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TOWN OF WILBUR ORDINANCE NO. 373

AN ORDINANCE relating to residential and other property maintenance and adding Chapter 8.10 to the Wilbur Municipal Code to be entitled LAND USE NUISANCES to implement the process and acquire the powers authorized by chapter 35.80 RCW to address conditions which render dwellings, buildings, structures and other premises unfit for human habitation and other uses, and providing for the effective date thereof.

WHEREAS, for several years members of the community and members of the Town Council have, on behalf of themselves and other individuals, and the Town of Wilbur as a whole, shared urgent concerns regarding conservation and improvement of the quality of life in neighborhoods throughout the Town of Wilbur and detrimental effects on public health, safety and welfare stemming from unkept, deteriorating and abandoned dwellings, buildings, structures and premises at various locations within the Town; and

WHEREAS, members of the Planning Commission and Town Council have met regularly since 2000 to consider the Town's policies and laws concerning how residential and other properties are maintained by owners and occupants; and

WHEREAS, at the May 16, 2000 Town Council meeting, the Planning Commission presented several recommendations to the Town Council to improve enforcement of the Town's laws and policies concerning maintenance of residential and other properties by owners and occupants; and

WHEREAS, there exist within the Town of Wilbur dwellings which are unfit for human habitation, and buildings, structures and premises or portions thereof, which are unfit for other uses, due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents, or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage, overcrowding, or due to other conditions which are harmful to the health and welfare of the residents of the Town; and

WHEREAS, Chapter 35.80 RCW authorizes Towns where conditions like those described above exist to adopt ordinances that would enable such towns to address such conditions fairly, effectively and with substantial assurance that costs incurred by the Town to abate such conditions could be recovered; and

WHEREAS, the Planning Commission has recommended to the Town Council that the Town implement the process and acquire the powers authorized by chapter 35.80 RCW to address conditions which render buildings and other premises in the Town unfit for human habitation and other uses; and

WHEREAS, the Town Council held a public hearing, after due notice thereof, to receive comment from the citizens of the Town regarding this ordinance on June 6, 2001; and

WHEREAS, the provisions stated below conform to the authority granted by chapter 35.80 RCW; and

WHEREAS, neighbors and neighborhoods are entitled to prompt abatement of conditions which violate the Town's property maintenance codes; and

WHEREAS, it is in the best interests of the Town to implement the process and acquire the powers authorized by chapter 35.80 RCW to address conditions which render buildings and other premises in the Town unfit for human habitation and other uses; **now therefore**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WILBUR, WASHINGTON:

Section 1. Chapter 8.10 of the Wilbur Municipal Code, as previously enacted by Ordinances 255, 284, 319 and 367 are hereby repealed.

Section 2. There is hereby added to the Town of Wilbur Municipal Code (WMC) Chapter 8.10 LAND USE NUISANCES.

Section 3. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.010 Finding and Purpose to read as follows: **8.10.010 Finding and Purpose.** There exists within The Town of Wilbur dwellings which are unfit for human habitation, and buildings, structures and premises, or portions thereof, which are unfit for other uses, due to dilapidation, disrepair, structural defects, increasing the hazards of fire, accidents, or other calamities. It is necessary for the public health, safety and welfare to regulate, prevent and prohibit conditions which may constitute disorderly, disturbing, unsafe, unsanitary, fly-producing, rat-harboring and/or disease-causing places, conditions or objects. It is also necessary for the public social and economic welfare to regulate, prevent and prohibit conditions, which degrade the Town's scenic attractiveness and livability and its economic development.

The purpose of this chapter is the abatement of such nuisances, to protect the public health, safety and welfare and promote the economic development of the Town, in accordance with chapter 35.80 RCW. It is also the purpose of this chapter to prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute fire and other safety and health hazards, and generally create a menace to the health and welfare of the public and contribute to the depreciation of the character of neighborhoods and depreciation of property values.

Section 4. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.020 Emergencies to read as follows: **8.10.020 Emergencies.** The provisions of this chapter shall not prevent the Director or any other officer of the Town of Wilbur or other governmental unit from taking any other action, summary or otherwise necessary action to eliminate or minimize an imminent danger, health or safety of any person or property.

Section 5. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.020 Other Powers Reserved to read as follows: **8.10.030 OTHER POWERS RESERVED.** Nothing in this chapter shall be construed to abrogate or impair the powers of the courts or of any department of the Town, to enforce any provisions of this chapter or its ordinances or regulations, nor to prevent or punish violations thereof. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. Nothing in this chapter shall be construed to impair or limit in any way the power of The Town of Wilbur to define and declare nuisances and to cause their removal or abatement, by summary proceeding or otherwise.

Section 6. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.040 Permit Required to read as follows: **8.10.40 Permit Required.** Any work, including construction, repairs or alterations under this chapter to rehabilitate any building or structure may require a permit in accord with the provision of chapter 15.04 WMC.

Section 7. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.050 Definitions to read as follows: **8.10.50 Definitions.** Unless specifically defined below or unless context clearly requires a different meaning, terms used in this chapter have the meaning given them by this chapter-adopted editions of the Uniform Building Code.

- (1) “Abandoned” refers to any property, real or personal, which is unattended and either open or unsecured so that admittance may be gained without damaging any portion of the property, or which evidence indicates that no person is presently in possession, e.g. disconnected utilities, accumulated debris, disrepair and in the case of chattels, location.
- (2) “Abatement” means for the purpose of this chapter, the correction of conditions, which render dwellings unfit for human habitation and which render buildings and structures and premises, or portions thereof unfit for other use. Either by repairing replacing, removing, destroying or otherwise remedying the condition in question by such means and in such a manner and to such an extent as the Director, in his judgement, determines is necessary in the interest of the general health, safety and welfare of the community.
- (3) “Board” means the Community Review Board established under this chapter, particularly under sections 8.10.400 and 8.10.410 WMC.
- (4) “Boarded-Up building” means any building the exterior openings of which are closed by extrinsic devices or some other manner designed or calculated to be permanent, giving to the building the appearance of non-occupancy or non-use for an indefinite period of time.
- (5) “Building” means any building, dwelling, structure, or mobile home, factory-built

house, or part thereof, built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

- (6) “Costs” means the Town’s actual expenses incurred to correct illegal conditions pursuant to the provisions of this chapter plus the administrative fee provided herein.
- (7) “Director” means the director of the Community Review Board, or his/her designee.
- (8) “Disposable package or container” means all packages or containers defined as by such rules and regulations adopted by the State of Washington Department of Ecology.
- (9) “Health Officer” means the head of the Lincoln County Health Department, his/her authorized deputies or representatives
- (10) “Interested Person” means any person entitled to notice of a complaint issued by the Director under Section 8.10.320 WMC.
- (11) “Junk” includes the storage of all old appliances, equipment or parts thereof, all old iron or other scrap metal, cardboard, old lumber, old wood and mattresses, which items are not being used for their intended purpose, metal articles, broken stone or cement and discarded building materials and does not include orderly stacked firewood.
- (12) “Litter” means and includes all waste material, including but not limited to disposable packages or containers thrown or deposited on public or private property.
- (13) “Nuisance” includes:
 - (a) a nuisance defined by statute or ordinance;
 - (b) a nuisance at common law, either public or private;
 - (c) an attractive nuisance, whether in or on a building, a building premises or an unoccupied lot and whether realty, fixture or chattel, which might reasonably be expected to attract children of tender years and constitute a danger to them; including, but not limited to: abandoned wells, ice boxes or refrigerators with doors and latches, shafts, basements or other excavations, abandoned or inoperative vehicles or other equipment, structurally unsound fences or other fixtures, lumber, fencing, vegetation or other debris;
 - (d) uncleanness or whatever is dangerous to human life or detrimental to health;
 - (e) overcrowding; or
 - (f) abandonment or vacancy.
- (14) “Owner” means any person having any interest in the real estate in question as shown upon the records of the office or the Lincoln County Auditor, or who establishes his/her interest before the Director, Board, or Town Council. For the purpose of giving notice, the term “owner” also includes any person in physical possession.
- (15) “Party of Interest” means any person entitled to notice of a complaint issued by the Director under section 8.10.320 WMC.
- (16) “Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee or any of them.

- (17) "Premises" means any building, lot parcel, real estate, land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips and all areas in or upon a street or alley right-of-way which abut land privately owned, or occupied by a property owner or occupier.
- (18) "Refuse" means vegetable offal, animal offal, discarded food, cans, bottles, waste paper, large tree limbs and all other waste substances from private and public establishments and from residences; but shall not include small amounts of weeds, twigs, grass or other material resulting from the normal tending of lawns and gardens.
- (19) "Repeat Violation" means a violation by the same person of the same regulation in any location for which voluntary compliance has been sought within two (2) years, or a Complaint or Notice and Order has been issued within two (2) years.
- (20) "Responsible Person" means any agent, lessee, owner or other person occupying or having charge or control of any premises including any street and alley right-of-way, which abuts, said premises.
- (21) "Town Council" means the Town Council of the Town of Wilbur.
- (22) "Weed" "Vegetable Growth" and "Horticultural Growth" mean and include but are not limited to: trees, plants, shrubs, bushes, flowers, garden vegetables and grasses and further include all growths of every kind and character, whether domestic or wild, causing the obstruction or interference or detriment prohibited by this chapter.

Section 8. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.060 Types of Nuisances to read as follows: **8.10.060 TYPES OF NUISANCES.** Each of the following places, conditions or things is declared to constitute a public nuisance, and whenever the Director determines that any of these conditions exist upon any premises the Director may require or provide for the abatement thereof pursuant to this chapter.

- A. The growing, maintaining, permitting or allowing of any weed, vegetable or horticultural growth which:
 - 1. Overhangs, encroaches upon, obstructs or in any manner interferes with the full and free use by the public of any street, sidewalk, or sidewalk area upon which such property so owned or occupied abuts or
 - 2. Has grown and died upon any premises owned, occupied or in control of the responsible person or persons and which constitutes a detriment to the public health, safety or welfare, including but not limited to a fire hazard, or
 - 3. Is so overgrown upon any premises owned, occupied or in control of the responsible person or persons as to cause the degradation of the character of the neighborhood and for which a general rule of thumb shall be an average length of twelve inches or more, or
 - 4. The public nuisance described above in this section and declared to be a nuisance shall include weeds; plants and vegetation as so described which grow upon any street and alley right-of-way or parking strip abutting private property.
- B. The existence of any junk, litter, or refuse within the town when declared as a public nuisance by the Board and the Director and confirmed by the Mayor or

his/her designee to have an impact on the town, neighbors, or neighborhood, unless such materials are kept or stored in an orderly and sightly manner and so as not to create a fire, safety, health or sanitary hazard;

- C. The depositing, leaving or throwing away of any junk, litter or refuse within Town for an unreasonable length of time beyond what is necessary for proper disposal, which length of time shall be not more than thirty days, except at the Town brush disposal site, or in covered containers or receptacles acceptable to the Director of the board, for the Town;
- D. The causing or permitting to be discharged, placed or thrown or the throwing into or upon any premises or any public street or alley of any nauseous, foul or putrid liquid or substance, or any liquid or substance likely to become nauseous, foul, offensive or putrid;
- E. The maintaining, permitting or existence of any unsightly and unsafe partially destroyed building or structure that has not been repaired or removed within a reasonable period, which period shall be not less than thirty days, or exceed one hundred and eighty days.
- F. A reasonable period of time for all other nuisances, except those outlined in (E) of this section, shall be not less than twenty-one (21) days or exceed thirty days.
- G. The allowing to grow or multiply any noxious weed as described in Chapter 17.10 RCW or in the Lincoln County list of noxious weeds.

Section 9. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.090 Prohibited Conduct to read as follows: **8.10.090 Prohibited Conduct.**

- A. It shall be unlawful for any responsible person(s) to create, permit, maintain, suffer, carry on or allow, upon their premises, any of the acts or things declared by this chapter to be a public nuisance.
- B. It shall be unlawful for any person to create, maintain, carry on or do any of the acts or things declared by this chapter to be a public nuisance.

Section 10. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.100 Duties of the Director to read as follows: **8.10.100 Duties of the Director.** The Director is the chief administrative officer for the purposes of this chapter and his/her duties and powers include:

- (1) Investigation of all buildings and premises which he/she has reasonable grounds to believe may be unfit, substandard boarded up, or a nuisance exists as stated in 8.10.60 WMC;
- (2) Preparation, service and posting of complaints or notices and orders against buildings or premises where illegal conditions are believed to exist; and
- (3) Doing all things necessary and proper to carry out and enforce this chapter.

Section 11. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.110 Duties of the Board to read as follows: **8.10.110 Duties of the Board.** The duties and powers of the Board shall include:

- (1) Conducting administrative hearings and rendering decisions based upon written findings; and

(2) Doing all things necessary and proper to carry out and enforce this chapter.

Section 12. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.120 Rules and Regulations to read as follows: **8.10.120 Rules and Regulations.** The Director and Board may make and promulgate such rules and regulations as will effectuate the purposes of this chapter and do substantial justice. The Director and Board may recognize and give appropriate effect to special and extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards and other provisions of this chapter. Examples of circumstances which may warrant such exercise of discretion include, without limitation, medical illness or disability affecting a property owner's ability to respond to orders or appear at hearings and bona fide insurance coverage disputes which create a definite risk that enforcement of this chapter would unfairly result in a substantial economic loss to the property owner.

The Director and the Board are authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. These powers shall include the following in addition to others herein granted:

- (a) (i) To determine which dwellings within the town are unfit for human habitation;
- (ii) to determine which buildings, structures, or premises are unfit for other use or have on it, a nuisance as described in 8.10.60 WMC;
- (b) to administer oaths and affirmations, examine witnesses and receive evidence; and
- (c) to investigate the dwelling and other property conditions in the Town and to enter upon premises for the purpose of making examinations when the Board or Director has reasonable grounds for believing they are unfit for human habitation, or for other use; provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted.

Section 13. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.200 Determination of Unfitness to read as follows: **8.10.200 Determination of Unfitness.** The Director after preliminary investigation, or the Board after the hearing provided in this chapter, or the Town Council after the appeal hearing provided in this chapter, may determine that a dwelling, building, structure, or premises is unfit for human habitation or other use, or has on it, a nuisance as described in 8.10.60 WMC, if the Director, or Board, or the Town Council, finds that conditions exist in such dwelling, building, structure, or premises which are dangerous or injurious to the health or safety or the occupants of such dwelling, building, structure, or premises the occupants of neighboring dwellings, or other residents of the Town.

Section 14. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.210 Standards for Determination of Unfitness to read as follows: **8.10.210 Standards for Determination of Unfitness.** In determining that a dwelling, building, structure, or other premises is unfit for human habitation or other uses, or has a nuisance

on it, as described in 8.10.60 WMC, the Director, Board or the Town Council shall consider:

- (a) dilapidation,
- (b) disrepair,
- (c) structural defects,
- (d) defects increasing the hazards of fire, accidents or other calamities, such as parts standing or attached in such manner as to be likely to fall and cause damage or injury,
- (e) inadequate ventilation,
- (f) uncleanness,
- (g) inadequate light,
- (h) inadequate sanitary facilities,
- (i) inadequate drainage,
- (j) substandard conditions,
- (k) other conditions which affect the fitness of the building or premises for human habitation or other purposes, or devalue the property or surrounding property.

Section 15. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.220 Standards for Determination to Require Repair or Demolition to read as follows:

8.10.220 Standards for Determination to Require Repair or Demolition

- (1) If the conditions identified in section 8.10.210 WMC or other conditions are found to exist to an extent dangerous or injurious to the health or safety of occupants of the building or premises, or the occupants of neighboring buildings or of other residents of the Town, and if, without extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards, and other provisions of this chapter:
 - (a) structural deterioration is of such degree that
 - (i) vertical members list, lean or buckle to the extent that a plumb line passing through the center of gravity falls outside the middle third of its base, or
 - (ii) (a) thirty-three percent (33%) of the supporting members shows damage or deterioration, or
 - (b) the cost of restoration exceeds sixty percent (60%) of the value of the building, or
 - (c) the building has been damaged by fire or other calamity, the cost of restoration exceeds thirty percent (30%) of the value of the building and it has remained vacant for six months or moredemolition shall be required. Value shall be determined by reference to a current edition of "Building Valuation Data" published by the International Conference of Building Officials or, if not published, as determined by the Director. Cost of restoration is the actual estimated cost, which may be determined in the same manner as "value".
- (2) A voluntary correction agreement or other undertaking entered into by a party in interest, at or prior to the hearing before the Board, creates a presumption that the building or premises can be reasonably repaired. The failure to fulfill such a voluntary correction agreement or to accomplish such an undertaking may constitute grounds for the Director to order demolition. Such an order shall be

subject to appeal according to the provisions of this chapter for appeal of decisions of the Board.

- (3) If by reason of any of the above conditions a building is unfit, but no public necessity is found for its immediate demolition, the Board or the Director may take other action, such as causing the property to be cleaned, cleared, vacated, secured or otherwise repaired, which will promote the public health, safety or general welfare.

Section 16. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.300 Preliminary Investigation to read as follows: **8.10.300 Preliminary Investigation.** After the Town learns of a possible unfit dwelling, building, structure, or nuisance, on a premise, the Director shall investigate whether such condition(s) actually exists. This investigation will usually include reasonable efforts to speak with the owner of the subject property, or the tenant if the property is rented. The Director will make a record of the investigation, including:

- (1) Identification of the subject property.
- (2) Documentation of inspection actions, including relevant dates, efforts to establish identity of and contact owners and tenants.
- (3) Written observations relevant to possible conditions of unfitness, possibly including diagrams of the building or premises and photographs.
- (4) The Director's conclusion whether or not the dwelling, building, structure, or other premises is unfit for human habitation or has on it, a nuisance as described in 8.10.60 WMC.

If the Director determines no actual violation exists, he/she will note such determination for the record for the subject property and the matter shall be concluded. The Director shall notify complainant(s), the owner(s), or other person(s) who have requested notice of his/her determination.

Section 16. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.310 Complaint or Notice and Order, contents to read as follows: **8.10.310 Complaint or Notice and Order, Contents.** If, after preliminary investigation, the Director determines that a dwelling, building, structure, or other premises is unfit for human habitation, or has on it any nuisance as described in 8.10.60, the Director shall serve, according to the provisions of section 8.10.320 WMC, a notice of unfitness and correction order, which may also be called a complaint, or a notice and order, which states:

- (1) A description of the conditions on the subject property which render such dwelling, building, structure, or premises unfit for human habitation or nuisance as described in 8.10.60 WMC;
- (2) What must be done to correct such illegal condition(s);
- (3) The deadline for correction of such condition(s), which will allow a reasonable time for correction and will be set 48 hours before the matter will be presented at a meeting of the Board;
- (4) The costs or administrative fees which may be charged to the owner as a consequence of such conditions;

- (5) The place and date, not less than 10 or more than 30 days after the complaint or notice and order is served, where and when the matter will be presented to the Board, when the Board will be requested to:
 - (a) Confirm the Director's determination of unfitness;
 - (b) Authorize the Town to proceed to abate the illegal conditions at the dwelling, building, structure, or other premises;
 - (c) Order that the owner pay the costs incurred by the Town, through the date of the Board's confirmation of the illegal conditions, together with such costs as the Town reasonably incurs to abate the illegal conditions.
- (6) That all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise and to give testimony at the time and place in the complaint;
- (7) The Town's policy that the Director may waive the Town's costs and/or administrative fees for a first offense if the illegal conditions are corrected at least 48 hours prior to the Board hearing;
- (8) Invite the owner's cooperation and inform the owner of the Town's policy that first offenders may negotiate a voluntary correction agreement consistent with the provisions of section 8.10.330 WMC in which, among other things, the owner:
 - (a) Admits that the illegal condition(s) exist(s);
 - (b) Promises to correct the illegal condition(s) by an agreed deadline no more than ninety (90) days from the original deadline, for dwellings, buildings, structures and chattels, or more than fifteen (15) days for all other nuisances;
 - (c) Consents to entry on the subject property by the Town to correct the illegal condition(s) in the event they are not corrected by the deadline;
 - (d) Agrees to pay the Town's costs to abate the illegal conditions if the owner fails to do so.
- (9) Advise the owner that if the illegal conditions are not corrected, the Town may pursue the matter further by civil and/or criminal enforcement, in addition to further proceedings under this chapter;
- (10) Advise the owner of the Town's policy that generally repeat offenders will be prosecuted.
- (11) Advise the owner and other interested persons of programs for assistance which may be provided by the Town and such other programs and community resources as the Director believes may assist the owner or others to correct the illegal conditions.

Section 17. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.320 Service of Complaint; Filing with County Auditor to read as follows:

8.10.320 Service of Complaint; Filing with County Auditor. If, after a preliminary investigation of any dwelling, building, structure, or premises in the Town of Wilbur, the Director finds that it is unfit for human habitation or has on it a nuisance as described in 8.10.060 WMC. He/she shall cause to be served, either personally or by certified mail, with return receipt requested, upon all persons having any interest therein, as shown upon the records of the Lincoln County Auditor's Office and shall post in a conspicuous place on such property, a complaint or notice and order stating in what respects such dwelling, building, structure, or premises is unfit for human habitation or what nuisance as described in 8.10.060 WMC is on the premises. If the whereabouts of any of such persons

is unknown and the same cannot be ascertained by the Director in the exercise of reasonable diligence and the Director makes an affidavit to that effect, then service of such complaint or notice and order upon such persons may be made either by personal service or by mailing a copy of the complaint or notice and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building or premises involved in the proceedings and mailing a copy of the complaint or notice and order by first-class mail to any address of each such person in the records of the county assessor or the county auditor for the county where the property is located. A copy of such complaint or notice and order shall also be filed with the auditor of the county in which the dwelling, building, structure, or premises is located and such filing of the complaint or notice and order shall have the same force and effect as other lis pendens notices provided by law.

Section 18. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.330 Voluntary Correction Agreement to read as follows: **8.10.330 Voluntary Correction Agreement.**

- (1) The Director may execute a voluntary correction agreement with the owner of a dwelling, building, structure, or premises the Director determines is unfit for human habitation, or is in such condition, as to devalue the property or surrounding property, caused by a nuisance as described in 8.10.60 WMC.
- (2) A voluntary correction agreement is a contract between the Town and the owner in which such person agrees to abate the illegal conditions within a specified time and according to specified conditions. The voluntary correction agreement shall include:
 - (a) The name and address of the owner and any other person bound under the contract;
 - (b) The street address and a legal description sufficient to identify the premises;
 - (c) A description of the conditions which render a dwelling, building, structure, or other premises unfit for human habitation or has a nuisance on it, as described in 8.10.60 WMC and a reference to the provisions of this chapter or other regulation that has been violated;
 - (d) The corrective action to be taken and a date and time by which the corrective action must be completed;
 - (e) A stipulation by the owner that the illegal condition(s) identified in the complaint or notice and order do exist and that the corrections specified in the voluntary correction agreement are appropriate;
 - (f) A stipulation by the owner that the Town of Wilbur may abate the illegal condition(s) and recover costs and administrative fees as an assessment to the owner and a lien on the property pursuant to this chapter in the event of a material breach of the voluntary correction agreement;
 - (g) The costs and administrative fees to be paid and by whom;
 - (h) Permission by the owner for the Town to enter upon the property at any reasonable times until the illegal condition(s) is abated; and
 - (i) An acknowledgement:
- (3) The Director may, in his or her sole discretion, extend deadlines for correction if the owner has been diligent and made substantial progress but has been unavoidably delayed.

- (4) The Director may determine that a material breach of a voluntary correction agreement has occurred and may further determine what shall be done to abate the illegal conditions, which were the subject of the voluntary correction agreement. The Director shall provide notice of such a determination in the same fashion as notice of decisions of the Board and such determinations shall function as a decision of the Board. A party to the voluntary correction agreement may appeal such a determination to the Town Council for review according to the procedures and standards applicable to appeals of decisions of the Board.

Section 17. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.400 Board Hearing on Director's Determination to read as follows: **Board Hearing on Director's Determination of Unfitness**

- (1) The Board shall be comprised of the members of the Planning Commission. In the event they are unable to perform this task, the Town Council will appoint five individuals of different aspects of the public, including local residents, business community, rental community, building industry and health community. The terms of appointment to the Board will be three years. The board may adopt and publish such rules of procedure as are necessary or convenient to carry out and effectuate the purposes and provisions of this chapter and chapter 35.80 RCW. Three members of the Board shall constitute a quorum thereof for the transaction of business. Except as otherwise specified by law, a majority vote of the Board members present at a meeting shall be required and shall be sufficient to transact any business before the Board.
- (2) Unless, prior to the time fixed for hearing in the complaint or notice and order issued by the Director, arrangements satisfactory to the Director for the repair, demolition, vacation or re-occupancy of the building, or premises is made, including the proper application for permits, or abatement of illegal conditions. The Board shall hold a hearing for the purpose of determining the immediate disposition of the dwelling, building, structure, nuisance, or other premises. The hearing will be canceled if the Director approves the completed corrective action at least 48 hours before the scheduled hearing and the Director shall provide the owner, complainants and other interested persons notice of the successful abatement of the illegal conditions.
- (3) The Board shall conduct a hearing pursuant to its adopted rules. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Board. The Director or his/her designee, the owner and other parties entitled to be served with the Director's complaint or notice and order may participate as parties in the hearing and each party may call witnesses. Any complainant or person affected by the illegal conditions may appear and present evidence. The Town shall have the burden of demonstrating by a preponderance of evidence that the building or premises is unfit for human habitation, or has on it, a nuisance as described in 8.10.60 WMC and that required the corrective action is reasonable. The Director's determination of unfitness shall be accorded substantial weight.
- (4) In the event of a tie vote of the Board, the matter shall be referred on an expedited basis to the Town of Wilbur Council for a new hearing and decision within thirty

days. In such case, the Council's decision shall be understood to take the place of a decision of the Board for the purposes of subsequent proceedings under this chapter. Appeals of the Town Council's decision in such case shall only be made to the Lincoln County Superior Court.

- (5) If the owner or other persons with interest of record fail to appear at the scheduled hearing, the Board may enter an order under subsection (6) hereafter, and noting the default.
- (6) If, after considering evidence and argument submitted by the Director, the owner and other interested parties, the Board determines that the dwelling, building, structure, or premises is unfit for human habitation or has on it a nuisance as described in 8.10.60 WMC, it shall issue and cause to be served upon the owner and other persons entitled to notice of the Director's complaint and shall post in a conspicuous place on said property, a written order which:
 - (a) States its findings of fact and conclusions in support of such order; and
 - (b) Requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises to render it fit for human habitation or has on it, a nuisance described in 8.10.60 WMC; and
 - (c) Requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or abate said nuisance, if this course of action is deemed proper on the basis of said standards; and
 - (d) States the Town's costs and administrative fees which have been incurred as a consequence of the illegal conditions and that such costs and fees shall be charged to the owner and assessed against the real property if they are not paid timely.
 - (e) States that if the owner or party in interest, following exhaustion of his or her rights to appeal, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, structure, premises, or abate said nuisance, the Town may direct or cause such dwelling, building, structure, premises, or nuisance, to be repaired, altered, improved, vacated, closed, removed or demolished and that the costs of such abatement by the Town shall be charged to the owner and assessed against the real property where the abatement occurs.
- (7) The order shall state that the owner has the right to appeal to the Town Council within thirty (30) days and unless he/she does appeal or comply with the order, the Town shall have the power, without further notice or proceedings, to vacate, secure the building or premises, abate the nuisance and do any act required of the owner in the order of the Board, and to charge any expenses incurred thereby to the owner and assess them against the property.
- (8) The Director shall serve the owner and other parties entitled to be served with the Director's complaint, a copy of the Board's decision by certified mail, return receipt requested, within five (5) business days following the hearing.
- (9) If no appeal is filed, a copy of such order shall be filed with the Auditor of Lincoln County and shall be a final order.

Section 18. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.410 Enforcement to read as follows: **8.10.410 Enforcement.**

- (1) The order of the Board may prescribe times within which demolition shall be commenced or completed. If the action is not commenced or completed within the prescribed time, or if no time is prescribed within the time for appeal, the Director may, after the period for appeal has expired, cause the building to be demolished and the premises to be suitably filled and cleared as provided by the chapter. If satisfactory progress has been made and sufficient evidence is presented that the work will be completed within a reasonable time, the Director or the Board may extend the time for completion of the work. If satisfactory or substantial progress has not been made, the Director may cause the building to be demolished and the premises suitably filled and cleared. The Director shall let bids for any demolition in accordance with this chapter.
- (2) If corrective action, other than demolition, ordered by the Board is not taken within the time prescribed, or if no time is specified within the time for appeal, the Director may, after the period for appeal has expired, cause the action to be taken by the Town or private contractor.
- (3) If the Director deems it necessary to have the building secured as an interim measure for the protection of the public health and welfare while pending action, he/she may so order. If the owner is unable or unwilling to secure the building within 48 hours, the Director may order the building secured by the Town.
- (4) If the owner is unable to comply with the Board's order within the time required and the time for appeal to the Town Council or petition to the court has passed, he/she may, for good and sufficient cause beyond his/her control, request in writing an extension of time. The Board or the Town Council may grant a reasonable extension of time after a finding that the delay was beyond the control of the owners. There shall be no appeal or petition from the Board or the Town Council's ruling on an extension of time.

Section 19. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.500 Appeal of board Decision to read as follows: **8.10.600 Appeal of Board Decision.**

- (1) The owner or any party in interest may, within thirty (30) days from the date of service and posting of an order issued by the Board under the provisions of this chapter for buildings, dwellings, structures and chattels, file an appeal. All other nuisances' appeals must be filled within ten (10) days.
- (2) An appeal must be filed by a written Notice of Appeal with the Town Clerk setting out the reasons why the determination or order of the Board is erroneous. An appeal fee of \$100 shall be paid at the time the Notice of Appeal is filed with the Town Clerk.
- (3) The Town Council shall hear the appeal at the earliest possible time, but in no event less than ten (10) day nor more than thirty (30) days after the date the Notice of Appeal is filed with the Town Clerk. The public hearing for the appeal will be scheduled to permit a final decision thereon to be made within sixty (60) days after the filing of the appeal.
- (4) Notice of the time and place of the public hearing for the appeal shall be made in accord with section 8.10.320 WMC.

- (5) The filing of the Notice of Appeal shall stay the order of the Director or Board, except so much thereof as requires temporary measures, such as securing of the building to minimize any emergent danger to the public health or safety.
- (6) The decision of the Town Council on the appeal shall be final and only appealable to the Lincoln County Superior Court.

Section 20. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.510 Hearings before the Town Council to read as follows: **8.10.510 Hearings Before the Town Council.**

- (1) Upon timely appeal, the Town Council shall review the proceedings and orders of the Board and determine whether to affirm, modify or vacate said orders.
- (2) The Council's review is on the record, not de novo. In the absence of good cause, the Town Council will not accept new evidence or evidence that has not been made available to the Board. Upon the public hearing of the appeal, the Town Council shall consider the file of the proceedings before the Board and such other evidence as may be presented.
- (3) The Town Council shall review the record and such supplemental evidence as is permitted under subsection (2) above. The Town Council may grant relief only if the party seeking relief has carried the burden of establishing by a preponderance of the evidence that the standards set forth in (a) through (g) of this subsection has been met. The standards include but are not limited to the following:
 - (a) The Board engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
 - (b) The Board's decision is an erroneous interpretation of the law;
 - (c) The Board's decision is not supported by evidence that is substantial when viewed in light of the whole record before the Town Council;
 - (d) The Board's decision is a clearly erroneous application of the law to the facts;
 - (e) The Board's decision is outside the authority or jurisdiction of the Board, or;
 - (f) The Board's decision violates the constitutional rights of the party seeking relief.
- (4) The Town Council may recognize and give appropriate effect to special and extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards and other provisions of this chapter.
- (5) After the public hearing, the Town Council may affirm, modify or vacate the order of the Board, or may continue the matter to a date certain for further deliberation or presentation of additional evidence.
- (6) A record of the proceedings shall be made and kept for at least three (3) years or until the matter is final, whichever is longer.
- (7) The Town Council shall cause its findings of fact and order to be made in writing; provided that the Town Council may adopt the findings and order of the Board, or so much thereof as supports its decision. In addition, such order shall state that the owner has the right to petition the Superior Court of Lincoln County for appropriate relief within thirty (30) days after the order becomes final.
- (8) The Town Council's findings and order shall be served upon the same persons and posted in the same manner as a complaint or notice and order of the Director.
- (9) Any action taken by the Town Council shall be final sixty (60) days after

the filing of a notice of appeal unless continued with consent of the owner or occupant.

- (10) In the event that the Town Council fails to reach a decision or continues the hearing beyond sixty (60) days after the filing of an appeal, the Director's or Board's findings and order shall be that of the Town Council and shall be final and subject to petition to the Lincoln County Superior Court; provided that any continuance at the request or with the consent of any owner or occupant shall suspend, for the length of the continuance, the running of the sixty (60) days allowed for final decision.
- (11) The Town Council's order shall be enforced in the same manner as an order of the Board.
- (12) A transcript of the appeal hearing before the Town Council shall be made available to the owner or other party in interest upon demand at the requestor's expense.
- (13) The findings, determinations and orders of the Town Council on appeals of determinations and orders issued by the Board shall be reported in the same manner and shall bear the same legal consequence as if issued by the Board, and shall be subject to review only in the manner and to the extent provided in WMC 8.10.520.

Section 20. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.520 Appeal to Superior Court to read as follows: **8.10.520 Appeal to Superior Court.** Any interested person affected by an order issued by the Town Council pursuant to sections 8.10.500 and 8.10.510 WMC may, within thirty days after the posting and service of the order, petition to the Superior Court for an injunction restraining the Town from carrying out the provisions of the order. Such trial shall be heard de novo. In all such proceedings the court is authorized to affirm, reverse, or modify the order of the Town Council.

Section 21. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.600 Assessment and Lien on the Real Property to read as follows: **8.10.600 Assessment and Lien on the Real Property.**

- (1) The amount of the cost of any repairs, alterations or improvements, or vacating and closing, or removal or demolition or the abatement of any nuisance by the Town, including the administrative fees established in this chapter, shall be assessed against the owner and shall be a lien against the real property upon which such costs and fees were incurred unless such amount is previously paid.
- (2) The Clerk Treasure or his/ her designee, shall certify any such assessment amount due and owing to the Lincoln County Treasure, who, pursuant to RCW 35.80.030, shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.02, as now or hereafter amended, for delinquent taxes and when collected to be deposited to the credit of the general fund of the Town. If the dwelling, building, structure, premises, or nuisance is removed or demolished by the Town, the Town shall, if possible, sell the materials of such dwelling, building, structure, premises, or nuisance and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be

paid to the parties entitled thereto, as determined by the Board, after deducting the Town's costs and administrative fees incident thereto.

Section 22. There is hereby added to the Town of Wilbur Municipal Code Section 8.10.610 Cost of Abatement and Administrative Fees to read as follows: **8.10.610 Cost of Abatement and Administrative Fees.**

(1) The costs of abatement, repair, alteration or improvement, or vacating and closing, or removal or demolition, when such actions are performed at the Town's cost, shall be assessed against the real property upon which such costs were incurred unless paid. The Director shall forward a report of such unpaid costs to the Town's Clerk/Treasurer, who shall certify them to the Lincoln County Treasurer for assessment on the tax rolls, as provided by RCW 35.80.030(h).

(2) Bids for demolition or repair shall be let only to a licensed contractor. The contract documents shall provide that the value of the materials and other salvage of the property shall be credited against the costs of the demolition. The contract documents may require bidders to estimate the salvage value of the property and by claiming the salvage, reduce the amount of his/her bid accordingly. The contract price fixed by acceptance of such a bid shall not be adjusted to reflect the actual salvage value. Such bids may be let prior to the time for compliance or appeal, but shall not be binding or accepted until the order for demolition is final. The Director shall have the authority to sign the contract on behalf of the Town.

(3) Actual costs and expenses will be assessed in accord with the provisions of this section.

(4) In addition to actual abatement costs, the following administrative fee shall be assessed and collected in the same manner for such dwelling, buildings, structures or premises, that are determined to be unfit for human habitation or has on it, a nuisance as described in 8.10.60 WMC:

(a) Where abatement is accomplished and approved by the Director prior to a Board hearing, the administrative fee shall be \$200.00, except that these fees shall be waived for a first offense if abatement is accomplished and approved 48 hours prior to a Board hearing.

(b) Where abatement is accomplished and approved by the Director less than 48 hours prior to a Board hearing, the administrative fee shall be \$300.00.

(c) Where abatement is accomplished and approved by the Director following breach of an agreement or understanding between the property owner(s) and the Director, the Board, or the Town Council, the administrative fee shall be \$600.00.

(d) Where the abatement is accomplished by the Town following hearing or default of the property owner(s), the administrative fee shall be \$1,000.00.

(5) The Board or the Town Council may, upon recommendation from the Director, modify the amount, methods, or time of payment of such fees as the condition of the property and the circumstances of the owner may warrant. In determining such adjustments, the Town Council may reduce the costs to an owner who has acted in good faith and would suffer extreme financial hardship. The Town Council may, upon recommendation from the Director, increase the administrative fees if it appears that the scheduled fees are inadequate to make the Town whole with respect to a particular unfit dwelling, building, structure, premises or nuisance.

Section 23 Review of Provisions. The Town Council shall review the provisions of this ordinance in the light of the Town's actual experience after the Ordinance has been effect for one year.

Section 24. Summary. The attached ordinance summary is hereby approved and the Town Clerk is directed to publish the same in the Town's official newspaper pursuant to RCW 35.27.300.

Section 25. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or any provision of the Wilbur Municipal Code established by this ordinance, is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or other provisions of Wilbur municipal Code established by this ordinance.

Section 26. Effective date. This ordinance shall be in full force and effect thirty (30) days after its passage, approval and publication as provided by law.

Passed by the Wilbur Town Council this 21st day of June 2001.

Ayes:
Nays:
Abstains:

MAYOR, DONALD G. REID

Attest:

Carla Shirley, Town Clerk

Approved as to form:

Cynthia E. McMullen, Town Attorney

TOWN OF WILBUR ORDINANCE NO. 373 SUMMARY

AN ORDINANCE of the Town of Wilbur, Washington, passed the Town Council June 21, 2001, repealing the current provisions of Chapter 8.10 of the Wilbur Municipal Code, enacting new provisions of Chapter 8.10 relating to land use nuisances, setting forth findings and purpose therefore, providing for processes for emergency circumstances, reserving other powers, requiring permits for all work done, setting forth definitions, identifying types of nuisances and prohibited conduct, setting forth the duties of the Director and the Board, providing for the adoption of rules and regulations, providing for the determination of unfitness and the standards therefore, providing for the determination to require repair or demolition, providing for a preliminary investigations, issuance of a complaint or notice and order, service and filing with the County Auditor of the complaint, providing for a voluntary correction agreement, providing for a Board Hearing on the Director's determination of unfitness, setting forth the method of enforcement, providing for an appeal of the Board's decision through a hearing before the Town Council, providing for appeal of the Town council's determination to the Superior Court, providing for an assessment and lien on the real property, providing for the recoupment of the costs of abatement and the payment of administrative fees, the setting of the administrative fees, providing for review of the Ordinance by the Town Council after one year, providing for severability of any portion found invalid for any reason, and providing that this ordinance shall be in full force and effect thirty days after passage, approval and publication.

A COPY OF THE FULL TEXT OF THIS ORDINANCE IS AVAILABLE AT THE WILBUR TOWN CLERK'S OFFICE, P.O. BOX 214, 14 NW DIVISION STREET, WILBUR, WA 99195-0214.