97(j); or by such other disposal method as may be required by applicable laws or ordinances of the city.
- (d) *Use and operation of supplied plumbing fixtures.* Every occupant of a dwelling unit shall keep the supplied plumbing fixtures therein clean and sanitary and shall be responsible for the exercise of reasonable care in their proper use and operation.

**Sec. 7-115. Responsibility of owners.**

(a)

*Provision for heat:*

(1)

*Terms defined.* The following words and phrases used in this subsection (a) shall have the meaning ascribed to them as herein defined;

a.

*Dwelling.* Any house or building, or portion thereof, which is occupied in whole or in part as the home, residence or sleeping place of one (1) or more human beings, either permanently or transiently.

b.

*Contracted.* This term shall include either written or oral contracts.

c.

*Person.* A person or persons, firm, partnership, corporation, institution, organization or association of any kind or nature. Where a person who is required to furnish heat as provided by this subsection (a) is a corporation, such corporation and the president, secretary and treasurer thereof, and also the superintendent and manager of the building, shall be liable for any failure to comply with this subsection (a).

(2)

*Required.* Every person, realtor, corporation and other authority within the meaning of this subsection (a) who leases, rents or lets an apartment house, hotel, roominghouse, flat or other building for living quarters, upon an agreement, either expressed or implied, to furnish heat to the tenants or occupants thereof, is hereby required to maintain from September 15 of each year to June 1 of the following year a minimum temperature, supplied safely with good operating conditions and capable of safely and adequately heating all rooms, of at least sixty (60) degrees Fahrenheit between the hours of 11:00 p.m. and 6:30 a.m. and a minimum temperature of at least seventy (70) degrees Fahrenheit between the hours of 6:30 a.m. and thereafter

until 11:00 p.m. in such building or portion thereof occupied as living quarters, measured at a distance three (3) feet above floor level, all rooms maintained.

(3)

*Exceptions.* Failure to maintain the temperature required herein shall not constitute an offense where such failure is due to a breakdown of the heating plant, if diligence is used to have such plant repaired, nor where it is due to strikes, to a general shortage of fuel, to any act of the tenant who gives notice as hereinafter provided or to any causes beyond the owner's control, nor until written notice, if such failure to furnish the heat required and maintain the temperatures set forth therein, shall first have been given to the owner or agent of the building by registered mail or by personal service by a sanitary inspector and twenty-four (24) hours shall have elapsed since the giving of such notice. Temperature readings required hereunder shall not be made until after the lapse of twenty-four (24) hours hereinbefore set forth.

(4)

*Measurement.* For the purpose of determining the temperature in any apartment house, hotel, roominghouse, flat or other building used as living quarters or in any room thereof, the temperature reading shall be made only by the principal health officer or sanitary inspector of the city or authorized representatives by means of standards Fahrenheit thermometers or by other approved recording thermometers. The thermometer reading shall be taken at a point at least thirty-six (36) inches above the floor and not closer than three (3) feet from an outside wall, window or door.

(5)

*Notice of violation; investigation.* Upon notice in writing given to the Wilkes-Barre City Health Department by a tenant occupying any portion of any of the premises described in subsection (a)(2) hereof that the minimum temperatures as in this subsection (a) set forth are not being maintained, the principal health officer or his authorized representatives shall investigate the facts and the principal health officer or his authorized representatives are empowered to enter the premises described in said notice, at reasonable times, for the purpose of investigating any violation of this subsection (a).

(6)

*Persons responsible.* Where a person who is required to furnish heat as provided by this subsection (a) is a corporation, such corporation and the president, secretary and treasurer thereof, and also the superintendent and manager of the building, shall be liable for any failure to comply with this subsection.

(7)

*Enforcement.* It shall be the duty of the principal health officer to see that this subsection (a) is enforced through the proper legal channels.

(b)

*Maintenance.* Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for maintaining in a reasonably clean and sanitary condition all communal, shared, public area of the dwelling and premises including the yard and accessory buildings thereof which are used or shared by the occupants of two (2) or more dwelling units.

(c)

*Vacant dwelling.* No owner shall occupy or rent to any other person for occupancy or allow any other person to occupy any vacant dwelling unit unless it is reasonably clean, sanitary and complies with all provisions of this article and all rules and regulations adopted pursuant thereto.

(d)

*Maximum occupancy notice.* No owner shall rent to any other persons for occupancy or allow any other persons to occupy any dwelling, rooming unit or dwelling unit unless he has informed such persons in writing of the maximum number of occupants that may live in such dwelling, rooming or dwelling unit.

#### **Sec. 7-116. Responsibility generally.**

(a)

*Extermination.* Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of insects, rodents or other pests on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two (2) or more dwelling units, extermination thereof shall be the responsibility of the owner.

(b)

*Transfer of responsibility.* A contract effective as between owner and operator, operator and occupant or owner and occupant shall not relieve any party of his direct responsibility under this article.

(c)

*Storage of rubbish.* It shall be unlawful for the owner or occupant of a residential building, structure or property to utilize the premises of such residential property for the open storage of any abandoned motor vehicle, icebox, refrigerator, stove, glass, building material, building rubbish or similar items. It shall be the duty and responsibility of every such owner or occupant to keep the premises of such residential property clean and to remove from the premises all such abandoned items as listed above, including but not limited to weeds, dead trees, trash, garbage, etc.

**Secs. 7-117—7-125. Reserved.**

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## **DIVISION 4. - ROOMINGHOUSES AND BOARDINGHOUSES**

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### **Sec. 7-126. - License and occupancy permit required.**

(a) Every person who operates a roominghouse or boardinghouse, or who occupies or lets to another for occupancy any rooming unit in any roominghouse or boardinghouse, shall have a valid occupancy permit issued by the enforcement officer and shall comply with the provisions of every section of this Code, except as provided in the following sections.

(b) No person shall operate a roominghouse or boardinghouse unless he holds a valid roominghouse/boardinghouse license issued by the licensed clerk in the department of finance and tax collection.

### **Sec. 7-127. - Water closet, hand lavatory and bath facilities.**

At least one water closet, lavatory basin and bathtub or shower properly connected to an approved water and sewer system and in good working condition shall be supplied for each four (4) rooms within a roominghouse or boardinghouse wherever such facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower stall shall be supplied with hot and cold water at all times.

### **Sec. 7-128. - Minimum floor area for sleeping purposes.**

Every room occupied for sleeping purposes by one occupancy shall contain at least seventy (70) square feet of floor area, and every room occupied for sleeping purposes by more than three (3) persons shall contain at least fifty (50) square feet of floor area for each occupant thereof.

### **Sec. 7-129. - Bed linen and towels.**

The operator of every roominghouse or boardinghouse shall supply bed linen and towels therein at least once each week and prior to the letting of any room to another occupant. The operator shall be responsible for maintenance of all supplied bedding in a clean and sanitary manner.

**Sec. 7-130. - Shades, drapes, etc.**

Every window of every rooming unit shall be supplied with shades, drawn drapes or other devices or material which, when properly used, will afford privacy to the occupant of the rooming unit.

**Sec. 7-131. - Sanitary conditions.**

The operator of every roominghouse or boardinghouse shall be responsible for the sanitary maintenance of all walls, floors, and ceilings and for the sanitary maintenance of every other part of the roominghouse or boardinghouse, and he shall be further responsible for the sanitary maintenance of the entire premises where the structure or building within which the roominghouse is controlled is leased or occupied by the operator.

**Sec. 7-132. - Sanitary facilities.**

Every water closet, flush urinal, lavatory basin and bathtub or shower required by section 7-127 shall be located within a room or rooms which:

- (1) Afford privacy and are separate from habitable rooms.
- (2) Are accessible from a common hall and without going outside the roominghouse or boardinghouse or through any other room therein.

## **DIVISION 5. - BUYER NOTIFICATION**

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**Sec. 7-133. - Inspection of dwellings for sale.**

It shall be the obligation of every owner and/or agent of a dwelling, to notify the Building Code Official and/or his/her designee of the bureau of housing, upon listing, advertising or offering the dwelling for sale. The Building Code Official and/or his/her designee shall provide a Building Inspection Report for the dwelling based upon physical inspection of the dwelling.

**Sec. 7-134. - Findings.**

The Bureau of Operations and Office of Code Enforcement have determined that some owners and/or agents of dwellings in the City are maintaining such dwellings in violation of this article and/or maintain uses which are in violation of the zoning ordinance and/or nonconforming uses as defined within the zoning ordinance.

**Sec. 7-135. - Intent.**

Many purchasers are unaware that certain dwellings are in violation of this article and/or the zoning ordinance or maintain nonconforming uses as defined by zone classification of the zoning ordinance. The intent of this division is to provide purchasers the opportunity to review the data and information contained within the Building Inspection Report prior to entering into an agreement of sale and/or consummating a purchase.

**Sec. 7-136. - Building Inspection Report.**

(a) The Building Code Official and/or his/her designee shall review the information contained within Building Inspection Report the parameters of this Section and this Ordinance to determine the issuance or denial of a certificate of occupancy, as provided in section 7-138.

(b) The Building Inspection Report furnished by the Building Code Official and/or his/her designee to the owner and/or agent will contain the following:

- (1) The street address or other appropriate description of the subject dwelling;
- (2) A statement of zoning and flood insurance rate map classification applicable to the subject dwelling(s).
- (3) A statement concerning the conformity or nonconformity of existing uses maintained within the dwelling and violations of the zoning ordinance, if any, existing at the time of inspection;
- (4) A statement concerning variances and/or use permits issued to date which affect the dwelling;
- (5) A statement of housing code violations, if any, existing at the time of inspection in conformance with section 7-169.

**Sec. 7-137. - Reserved.**

**Sec. 7-138. - Issuance or denial of Certificate of Occupancy.**

(a) The Building Code Official and/or his/her designee shall review the information contained within the Building Inspection Report. Based upon such review the Building Code Official and/or his/her designee may issue a certificate of occupancy, and deliver such certificate of occupancy to the owner and/or agent who lists, advertises or offers a dwelling for sale.

(b) The Building Code Official and/or his/her designee shall deliver the certificate of occupancy to the owner and/or agent of the dwelling. The certificate of occupancy shall be transferred and delivered by the owner and/or agent to the purchaser of the dwelling upon consummation of purchase or sale.

(c) The Building Code Official and/or his/her designee shall provide and deliver to the owner and/or agent written notice and explanation for the denial of a certificate of occupancy for any dwelling listed, advertised or offered for sale.

**Sec. 7-139. - Review prior to sale or purchase.**

It shall be the obligation of every owner and/or agent to allow the purchaser to review the certificate of occupancy or written notice denying the certificate of occupancy as provided in section 7-138(c) to the purchaser prior to the execution of agreement of sale and/or purchase of the dwelling, prior to the transfer of the dwelling, and prior to the exchange of any monetary sum relative to the purchase of the dwelling should an agreement of sale not be utilized.

**Sec. 7-140. - Option of review by purchaser.**

(a) The purchaser shall have the right to review the information contained within the Building Inspection Report or to waive the right to review the Building Inspection Report prior to entering into an agreement of sale or consummating a purchase.

(b) The Building Code Official and/or his/her designees shall deliver to the owner and/or agent a purchaser acknowledgement form. Such form shall be delivered to the owner and/or agent at the time when the Building Code Official and/or his/her designee delivers the certificate of occupancy or written notice denying the certificate of occupancy. It shall be the obligation of every owner and/or agent to deliver the purchaser acknowledgement form to the purchaser prior to execution of agreement of sale or purchase of the dwelling prior to the transfer of the dwelling and prior to the exchange of any monetary sum relative to the purchase of the dwelling, should an agreement of sale not be utilized.

(c) The purchaser of the dwelling shall complete the purchaser acknowledgement form and deliver it to the Building Code Official and/or his/her designee. Should the purchaser wish to review the Building Inspection Report, the Building Code Official and/or his/her designee will make arrangements for such.

**Sec. 7-140.1. - Period of notice.**

(a) Six (6) months from the date of inspection, if a dwelling has not been sold, the conclusiveness of the Building Inspection Report must be either endorsed, as described in subsection (b), or altered, by a new inspection to indicate appropriate changes. The Building Inspection Report will only indicate violations and conditions of the date of inspection. Such Building Inspection Report does not indicate violations or corrections of such occurring between the date of inspection and the date of agreement of sale of a dwelling, or transfer of dwelling when an agreement of sale is not utilized, and of exchange of a monetary sum relative to the sale of a dwelling.

(b) However, upon the request of owner and/or agent, prior to the expiration of the six-month period referred to in subsection (a), the Building Code Official and/or his/her designee may issue endorsements to the Building Inspection Report, extending its conclusiveness for up to two (2) additional three-month periods, showing any change to the information shown on the original Building Inspection Report. Each endorsement, however, shall extend the conclusiveness of the Building Inspection Report for only three (3) months.

**Sec. 7-140.2. - Fees.**

The following fees shall be applicable for Buyer Notification Inspections:

- (a) Residential Structures/Buildings: \$90.00
- (b) Commercial Structures/Buildings under 6,000 Square feet: \$125.00
- (c) Commercial Structures/Buildings over 6,000 Square feet: \$250.00

**Sec. 7-140.3. - Exceptions.**

The Building Inspection Report, set forth in section 7-136(b), shall not be required for a dwelling should any of the following conditions be applicable:

- (1) Where such dwelling is intended to be demolished and a valid demolition permit pursuant to the building code of the city has been obtained;

- (2) Where such dwelling is sold at a foreclosure sale or pursuant to the Real Estate Tax Sale Act of 1947, P.L. 1368, as amended, or other judicial sale pursuant to federal or state statutes;
- (3) Where such dwelling is given as a gift inter-family, i.e. husband and wife, parents and children and spouses of children;
- (4) When title to such dwellings pass by virtue of laws relating to descendant's estate;
- (5) Where such dwelling(s) is new and has never been occupied as a dwelling and has been inspected and approved for occupancy by a construction code inspector of the city.

**Sec. 7-140.4. - Disclaimer, waiver.**

Notwithstanding any other law or ordinance, the provisions of this division may not be waived or disclaimed by an oral or written agreement executed by any owner, agent or purchaser.

**Sec. 7-140.5. - Liability of the City.**

The Building Inspection Report shall be compiled from the records of the City and from an inspection of the dwelling. Neither the enactment of this division nor the preparation and delivery of any Building Inspection Report required hereunder shall impose any liability upon the City, or officers or employees thereof, for any errors or omissions contained in such Building Inspection Report nor shall the city bear any liability not otherwise imposed by law.

**Sec. 7-140.6. - Filing of appeal.**

- (a) Appeals from the findings set forth in the Building Inspection Report must be filed in writing with the director of the Office of Code Enforcement within ten (10) business days after issuance of the Building Inspection Report, who will refer the appeal to the board or boards as follows:
  - (1) Housing board of appeals, where the conditions reported constitute violations of the applicable codes of the city or deal with the suitability of any dwelling or structure, with regard to the health, safety and welfare of our citizens for continued occupancy; and/or
  - (2) The zoning hearing board, where the findings set forth in the Building Inspection Report relate to matters concerning the classification and the use of property under the zoning ordinance.

(b) Any party may appeal decisions of the building board of appeals or the zoning hearing board to any court of competent jurisdiction.

**Sec. 7-140.7. Establishment of a Housing Board of Appeals.**

(a) A Housing Board of Appeals is hereby established for the purpose of addressing any and all appeals from violations of 7-239 (d)(1)(f)(vii) and (viii).

(b) The Housing Board of Appeals shall consist of five (5) members who shall be appointed by the Mayor of the City of Wilkes-Barre, and shall be approved by City Council.

(c) The cost for an appeal shall be One Hundred Dollars (\$100.00) due at the time the appeal is filed. In the event an individual cannot afford the appeal, the individual may appeal and claim *in forma pauperis* status by completing a form available through the Office of Code Enforcement. It shall be the decision of the Board at the time of the hearing as to whether such status shall be permitted.

(d) The Pennsylvania Rules of Evidence shall be relaxed for purposes of presentation of facts and evidence at the time of the hearing. However, the Housing Board Chair, in consultation with the solicitor of the Board shall have the right to take any and all action to maintain decorum and allow for the protection of the due process rights of all parties.

(e) Minutes of the Board Hearings shall be kept by the Board and shall be filed with the Office of the City Clerk of the City of Wilkes-Barre. Any party has the right, but not the obligation, to bring a court reporter / stenographer to the Board Hearings for purposes of transcribing the same.

(d) Notice of the date and the time for the hearing on any appeal shall be given to the appellant by certified mail, return receipt requested or through a means of delivery that can be verified through a tracking procedure or properly submitted service affidavit.

(d) Should any party wish to appeal the decision of the Housing Board of Appeals, the party in interest may do so within thirty (30) days of the date of the decision to the Court of Common Pleas of Luzerne County.

**Secs. 7.140.8—7-140.16. - Reserved.**

**DIVISION 6. - GROUP RESIDENCES 42**

**Sec. 7-140.17. - Compliance with code required for operation.**

Every person who operates a group residence or who occupies, or lets to another for occupancy, any dwelling unit in any group residence shall have been approved by the governmental entity (if any) which has jurisdiction over the congregate living arrangements and/or the persons assigned to reside within the structure and shall comply with the provisions of every section of this code, except as provided in the following sections.

**Sec. 7-140.18. - Water closet, hand lavatory and bath facilities.**

At least one water closet, lavatory basin and bathtub or shower properly connected to an approved water and sewer system and in good working condition shall be supplied for each group residence. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one story removed from any of the persons sharing such facility. Every lavatory basin and bathtub or shower stall shall be supplied with hot and cold water at all times.

**Sec. 7-140.19. - Minimum floor area for sleeping purposes.**

Every room occupied for sleeping purposes by one occupant shall contain at least seventy (70) square feet of floor area, and every room occupied for sleeping purposes by more than three (3) persons shall contain at least fifty (50) square feet of floor area for each occupant thereof.

**Sec. 7-140.20. - Bed linen and towels.**

The operator of every group residence shall supply bed linen and towels therein at least once each week and prior to the letting of any room to another occupant. The operator shall be responsible for maintenance of all supplied bedding in a clean and sanitary manner.

**Sec. 7-140.21. - Shades, drapes, etc.**

Every window of every group residence shall be supplied with shades, drawn drapes or the devices or material which, when properly used, will afford privacy to the occupants of the group residence.

**Sec. 7-140.22. - Sanitary conditions.**

The operator of every group residence shall be responsible for the sanitary maintenance of all walls, floors, and ceilings, and for the sanitary maintenance of every other part of the group residence; and he/she shall be further responsible for the sanitary maintenance of the entire premises where the structure or building within which the group residence is contained is leased or occupied by the operator.

**Sec. 7-140.23. - Sanitary facilities.**

Every water closet, flush, urinal, lavatory basin and bathtub or shower required by section 7-140.18 shall be located within a room or rooms which:

- (1) Afford privacy and are separate from habitable rooms.
  
- (2) Are accessible from a common hall and without going outside the group residence or through any other room therein.

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**ARTICLE IV – COMMERCIAL PROPERTY MAINTENANCE CODE**

**DIVISION 1. - GENERALLY**

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**Sec. 7-141. - Short title.**

The short title of this article shall be the "Commercial Property Maintenance Code."

**Sec. 7-142. - Findings and declaration of policy.**

It is hereby found and declared that there exist in the city structures used for nonresidential purposes which are, or may become in the future, substandard with respect to structure, equipment and maintenance; or further that such conditions including but not limited to structural deterioration, lack of maintenance and appearance of exterior of premises, infestation, lack of essential heating, plumbing, storage or refrigeration equipment, lack of maintenance or upkeep of essential utilities and facilities, existence of fire hazards, inadequate provisions for light and air, unsanitary conditions and overcrowding constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens and inhabitants of the city. It is further found and declared that by reason of lack of maintenance and progressive deterioration, certain properties having the further effect of creating blighting conditions and initiating slums, and that if the same are not curtailed and removed, the

aforesaid conditions will grow and spread and will necessitate in time the expenditure of large amounts of public funds to correct and eliminate the same, and that by reason of timely regulations and restrictions as herein contained, the growth of slums and blight may be prevented and the neighborhood and property values thereby maintained, the desirability and amenities of residential and nonresidential uses and neighborhoods enhanced and the public health, safety and welfare protected and fostered.

### **Sec. 7-143. - Purposes.**

The purpose of this article is to protect the public health, safety, morals and welfare by establishing minimum standards governing the maintenance, appearance, condition and occupancy of nonresidential premises; to establish minimum standards governing utilities, facilities and other physical components and conditions essential to make the aforesaid facilities fit for human habitation, occupancy and use; to fix certain responsibilities and duties upon owners and operators, and distinct and separate responsibilities and duties upon occupants; to authorize and establish procedures for the inspection of premises; to fix penalties for the violations of this article; and to provide for the repair, demolition or vacation of premises unfit for human habitation or occupancy or use. This article is hereby declared to be remedial and essential for the public interest and it is intended that this article be liberally construed to effectuate the purposes as stated herein.

### **Sec. 7-144. - Definitions.**

The following terms wherever used herein or referred to in this article shall have the respective meanings assigned to them unless a different meaning clearly appears from the context:

**Accessory structure** is a structure the use of which is incidental to that of the main building and which is attached thereto or located on the same premises.

**Building** is a structure adapted to permanent or continuous occupancy or use for public, institutional or storage purposes.

**Deterioration** is the condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, lack of maintenance or excessive use.

**Fire hazard** is:

- (1) Any device or condition likely to cause fire and which is so situated as to endanger either persons or property;

(2) The creation, maintenance or continuance of any physical condition by reason of which there exists a use, accumulation or storage of combustible or explosive material sufficient in amount or so located or in such a manner as to put in jeopardy, in event of ignition, either persons or property;

(3) The obstruction to or of fire escapes, ladders which may be used as escapes, stairways, aisles, exits, doors, windows, passageways or halls, likely, in the event of fire, to interfere with the operations of the bureau of fire or of the safety and ready egress of occupants.

**Garbage** means all kitchen refuse of residences, hotels, restaurants, or other places where food is prepared for human consumption, and all offal from fish, meat and vegetable markets, and all vegetable or organic substances unfit for food that are subject to immediate decay.

**Infestation** means the presence of insects, rodents, vermin or other pests on the premises which constitute a health hazard.

**Operator** is any person who has charge, care or control of a premises, or a part thereof, whether with or without the knowledge and consent of the owner.

**Owner** is any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises, with or without accompanying actual possession thereof; or shall have charge, care or control as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee, receiver or guardian of the estate, or as a mortgagee in possession regardless of how such possession was obtained.

**Plumbing** means all of the following supplies, facilities and equipment: Gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines, and water pipes and lines utilized in conjunction with air-conditioning equipment.

**Premises** means a lot, plot or parcel of land including the building or structures thereon.

**Restrooms** means an enclosed space containing one or more toilets and one or more lavatories or fixtures serving similar purposes.

**Rubbish** means all combustible and noncombustible waste materials, except garbage; and the term shall include, but not be limited to, the residue from the burning of wood, coal, coke and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, plastic or other synthetic materials, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, and dust.

**Structure** means any combination of any materials, whether fixed or portable, forming a construction, including buildings.

**Ventilation** means supply and removal of air to and from any space by natural or mechanical means.

**Ventilation, mechanical** means ventilation by power-driven devices.

**Ventilation, natural** means ventilation by opening to outer air through windows, skylights, doors, or stacks with or without wind-driven devices.

**Weathering** means deterioration, decay or damage caused by exposure to the elements.

### **Sec. 7-145. - Applicability.**

(a) **Generally.** Every building and the premises on which it is situated used for or intended to be used for nonresidential purposes shall comply with the provisions of this article, whether or not such building shall have been constructed, altered or repaired before or after the enactment of this article, and irrespective of any permits or licenses which shall have been issued for the use or occupancy of the building or premises, for the construction or repair of the building, or for the installation or repair of equipment or facilities prior to the effective date of this article. This article establishes minimum standards for the initial continued occupancy and use of all such buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building, equipment or facilities contained therein, except as provided in subsection (c) of this section.

(b) **Basic construction codes.** Any alterations to buildings, or changes of use therein, which may be caused directly or indirectly by the enforcement of this article shall be done in accordance with applicable sections of the basic construction codes of the city.

(c) **Conflict with other ordinances or laws.** In any case where the provisions of this article impose a higher standard than that set forth in any other ordinance or law, then the standards as set forth herein shall prevail, but if the provisions of this article impose a lower standard than any other ordinance or law, then the higher standard contained in such other ordinance or law shall prevail.

(d) **Enforcement of and compliance with other ordinances.** No license or permit or other certification of compliance with this article shall constitute a defense to any violation of any other ordinance of the city applicable to any structure or premises, nor shall any provision herein relieve any owner, operator or occupant from complying with any such other provision, nor any official of the city from enforcing any such other provisions.

(e) **Existing buildings.** This article establishes minimum requirements for the initial and continued maintenance of all buildings used for nonresidential purposes and does not replace or modify

requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities.

**Sec. 7-146. - Enforcement authority.**

(a) Building code official. The building code official shall have the same duties and responsibilities as defined in the Pennsylvania Uniform Construction Code. The building code official (BCO) shall be the chief enforcement officer for the enforcement of this Code, as required by the Pennsylvania Uniform Construction Code.

(b) Administrative rules and regulations. The building code official, in conjunction with the administration and the director of operations, is hereby authorized and empowered to promulgate such written rules and regulations as he or she may deem necessary for the proper administration and enforcement of this article; provided, however, that such rules and regulations shall not be in conflict with any of the provisions of this article, nor in any way alter, amend or supersede any of the provisions thereof. The building code official shall file a certified copy of all rules and regulations which he may promulgate in the office of the city clerk and shall conspicuously post the said rules and regulations in the office of code enforcement. Such rules and regulations promulgated and filed by the building code official, consistent with this paragraph, and pursuant to this article, shall have the same force and effect as the provisions of this article, and the penalty for violation thereof shall be the same as the penalty for violation of the provisions of this article.

(c) Investigation. The building code official or his agents, shall, when the public interest so requires, make investigations in connection with matters referred to in this article and render written reports on the same.

(d) Coordination of enforcement. Inspection of premises and the issuing of orders in connection therewith, under the provisions of this article shall be the exclusive responsibility of the building code official. Wherever, in the opinion of the building code official it is necessary or desirable to have inspections of any condition by any other department he shall arrange for this to be done in such a manner that the owners or occupants of buildings shall not be subjected to visits by numerous inspectors nor to multiple or conflicting orders.

No order for correction of any violation under this article shall be issued without the approval of the building code official and it shall be the responsibility of that official before issuing any such order to include the other corrective actions for violations cited under related codes.

(e) Administration liability. Except as may be otherwise provided by statute or local law or ordinance, no officer, agent or employee of the city charged with the enforcement of this article shall render himself personally liable for any damage that may accrue to persons or property as a result of any act

required or permitted in the discharge of his duties under this article. No person who institutes, or assists in the prosecution of, a criminal proceeding under this article shall be liable to damages hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission. Any suit brought against any officer, agent or employee of the city, as a result of any act required or permitted in the discharge of his duties under this article, shall be defended by the legal representative of the city until the final determination of the proceedings therein.

#### **Sec. 7-147. - Inspections.**

(a) The enforcement officer will make or cause to be made inspections to determine the conditions of structures to carry out the provisions of this article in order to safeguard the safety, health and welfare of the public under the provisions of this article. The enforcement officer is authorized as permitted by law, to enter any structure or premise at any reasonable time for the purpose of performing his duties under this article. The owner, operator or occupant of every structure or premise or the person in charge thereof, shall give the enforcement officer as permitted by law, free access to all parts thereof and to the premises on which it is located between the hours of 9:00 a.m. to 4:30 p.m., Monday through Friday, unless another time is agreed to by the occupant and the department for purposes of inspection, examination and survey.

(b) Where the enforcement officer is refused entry or is otherwise impeded in the performance of his duties he may, upon affidavit, apply to the magistrate of the city for a search warrant setting forth factually the actual conditions and circumstances that provide a reasonable basis for believing that violation of this article exists on the premises and if the magistrate is satisfied as to the matter set forth in the said affidavit, he shall authorize the issuance of a search warrant permitting access to and inspection of that part of the premises on which the violation may exist.

#### **Sec. 7-148. - Violations.**

(a) Notice. Whenever the enforcement officer determines that there has been or is a violation, or that there are reasonable grounds to believe that there has been or is a violation of any provision of this article, he shall give notice of such violation or alleged violation to the person responsible therefor as hereinafter provided.

(b) Form of notice. Whenever the enforcement officer has recorded a violation of this article, he shall give notice to the owner, operator and occupant of such structure or premise. Such notice shall:

- (1) Be in writing;
- (2) Include a description of the real estate sufficient for identification;

(3) Include a statement of the reason or reasons why it is being issued;

(4) State the time to correct the conditions.

(c) Service of notice. Service of notice shall be as follows:

(1) By delivery to the owner personally, or by leaving the notice at the usual place of abode of the owner with a person of suitable age and discretion; or

(2) By certified or registered mail addressed to the owner at his last known address with postage prepaid thereon.

(d) Abatement of violation. When upon reexamination, after the expiration of the allotted time for compliance, the enforcement officer finds that the violations have not been corrected he is authorized to cause such dwellings to be repaired, altered, improved, demolished or razed.

(e) Costs of repairs, alterations, improvements, closing, removal and demolition. The amount of the cost of such repairs, alterations or improvements or vacating and closing, or removal or demolition when done by order of the enforcement officer shall be a municipal lien against the real property upon which cost was incurred. If the dwelling is removed or demolished by order of the enforcement officer, he shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of removal or demolition and any balance remaining shall be deposited with the finance officer by the chief enforcement officer, shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court; provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

#### **Sec. 7-149. - Prosecution and penalty.**

(a) Prosecution for failure to comply. In cases where the cited violations have not been corrected in the time period specified in a violation notice or as may be later extended, the enforcement officer may request the city attorney to institute an appropriate action or proceeding at law or in equity against the person responsible for correcting the violation.

(b) Penalty for violation. Any person violating any of the provisions of this article shall, upon summary conviction thereof in a summary proceeding before a magistrate of the City of Wilkes-Barre, be sentenced as provided in section 1-7.

**Sec. 7-150. - Appeal procedure and board of appeals.**

(a) *Generally.* Any person who is aggrieved by an order of the enforcement officer may file with the board of appeals a petition setting forth his reasons for contesting the notice or order. Such petition must be filed within ten (10) days after the enforcement officer has rendered his written opinion respecting the contested notice.

When such petition has been filed, compliance with the notice of violation shall not be required pending a decision by the board, except as provided in subsection (g).

(b) *Board of appeals.* The Housing Board of Appeals established in the building code of the city is hereby given the responsibility for hearing appeals from decision of the enforcement officer.

(c) *Hearing.* The board of appeals shall set a time and place for hearing an appeal from the decision of the enforcement officer within thirty (30) days after filing of an appeal, and shall advise the petitioner of such time and place in writing.

(d) *Findings.* After the hearing, the board shall sustain, modify or withdraw the order of the enforcement officer, depending on the board's findings as to whether the provisions of this article and of the rules and regulations adopted pursuant thereto have been complied with.

(e) *Decision.* Every decision of the board of appeals shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity. Every decision shall be in writing and shall be a matter of public record in the office of the department of planning and development and shall be open to public inspection; a certified copy shall be sent by mail or otherwise to the petitioner and a copy shall be posted in the office of the department of planning and development for two (2) weeks after the rendering of such decisions. The board of appeals shall in every case reach a decision without unreasonable or unnecessary delay.

(f) *Implementation of decisions.* If the board of appeals sustains or modifies the order of the enforcement officer, its action shall be deemed to be final, and the enforcement officer shall be directed to take such actions as may be required to implement the decision of the board.

(g) *Compliance with emergency order prior to appeal.* Whenever the enforcement officer finds that there exists any violation of this article or any rule or regulation adopted pursuant thereto which creates an emergency requiring immediate correction to protect the health or safety of any occupant of a structure or the public, and requiring necessary action to be taken immediately, any person to whom such notice is directed shall comply immediately even though such person has applied or intends to apply to the enforcement officer for an informal hearing or has appealed or intends to appeal to the

board of appeals for a hearing. The enforcement officer or the board of appeals, as the case may be, will give priority to any such appeals resulting from the issuance of such notice.

(h) *Court appeal.* A person aggrieved by a decision of the board, whether previously a party to the proceeding or not, or an official of the city or member of the board may, within thirty (30) days after the filing of such decision in the office of the department of planning and development, apply to the appropriate court to correct errors of law in such decision.

**Secs. 7-151—7-161. - Reserved.**

## **DIVISION 2. - RESPONSIBILITIES OF PERSONS**

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**Sec. 7-162. - Responsibilities of owner, operator and occupant independent of each other.**

(a) Owners and operators shall have all the duties and responsibilities as prescribed in section 7-163 and the regulations promulgated pursuant thereto, and no owner or operator shall be relieved from any such duty and responsibility nor be entitled to defend against any charge of violation thereof by reason of the fact that the occupant is also responsible therefor and in violation thereof.

(b) Occupants shall have all the duties and responsibilities as prescribed in section 7-164 and all the regulations promulgated pursuant thereto, and the occupant shall not be relieved from any such duty and responsibility nor be entitled to defend against any charge of violation thereof by reason of the fact that the owner or operator is also responsible therefor and in violation thereof.

(c) Unless expressly provided to the contrary in this article, the respective obligations and responsibilities of the owner and operator on one hand, and the occupant on the other, shall not be altered or affected by any agreement or contract by and between any of the aforesaid or between them and other parties.

**Sec. 7-163. - Duties and responsibilities of owner and operator.**

The following duties and responsibilities are hereby imposed upon every owner and operator of any building covered by the provisions of this article:

(1) The exterior of the premises and all structures thereon shall be kept free of all nuisances, and any hazards to the safety of occupants, pedestrians and persons utilizing the premises, and free of unsanitary conditions, and any of the foregoing shall be promptly removed and abated by the owner or operator. The items prohibited hereby shall include, but not be limited to:

Brush, weeds, broken glass, stump roots, obnoxious growths, filth, garbage, trash, refuse, debris, dead and dying trees and limbs or other natural growth, loose and overhanging objects, and ground surface hazards.

(2) Foundation walls shall be kept structurally sound, free from defects and damage, and capable of bearing imposed loads safely.

(3) Chimneys and all flue and vent attachments thereto shall be maintained structurally sound, free from defects, and so maintained as to capably perform at all times the functions for which they were designed. Chimneys, flues, gas vents or other draft producing equipment shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight, and capable of withstanding the action of flue gases.

(4) Exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of fallings, and the same shall be kept structurally sound, in good repair, and free from defects.

(5) The exterior of the premises and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with standards of the neighborhood.

(6) Premises shall be kept landscaped and lawns, hedges and bushes shall be kept trimmed.

(7) All permanent signs and billboards exposed to public view permitted by reason of other ordinances or laws shall be maintained in good repair. Any signs which have excessively weathered or faded or those upon which the paint has excessively peeled or cracked shall, with their supporting members, be removed forthwith or put into a good state of repair by the owner of the sign.

(8) All display windows or storefronts constructed of plate glass shall be kept clean and free of cracks, and no storage shall be permitted therein unless shielded from public view.

(9) All storefronts shall be kept in good repair, painted where required, and shall not constitute a safety hazard or nuisance. In the event repairs to a storefront become necessary, such repairs shall be made with the same, similar or compatible materials used in the construction of the storefront in such a manner as to permanently repair the damaged area or areas. Any cornice visible above a storefront shall be kept painted, where required, and in good repair.

(10) Except for "For Rent" and "For Sale" signs, any temporary sign or other paper advertising material glued or otherwise attached to a window, or windows, or otherwise

exposed to public view shall be removed (1) at the expiration of the vent or sale for which it is erected, or (2) within sixty (60) days after erection, whichever shall occur first.

(11) Any awnings or marquees, and their accompanying structural members which extend over any street, sidewalk or other portion of the premises shall be maintained in good repair and shall not constitute a nuisance or a safety hazard. In the event such awnings or marquees are not properly maintained in accordance with the foregoing, they shall, together with their supporting members, be removed forthwith. If awnings or marquees are made of cloth, plastic or of similar materials, such cloth or plastic where exposed to public view shall be maintained in good condition and shall not show evidence of excessive weathering, ripping, tearing or other holes. Nothing herein shall be construed to authorize any encroachment on streets, sidewalks or other parts of the public domain.

(12) The exterior of every structure or accessory structure shall be kept in good repair and kept painted where necessary for purposes of preservation and appearance. All surfaces shall be maintained free of broken glass, loose shingles, crumbling stone or brick, excessive peeling paint or other condition reflective of deterioration or inadequate maintenance.

(13) Restrooms shall be surfaced with waterproof floors and shall be kept dry, clean, and sanitary at all times. Sufficient restrooms shall be installed and maintained for each sex commensurate with the use of the premises. Every restroom shall be provided with a permanently installed artificial lighting fixture, and a wall switch therefor which is free from danger of short circuiting.

(14) All premises shall be properly connected to and provided with electric power as requested for the operation of the structure. All such connections and electrical equipment shall be installed and maintained in conformity with the provisions of the city electrical code, and other applicable ordinances.

(15) Maximum fuse sizes consistent with safety shall be posted conspicuously, and no fuse shall be installed in a fuse box in excess of the stated maximum except that owners and operators shall not be responsible for violation in fuse installations without their knowledge where the correct maximum is stated and the fuse box is located within any part of the premises which is in the exclusive possession of occupants other than the owner, in which case such occupant shall be responsible for such violations.

#### **Sec. 7-164. - Duties of occupant.**

The following duties and responsibilities are hereby imposed upon every occupant of any building covered by the provisions of this article:

(1) Upon discovery by an occupant of any condition on the premises which constitutes a violation of the provisions of this article, the occupant shall first report the same to the owner or operator and upon failure of the owner or operator to act in five (5) days, then the occupant shall report the same to the housing inspector immediately.

(2) All parts of the premises under the control of the occupant shall be kept in a clean and sanitary condition.

(3) Storage bins, rooms and areas shall not be used for the accumulation of garbage or refuse.

(4) Every occupant shall be responsible for the elimination of infestation in and on the premises subject to his control.

(5) No occupant shall install electrical fuses in a fuse box in excess of the posted limit.

**Secs. 7-165—7-175. - Reserved.**

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## **ARTICLE V. - FLOOD DAMAGE CONTROLS** <sup>[43]</sup>

### **Sec. 7-176. - Generally**

The current, existing zoning regulations of the City of Wilkes-Barre regarding flood controls are hereby adopted as part of Chapter 7 as if the same were set forth fully herein at length.

**Secs. 7-177—7-209. - Reserved.**

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## **ARTICLE VI. - BLASTING REGULATIONS** <sup>[44]</sup>

### **Sec. 7-210. - Definitions.**

The following words and phrases, when used in this article shall have the meanings respectively ascribed to them as follows:

**Aboveground blasting.** Any explosive discharge above the earth's surface.

**Blaster.** Any person, partnership, firm, association or corporation engaged in the practice of blasting.

**Blasting.** The practice or occupation of removing, by means of explosives, any mass, especially rocks, buildings, etc.

**Explosives.** Any chemical or other substance intended for the purpose of producing an explosion or that contains oxidizing or combustible units or other ingredients in such proportions or quantities that ignition by fire, by friction, by concussion, by percussion or by detonation may produce an explosion capable of causing injury to persons or damage to property. The term "explosive" includes, but is not limited to, the following: Black powder (all varieties), dry gun cotton, nitroglycerine, dynamite, chlorates, fulminates, all sensitized ammonium nitrate compositions and any other of their compounds or mixtures, smokeless powder, wet gun cotton and wet nitrostarch.

**Shot.** A charge of powder or other explosive ready for detonating.

**Shot plan.** A detailed written description of all preparatory actions, to be undertaken by the blaster, in order to bring about the safe completion of a blast.

### **Sec. 7-211. - Permit required.**

No person, partnership, firm, association or corporation shall initiate any blasting operation within the corporate boundaries of the City of Wilkes-Barre without complying with the prerequisites and regulations as set forth in this article and without first obtaining a permit therefor from the chief building inspector of the city.

### **Sec. 7-212. - Prerequisites for permit.**

The following prerequisites must be met prior to issuance of a blasting permit:

(a) **Permit fee.** The blaster shall pay a permit fee to the City of Wilkes-Barre at the office of the chief building inspector in the amount of six hundred dollars (\$600.00) per blasting day.

(b) **Submission of site plan or map.** The blaster shall submit to the chief building inspector a site plan or map of the blasting area showing all related structures and their distances from the blasting site and all utilities above and below ground and their distance and elevation plus or minus (+/-) to the blasting operation.

- (c) Submission of shot plan. The blaster shall submit a shot plan showing the amount of blasting holes required for the proposed shots, the number of delays per shot, the number of pounds required per hole for the proposed blast, the maximum pounds and delays per shot and the expected amount of shots and amount of time to complete the blasting operation.
- (d) Submission of letter from powder company. The blaster shall submit a letter from a powder company specifying the type of powder and the caps to be used for the blasting operation and the powder company's recommendations for the proposed blasting operation.
- (e) Proof of conduct of similar blasts. The blaster shall submit proof that the blaster has conducted similar blasts within twelve (12) months preceding the proposed blasting operation.
- (f) Proof of insurance. The blaster shall submit proof of insurance coverage in an amount not less than five million dollars (\$5,000,000.00) covering personal injury and property damage, naming the City of Wilkes-Barre as an additional insured.
- (g) State blasting license. The blaster shall have a valid and current Pennsylvania State Blasting License meeting all requirements for the type of blasting proposed by the blaster.
- (h) Verification of notification of utility companies. The blaster shall submit written verification that all utility companies, including, but not limited to, gas, electric, water, fire, alarm, telephone, telegraph or steam, in the proposed blast area have been notified of the date, time and place of the proposed blasting operation.
- (i) Notification of persons within one thousand (1,000) feet. The blaster shall notify every person within one thousand (1,000) feet of the proposed blasting site at least twenty-four (24) hours in advance of the blasting operation.
- (j) Verification of notification of institutions. The blaster shall submit written verification that every institution, including, but not limited to, public buildings, hospitals, schools, and daycare centers, within one thousand (1,000) feet of the blasting site received notice at least twenty-four (24) hours in advance of the blasting operation.
- (k) Twenty-four (24) hours' delay after issuance. A blasting operation shall not be commenced by a blaster until at least twenty-four (24) hours have elapsed after the issuance of the blasting permit by the chief building inspector.

**Sec. 7-213. - Revocation of permit; appeal; review by building board of appeals.**

The chief building inspector may revoke any permit issued pursuant to this article upon a determination by the chief building inspector that the blaster violated any of the provisions of this article. Any blaster aggrieved by the action of the chief building inspector may, within ten (10) days of receipt of the chief building inspector's written notice of revocation of a permit issued pursuant to this article, appeal to the Wilkes-Barre Building Board of Appeals for a review of the action of the chief building inspector in accordance with the procedures prescribed by the Wilkes-Barre Building Board of Appeals. Such appeal shall be in writing and addressed to the Wilkes-Barre Building Board of Appeals, City Hall, Wilkes-Barre, Pennsylvania.

**Sec. 7-214. - General blasting regulations.**

Any person, partnership, firm, association or corporation conducting a blasting operation within the corporate boundaries of the City of Wilkes-Barre shall comply with the following regulations:

- (a) Submission of blasting reports. The blaster shall submit a copy of the blaster's Pennsylvania Blasting Report to the chief building inspector within ten (10) days following the completion of the blasting operation.
- (b) Employment of seismograph company and submission of company's report. The blaster shall employ an independent seismograph company to monitor the blasting operation and a copy of the independent seismograph company's report must be submitted by the blaster to the chief building inspector within ten (10) days following the completion of the blasting operation.
- (c) Verbal approval to load holes with explosives required. No holes shall be loaded with explosives without the express verbal approval of the chief building inspector of the City of Wilkes-Barre, or his designee.
- (d) Flagmen required. The blaster shall employ flagmen to be present at the blasting site on the day or days of the blasting operation.
- (e) Times for blasting operations. Blasting operations may be conducted only between the hours of 10:00 a.m., and 3:30 p.m., Monday through Friday.
- (f) Presence of building inspector required. The chief building inspector and the fire chief, or their designees, shall be present throughout the blasting operations.
- (g) Age requirement for blaster. The handling and firing of explosives shall be performed by a blaster possessing a permit to use explosives who is at least twenty-one (21) years old.

(h) Handling explosives while under intoxicants or narcotics prohibited. The blaster shall not handle explosives while under the influence of intoxicants or narcotics.

(i) Smoking prohibited. The blaster shall not smoke or carry matches while handling explosives or while in the vicinity of the blasting site.

(j) Open flame lights prohibited. An open flame light shall not be used in the vicinity of the blasting site.

(k) Distance requirements for magazines. At the site of blasting operations, a distance of at least one hundred fifty (150) feet shall be maintained between Class II magazines and the blast site when the quantity of explosives temporarily kept therein is in excess of twenty-five (25) pounds, and at least fifty (50) feet when the quantity of explosives is twenty-five (25) pounds or less.

(l) General safety for persons, vehicles and surplus explosives. Before a blast is fired, the blaster in charge shall make certain that all surplus explosives are in a safe place, and all persons and vehicles are at a safe distance or under sufficient cover.

(m) Precautions from accidental discharge of electric blasting caps. The blaster shall take due precautions to prevent accidental discharge of electric blasting caps from current induced by radio or radar transmitters, lightning, adjacent power lines, dust storms or other sources of extraneous electricity. These precautions shall include:

(1) The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electrical storm;

(2) The posting of signs prohibiting the use of mobile radio transmitters on all roads within five hundred (500) feet of the blasting operations; and

(3) Compliance with nationally recognized good practice when blasting within one and one-half (1½) miles of broadcast or highpower short wave radio transmitters.

(n) Audible warning signal. A loud warning signal audible at least one thousand (1,000) feet from the blasting site shall be sounded at least three (3) minutes prior to the detonation of a blast.

**Sec. 7-215. - Aboveground blasting.**

When initiating aboveground blasting operations, such as steel structures and buildings, the blaster shall employ, at the blaster's expense, a competent independent consultant, who is acceptable to the city, and who shall monitor the blasting operation, and who shall be at the blasting site throughout the blasting operation. Any data, information, documentation or recommendations made by the consultant shall be provided to the city for the city's review at no cost.

**Sec. 7-216. - Application to strip mining ordinance.**

The provisions of this article shall supplement the provisions of File of Council No. 4 of 1956, as amended (Chapter 15, Article II), and shall not be deemed to be in conflict therewith. That is, any applicant for a strip mining permit under File of Council No. 4 of 1956, as amended, must also comply with the provisions of this article.

**Sec. 7-217. - Penalties and revocation.**

Any person, partnership, firm, association or corporation who violates any provision or provisions of this article shall, upon summary conviction thereof in a summary proceeding before a magistrate of the city, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00), and costs. In default of such fine and costs, such person shall be imprisoned in the county jail for a period not exceeding ninety (90) days. Each and every day upon which any person violates or continues to violate the provisions of this article shall constitute a separate offense.

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**ARTICLE VII. - RENTED DWELLING/RESIDENCE NOTIFICATION AND  
TENANT REGISTRATION <sup>[45]</sup>**

**Sec. 7-218. - Inspection of dwellings for lease or rent.**

(a) *Purpose/scope/declaration of policy and findings.* It is the purpose of this article and the policy of the City of Wilkes-Barre, in order to protect and promote the public health, safety and welfare of its citizens, to establish rights and obligations of owners, landlords, managers, tenants and occupants relating to the rental of certain regulated rental units in the City of Wilkes-Barre and to encourage owners and occupants to maintain and improve the quality of rental housing within the community. It is also the policy of the city that owners, managers and occupants share responsibilities to obey the various Codes adopted to protect and promote public health, safety and welfare. As means to those ends, this article provides for a system of inspections; issuance and renewal of occupancy license; and

sets penalties for violations. This article shall be liberally construed and applied to promote its purposes and policies.

Additionally, the planning and zoning bureau and the housing bureau of the department of planning and development have determined that some owners, landlords and/or agents of regulated rental unit(s) and occupants and/or tenants of the same in the City of Wilkes-Barre are maintaining said regulated rental unit(s) in violation of the housing code ordinance and/or maintain use(s) which are in violation of the zoning ordinance and/or nonconforming uses as defined within the zoning ordinance.

Many occupants and tenants are unaware that certain regulated rental unit(s) are in violation of the housing code ordinance and/or zoning ordinance or maintain nonconforming uses as defined by zone classification of the zoning ordinance.

(b) All taxes, assessments, fees and costs due to the City must be current before any license and/or authorization may be issued or re-issued by the City. The City's records of payment shall be conclusive of whether payment has been properly made prior to the issuance and/or authorization for the release of any license.

#### **Sec. 7-219. - Definitions.**

The following words shall have their corresponding meanings for purposes of this article, in addition to those which have already been defined in the Housing Code of the City of Wilkes-Barre and/or the Landlord Ordinance of Number 23 of 2002. In the event that any definition herein conflicts with a prior definition, the following definitions shall govern:

**City.** The City of Wilkes-Barre, Luzerne County, Pennsylvania.

**Code.** Any code or ordinance adopted, enacted, and/or in effect in and for the City of Wilkes-Barre concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or regulated rental unit.

**Code enforcement officer.** The duly appointed code enforcement officer(s) having charge of code enforcement for the City of Wilkes-Barre, and any assistants or deputies thereof.

**Common area.** In multiple unit dwellings, space which is not part of a regulated rental unit and which is shared with other occupants of the dwelling whether they reside in regulated rental units or not. Common areas shall be considered as part of the premises for purposes of this article.

**Disruptive conduct.** Any form of conduct, action, incident or behavior perpetrated, caused or permitted, by any occupant or visitor of a regulated rental unit that is a violation of existing ordinances of the City of Wilkes-Barre or statutes of the Commonwealth of Pennsylvania. In order for such disruptive conduct to constitute an offense under this article, a citation or criminal complaint must be issued by the police and

successfully prosecuted or a guilty plea entered before a district justice. If an appeal is filed from a decision of a district justice, the matter shall not be deemed to constitute disruptive conduct, unless a finding of guilty is affirmed by a final decision on appeal.

**Regulated rental unit.** A building having one (1) or more regulated rental units.

**Regulated rental unit.** A room or group of rooms within a regulated rental unit and forming a single unit and used for living and sleeping purposes, having its own cooking facilities, and a bathroom with a toilet and a bathtub or shower.

**Guest.** A person on the premises with the actual or implied consent of an occupant but who not a landlord, tenant or owner is as listed herein.

**Landlord.** One (1) or more persons, jointly or severally, in whom is vested all or part of the legal title to the premises, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgage holder in possession of a regulated rental unit, and/or the person(s) who is in control of leasing the premises to tenants, including the collection of rent, interviewing prospective tenants, responding to complaints and concerns and/or maintenance of the premises.

**Multiple-unit regulated rental unit.** A building containing two (2) or more independent regulated rental units, including, but not limited to, double houses, row houses, town houses, condominiums, apartment houses, and conversion apartments.

**Nonconforming use** means a use, whether of land or a structure which does not comply with the applicable use provisions of the zoning ordinance, or in an amendment to such, where such use was lawfully in existence prior to the enactment of the zoning ordinance or such amendment.

**Occupancy license.** The License issued to the owner of regulated rental units under this article, which is required for the lawful rental and occupancy of regulated rental units indicating that the owner or landlord has sufficiently complied with the provisions and regulations of the Housing and Zoning Ordinance of the City of Wilkes-Barre.

**Occupant.** An individual who resides in a regulated rental unit, whether or not he or she is the owner thereof, with whom a legal relationship with the owner/landlord is established by a written lease or [by] other legally enforceable agreement under the laws of the Commonwealth of Pennsylvania.

**Owner.** One (1) or more persons, jointly or severally, in whom is vested all or part of the legal title to the premises, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgage holder in possession of a regulated rental unit.

**Owner-occupied regulated rental unit.** A regulated rental unit in which the owner [resides on a regular, permanent basis] is domiciled. Said owner-occupied regulated rental unit shall not be considered the

entire building when there is more than one (1) apartment or unit, but shall be considered only the apartment or unit occupied by the owner as his or her residence.

**Person.** A natural person, partnership, corporation, unincorporated association, limited partnership, trust, or any other entity.

**Police.** The Police Department of the City of Wilkes-Barre, or any properly authorized member or officer thereof or any other law enforcement agency having jurisdiction within the City of Wilkes-Barre.

**Premises.** Any parcel of real property in the city, including the land and all buildings and appurtenant structures or appurtenant elements, on which one (1) or more regulated rental units is located.

**Property Manager.** An adult individual designated by the owner and/or landlord of a regulated rental unit under subsection 7-236(b). The property manager shall be the agent of the owner or landlord for service of process and receiving notices or demands and to perform the obligation of the owner under this article and under rental agreements with occupants. Any and all Property Managers must be properly licensed as a real estate broker, and hold the appropriate credentials as required by the laws of the Commonwealth of Pennsylvania. It shall be the burden of the owner/Property Manager to provide evidence that any exception to the state law applies.

**Regulated rental unit.** An apartment, specific unit, or an entire property within or as part of a building or structure occupied by not more than four (4), unrelated persons under a rental agreement within the City of Wilkes-Barre, which is not occupied by the owner, and which is used as a residence. If the regulated rental unit is an entire property or structure, it is presumed for purposes of this article that there is only one (1) regulated rental unit which constitutes the entire premises. In multi-unit properties, each unit constitutes either a regulated rental unit or an owner-occupied regulated rental unit (see definition of *Owner-occupied regulated rental unit*).

**Rent.** Any payment, compensation and/or other consideration, regardless of the nature of the same, which acts as a consideration, whether actual or implied, for the right to rent or lease a property, dwelling, residence or regulated rental unit. This payment, compensation and/or other consideration need not necessarily be made by the one actually living in the regulated rental unit or regulated rental unit and/or on the property.

**Rental agreement.** A written or oral agreement or other legally enforceable agreement between owner/landlord and occupant/tenant supplemented by the addendum required under subsection 7-236(e) of this article, embodying the terms and conditions concerning the use and occupancy of a specified regulated rental unit or premises.

**Renter acknowledgement Opportunity.** The code enforcement officer shall offer the occupant or tenant the right to review the Rental Inspection Report of the regulated rental unit offered for lease or rent, and the Renter shall be permitted to sign the said form.

**Renter's report.** This is a form which will be submitted to the Wilkes-Barre City Tax Office within thirty (30) days of the execution of any rental agreement of the date which the possession of the regulated rental unit is transferred to the occupant or tenant. This document shall contain the property location, the contact information of the owner, manager (if applicable), occupant and tenant and the start date for the term of the rental agreement.

**Tenant.** An individual who resides in a regulated rental unit, whether or not he or she is the owner thereof with whom a legal relationship with the owner/landlord is established by a [written] lease or by the laws of the Commonwealth of Pennsylvania. (Same as occupant)

**Unrelated.** Of or pertaining to two (2) or more persons not related to one another through blood, adoption or marriage.

**Zoning ordinance.** "The City of Wilkes-Barre Zoning Ordinance" File of Council No. 17 of 1960.

#### **Sec. 7-220. - Inspection of dwellings for lease or rent.**

It shall be the obligation of every owner, landlord and manager of a regulated rental unit as defined in section 7-219 of the housing code ordinance or this article in section 7-219, to notify the code enforcement officer of the bureau of housing, upon listing, advertising or offering said regulated rental unit(s) for lease or rent. The code enforcement officer shall provide a "Rental Inspection Report" for said regulated rental unit(s) based upon physical inspection of said regulated rental unit(s). Said Rental Inspection Report shall only be valid for six (6) months from the date of issuance.

#### **Sec. 7-221. - Utilization of Rental Inspection Report.**

The code enforcement officer shall review the information contained within the Rental Inspection Report to determine the issuance or denial of an occupancy license, as provided in section 7-225 of this article.

#### **Sec. 7-222. - Contents of Rental Inspection Report.**

The Rental Inspection Report furnished by the code enforcement officer to the owner, landlord and/or manager will contain the following:

- (1) The street address or other appropriate description of subject regulated rental unit(s).
- (2) A statement of zoning and flood insurance rate map classification applicable to the subject regulated rental unit(s).

(3) A statement concerning the conformity or nonconformity of existing uses maintained within the regulated rental unit(s) and violations of the zoning ordinance, if any, existing at the time of inspection.

(4) A statement concerning variances and/or use permits issued to date which affect said regulated rental unit(s).

(5) A statement of housing code violations, if any, existing at the time of inspection in conformance with section 7-223 of this article.

### **Sec. 7-223. - Inspection standards used in Rental Inspection Report.**

The code enforcement officer shall use the standards set forth herein in the inspection of the properties. The code enforcement officer shall inspect each rental unit located within the City of Wilkes-Barre, consistent with this article, and shall follow the requirements contained and set forth as the "Inspection Standards" outlined below. These inspection standards shall be integrated into the Rental Inspection Report which shall be kept on file in the Wilkes-Barre City Code Office for public inspection. In the event the regulated rental unit does not meet all inspection standards, the inspection shall fail, and the owner shall be required to make changes, consistent with the Code of Ordinances, prior to having the regulated rental unit re-inspected in accordance with this article. The relevant inspection standards are:

(a) Smoke detectors. All regulated rental units and rental properties shall be required to have working smoke detectors installed where required by this Code of Ordinances and any applicable laws. Smoke detectors may be battery operated so long as the battery is a ten-year lithium type and approved by the code enforcement officer. Smoke detectors shall be located:

- (1) In every bedroom;
- (2) In common area outside all bedrooms;
- (3) At least one (1) on each floor;
- (4) One (1) in basement, where applicable;
- (5) One (1) in attic, where applicable;

In the event there is construction and/or a complete renovation of the regulated rental unit(s) which is subject to the rules and regulations of the Wilkes-Barre City Building Code and/or the International Building Code (or Residential Code), the owner(s) and occupant(s) shall be subject to the requirements of the said Codes. In the event there is a conflict between this section and the above-referenced Codes, the code which is stricter shall apply.

(b) Requirements. Each regulated rental unit shall have at least one (1) of each of the following:

(1) Kitchen. A Kitchen shall have a stove with at least two (2) working burners and an oven; it shall have a sink with both hot and cold water; it shall have at least one (1) GFI receptacle; it shall have one (1) window which shall operate by opening to the outside; and it shall have at least one (1) light fixture;

(2) Bathroom. A bathroom shall have one (1) commode; it shall have one (1) lavatory; it shall have one (1) tub and/or shower; it shall have hot and cold water; it shall have at least one (1) GFI receptacle; it shall have one (1) window and/or an approved exhaust fan exhausting to the outside; and it will have at least one (1) light fixture;

(3) Living room. A living room must have at least two (2) double receptacles or one (1) double receptacle with a ceiling or wall mounted light fixture; it shall also have at least one (1) operating window which opens to the outside. Screens shall be provided for all windows and storm doors. Windows must be able to remain open without the aid of props;

(4) Bedroom. Each bedroom must have at least two (2) double receptacles or one (1) double receptacle with a ceiling or wall mounted light fixture; it shall also have at least one (1) operating window which opens to the outside. Screens shall be provided for all windows and storm doors. Windows must be able to remain open without the aid of props.

(c) Stairways. Each regulated rental unit that has stairways within the said unit or in common areas shall have continuous hand rails.

(d) Heat sources. All regulated rental units shall have either electric heat or a central heating source. Space heaters are not permitted as a sole source of heat. Kerosene heaters are prohibited.

(e) Hot water heaters. All heating units and domestic hot water heaters shall be installed according to the manufacturer's specifications by a licensed contractor, and shall be maintained and in good, working order at all times.

(f) Electrical requirements. No regulated rental unit is permitted to have exposed electrical wiring which does not meet the appropriate code and/or which can be a safety and/or health hazard.

(g) Other standards. All sockets, switches, outlet boxes and receptacles must have the appropriate covers/cover plates; plumbing fixtures and pipes cannot leak or be obstructed; roofs must be weathertight. The code enforcement officer shall also be required to inspect for other violations of this article which may or will have an impact on the health, safety and/or welfare of the owner, occupants or residents of the City of Wilkes-Barre.

#### **Sec. 7-224. - Infestation and vermin inspection.**

As part of the regulated rental unit inspection process, and as part of the Rental Inspection Report, the code enforcement officer shall also conduct an infestation and vermin inspection in each regulated rental unit offered for lease or rent. This shall be an inspection of the entire regulated rental unit and the surrounding property for possible health hazards resulting from any type of infestation, including, but not limited to, bugs, termites, roaches, ants, etc., and any type of vermin, including, but not limited to rats or mice. The code enforcement officer shall have the right to deny or revoke an occupancy license, as defined in sections 7-219 and 7-237 if, upon the code enforcement officer's opinion, there is an infestation or vermin hazard. If such a hazard is discovered in the course of inspecting the regulated rental unit(s), the owner/landlord/agent shall be responsible for abating the hazard within forty-five (45) days of notice of the same from the code enforcement officer regardless of whether the regulated rental unit is actually rented or leased.

The revocation of a Certificate of Occupancy shall mean that the owner/occupant shall be required to immediately vacate the property until the Regulated Rental Unit is reinspected and cleared by the code enforcement officer.

#### **Sec. 7-225. - Issuance or denial of occupancy license.**

(a) The Code Enforcement Officer shall review the information contained within the "Rental Inspection Report". Based upon said review the code enforcement officer may issue a occupancy license, and deliver said occupancy license to the owner/landlord and/or agent who lists, advertises, or offers a regulated rental unit(s) for lease or rent.

(b) The Code Enforcement Officer shall deliver the occupancy license to the owner/landlord and/or agent of said regulated rental unit(s). The occupancy license shall be transferred and delivered by the owner/landlord and/or manager to the occupant and tenant(s) of said regulated rental unit(s) upon execution of the rental agreement and/or at the time the occupant and/or tenant(s) may take possession, whichever is earlier.

(c) The code enforcement officer shall provide and deliver to the owner/landlord and/or manager written notice and explanation for the denial of a occupancy license for any regulated rental unit listed, advertised or offered for lease or rent.

**Sec. 7-226. - Certificate review prior to tenant occupancy.**

It shall be the obligation of every owner, landlord and manager to allow the occupant(s) and tenant(s) to review the occupancy license or written notice denying the occupancy license as provided in section 7-225 to the occupant(s) and tenant(s) prior to the execution of any rental agreement for the dwelling(s), prior to the transfer of possession of the dwelling(s), and prior to the exchange of any monetary sum relative to the lease of the regulated rental unit(s).

**Sec. 7-227. - Option of review by occupant/tenant.**

(a) The occupant(s) and tenant(s) shall have the right to review the information contained within the Rental Inspection Report or to waive the right to review the Rental Inspection Report prior to entering into a rental agreement.

(b) The code enforcement officer shall deliver to the owner, landlord and manager a copy of the "Rental Inspection Report" as defined in section 7-219. Said form shall be delivered to the owner, landlord and manager at the time when the code enforcement officer delivers the occupancy license or written notice denying the occupancy license. It shall be the obligation of every owner, landlord and manager to deliver the "Renter Acknowledgment Form" to the occupant(s) and/or tenant(s) prior to execution of the rental agreement for the dwelling(s), prior to the transfer of possession of the regulated rental unit(s) and prior to the exchange of any monetary sum relative to the lease of the dwelling(s), should a rental agreement not be utilized.

(c) The occupant(s) and tenant(s) of the regulated rental unit(s) shall complete the "Rental Inspection Report" and deliver it to the code enforcement officer. Should the occupant(s) and tenant(s) wish to review the Rental Inspection Report, the code enforcement officer will make arrangements for such.

**Sec. 7-228. - Period of notice.**

(a) Six (6) months from date of inspection, if a regulated rental unit(s) has not been rented or leased, the conclusiveness of the Rental Inspection Report must be either endorsed, as described in section 7-223, or altered, by a new inspection to indicate appropriate changes. The Rental Inspection Report will only indicate violations and conditions as of the date of inspection. Said Rental Inspection Report does not indicate violations and/or corrections of such occurring between the date of inspection and the date of a rental agreement for a dwelling(s), or transfer of possession of the regulated rental unit(s) when a

rental agreement is not utilized, and of exchange of a monetary sum relative to the lease of a regulated rental unit(s).

(b) However, upon the request of owner/landlord and/or manager, prior to the expiration of the six (6) month period referred to in subsection (a).

### **Sec. 7-229. - Notice to Wilkes-Barre City Tax Office.**

After the occupancy license has been issued, and within thirty (30) days of the execution of any rental agreement, or upon transfer of possession of the regulated rental unit(s) to any occupant(s) and/or tenant(s), whichever is earlier, the owner/landlord and/or manager must file a renter's report with the Wilkes-Barre City Tax Office, which shall list the following:

- (1) Name, address and contact number of owner/landlord and/or manager;
- (2) Name of the occupants and tenants;
- (3) Location, including street address and apartment number, of regulated rental unit(s);
- (4) Term of rental agreement; and
- (5) Date term shall commence.

Forms for obtaining this information shall be made available at the Wilkes-Barre City Tax Office during regular business hours.

It shall be the intent of this section to maintain the proper information on record for such needs of the city, including, but not limited to tax collection, census counting and head-counting used in obtaining state and/or federal aid or grants.

### **Sec. 7-230. - Fees.**

A fee of seventy-five dollars (\$75.00) shall be required for each unit inspected regardless of the number of units in the building or on the premises. (See also subsection 7-238(b) of this article). A Re-inspection fee shall be seventy-five dollars (\$75.00) as well.

### **Sec. 7-231. - Exceptions.**

The Rental Inspection Report set forth in section 7-221 shall not be required for regulated rental unit(s) should any of the following conditions be applicable:

(1) Where such regulated rental unit(s) is intended to be demolished and a valid demolition permit pursuant to the building code of the City of Wilkes-Barre has been obtained.

(2) Where such regulated rental unit(s) is given as a gift inter-family, i.e. husband and wife, parents and children and spouses of children.

**Sec. 7-232. - Disclaimer; Waiver.**

Notwithstanding any other law or ordinance, the provisions of this article may not be waived or disclaimed by an oral or written agreement executed by any owner/landlord and/or manager or occupant or tenant.

**Sec. 7-233. - Liability of the city.**

The Rental Inspection Report shall be compiled from the records of the City of Wilkes-Barre and from an inspection of the regulated rental unit(s). Neither the enactment of this article nor the preparation and delivery of any Rental Inspection Report required hereunder shall impose any liability upon the City of Wilkes-Barre, or officers or employees thereof, for any errors or omissions contained in such Rental Inspection Report nor shall the City of Wilkes-Barre bear any liability not otherwise imposed by law.

**Sec. 7-234. - Filing of appeal.**

Appeals from the findings set forth in the Rental Inspection Report must be filed in writing with the director of the department of code enforcement for the City of Wilkes-Barre within ten (10) business days after issuance of said Rental Inspection Report, who will refer the appeal to the board or boards as follows:

(1) Building board of appeals, where the conditions reported constitute violations of the applicable codes of the City of Wilkes-Barre or deal with the suitability of any regulated rental unit or structure, with regard to the health, safety and welfare of our citizens for continued occupancy; or

(2) The zoning hearing board, where the findings set forth in the Rental Inspection Report relate to matters concerning the classification and the use of property under the zoning ordinance of the City of Wilkes-Barre.

Any party(s) may appeal decisions of the building board of appeals or the zoning hearing board to any court of competent jurisdiction.

**Sec. 7-235. - Reserved.**

**Sec. 7-236. - Owner's duties.**

(a) *General.*

(1) It shall be the duty of every owner to keep and maintain all regulated rental units in compliance with all applicable Codes and provisions of all other applicable state laws and regulations and local ordinances, and to keep such property in good and safe condition.

(2) As provided for in this article, every owner shall be responsible for regulating the proper and lawful use and maintenance of every regulated rental unit which he, she or it owns. As provided for in this article, every owner shall also be responsible for regulating the conduct and activities of the occupants of every regulated rental unit which he, she or it owns in the city, which conduct or activity takes place at such regulated rental unit or its premises.

(3) In order to achieve those ends, every owner of a regulated rental unit shall regulate the conduct and activity of the occupants thereof, both contractually and through enforcement, as more fully set forth below.

(4) This section shall not be construed as diminishing or relieving, in any way, the responsibility of occupants or their guests for their conduct or activity; nor shall it be construed as an assignment, transfer, or projection over or onto any owner of any responsibility or liability which occupants or their guests may have as a result of their conduct or activity under any private cause of action, civil or criminal enforcement proceeding, or criminal law; nor shall this section be construed so as to require an owner to indemnify or defend occupants or their guests when any such action or proceeding is brought against the occupant based upon the occupant's conduct or activity. Nothing herein is intended to impose any additional civil/criminal liability upon owners other than that which is imposed by existing law.

(5) This article is not intended to, nor shall its effect be, to limit any other enforcement remedies which may be available to the city against an owner, occupant, or guest thereof.

(b) *Designation of manager.*

(1) Every owner who is not a full-time resident of the City of Wilkes-Barre, or elsewhere in an area that is not within a twenty (20) mile radius of the City of Wilkes-Barre, shall designate a manager who shall reside in an area that is within a twenty (20) mile radius of the City of Wilkes-Barre. If the owner is a corporation, a manager shall be required if an officer

of the corporation does not reside within the aforesaid area. If an officer does reside in the area, the officer shall perform the same function as a manager. If the owner is a partnership, a manager shall be required if all partners do not reside within the aforesaid area. Any partner that does reside in the area shall perform the same function as a manager. The manager shall be the agent of the owner for service of process and receiving of notices and demands, as well as for performing the obligations of the owner under this article and under rental agreements with occupants. The identity, address and telephone number(s) of a person who is designated as manager hereunder shall be provided by owner or manager to the city, and such information shall be kept current and updated as it changes. The owner of the property shall be responsible for designating a legal, and certified property manager. The Property Manager must have the credentials approved by and in accordance with the Commonwealth of Pennsylvania.

(c) *Disclosure.*

(1) The owner or manager shall disclose to the occupant in writing on or before the commencement of the tenancy:

- a. The name, address and telephone number of the manager; if applicable; and
- b. The name, address and telephone number of the owner of the premises.

(2) Before an occupant initially enters into or renews a rental agreement for a regulated rental unit, the owner or manager shall furnish the occupant with the most recent inspection Building Inspection Report relating to the regulated rental unit.

(d) *Maintenance of premises.*

(1) The owner shall maintain the premises in compliance with the applicable codes of the city and shall regularly perform all routine maintenance, including lawn mowing and ice and snow removal, and shall promptly make any and all repairs necessary to fulfill this obligation. Failure to abide by this provision shall subject the owner and/or the occupant to fines as set forth herein.

(2) The owner and occupant may agree that the occupant is to perform specified repairs, maintenance tasks, alterations, or remodeling. In such case, however, such agreement between the owner and occupant must be in writing. Such an agreement may be entered into between the owner and occupant only if:

- a. The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the owner or occupant; and

b. The agreement does not diminish or affect the obligation of the owner to other occupants in the premises.

(3) In no case shall the existence of any agreement between owner and occupant relieve an owner of any responsibility under this article or other ordinances or codes for maintenance of premises.

(e) *Written rental agreement.*

(1) All rental agreements for regulated rental units shall be in writing. All disclosures and information required to be given to occupants by the owner shall be furnished before the signing or other finalization of the rental agreement. The owner shall provide occupant with copies of the rental agreement and addendum before commencement of the lease.

(2) Terms and conditions. Owner and occupant may include in a rental agreement terms and conditions not prohibited by this article or other applicable ordinances, regulations, and laws, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(3) Prohibited provisions. Except as otherwise provided by this article, no rental agreement may provide that the occupant or owner agrees to waive or to forego rights or remedies under this article. A provision prohibited by this subsection included in rental agreement is unenforceable.

(4) The owner shall secure a written acknowledgment from occupants that the occupants have received the disclosures and information required by this article.

(5) Upon oral or written request by the City of Wilkes-Barre, the owner, within ten (10) days of the request, shall furnish to the city, copies of the acknowledgment that the occupants received the disclosures and information required by this article.

(6) Upon oral or written request by the City of Wilkes-Barre, the owner, within ten (10) days of the request, shall furnish to the city for inspection purposes only, copies of the leases the owner has entered into for regulated rental unit.

(7) The amount of compensation being received by the landlord and/or owner being defined as "Rent" herein may be redacted from submission of any rental agreement.

(f) *Complaints.*

(1) The owner or manager shall reply promptly to reasonable complaints and inquiries from occupants.

(g) *Landlord/Tenant Act.*

(1) The owner shall comply with all provisions of the Landlord-Tenant Act of the Commonwealth of Pennsylvania.

(h) *Common areas.*

(1) Where an owner does not regulate the use of common areas and the behavior of occupants and guests in the common areas, the owner shall be directly responsible for the behavior of occupants and guests in the common area as if the owner were an occupant.

(i) *Enforcement.*

(1) In the event that the same occupant is convicted of a third disruptive conduct violation within a license year, the code enforcement officer shall direct the owner to evict the occupant who violated the ordinance and not to permit the occupant to occupy the premises during the subsequent licensing.

(j) *Code violations.*

(1) Upon receiving notice of any code violations from the code enforcement officer, the owner shall promptly take action, or cause the necessary action to be taken, to abate the offending condition and eliminate the violation.

(k) *City can make repairs.*

(1) In case the owner of premises shall neglect, fail or refuse to comply with any notice from the city or its code enforcement officer to correct a violation relating to maintenance and repair of the premises under any code within the period of time stated in such notice, the city may cause the violation to be corrected. There shall be imposed upon the owner a charge of the actual costs involved, plus ten (10) percent of said costs for each time the city shall cause a violation to be corrected; and the owner of the premises shall be billed after same has been completed. Any such bill which remains unpaid and outstanding after the time specified therein for payment shall be grounds for the imposition of a municipal lien upon the premises as provided by law. Such a lien may be reduced to judgment and enforced and collected as provided by law, together with interest at the legal rate and court costs. The remedies

provided by this paragraph are not exclusive and the city and its code enforcement officer may invoke such other remedies available under this article or other applicable codes, ordinances or statutes, including where appropriate, condemnation proceedings or declaration of premises as unfit for habitation; or suspension, revocation, or nonrenewal of the license issued hereunder.

(l) *Inspections.*

(1) The owner shall permit inspections of any premises by the code enforcement officer at reasonable times upon reasonable notice.

**Sec. 7-237. - Occupant duties.**

(a) *General.*

(1) The occupant shall comply with all obligations imposed upon occupants by this article, all applicable Codes and ordinances of the city and all applicable provisions of state law.

(b) *Health and safety regulations.*

(1) The occupant shall dispose from his or her regulated rental unit all rubbish, garbage, and other waste in a clean and safe manner, and separate and place for collection all recyclable materials, in compliance with the recycling plan submitted by the owner to the city under Wilkes-Barre's Solid Waste and Recycling Ordinance; or, if there is no recycling plan for the premises, then in compliance with Wilkes-Barre's Solid Waste and Recycling Ordinance and all other applicable ordinances, laws and regulations.

(c) *Peaceful enjoyment.*

(1) The occupant shall conduct himself or herself and require other persons, including, but not limited to, guests on the premises and within his or her regulated rental unit with his or her consent, to conduct themselves in a manner compliant with the ordinances and regulations of the City of Wilkes-Barre that will not disturb the peaceful enjoyment of the premises by others, and that will not disturb the peaceful enjoyment of adjacent or nearby dwellings by the persons occupying same.

(d) *Residential use.*

(1) The occupant shall, unless otherwise permitted by applicable law or ordinance; occupy or use his or her regulated rental unit for no other purpose than as a residence.

(e) *Illegal activities.*

(1) The occupant shall not engage in, nor tolerate nor permit others on the premises to engage in, any conduct declared illegal under any federal criminal statute, and/or under the Pennsylvania Crimes Code (18 Pa.C.S.A. § 101, et seq) or Liquor Code (47 P.S. § 1-101 et seq), or The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101 et seq). Any misdemeanor or felony arrests shall be considered the basis for immediate occupant eviction proceedings.

(f) *Disruptive conduct.*

(1) The occupant shall not engage in, nor tolerate nor permit others on the premises to engage in, disruptive conduct, or other violations of the ordinance.

(g) *Compliance with rental agreement.*

(1) The occupant shall comply with all lawful provisions of the rental agreement entered into between owner and occupant. Failure to comply may result in the eviction of the occupant by the owner.

(h) *Damage to premises.*

(1) The occupant shall not intentionally cause, nor permit nor tolerate others to cause, damage to the premises. Conduct which results in damages in excess of five hundred dollars (\$500.00) shall be considered a violation of this article.

(i) *Inspection of premises.*

(1) The occupant shall permit inspections by the code enforcement officer of the premises at reasonable times (during business hours of the bureau of inspections), upon reasonable notice (twenty-four (24) hours' notice, either written or oral, by the Office of Code Enforcement).

**Sec. 7-238. - Licenses and inspection.**

(a) *License requirement.*

(1) As a prerequisite to entering into a rental agreement or permitting the occupancy of any Regulated Rental Unit (except as provided in subsection (c), below), the owner of every such Regulated Rental Unit shall be required to apply for and obtain an occupancy license for each Regulated Rental Unit.

(2) A license shall be required for each building and an inspection of each Regulated Rental Unit.

(3) The following categories of rental properties shall not require licenses, and shall not, therefore, be subject to the permitting provision of this article:

a. Owner-occupied Regulated Rental Units provided that not more than four (4) unrelated individuals, in addition to the immediate members of the owner's family, occupy the Regulated Rental Unit at any given time.

b. Hotels and motels.

c. Hospitals and nursing homes.

d. Bed and breakfast homes as defined in the City's zoning ordinance.

(4) An occupancy license shall not be required for multiple-unit dwellings, although an occupancy license shall be required for each regulated rental unit within the structure. The foregoing notwithstanding, all other provisions of this article shall apply to the common areas of the structure.

(5) The application for the occupancy license shall be in a form as determined by the City.

(6) The owner shall maintain a current list of occupants in each regulated rental unit which shall include their name, permanent address and permanent telephone number. The owner shall furnish the list to the city upon request and shall notify the City of any changes in the number of occupants so that revisions can be made to the license.

(7) The owner shall furnish with his or her application for an occupancy license a copy of the written lease form or detailed written summary of the terms and conditions of any rental agreement the owner intends to have the occupants of each licensed regulated rental unit execute or otherwise agree to. If the owner uses more than one (1) form of a rental agreement, the owner shall furnish a copy of each form. The occupancy license will not be issued if the rental agreement form does not meet the requirements of this article.

(8) The owner shall furnish with his or her application, for inspection purposes only, the rental agreements that have been entered into that will cover all or part of the occupancy license term. The occupancy license will not be issued if such leases are not furnished for inspection. Leases shall be furnished for all persons who have paid a down payment at the time that the owner applies for an occupancy license or who have committed to residing in the premises.

(9) Failure to abide by this Section shall be a summary offense with a fine of not more than Three Hundred Dollars (\$300.00) per violation.

(b) *Bi-annual license term, fee and occupancy limit.*

(1) Each occupancy license shall have a two-year term and each regulated rental unit shall be subject to a minimum of one (1) inspection every other year, provided that there is no transfer of title to the premises and there is no change in any tenant of a regulated rental unit. The occupancy license shall be valid for two (2) years from the initial date of issuance and shall expire on the last day. Any renewal inspection shall be required to be performed prior to the expiration of the occupancy license. All properties in the city-classified "Zone 1" shall be required to be inspected in odd-numbered years, while those in "Zone 2" shall be required to be inspected in even-numbered years, subject to the other conditions set forth herein.

(2) Upon application for a license and prior to issuance or renewal thereof, each applicant shall pay to the city an annual license and inspection fee.

a. Registration—The fee for a Residential Rental Registration shall be One Hundred Dollars (\$100.00) per residential rental unit payable at the time of the scheduling of the original inspection.

b. Licensure (occupancy license)—The fee for a License for Occupancy shall be One Hundred Dollars (\$100.00).

c.. Reinstatement—The fee to reinstate a revoked residential rental registration or a residential rental license shall be one hundred dollars (\$100.00) per residential rental unit and ten dollars (\$10.00) per occupant with a maximum of four (4) occupants.

d. Transfer—See section 7-242 of this article.

For inspection fees, see section 7-230 of this article.

(3) The license shall indicate thereon the maximum number of occupants in each regulated rental unit.

(4) No license shall be issued if the owner has not paid any fines and costs arising from enforcement of this article or any of the ordinances of the City of Wilkes-Barre relating to land use and/or code enforcement or if any licensing fees under this article are due and owing the city.

(c) *Inspection.*

(1) All premises shall be subject to periodic inspection by the code enforcement officer or another duly authorized agent of the city as outlined in section 7-219. Such inspection may take place when an application is submitted for a license or at any time during the year when a property becomes subject to this article. The fees for inspections are contained in section 7-230 of this article.

(2) The code enforcement officer is hereby designated as the official authorized to enforce this article and to take appropriate measures to abate violations hereof, for and on behalf of the City of Wilkes-Barre.

(3) This section shall not be construed so as to limit or restrict the code enforcement officer's authority to conduct inspections of premises, whether or not subject to the permitting and inspection requirements of this ordinance, pursuant to any other ordinance or Code.

(d) *Search warrant.*

(1) Upon a showing of probable cause that a violation of this article or any other ordinance of the City of Wilkes-Barre has occurred, the code enforcement officer may apply to the district justice having jurisdiction in the City of Wilkes-Barre for a search warrant to enter and inspect the premises.

(e) *Posting of contact information.*

(1) Any multi-unit regulated rental unit shall be required to conspicuously post the contact name and address of the owner, landlord and manager for the benefit of all tenants and residents. Said information shall be posted in the common area of the multi-unit regulated rental unit.

**Sec. 7-239. - Grounds for nonrenewal, suspension or revocation of license.**

(a) *General.*

(1) The code enforcement officer may initiate disciplinary action against an owner that may result in a formal warning, nonrenewal, suspension or revocation of the owner's license, for violating any provision of this article that imposes a duty upon the owner and/or for failing to regulate the breach of duties by occupants as provided for herein.

(b) *Definitions of options to the Code Enforcement Officer.*

(1) **Formal warning**—Formal written notification of at least one (1) violation of this article. Upon satisfactory compliance with this article and any conditions imposed by the code enforcement officer and/or the City of Wilkes-Barre, the formal warning shall be removed when the owner applies for license renewal at a time set by the code enforcement officer or by City of Wilkes-Barre.

(2) **Nonrenewal**—The denial of the privilege to apply for license renewal after expiration of the license term. The city will permit the owner to maintain occupants in the premises until the end of the license term but will not accept applications for renewal of the license until a time set by the code enforcement officer or by City of Wilkes-Barre such time not to exceed one (1) year from the renewal date.

(3) **Suspension**—The immediate loss of the privilege to rent regulated rental units for a period of time set by the code enforcement officer or City of Wilkes-Barre such time not to exceed one (1) year from the date of suspension. The owner, after the expiration of the suspension period, may apply for license renewal without the need to show cause why the owner's privilege to apply for a license should be reinstated. Upon suspension, the owner shall take immediate steps to evict the occupants.

(4) **Revocation**—The immediate loss of the privilege to rent regulated rental units for a period of time set by the code enforcement officer or the City of Wilkes-Barre and the loss of the privilege to apply for renewal of the license at the expiration of the time period such time not to exceed one (1) year from the date of revocation. Upon the loss of the privilege to rent, the owner shall take immediate steps to evict the occupants.

(5) **Reinstatement**—A residential rental registration shall be reinstated if the owner or operator of a regulated rental unit corrects the reason for the revocation of the residential rental registration and has paid the residential rental registration reinstatement fee.

(c) *Criteria for applying sanctions.*

(1) The code enforcement officer, when recommending sanctions, and the City of Wilkes-Barre, when applying sanctions, shall consider the following:

- a. The effect of the violation on the health, safety and welfare of the occupants of the regulated rental unit and other residents of the premises.
- b. The effect of the violation on the neighborhood.

- c. Whether the owner has prior violations of this article and other ordinances of the city or has received notices of violations as provided for in this article.
- d. Whether the owner has been subject to sanctions under this article.
- e. The effect of sanctions against the owner on the occupants.
- f. The action taken by the owner to remedy the violation and to prevent future violations, including any written plan submitted by the owner.
- g. The policies and lease language employed by the owner to manage the regulated rental unit to enable the owner to comply with the provisions of this article.
- h. In addition to enforcing sanctions as set forth above, the code enforcement officer may recommend and City of Wilkes-Barre may impose upon the existing or subsequent licenses reasonable conditions related to fulfilling the purposes of this article.

(d) *Grounds for imposing sanctions.*

- (1) Any of the following may subject an owner to sanctions as provided for in this article:
  - a. Failure to abate a violation of City Codes and ordinances that apply to the premises within the time directed by the Code Enforcement Officer.
  - b. Refusal to permit the inspection of the premises by the Code Enforcement Officer based on just cause or a referral from a law enforcement agency, or by complaint based on circumstantial evidence.
  - c. Failure to take steps to remedy and prevent violations of this article by occupants of Regulated Rental Units as required by this Code of Ordinances.
  - d. Failure to evict occupants after having been directed to do so by the code enforcement officer of the City as provided for in this Code of Ordinances.
  - e. Three (3) violations of this article or other ordinances of the city that apply to the premises within a license term, with the exception of (d)(1)(f)(vii) and (viii), which shall only require one incident as set forth in the said provisions. For purposes of this article, there need be no criminal conviction before a violation can be found to exist.

f. The Code Enforcement Officer, or any authorized agent thereof, may close a Rental Unit (or an entire property or structure or building containing more than one (1) rental unit) pursuant to this subsection when one (1) or more of the following events occurs at the property:

i. A riot as defined in Title 18 of the Pennsylvania Statutes occurs on the premises where the rental unit(s) is located;

ii. Three (3) or more of the following occur in any combination within any six-month period: violations of this section under [Chapter 7](#) have occurred;

iii. The rental unit, common areas, or the premises is condemned by the Code Enforcement Officer, the Wilkes-Barre City Fire Department, or any other appropriate city official, as unsafe for human occupancy, or structurally unsafe;

iv. The owner has failed to appoint a Property Manager as required by this section, or if the property manager is not properly licensed as required by the Commonwealth of Pennsylvania;

v. The owner has failed to comply with any applicable building codes, zoning codes, housing codes or any provision of this Chapter; and/or, the owner has failed to pay the fine or rectify the underlying problem which generated a citation and/or fine from the Code Enforcement Office regarding the condition of the premises; or an owner, after written notice of violation(s), has failed to come into compliance with the Wilkes-Barre Code of Ordinances, within such time as the code enforcement officer may designate.

vi. Three (3) or more nuisance violations, under [Chapter 18](#) of the Wilkes-Barre Code of Ordinances, have occurred on the premises within any six (6) month period.

vii. An occupant or owner has implied or actual knowledge of drug activity, if the owner and/or occupant is charged or convicted in a court of competent jurisdiction of selling or distributing narcotics or controlled substances, as these terms are defined in the Pennsylvania statutes, in the rental unit, common areas or on the premises or property. Said knowledge may be imputed to the occupant or owner based on police knowledge and experience of drug activity on the premises or property.

viii. An occupant or owner has implied or actual knowledge of any illegal or criminal action with a firearm, in any instance where the owner and/or occupant(s) are charged or convicted in a court of competent jurisdiction of murder or attempted murder, in any degree, manslaughter, assault with a deadly weapon, possession of an illegal firearm, gun manufacturing, gun or

firearm trafficking, illegal possession of a firearm, or any crime where a firearm is used as an accessory and/or part of the commission of the said crime, as these terms are or may be defined in the Pennsylvania statutes, in the rental unit, common areas or on the premises or property. Said knowledge may be imputed to the occupant or owner based on police knowledge and experience of such criminal activity(ies) on the premises or property.

In the event there is a violation of any provision of [section 7-239\(d\)\(1\)\(f\)](#) i., iv. and v., the rental unit or rental unit(s) of a multi-unit building, when necessary, may be closed by the City of Wilkes-Barre for a period of up to six (6) months, at the direction of the Building Code Official. Evidence that the violation has been cured must be presented to the Building Code Official and verified before any license could be re-issued and/or a property re-opened. The violation of [section 7-239\(d\)\(1\)\(f\)](#) ii, iii, vii. or viii. shall require the closure of the rental unit(s) for a period of six (6) months at the direction of the City of Wilkes-Barre by way of the revocation of the rental license. Each re-opening without having cured the violation or prior to obtaining a new certificate of occupancy shall be considered a new violation subject to any applicable fines, penalties or additional, consecutive closure orders.

Any person aggrieved by an order of the City for closure of a rental unit by way of a suspension or termination of a rental license or closure for issues related to other issues under the City's Code and issued under this article relating to housing, building, health or disruptive conduct may appeal such order, within twenty (20) days from the date of the order to the Housing Appeals Board by filing an appeal in the Office of Code Enforcement at Wilkes-Barre City Hall, and paying a non-refundable appeal fee of One Hundred Dollars (\$100.00). This appeal fee may be waived for those claiming *in forma pauperis* status.

For purposes of this section and article, any notice required hereunder which is given to the agent, property manager or occupant shall be deemed as notice given to the owner. A claimed lack of knowledge by the owner, property manager or agent, if applicable, of any violation hereunder cited shall be no defense to closure of rental units/revocation of license, as long as all notice prerequisite to such proceedings has been given in accordance with this section or article.

Nothing contained in this article or this section is intended to dissuade, discourage or prohibit any person whose safety is in jeopardy, or who is a victim of domestic violence from contacting the appropriate authorities, including, but not limited to the Wilkes-Barre City Police Department. Communication and cooperation with law enforcement agencies prior to any event by the owner and/or tenant shall be considered a mitigating factor in the closure of any rental unit and revocation of any license.

Once a rental unit is closed by the City of Wilkes-Barre through the revocation of the license, it shall be closed for the period of time specified in this Ordinance and by the City, where applicable, and shall remain closed notwithstanding a sale and/or transfer

of real estate subsequent thereto. It shall be the duty of any property owner to notify any subsequent purchaser of the fact that a rental unit is closed by the City of Wilkes-Barre and that a license cannot be obtained until the expiration of the closure period and after a reinspection occurs by the City of Wilkes-Barre. Further, no rental license shall be re-issued unless all real estate taxes are current.

No person shall remove any placard placed by any City Official placing the public on notice of any closure or any violation. Any placards posted may only be removed by the appropriate City Officials. Removal of the placard shall subject the offending individual(s) to a fine of Three Hundred Dollars (\$300.00) for each violation. Removal of a placard by the same individual more than two (2) times, in addition to the fines imposed, shall subject the offending individual(s) to a term of incarceration at the direction of the presiding Court.

(e) *Procedure for nonrenewal, suspension or revocation of license and appeal.*

(1) Notification. Following a determination that grounds for nonrenewal; suspension or revocation of a license exist, the code enforcement officer shall notify the owner of the action to be taken and the reason therefore. Such notification shall be in writing, addressed to the owner in question, and shall contain the following information:

a. The address of the premises in question and identification of the particular regulated rental unit(s) affected.

b. A description of the violation which has been found to exist.

c. A statement that the license for said regulated rental unit(s) shall be either suspended or revoked, or will not be renewed for the next license or that the owner will receive a formal warning. In the case of a suspension or revocation, the notice shall state the date upon which such suspension or revocation will commence, and in the case of a suspension shall also state the duration of said suspension.

d. A statement that, due to the nonrenewal, suspension or revocation (as the case may be), the owner or any person acting on his, her or its behalf is prohibited from renting, letting, or permitting occupancy of the regulated rental unit(s) by more than two (2) unrelated individuals subject to said enforcement action, from and during the period said action is in effect.

e. Any person affected by a decision of the code enforcement officer or a notice or order issued by the code enforcement officer shall have the right to appeal to the Housing board of appeals, provided that a written application for appeal is filed within twenty (20) days after the day the decision, notice or order was served.

f. Any person(s) filing an appeal hereunder shall be required to pay an appeal fee of one hundred dollars (\$100.00) at the time the appeal is filed consistent with subsection e above. If the appeal is successful, the appeal fee shall be refunded.

(f) *Delivery of notification.*

(1) All notices shall be sent to the owner and manager, if applicable, by certified mail. In the event that the notice is returned by the postal authorities marked "unclaimed" or "refused", then the code enforcement officer or other agent of the city shall attempt delivery by personal service on the owner or manager, if applicable. The code enforcement officer or other agent of the city shall also post the notice at a conspicuous place on the premises.

(2) If personal service cannot be accomplished after a reasonable attempt to do so, then the notice may be sent to the owner or manager at the address stated on the most current license application for the premises in question, by regular first class mail, postage prepaid. If such notice is not returned by the postal authorities within five (5) days of its deposit in the U.S. mail, then it shall be deemed to have been delivered to and received by the addressee on the fifth day following its deposit in the U.S. mail, and all time periods set forth under subsection (1) above, shall thereupon be calculated from said fifth day.

**Sec. 7-240. - Violations and penalties.**

(a) *Basis for violation.* It shall be unlawful for any person, as either owner or manager of a regulated rental unit for which a license is required, to operate without a valid, current license issued by the city authorizing such operation. It shall also be unlawful for any person, either owner or manager, to allow the number of occupants of a regulated rental unit to exceed the maximum limit as set forth on the license, or to violate any other provision of this article. It shall be unlawful for any occupant to violate this article.

(b) *Penalties.* Any person who shall violate a provision of this article or shall fail to comply with any of the requirements hereof, or the building code of the city, or shall be in violation of an approved plan or directive of the code enforcement officer shall, upon conviction thereof before the district magistrate of the City of Wilkes-Barre, Pennsylvania, be liable to pay the following penalties:

(1) First violation—A fine of five hundred dollars (\$500.00), or thirty (30) days imprisonment, or both;

(2) Second violation—A fine of seven hundred fifty dollars (\$750.00), or sixty (60) days imprisonment, or both;

(3) Third and each subsequent violation—A fine of one thousand dollars (\$1,000.00), or ninety (90) days imprisonment, or both.

Upon conviction of a third offense, the owner of the property will be required to begin eviction of the tenants/occupants of the property.

(c) *Nonexclusive remedies.* The penalty provisions of this article and the license nonrenewal, suspension and revocation procedures provided in this article shall be independent, nonmutually exclusive separate remedies, all of which shall be available to the city as may be deemed appropriate for carrying out the purposes of this article. The remedies and procedures provided in this article for violation hereof are not intended to supplant or replace, to any degree, the remedies and procedures available to the city in the case of a violation of any other Code or ordinance of the city, whether or not such other Code or ordinance is referenced in this article and whether or not an ongoing violation of such other Code or ordinance is cited as the underlying ground for a finding of a violation of this article.

#### **Sec. 7-241. - Miscellaneous provisions.**

(a) *Notices.*

(1) For purposes of this article, any notice required hereunder to be given to a manager shall be deemed as notice given to the owner.

(2) There shall be a rebuttable presumption that any notice required to be given to the owner under this article shall have been received by such owner if the notice was given to the owner in the manner provided by this article.

(3) A claimed lack of knowledge by the owner of any violation hereunder cited shall be no defense to license nonrenewal, suspension or revocation proceedings as long as all notices prerequisite to institution of such proceedings have been given and deemed received in accordance with the applicable provisions of this article.

(b) *Changes in ownership/occupancy.* It shall be the duty of each owner of a regulated rental unit to notify the code enforcement officer in writing within five (5) days of any change in ownership of the premises or of the number of regulated rental units on the premises. It shall also be the duty of the owner to notify the code enforcement officer in writing within five (5) days of any increase in the number of occupants in any regulated rental unit or of the changing of a regulated rental unit from owner-occupied to non-owner-occupied, which thereby transforms the regulated rental unit into a regulated rental unit for purposes of this article. Failure to so notify the code enforcement officer shall be considered a violation of this article.

(c) *Owners severally responsible.* If any regulated rental unit is owned by more than one (1) person, in any form of joint tenancy, as a partnership, or otherwise, each person shall be jointly and severally responsible for the duties imposed under the terms of this article, and shall be severally subject to prosecution for the violation of this article.

(d) *Severability.* If any provision of this article or the application thereof to any person or circumstances is held invalid, such holding shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end, the provisions of this article are declared severable.

### **Sec. 7-242. - Inspection before or after sale of premises.**

(a) *Generally.* If a rental inspection has occurred within three (3) months before the sale of the premises (the date is defined as the date of settlement) the specific unit, but not the entire premises is exempt from the inspection prior to sale. Verification of the inspection must be shown to the code enforcement officer prior to the inspection for sale.

If an inspection was conducted for the sale of a property and the inspection for a sale has occurred three (3) months prior to the need for an inspection (i.e. a change in a tenant or a renewal of an occupancy license), the code enforcement officer may waive the need for an inspection provided there is not circumstances which would necessitate a re-inspection (i.e. drug activity, criminal activity, probable cause to believe there is a nuisance or that the regulated rental unit(s) are not up to code). Such decision as to whether an inspection is necessary within three (3) months after the inspection for sale is at the sole discretion of the code enforcement officer.

(b) *Sale of premises.* It shall be unlawful for any owner of any premises within the City of Wilkes-Barre which has one (1) or more regulated rental units unless the inspections herein are conducted or lawfully exempt, to sell the premises until the inspections have been completed as set forth herein.

(c) *Additional penalties.* In addition to the penalties set forth in this article, which shall remain applicable herein, no deed shall be registered or recorded in the Office of Recorder of Deeds of Luzerne County unless and until the inspections have been completed or determined to be exempt by the code enforcement officer.

### **Sec. 7-243. - Conflicts.**

All ordinances or parts of ordinances of the City of Wilkes-Barre in conflict with this article to the extent of such conflict, and no further, are hereby repealed. The provisions of this article are

severable. If any part of this article is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby.

**Sec. 7-244. - Application.**

All regulated rental units in the City of Wilkes-Barre must be inspected in accordance with the guidelines and requirements herein no later than December 31, 2005 for properties in Zone 1 and by December 31, 2006 for properties in Zone 2. Additionally, any information which may be necessary and/or must be provided by the owner, landlord or manager under this article must be provided to the office of code enforcement no later than December 31, 2005, regardless of whether an inspection is required.

**Secs. 7-245—7-270. - Reserved.**

**ARTICLE VIII. - HOUSING CODE OF THE CITY REQUIRING THE  
INSPECTION OF ALL PROPERTIES WITHIN THE CITY PRIOR TO SALE  
AND/OR TRANSFER**

**Sec. 7-271. - Definitions.**

The following words shall have their corresponding meanings for purposes of this article, in addition to those which have already been defined in the housing code of the City of Wilkes-Barre. In the event that any definition herein conflicts with a prior definition, the following definitions shall govern:

**City.** The City of Wilkes-Barre, Luzerne County, Pennsylvania.

**Code.** Any code or ordinance adopted, enacted, and/or in effect in and for the City of Wilkes-Barre concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or regulated rental unit.

***Code enforcement officer.*** The duly appointed code enforcement officer(s) having charge of code enforcement for the City of Wilkes-Barre, and any assistants or deputies thereof.

***Housing Inspection Report.*** The report created and used as an objective analysis of real estate, improvements and dwellings within the City of Wilkes-Barre and which shall be used as the basis for an occupancy license for regulated rental units and all other dwellings within the city limits.

**Sale.** The transfer of any real estate for consideration or for nominal consideration (one dollar (\$1.00) or some other nominal consideration) within the City of Wilkes-Barre. A sale shall not include a transfer wherein the grantor(s) and the grantee(s) are the same individual or where real estate is being purchased as part of a tax sale, sheriff sale or fee and clear sale as the direct result of a foreclosure.

**Sales certificate.** The certificate issued by the code enforcement officer which must be issued prior to the sale of any real estate within the city and which must be filed with the deed in the Office of the Recorder of Deeds of Luzerne County.

### **Sec. 7-272. - Inspection requirements.**

Any person, individual or entity listing or offering a property for sale, whether it be commercial or residential, shall be required to have an inspection prior to the sale by a code enforcement officer of the City of Wilkes-Barre. The current owner shall make an application to the code enforcement office to request an inspection to be sure that the real estate and improvements meet the Code requirements in the city. A code enforcement officer shall inspect the real estate and improvements and issue a sales certificate to the owners as set forth herein.

### **Sec. 7-273. - Inspection standards.**

The code enforcement officer shall use the standards set forth herein in the inspection of the properties. The code enforcement officer shall inspect each property which is to be sold and/or transferred within the City of Wilkes-Barre and, and shall follow the requirements contained in and set forth as the "Inspection Standards" outlined below. These inspection standards shall be integrated into the Housing Inspection Report which shall be kept on file in the Wilkes-Barre City Code Office for public inspection. In the event the property which is to be sold and/or transferred does not meet all inspection standards, the inspection shall fail, and the owner shall be required to make changes, consistent with the Code of Ordinances, prior to the issuance of a sales certificate in accordance with this article. The relevant inspection standards are:

(a) **Smoke detectors.** All properties which are to be sold and/or transferred shall be required to have working smoke detectors installed where required by this Code of Ordinances and any applicable laws. Smoke detectors may be battery operated so long as the battery is a ten-year lithium type and approved by the code enforcement officer. Smoke detectors shall be located:

- (1) In every bedroom;
- (2) In common area outside all bedrooms;

- (3) At least one (1) on each floor;
- (4) One (1) in basement, where applicable;
- (5) One (1) in attic, where applicable;

In the event there is construction and/or a complete renovation of the property which is to be sold and/or transferred, which is subject to the rules and regulations of the Wilkes-Barre City Building Code and/or the International Building Code (or Residential Code), the owner(s) and occupant(s) shall be subject to the requirements of the said Codes. In the event there is a conflict between this section and the above-referenced Codes, the code which is stricter shall apply.

(b) Requirements. Each of the rooms listed below shall meet the following criteria and conditions:

(1) Kitchen. A kitchen shall have a stove with at least two (2) working burns and an oven; it shall have a sink with both hot and cold water; it shall have at least one (1) GFI receptacle; it shall have one (1) window which shall operate by opening to the outside; and it shall have at least one (1) light fixture;

(2) Bathroom. A bathroom shall have one (1) commode; it shall have one (1) lavatory; it shall have one (1) tub and/or shower; it shall have hot and cold water; it shall have at least one (1) GFI receptacle; it shall have one (1) window and/or an approved exhaust fan exhausting to the outside; and it will have at least one (1) light fixture;

(3) Living room. Each living room must have at least two (2) double receptacles or one (1) double receptacle with a ceiling or wall mounted light fixture; it shall also have at least one (1) operating window which opens to the outside. Screens shall be provided for all windows and storm doors. Windows must be able to remain open without the aid of props;

(4) Bedroom. Each bedroom must have at least two (2) double receptacles or one (1) double receptacle with a ceiling or wall mounted light fixture; it shall also have at least one (1) operating window which opens to the outside. Screens shall be provided for all windows and storm doors. Windows must be able to remain open without the aid of props.

- (c) Stairways. All stairways within the said property shall have continuous hand rails.
- (d) Heat sources. All properties shall have either electric heat or a central heating source. Space heaters are not permitted as a sole source of heat. Kerosene heaters are prohibited.
- (e) Hot water heaters. All heating units and domestic hot water heaters shall be installed according to the manufacturer's specifications by a licensed contractor, and shall be maintained and in good, working order at all times.
- (f) Electrical requirements. No property is permitted to have exposed electrical wiring which does not meet the appropriate code and/or which can be a safety and/or health hazard.
- (g) Other standards. All sockets, switches, outlet boxes and receptacles must have the appropriate covers/cover plates; plumbing fixtures and pipes cannot leak or be obstructed; roofs must be weathertight. The code enforcement officer shall also be required to inspect for other violations of this article which may or will have an impact on the health, safety and/or welfare of the owner, occupants or residents of the City of Wilkes-Barre.

**Sec. 7-274. - Additional inspection report requirements.**

In addition to the outline of the point allocation in the Housing Inspection Report, the inspection information shall also contain the following:

- (1) Identification of the address of the property;
- (2) Name and address of the current titled owner;
- (3) Name and address of the new/future titled owner;
- (4) Designation of the property as residential or commercial;
- (5) Name of the occupants of the property;
- (6) Name of the real estate broker(s) for the property;
- (7) The zoning and flood insurance map classification of the property.

**Sec. 7-275. - Issuance of a sales certificate.**

(a) After review of the real estate and all improvements, provided that the same meets the standards set forth herein, the code enforcement officer shall issue a sales certificate which shall be required for the filing of the deed in the Office of the Recorder of Deeds of Luzerne County. Said sales certificate shall serve as the proof and certification that the real estate and improvements are suitable for human habitation and whether or not additional work is necessary prior to or immediately after the sale.

(b) If the real estate and improvements do not meet the standards of the aforesaid Housing Inspection Report, the property cannot be sold or transferred without a written waiver of the failure of inspection

and execution by the purchaser/buyer of the sales certificate indicating that the purchaser is aware of the condition and agrees to bring the property to meet the Code requirements. Additionally, any waiver executed by the purchaser is deemed to be an understanding that no person, individual or entity, may occupy the real estate or property unless and until another inspection is conducted to ensure that the said property meets the Code requirements. Further, the sales certificate shall be considered the first notice to the new titled owner of the condition of the property for purposes of citations for failure to meet Code.

**Sec. 7-276. - Notice to Wilkes-Barre City Tax Office.**

A copy of the sales certificate shall be delivered to the Wilkes-Barre City Tax Office upon final execution of the same.

**Sec. 7-277. - Fees.**

A fee of ninety dollars (\$90.00) for all residential buildings; an additional fee of twenty-five dollars (\$25.00) for each additional unit in the aforesaid residential unit; a fee of one hundred twenty-five dollars (\$125.00) for a commercial unit under six thousand square feet (6,000 sf); and a fee of Two Hundred Fifty Dollars (\$250.00) for any commercial building more than six thousand square feet (6,000 sf). Any mixed use property (real estate/commercial) shall be deemed commercial.

**Sec. 7-278. - Liability of the city.**

The Housing Inspection Report and the sales certificate shall be compiled from the records of the City of Wilkes-Barre and from an inspection of the real estate. Neither the enactment of this article nor the preparation and delivery of any Housing Inspection Report or sales certificate required hereunder shall impose any liability upon the City of Wilkes-Barre, or officers or employees thereof, for any errors or omissions contained in such Housing Inspection Report or sales certificate nor shall the City of Wilkes-Barre bear any liability not otherwise imposed by law.

**Sec. 7-279. - Filing of appeal.**

Appeals from the findings set forth in the Housing Inspection Report and/or from the Sales Certificate or denial thereof must be filed in writing with the director of the department of code enforcement for the City of Wilkes-Barre within ten (10) business days after issuance of said Housing Inspection Report and/or denial or issuance of a sales certificate, who will refer the appeal to the board or boards as follows:

(1)

The Housing board of appeals, where the conditions reported constitute violations of the applicable codes of the City of Wilkes-Barre or deal with the suitability of any real estate or structure, with regard to the health, safety and welfare of our citizens for continued occupancy; or

(2)

The zoning hearing board, where the findings set forth in the Housing Inspection Report relate to matters concerning the classification and the use of property under the zoning ordinance of the City of Wilkes-Barre.

Any party(s) may appeal decisions of the building board of appeals or the zoning hearing board to any court of competent jurisdiction.

### **Sec. 7-280. - Violations and penalties.**

(a) Basis for violation. It shall be unlawful for any person, corporation or entity to sell or transfer any property without an inspection as required hereunder. It shall be unlawful for any individual, entity or corporation to violate any provision of this article.

(b) Penalties. Any person who shall violate a provision of this article or shall fail to comply with any of the requirements hereof, or the building code of the city, or shall be in violation of an approved plan or directive of the code enforcement officer shall, upon conviction thereof before the district justice of the City of Wilkes-Barre, Pennsylvania, be liable to pay one thousand dollars (\$1,000.00) as a fine.

(c) Nonexclusive remedies. The penalty provisions of this article and the license nonrenewal, suspension and revocation procedures provided in this article shall be independent, nonmutually exclusive separate remedies, all of which shall be available to the city as may be deemed appropriate for carrying out the purposes of this article. The remedies and procedures provided in this article for violation hereof are not intended to supplant or replace, to any degree, the remedies and procedures available to the city in the case of a violation of any other Code or ordinance of the city, whether or not such other Code or ordinance is referenced in this article and whether or not an ongoing violation of such other Code or ordinance is cited as the underlying ground for a finding of a violation of this article.

(d) Sale of premises. It shall be unlawful for any owner of any premises within the City of Wilkes-Barre unless the inspections herein are conducted or lawfully exempt, to sell the premises until the inspections have been completed as set forth herein.

(e) Additional penalties. In addition to the penalties set forth in this article, which shall remain applicable herein, no deed shall be registered or recorded in the Office of Recorder of Deeds of

Luzerne County unless and until the inspections have been completed or determined to be exempt by the code enforcement officer. A sales certificate shall be filed with the deed for the said property.

**Secs. 7-282—7-310. - Reserved.**

**ARTICLE IX. - COMMERCIAL BUILDING INSPECTION PROGRAM**

**Sec. 7-311. - Purpose.**

It is the purpose of this article and the policy of the City of Wilkes-Barre, in order to protect and promote the public health, safety and welfare of the residents and citizens of the City of Wilkes-Barre, as well as the work force, regardless of residency, to establish rights and obligations of commercial building owners and tenants relating to the maintenance and upkeep of the commercial buildings and structures throughout the City of Wilkes-Barre. It is the purpose and intent of this article to enforce the applicable building and fire Codes as well as any other applicable law of the city and of the commonwealth which may affect the health, safety and welfare of those who may occupy or traverse through the said building or structure. Given the age, condition and ever changing standards of building, fire and construction Codes, it is the responsibility of the City of Wilkes-Barre to ensure that any pending or future violations of the said laws and ordinances of the city and commonwealth are effectively eliminated through the annual inspection of the commercial buildings and structures within the city limits.

The purpose of this article is also to establish fees for inspections which will be used to supplement the general fund resources used to provide the enhanced level of inspection service and to authorize the fire and building code officials to implement a program of safety reviews in order to affect the intent and purpose of this article.

**Sec. 7-312. - Definitions.**

The following words shall have their corresponding meanings for the purpose of this article, in addition to those which have already been defined in the zoning ordinance of the City of Wilkes-Barre and/or any other applicable ordinance governing building code or fire inspections. In the event that any definition is inconsistent with the definitions set forth herein, these definitions shall govern:

City. The City of Wilkes-Barre, County of Luzerne, Commonwealth of Pennsylvania.

**Code.** Any code or ordinance adopted, enacted, and/or in effect in and for the City of Wilkes-Barre, concerning fitness for habitation, tenancy, fire protection, zoning, or any other law or ordinance adopted within the City of Wilkes-Barre.

**Code enforcement officer.** The duly appointed code enforcement officer(s) and/or fire officials having charge of the uniform construction code, the fire code or zoning code of the City of Wilkes-Barre, and any assistants or deputies thereof.

**Commercial building.** Any structure, building or property that is subject to regulation under applicable fire and building codes and includes occupancies on public and private properties, as well as on all other types of ownership.

**Certificate of inspection.** A document issued by the code enforcement officer of the City of Wilkes-Barre for the purpose of certifying that all Code violations have been identified and inspected and have been corrected for the terms set forth on the said certificate of inspection. The inspections shall include, but shall not be limited to Code, the uniform construction code, the fire code, zoning code and any other applicable law or ordinance/code as may be enacted or shall be enacted under the laws of the Commonwealth of Pennsylvania.

**Owner.** One (1) or more persons, jointly or severally, in whom is vested all or part of the legal title to the premises, or commercial building, or all or part of the beneficial ownership and a right to the present use and enjoyment of the premises.

**Person.** A natural person, partnership, corporation, unincorporated association, limited partnership, trust or any other entity.

**Police.** The police department of the City of Wilkes-Barre, or any properly authorized member or officer thereof, or any other law enforcement agency having jurisdiction within the City of Wilkes-Barre.

**Tenant.** An individual or entity which occupies all or a portion of the commercial building, whether or not he or she is the owner thereof, with whom a legal interest and legal relationship with the landlord is established by a lease agreement of some nature or by the laws of the City of Wilkes-Barre and/or the Commonwealth of Pennsylvania.

**Fire regulations/fire code.** The statutes and administrative rules adopted by the Commonwealth of Pennsylvania and the City of Wilkes-Barre and/or which may be adopted by the city council of the City of Wilkes-Barre which are for the purpose of safeguarding life and property from the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, violations, materials and devices and from conditions hazardous to life or property in the use or occupancy of commercial buildings, buildings or premises.

**Sec. 7-313. – Bi-Annual inspection.**

(a) All commercial building located within the city limits of the City of Wilkes-Barre, shall be subject to a bi-annual inspection by the code enforcement officers of the City of Wilkes-Barre for the purpose of ensuring that no violations exist of the applicable codes of the City of Wilkes-Barre. The inspections will occur in Zone A in EVEN years; the inspections will occur in Zone B in ODD years. Nothing herein is intended to prevent an inspection, at any time, based on information or documentation received by the City alleging a code enforcement violation.

(b) The Fees for the inspections by the City of Wilkes-Barre shall be Four Hundred Fifty Dollars (\$450.00) for the first five thousand (5,000) square feet, and Ten Dollars (\$10.00) per One Thousand (1,000.00) square feet thereafter.

#### **Sec. 7-314. - Certificate of inspections.**

The owners and managers of any commercial building shall be required to have available for review, a valid certificate of inspection. This said certificate shall be available for the review by any tenant, and/or any guest, business invitee, or other patron of the commercial building. The certificate of inspection shall only be valid for one (1) year from the date of inspection and can only be issued by the office of code enforcement of the City of Wilkes-Barre. In the event an inspection yields a violation of any type, as deemed by the code enforcement officer, the certificate of inspection shall either not be issued or shall be revoked, at the discretion of the code enforcement officers at the time of the inspection, or upon any subsequent inspection during the term of the valid certificate of inspection.

#### **Sec. 7-315. - Subsequent inspections.**

The code enforcement officers of the City of Wilkes-Barre shall have the power and authorization to conduct subsequent inspections after the issuance of a certificate of inspection, and during the term of the same, in the event of any complaint or concern as registered by any tenant, patron, business invitee, or at the code enforcement officer's own discretion based upon reasonable concern for violations, public safety, public health and/or other valid reasons.

#### **Sec. 7-316. - Powers of inspection.**

All inspections by the code enforcement officers of the City of Wilkes-Barre shall be conducted during normal business hours of the commercial building and/or at the time when the businesses and/or commercial tenants have their hours of operation. Where there is an emergency, the code enforcement officers shall be permitted to inspect the commercial building during the time of the said emergency for any violations which may be present.

The code enforcement officers shall identify themselves to the owner of the commercial building, if the owner is available, and to the owner or manager, or duly authorized agent, of the specific business which is or may be a tenant on the property. The code enforcement officers of the City of Wilkes-Barre shall not be required to give notice of the date and time of the inspection.

**Sec. 7-317. - Dual residential/commercial use structures.**

The commercial buildings which also have residential units attached or contained within the said commercial building shall be liable for the commercial portions of the structure under this article and liable for the residential portions of the structure under the tenant and rental unit registration ordinance, commonly referred to as the "Landlord Ordinance" of the City of Wilkes-Barre. The code enforcement officers shall be permitted, however, to address any violations in a residential portion of a commercial building if the said violations are of a concern to life, health and/or safety to the occupants of the said residential structure. The inspection of the commercial building shall be considered to be a cumulative inspection of the entire structure and shall serve as the required inspection under this article. This shall not relieve the owner of the commercial building from the requirements set forth in the landlord ordinance of the City of Wilkes-Barre from having subsequent inspections conducted under the requirements set forth therein. To the extent that the ordinances are inconsistent, with the exception of the associated fees, this article shall govern.

**Sec. 7-318. - Duties of code enforcement officer.**

The code enforcement officers of the City of Wilkes-Barre conducting the inspections of the commercial buildings on an annual basis shall be required to keep a list and detailed outline of the Code violations which made be present during the said inspection. In the event that any violations exist, the code enforcement officers are granted the approval and the right to take whatever action is necessary under the applicable Code in order to protect the health; safety and welfare of the citizens of the City of Wilkes-Barre and the owners, managers, tenants and patrons of the said commercial building, including, but not limited to, temporary or permanent closure of the commercial building. In the event any party prohibits or prevents the code enforcement officer from performing its duty to inspect the commercial building, the entire structure, or a portion thereof, as deemed necessary by the code enforcement officer, shall be closed until the said inspection is permitted to occur.

**Sec. 7-319. - Search warrant.**

Upon showing of probable cause that a violation of this article or any other ordinance or code of the City of Wilkes-Barre has occurred, the code enforcement officers may apply to the district justice having jurisdiction in the City of Wilkes-Barre for a search warrant to enter and inspect the

commercial building. The costs of the same shall be borne by the individual or entity which prohibited the inspection.

**Sec. 7-320. - Criteria for the issuance for a certificate of inspection.**

The code enforcement officers shall be required to issue a certificate of inspection, as set forth in section 7-314 of this article and shall follow the general guidelines as set forth below:

- (1) All code enforcement officers shall issue a finding that the occupancy of the commercial building satisfies the fire regulations, uniform construction code violations, health violations, zoning ordinances, subdivision ordinances and general ordinances and laws of the City of Wilkes-Barre and the laws of the Commonwealth of Pennsylvania.
- (2) In the event that an inspection reveals a violation of any of the regulations set forth in subsection (1) of this section, the code enforcement officers shall prescribe the date by which all violations shall be abated. The code enforcement officers shall be permitted to prescribe a different abatement date for different violations.
- (3) The certificate of inspection shall include the address of the occupancy, the name and address of the owner of the commercial building, a description of the existing uses in the commercial building and a statement that the described occupancy complies with the applicable regulations, codes and policies of the City of Wilkes-Barre.
- (4) The certificate of inspection is issued to the business owner for the existing use at the location specified in the certificate and is not transferable.
- (5) Any change of use from the building code classification recorded on the certificate of inspection, or the addition of uses outside of the approved classification in an existing occupancy shall invalidate the certificate of inspection. A new inspection shall be required as to the changed use and the additional uses only, unless the initial certificate has expired.
- (6) The code enforcement officers shall be authorized to issue a notice of revocation of a certificate of inspection upon a finding that:
  - a. The certificate is being used at a location other than that for which it was issued;
  - b. The certificate is being used for uses which are new or in addition to the existing approved use and which are in a different uniform classification than the uses approved under the current certificate of inspection;

- c. A subsequent inspection finds violations of the applicable codes;
- d. The prevention by any commercial building owner, tenant or authorized agent of either of the code enforcement officer from conducting an inspection;
- e. That there has been a false statement or misrepresentation of a material fact on which the certificate was issued;

(7) The code enforcement officer shall give notice to the commercial building owner and the owner of any tenant that the certificate shall be revoked and the basis for the revocation, and shall advise the commercial building owner that the revocation shall be effective thirty (30) days from the day of mailing of the notice unless the commercial building owner appeals the decision of the code enforcement officer to the applicable appeals board within the City of Wilkes-Barre. If an appeal is filed, the revocation shall be suspended until the decision of the respective appeal board;

**Sec. 7-321. - Fees.**

There shall be an inspection fee applicable to all inspections conducted by the code enforcement officers of the City of Wilkes-Barre. The fee schedule, if not specifically set forth herein, shall be set by resolution of city council upon recommendation by the office of code enforcement.

**Sec. 7-322. - Penalties.**

Any person who shall violate a provision of this article or shall fail to comply with any requirements hereof, or who or which shall be in violation of approved directive of the code enforcement officer shall, upon conviction thereof, before the district judge of the City of Wilkes-Barre, be liable for the following penalties:

- (1) The first violation is a fine of five hundred dollars (\$500.00), or thirty (30) days imprisonment, or both;
- (2) The second violation is a fine of seven hundred fifty dollars (\$750.00), or sixty (60) days imprisonment, or both;
- (3) The third and each subsequent violation thereafter, a fine of one thousand dollars (\$1,000.00), or ninety (90) days imprisonment, or both.

Nothing within this penalty section shall server to hamper the rights of the code enforcement officers of the City of Wilkes-Barre to take any and all necessary legal

action to force the abatement of any violation and/or nuisance which is discovered and/or known by the code enforcement officers as a result of any information received or observed, including, but not limited to, the temporary or permanent closure of the commercial building, or any other rights or remedies which are permissible under any other code or ordinance of the City of Wilkes-Barre or law of the Commonwealth of Pennsylvania. The above referenced penalties shall be in addition to the course of action taken by the code enforcement officers.

**Sec. 7-323. - Nonexclusive remedies.**

The penalty provisions of this article and the non-renewal, suspension, revocation and closure procedures provided in this article shall be independent, non-mutually exclusive separate remedies, all of which shall be available to the city as may be deemed appropriate for carrying out the purposes of this article. The remedies and procedures provided in this article for violation hereof are not intended to supplant or replace, to any degree, the remedies and procedures available to the city, in the case of a violation of any other code or ordinance of the City of Wilkes-Barre or the Commonwealth of Pennsylvania, whether or not such code or ordinance is referenced in this article and whether or not an ongoing violation of such other code or ordinance is cited as the underlying ground for a finding of a violation of this article.

**Sec. 7-324. - Miscellaneous provisions.**

For purposes of this article, any notice required hereunder and/or identification which is given to a manager or authorized agent of the owner of a commercial building shall be deemed as notice or identification provided to the owner directly.

**Sec. 7-325. - Rebuttable presumption.**

There shall be a rebuttable presumption that any notice required to be given to the owner of a commercial building under this article shall be received by such owner if the notice/identification was given to the owner in the manner provided herein.

**Sec. 7-326. - Severability.**

If any provision of this article or the application thereof to any person or circumstances is held invalid, such holdings shall not affect the other provisions or applications of this article which can be given their full force and effect without the invalid provisions where application and, to this end, the provisions of this article are declared severable.

**Sec. 7-327. - Conflicts.**

All ordinances, or parts of ordinances, of the City of Wilkes-Barre in conflict with this article to the extent of such conflicts, and no further, are hereby repealed. The provisions of this article are severable. If any part of this article is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby.

**Sec. 7-328. - Application.**

All commercial buildings must be inspected within the City of Wilkes-Barre no later than March 1 of 2007, and annually thereafter. In the event that the code enforcement officers of the City of Wilkes-Barre have not contacted a commercial building owner by March 1, 2007, it shall be the responsibility of the owner of the said commercial building to contact the office of code enforcement of the City of Wilkes-Barre within thirty (30) days thereafter to arrange for an inspection. Failure to have the inspection by that date, shall subject the owner of the commercial building to the penalty set forth herein.

**Secs. 7-329—7-350. - Reserved.**

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**ARTICLE X. – VACANT/ABANDONED REAL PROPERTY REGISTRATION  
AND INSPECTION PROCEDURE AND CONDEMNATION/REHABILITATION  
PROPERTY POLICY FOR PROPERTIES LOCATED WITHIN THE CITY**

**Sec. 7-351. - Definitions, word usage.**

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings given herein. The word "shall" is always mandatory and not merely directory. As used in this ordinance, the following words shall have the meanings indicated. If the word is not defined specifically herein, it shall have the meaning identified and outlined in the Wilkes-Barre City Code of Ordinances:

***Abandoned Real Property*** - means any real property located in the City, whether vacant or occupied, that is in default on a mortgage, has had a lis pendens filed against it by the Lender holding a mortgage on the property, is subject to an ongoing foreclosure action by the Lender, is subject to an application for a tax deed or pending tax assessors lien sale, or has been transferred to the Lender under a deed in lieu of foreclosure. The

designation of a property as "abandoned" shall remain in place until such time as the property is sold or transferred to a new owner, the foreclosure action has been dismissed, and any default on the mortgage has been cured.

**Actively for sale or lease.** A building, structure or parcel actively listed and marketed through a licensed real estate agent/broker, or by the owner, who is regularly advertising the property in newspapers of general circulation in and around Luzerne County and posting the property for sale via signage; the property is offered for sale or lease at a cost of no more than twenty-five (25) percent over the market rate — as determined by comparables; and the property is in reasonable condition for sale or lease, including but not limited to, no trash/debris has accumulated inside or outside, all utilities are functional, and it is not used for storage unrelated to the former use.

**Board of appeals.** The City of Wilkes-Barre Board of Appeals.

**Boarded.** Any building or structure with one (1) or more exterior doors, other than a storm door, and/or one (1) or more windows with a sheet or sheets of plywood or similar material covering the space of such doors or windows.

**City.** The City of Wilkes-Barre, Pennsylvania.

**Condemned property.** Any building or structure, whether residential or commercial, which has been lawfully deemed by the appropriate City of Wilkes-Barre Code Enforcement Official or Employee to be uninhabitable, unsafe, dilapidated, a public nuisance and/or in substantial disrepair, and in which notice has been provided to the owner in accordance with the Wilkes-Barre City Code of Ordinances applicable to such properties.

**Occupied.** Any building or structure with one (1) or more persons actually conducting a lawful business and/or residing in all or part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same.

(For purpose of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to: the consistent receipt of regular mail delivery through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license; or the most recent, federal, state, or city tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy, or proof of pre-rental lease.)

**Open.** A building or structure deemed to have one (1) or more exterior doors, other than a storm door, broken, open and/or closed, but without a properly functioning lock, or if one (1) or more windows are broken or not capable of being locked and secured from intrusion, or any combination of the same.

**Owner.** The owner shall be the individual, corporation, partnership, trust, estate or other entity which is the party listed on the deed to the referenced property.

**Premises.** All lands, structures, places, and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to, or is otherwise used in connection with any such business conducted on such premises.

**Vacant.** A building, structure or parcel deemed to have no person or persons actually conducting a lawful business or lawfully residing in or on any part thereof in a permanent, non-transient basis, and/or does not have a valid certificate of occupancy issued by the City of Wilkes-Barre Office of Code Enforcement.

### **Sec. 7-352. - Annual registration of vacant buildings and parcels.**

(a) The purpose of requiring registration of all abandoned real property/vacant buildings, including dwellings, and the payment of registration fees is to:

- (1) Assist the city, specifically including, but not limited to, the office of code enforcement, in protecting the public health, safety, and welfare of the residents;
- (2) Monitor the number of abandoned real property/vacant buildings and lands in the city;
- (3) Assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, reduction in property values and the long term stability of the neighborhoods; and
- (4) Promote substantial efforts to rehabilitate such abandoned real property/vacant properties.

(b) The provisions of this article are applicable to the owners of such abandoned real property/vacant buildings and parcels as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of the City of Wilkes-Barre Code of Ordinances, and any other applicable ordinances and/or regulations of the city.

(c) Any mortgagee who holds a mortgage on real property located within the City of Wilkes-Barre shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. The mortgagee shall, within ten (10) days of the inspection, register the property with the Division of Code Enforcement, or designee, on forms or website access provided by the City, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.

(d) If the property is occupied but remains in default, it shall be inspected by the mortgagee or his designee monthly until (1) the mortgagor or other party remedies the default, or (2) it is found to be

vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall, within ten (10) days of that inspection, update the property registration to a vacancy status on forms provided by the City.

(e) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

(f) Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they remain vacant or in default.

(g) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.

(h) Failure of the mortgagee and/or owner to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement.

i) Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, the City may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

### **Sec. 7-353. - Applicability.**

(a) The requirements of this article shall be applicable to each owner of any commercial or residential building or parcel that is not an individual dwelling unit that is vacant for more than forty-five (45) consecutive days, and to each owner of a residential property consisting of one (1) or more vacant dwellings that shall have been vacant for more than forty-five (45) days.

(b) This shall also be applicable to any building or structure, whether it be residential or commercial, which does not have a current and valid certificate of occupancy issued by the office of code enforcement for the City of Wilkes-Barre.

(c) Registration shall be required for all vacant buildings and parcels, whether vacant and secure, vacant and open, or vacant and boarded, and shall be required whenever any building has remained vacant for forty-five (45) consecutive days or more. The ordinance shall not apply to any building owned by the United States government, the state, the city nor to any of their respective agencies or subdivisions.

**Sec. 7-354. - Registration statement.**

(a) *Registration statement.* Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each vacant building and/or parcel, the names, addresses, phone numbers and email addresses of all owners, as hereinafter described, and any other information deemed necessary by the city. The registration fee(s) as required by this article shall be billed by the City of Wilkes-Barre and shall be paid within sixty (60) days of the property becoming vacant in any calendar year. For purposes of this article, the following shall also be applicable:

- (1) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers/directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the applicable secretary of state.
- (2) If an estate, the name and business address of the executor of the estate.
- (3) If a trust, the name and address of all trustees, grantors, and beneficiaries.
- (4) If a partnership, the names and residence addresses of all partners with an interest of ten (10) percent or greater.
- (5) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten (10) percent or greater.
- (6) If an individual person, the name and residence address of that individual person.
- (7) In no instance shall the registration of a vacant building or parcel, and payment of registration fees, be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building or housing codes or other applicable requirements of law.
- (8) One (1) registration statement must be filed for each vacant building or parcel that the owner is registering.
- (9) If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party and/or agent for the same to contact the City of Wilkes-Barre Office of Code Enforcement within thirty (30) days of the occurrence of such change and advise the city in writing of those changes.

(b) Local agent. If none of the persons listed on the registration statement are at an address within the Commonwealth of Pennsylvania, the registration statement also shall provide the name and address of a person who resides within twenty (20) miles of the City of Wilkes-Barre and who is authorized to accept service of process on behalf of the owners and who shall be designated as responsible local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registrations statements as herein authorized and in connection herewith.

(c) Fee schedule. The owner of the vacant property shall be responsible for the payment of the non-refundable registration fee. Properties subject to this section shall remain under the annual registration requirement, and the inspection, security, and maintenance standards of the City code as long as they remain vacant. An annual registration fee shall be billed by the City of Wilkes-Barre in the amount of two hundred (\$200.00) dollars per property. All registration fees must be paid directly from the Mortgagee, Servicer, Trustee or Owner.

(d) Delinquent registration fees as a lien. After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected a waiver pursuant to section 7-355 herein, and the owner fails to pay the amount due by March 15 of each calendar year, or within sixty (60) days of the property becoming vacant, said amount shall constitute a debt due and owing to the City of Wilkes-Barre and the city may commence a civil action to collect such unpaid debt. Further, a municipal lien shall be filed against said property in the Luzerne County Court of Common Pleas.

(e) Penalties. Failure to register any abandoned real property or vacant property on an annual basis and/or any violation of the section stated within will result in a civil penalty of \$500.00.

### **Sec. 7-355. - Waiver of registration fee/exemption.**

(a) One (1) time waiver of registration fee. A one (1) time waiver of the registration fee may be granted by the office of code enforcement upon application of the owner if the owner:

- (1) Demonstrates with satisfactory proof that the owner is in the process of demolition, construction, rehabilitation, or other substantial repair of the vacant building as evidenced by valid permits issued by the City of Wilkes-Barre and any other regulatory entity;
- (2) Objectively demonstrates the anticipated length of time for the demolition;
- (3) Complies with the City of Wilkes-Barre Condemnation Property Policy;

(4) Provides satisfactory proof that the owner is actively attempting to sell or lease the property during the vacancy period. [Satisfactory proof must be provided, including, but not limited to, the property being actively listed and marketed through a licensed real estate agent/broker, or by the owner, who is regularly advertising the property in newspapers of general circulation in and around Luzerne County. (For the purposes of this article, consistently shall mean at least once per quarter.) Also, the property shall be posted with "For Sale" signs large enough to see from across the street. Said property shall be offered for sale or lease at a cost of no more than twenty-five (25) percent over the market rate — as determined by comparables.] (Properties listed at a price of twenty-five (25) percent above market value will not meet the waiver guidelines.); and

(5) Remits a non-refundable fee of one hundred dollars (\$100.00).

(b) Two-year waiver. Upon application by the owner and satisfaction of the subsections above, the city may grant a two-year waiver of the registration fee if the owner meets the criteria for a non-profit organization - as defined by section 501(c)3 of the IRS Code.

(c) Vacant real estate with no improvements. Any vacant real estate with no improvements, structures or other appurtenances attached thereto which is owned by an owner who owns an adjacent parcel, which actually borders the vacant real estate and which is not in violation of this article, is exempt from the fees required in this article. However, the owner is still required to register the said vacant, unimproved parcel with the City of Wilkes-Barre.

### **Sec. 7-356. - Maintenance Requirements.**

(a) Plywood or other wood-type covering. In the event a residential or commercial property is vacant, the owner may only secure the property with plywood or other similar type of wood covering on the exterior of the property for a period not to one (1) year from the date the property becomes vacant. After one (1) year has expired, the owner may be cited by the City of Wilkes-Barre as the plywood or other wood-type covering on the exterior of the property or which is visible from the sidewalk, shall be deemed a de facto nuisance punishable by a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00). Each day in which the nuisance is not abated shall be considered a separate offense.

(b) Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers circulars, flyers, notices, except those required by federal, state or local law discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

- (c) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- (d) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.
- (e) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- (f) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- (g) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s).
- (h) Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable code(s) and issuance of a citation or Notice of Violation in accordance with the applicable code of the City. Pursuant to a finding and determination by the City's Code Enforcement Officer, City's Health Department Officer, Magistrate or a court of competent jurisdiction, the City may take the necessary action to ensure compliance with this section.
- (i) In addition to the above, the property is required to be maintained in accordance with the applicable code(s).

**Sec. 7-357. - Condemnation for demolition property policy.**

(a) Property security. All condemned properties, identified for demolition by the building code official and/or his or her designee, located within the City of Wilkes-Barre shall be required to be addressed, in accordance with this article, by the property owner within thirty (30) days of the property being deemed condemned by the City of Wilkes-Barre.

(1) The term "addressed" shall mean taking any and all proper and legal measures to ensure that the condemned property is safe and secure and not in danger of causing bodily harm or property damage, including, but not limited to, being boarded up with ply wood and/or being forcibly secured to prevent transient access or other prohibited access by any non-owner. "Secure" shall be determined by the building code official or the designee in accordance with the Uniform Construction Code, as amended.

(b) Permits required before commencement of work. No owner shall commence any work on any condemned property without first complying with the vacant property registration set forth in this article, and obtaining any and all permits required by the office of code enforcement.

(c) Performance bond requirement. Before commencing any work, other than to address the condemned property as set forth in section 7-357(a)(1) of this article, the owner of the condemned

property shall post with the City of Wilkes-Barre a performance bond or cashiers check, acceptable to the City of Wilkes-Barre, in an amount sufficient to cover any and all costs necessary for the city to demolish the condemned property in the event the condemned property is not issued a certificate of occupancy within the timeframe represented by the owner and agreed to by the city, or a reasonable extension granted as permitted in this article (the "rehab timeframe"). The performance bond or cashiers check shall be held by the City of Wilkes-Barre until the certificate of occupancy is issued or until the rehab timeframe has expired, whichever is earlier. If the certificate of occupancy is issued, then the performance bond or cashiers check shall be returned to the owner. If the rehab timeframe expires prior to the issuance of the certificate of occupancy, the City of Wilkes-Barre may immediately accept public bids to demolish the condemned property and use the cashiers check or proceeds from the performance bond, whichever may be applicable, to cover the costs of the demolition. No person or entity will be permitted to commence any work on any condemned property unless and until the proper performance bond or cashiers check is presented to the city.

(1) Determination of amount of bond or check. The City of Wilkes-Barre reserves the right to consult with and/or seek an estimate from a qualified demolition contractor, who is currently licensed by the City of Wilkes-Barre, to confirm the proper and required amount of the performance bond or cashiers check. The City of Wilkes-Barre has the right to determine amount of the performance bond or cashiers check. Any costs associated with the estimate(s) shall be borne by the owner.

(2) Appeal of amount of bond or check. In the event the owner does not agree with the amount of the performance bond or cashiers check, the owner shall be permitted to appeal the matter to the city's Housing Board of Appeals within ten (10) business days of the owner being notified of the amount due. In the event the appeal is not filed within ten (10) business days, the amount of the performance bond or cashiers check shall be conclusive. In order for the appeal of the amount of the performance bond or cashiers check to be valid, the owner must post the amount not in dispute and commence work in accordance with this article and with the requirements set forth in the Wilkes-Barre Code of Ordinances, generally.

i. No automatic stay during appeal period. Any appeal by the owner shall not postpone, or act as a stay to the requirement that the owner commence work on the condemned property in question in accordance with this article or with the Wilkes-Barre City Code of Ordinances, generally.

ii. Cost for appeal. Any appeal made hereunder shall require a fee of one hundred dollars (\$100.00) unless the owner claims *in forma pauperis* status, which shall require the completion of a financial statement and affidavit verifying that the owner does not have the means to make the one hundred dollar (\$100.00) appeal fee, at which time, if verified, the said fee shall be waived.

(d) Full payment of all applicable real estate taxes and sanitary/recycling fees. Prior to the issuance of any permits for the rehabilitation of any condemned property, the owner must show proof that all outstanding real estate taxes, for the City of Wilkes-Barre, County of Luzerne and Wilkes-Barre Area School District, are paid in full. Additionally, the owner shall show proof that all Wilkes-Barre City and Wyoming Valley Sanitation Authority sewer and recycling fees are paid in full.

(e) Licensed contractors and compliance with the Uniform Construction Code. All contractors performing work on the condemned property shall be licensed in the City of Wilkes-Barre consistent with all applicable requirements in the city's Code of Ordinances. Additionally, all work must be in compliance with and inspected according to the Uniform Construction Code and the applicable building, rental and construction codes in effect at the time. The owner and contractor shall be jointly and severally responsible and liable for notifying the City of Wilkes-Barre for all inspections and, ultimately, for the issuance of certificate of occupancy.

(f) Extension of time to complete rehabilitation of condemned property. In the event that the rehabilitation of the condemned property exceeds one (1) year from the date the property is deemed a "condemned property", the code enforcement office may grant the owner an additional four (4) months in which to complete the rehabilitation. After that four-month extension, all future extensions may only be granted with approval of city council. City council may seek guidance and/or a recommendation from any third party, if necessary or desired, including, but not limited to, the city's engineers, the code officers, or the director of operations.

(g) Form to be completed. Prior to the issuance of permits for the rehabilitation of the condemned property, the owner shall complete the form available in the city's code enforcement office which shall state, inter alia, the following:

- (1) Name of the owner of the property;
- (2) Address of the owner of the property;
- (3) Name and address of responsible person (if owner is not an individual);
- (4) Contact phone number and email addresses for owner and responsible person;
- (5) Location of the property, including PIN Number and street address;
- (6) Deed book and page number for the condemned property;
- (7) Timeline for completion of the rehabilitation of the condemned property;
- (8) Name, address and phone number of contractor(s) performing work on the condemned property.

(h) Documents to be provided. Prior to the issuance of permits for the rehabilitation of the condemned property, the owner shall provide the city with the following documentation:

- (1) Copy of deed to the condemned property;
- (2) Verification of payment for all applicable taxes, sewer and recycling fees;

(3) Performance bond or certified check.

(i) Final inspection/issuance of certificate of occupancy. Upon completion of the foregoing requirements and the construction/rehabilitation of the condemned property within the rehab timeframe, the owner and contractor shall notify the City of Wilkes-Barre and final inspection shall be conducted at the condemned property. If the condemned property passes the final inspection, the condemned property shall be removed from "condemned property" status and the performance bond or cashier's check shall be immediately returned to the owner, and a valid certificate of occupancy issued. If the final inspection results in a failure, the city's inspector shall provide the owner and the contractor with a list of items which need to be corrected in accordance with the city's applicable property inspection ordinances. If, in the opinion of the office of code enforcement, after a consultation with and report from a structural engineer, the condemned property cannot be safely removed from the condemned property status, or if the completion of the work cannot be completed within the rehab timeframe, or after any reasonable extension, the code officer shall provide certified, written notice to the owner of the city's intent to demolish the condemned property and the use of the performance bond or certified check. The owner may appeal this determination within ten (10) days of the receipt of the notice in accordance with and along the same procedures set up in section 7-357(c)(2). The demolition, unless the condemned property is in immediate danger of collapse, a serious threat to public safety or to property, shall only occur after the exhaustion of all appeals.

(j). Appeals All appeals concerning any matter in this section shall be appealed to the Housing Board of Appeals of the City of Wilkes-Barre, consistent with the terms and conditions of the Housing Board of Appeals outlined in Section 7-140.7.

### **Sec. 7-358. - Severability.**

The provisions of this article are severable and if any section, sentence, clause, revision, part or other portion hereof shall be held unconstitutional, illegal, invalid or otherwise ineffective, the validity of the remaining provisions shall be unaffected thereby. It is the intention of the Council of the City of Wilkes-Barre that this article would have been adopted had such unconstitutional, illegal, invalid, or otherwise ineffective section, sentence clause, or provision, part or other portion not been included herein.

## **SECTION 2. CONFLICTS**

All Ordinances or parts of Ordinances of the City of Wilkes-Barre in conflict with this Ordinance to the extent of such conflict, and no further, are hereby repealed. The provisions of this Ordinance are severable. If any part of this Ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby.

SECTION 3.            **EFFECTIVE DATE OF ORDINANCE**

This ordinance shall become effective ten (10) days after final adoption by Wilkes-Barre City Council.

ATTEST:

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JAMES RYAN, CITY CLERK