

## **Chapter 53**

### **DEPARTMENT OF BUILDING INSPECTION AND CODE ENFORCEMENT; PERMITS AND APPROVALS**

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History: Chapter 53 created by Ordinance 14-1215-04 and adopted on March 4, 2015

**Article I. DEPARTMENT OF BUILDING INSPECTION AND CODE ENFORCEMENT**

**Section 53-1 Creation; Composition**

There is hereby created a Building Inspection and Code Enforcement Department for the City of Delaware City, which shall consist of a Code Enforcement Officer (and potentially assistant Code Enforcement Officers) and a Building Code Inspector (and potentially assistant Building Code Inspectors), which may be the same person. The Building Code Inspector (and assistants) and the Code Enforcement Officer (and assistants) shall be appointed by the City Manager and the contract for the Building Code Inspector and the Code Enforcement Officer shall be approved by a majority vote of the City Council.

**Section 53-2 Duties of Building Code Inspector**

The duties of the Building Code Inspector shall include the following:

A. The Building Code Inspector shall devote reasonable time to the duties of his/her office. He/she shall receive applications required by this Code, issue permits and furnish the prescribed certificates. He/she shall examine premises for which permits have been issued and shall make necessary inspections to see that the provisions of law are complied with and that construction is proceeding safely. He/she shall enforce all provisions of the building code (Chapter 23) and shall be deemed the “Code Official” under Chapter 23. He/she shall, when requested by proper authority or when the public interest so requires, make investigations in connection with matters referred to in the building code and render written reports on the same. To enforce compliance with law, to remove illegal, unsafe conditions, to secure the necessary safeguards during construction or to require adequate exit facilities and structure, he/she shall issue such notices or orders as may be necessary.

B. The Building Code Inspector will be responsible for all building inspections within the City limits with the exception of the following: accessory buildings with a building footprint of 150 square feet or less without electrical service, administrative reviews, same size residential and commercial window replacements, roof shingle replacement, interior cosmetic improvements with no structural wall construction, and in-kind exterior siding replacement. These specific inspections (if necessary) will be performed and regulated through the City of Delaware City or its duly appointed assistant(s).

C. Inspections required under the provisions of the building code shall be made by the Building Code Inspector or his/her duly appointed assistant.

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D. The Building Code Inspector will be responsible for establishing inspection procedures, the timing of inspections, the number of inspections required, and any other schedules pertaining to the inspection process.

E. The Building Code Inspector shall be responsible for issuing certificates of occupancy and building permits in accordance with the provisions the Delaware City Code.

F. The Building Code Inspector may require an applicant to provide a completion of performance bond and/or other form of guaranty to the City and may establish the amount of such bond and/or guaranty.

G. The Building Code Inspector will be responsible for revoking and suspending building permits and certificates of occupancy as well as issuing and revoking stop-work orders.

H. The Building Code Inspector shall keep comprehensive records of applications, of permits issued, of certificates issued, of inspections made, or reports rendered, and of notices or orders issued. He/she shall retain on file copies of required plans and all documents relating to building work so long as any part of the building or structure to which they relate may be in existence.

I. The Building Code Inspector shall make timely inspections and be prepared to perform the necessary inspections within 48 hours of receipt of a request for inspection absent extenuating circumstances. Applications shall be made at the City Hall at which time all paperwork must be accurate and fees paid to initiate the building review/inspection process.

J. All such records shall be open to public inspection for good and sufficient reasons at the stated office hours, but shall not be removed from the office of the Building Code Inspector without written consent. Copies may be provided consistent with the rate schedule set forth in the Delaware Freedom of Information Act for copies and associated expenses.

K. The position of Building Code Official shall be an agent/official of the City for purposes of tort claims and indemnity pursuant the Charter and the City Code. The position may be filled by an individual or a firm on a contract basis. The Building Code Official, while an agent of the City, shall be an independent contractor and shall be responsible for payment of all taxes, licenses, and fees associated with independent contractor status. The Building Code Official is subject to all laws and codes of conduct applicable to City employees and officials – including conflict of interest standards.

L. The Building Code Inspector shall make written report to the City Manager each month, or more often if requested, including statements of permits and certificates, and orders promulgated.

**Section 53-3 Additional Powers and Authority**

Along with other powers and authority granted to the Building Code Inspector in this Code (including Chapter 23), the Building Code Inspector shall have the following powers and authority:

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A. Temporary certificates of occupancy. The Building Code Inspector shall have authority to issue temporary certificates of occupancy for buildings and structures that do not comply with the codes, upon the terms and conditions as set forth in this section.

B. Affidavit to complete work. In the event that the owner and builder of a structure are in agreement that certain items, such as grading, seeding, soil stabilization, and other similar work, cannot be completed because of the weather or the season, but that these items can be completed by the builder after a temporary certificate of occupancy is granted and the owner takes possession of the property, then the Building Code Inspector may grant a temporary certificate of occupancy, conditioned upon the builder executing an affidavit agreeing to complete the necessary items specified therein, within a time period specified therein, with sanctions to be imposed by the Building Code Inspector for noncompliance by the builder, to include, but not to be limited to, revocation of the temporary certificate of occupancy, refusal to issue to the builder further building permits on other parcels, and such other administrative action as the Building Code Inspector may deem appropriate.

C. Issuance of additional fees for re-inspection. The Building Code Inspector shall have authority to charge additional fees for re-inspection for failed elements of previously inspected work or lack of timeliness on the part of the application. Said fees shall be in accordance with the Schedule of Fees in Section 46-147 of the Delaware City Code.

D. Time extensions for building plan review. The Building Code Inspector shall have authority to issue time extensions for the review of building plans if it is determined that extenuating circumstances prevent the timely review of said plans or if specialized review or board or agency approval is required.

E. Hardship. Upon adequate hardship being shown to the Building Code Inspector and upon agreement of all parties, including the owner or equitable owner and the builder, the Building Code Inspector may issue temporary certificates of occupancy for buildings and structures where any work of a minor nature is required in the future to comply with the codes, provided that all parties sign an agreement to this effect and the builder executes an affidavit, with the conditions and stipulations provided in Subsection B of this section, agreeing to the imposition of sanctions for noncompliance to be imposed by the Building Inspector.

F. Agreements and affidavits for certificates. The Building Code Inspector shall prepare uniform agreements and affidavits to be used in granting temporary certificates of occupancy as stated herein.

G. The Building Code Inspector or his duly authorized assistant(s) shall have the right to enter any building or enter upon any land at any reasonable hour, as necessary, in the execution of his/her duties.

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1. The Building Code Inspector shall notify the owner and tenant before conducting any inspection.

2. The Building Code Inspector or his duly authorized assistants shall display identification signed by the City Manager upon commencing an inspection.

3. Inspections may be commenced in the presence of the owner, or his representative or tenant.

H. Upon written authorization of the City Manager, the Building Code Official may also perform all duties of the Code Enforcement Officer.

**Section 53-4 Code Enforcement Officer**

The duties of the Code Enforcement Officer shall include the following:

A. The Code Enforcement Officer shall devote reasonable time to the duties of his/her office. He/she shall receive, investigate, and enforce property maintenance and other building complaints and shall investigate, remedy, and prosecute building and property maintenance violations. He/she shall examine premises subject to the Delaware City Code and shall make necessary inspections for compliance with applicable law. He/she shall enforce applicable non-construction provisions of the building code (Chapter 23), the Property Maintenance Code (Chapter 52), and all other property maintenance related provisions of the Delaware City Code. He/she shall, when requested by proper authority or when the public interest so requires, make investigations in connection with matters referred to in the applicable code sections and render written reports on the same. To enforce compliance with law, to remove illegal, unsafe conditions, and to secure the necessary safeguards, he/she shall issue such notices or orders as may be necessary.

B. Inspections required under the provisions of any property maintenance related provision of the Code shall be made by the Code Enforcement Officer or his/her duly appointed assistant. The Code Enforcement Officer is designated as the "Code Official" pursuant to 52 of the Delaware City Code.

C. The Code Enforcement Officer shall keep comprehensive records of complaints received, of inspections made, or reports rendered, and of notices or orders issued. He/she shall retain file copies of required plans and all documents relating to these duties for a period of five years. The Code Enforcement Officer shall also keep detailed records of citations issued and moneys received, all of which shall be remitted to the City's general fund.

D. All such records of the Code Enforcement Officer shall be open to public inspection for good and sufficient reasons at the stated office hours, but shall not be removed from the office of the Code Enforcement Officer without written consent. Copies may be provided consistent with the rate schedule set forth in the Delaware Freedom of Information Act for copies and associated expenses.

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E. The position of Code Enforcement Officer shall be an agent/official of the City for purposes of tort claims and indemnity pursuant the Charter and the City Code. The position may be filled by an individual or a firm on a contract basis. The Code Enforcement Officer, while an agent of the City, shall be an independent contractor and shall be responsible for payment of all taxes, licenses, and fees associated with independent contractor status. The Code Enforcement Officer is subject to all laws and of conduct applicable to City employees and officials – including conflict of interest standards.

F. The Code Enforcement Officer shall make written report to the City Manager each month, or more often if requested, including statements of inspections performed, complaints received, orders promulgated, citations made, and fines collected.

G. The Code Enforcement Officer or his duly authorized assistant(s) shall have the right to enter any building or enter upon any land at any reasonable hour, as necessary, in the execution of his/her duties.

1. The Code Enforcement Officer shall notify the owner and tenant before conducting any interior inspection.

2. The Code Enforcement Officer or his duly authorized assistants shall display identification signed by the City Manager upon commencing an inspection.

3. Inspections may be commenced in the presence of the owner, or his representative or tenant.

H. Upon written authorization of the City Manager, the Code Enforcement Officer may also perform all duties of the Building Code Official.

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**Section 53-5 Filing of Plans and Supplementary Materials**

A. In those cases where a building permit is required by the Delaware City Code, plans for the construction, alteration, or enlargement, wholly or partly, of any building or structure shall be filed with the Building Code Inspector. These shall be accompanied by a preliminary application for a certificate of occupancy as required by this Article and by a statement of the existing and intended use of each building or part thereof, the number of families to be accommodated, and such other information as is needed to determine its conformance with all provisions of the zoning provisions of the City Code. In cases involving a subdivision, any application filed with the Building Code Inspector shall include the final subdivision plan as approved by City Council or by decision of the Board of Adjustment.

B. In cases where no building permit is required under the Building Code, any person desiring to use any land for any purpose other than that for which said land is being used at the time of the adoption of this Chapter shall make preliminary application to the Building Code Inspector for a certificate of occupancy as required by this Article. Such preliminary application shall be accompanied by two (2) copies of a map or plan drawn to scale and showing the location, shape and dimensions of the lot to be built upon, the size and location of existing buildings, thereon, the lines within which the proposed buildings are to be erected or altered and the existing and intended use of each building or part thereof, the height thereof, and the number of families to be accommodated. The applicant shall also give such other pertinent information respecting the proposed use of property as may be necessary to determine the propriety of issuance of certificate of occupancy upon completion of any construction involved.

**Section 53-6 Building permit required.**

No building or structure in any zone shall be erected or structurally altered without a building permit duly issued upon application to the Department of Building Inspection and Code Enforcement. No structures such as commercial trailers, truck bodies, etc. are allowed to be placed on a residential property without a permit. No building permit shall be issued unless the proposed construction or use is in full conformity with all the provisions of the applicable ordinance(s). No building permit shall be issued unless the building or structures, as proposed would comply with all provisions of the zoning provisions for the district within which it is located. Any building permit issued in violation of the provision of the Delaware City Code shall be null and void and of no effect.

**Section 53-7 Application for building permit.**

Application for a building permit for erection or structurally altering or adding to a building shall be accompanied by a fee as stated in Chapter 46-147 of the Delaware City Code. Attached shall be a plot

plan drawn to scale showing the following as necessary or as determined by the Building Code Inspector or his/her duly appointed designee:

- A. The actual shape, dimension, radii, angles and arc of the lot on which the building is proposed to be erected or of the lot on which it is situated if an existing building.
- B. The street, block, and lot number, where possible.
- C. The exact size and location on the lot of the proposed building or buildings or alterations or additions to an existing building and of other existing buildings on the same lot.
- D. Dimensions of all yards in relation to the subject building and the distances between such building and any other existing building on the same lot.
- E. The existing and intended use of all buildings (existing or proposed), the use of land and the number of dwelling units the building is designed to accommodate.
- F. Such topographic or other information with regard to the building, the lot or neighboring lots as may be necessary to determine that the proposed construction will conform to the provisions of this Article. Application for the construction of new buildings shall be accompanied by an accurate survey prepared by a licensed engineer or land surveyor.
- G. All other documents, plans, and approvals required by the Delaware City Code required for construction.

**Section 53-8 Lot requirements.**

No building permit shall be issued for construction or alteration of any building(s) on a lot without frontage upon or legal permanent access to a public street, or without access to public sewer and water services. All setback and parking requirements must be satisfied.

**Section 53-9 Supporting Documentation.**

Unless otherwise established by the Building Code Inspector, the application and all supporting documentation shall be made in triplicate. On issuance of the building permit, the City Code Official shall return one copy of all documents to the applicant.

**Section 53-10 Validity of Permit.**

The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this Code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the appropriate City official from requiring the correction of errors in the construction documents and other data. The City is also authorized to prevent occupancy or use of a structure where in

violation of this Code or of any other ordinances of this jurisdiction. No building permit or certificate of occupancy shall be issued until all applicable provisions of the Delaware City code are satisfied.

**Section 53-11 Time Limit for Issuance or Denial of Building Permit.**

Unless otherwise established by the Building Code Inspector or as otherwise specified in this chapter, the City Code Official shall, within ten (10) business days after the filing of a complete and properly prepared application, either issue or deny a building permit. A longer time is permitted for issuance if the applications require technical review by outside consultants or if the application requires review by boards, commissions, state agencies, federal agencies, or City Council. The Building Code Inspector is authorized to request and receive additional documentation as necessary which are not specifically delineated herein for the purpose of reviewing the permit application. If a building permit is denied, the Building Code Inspector shall state in writing the reasons for such denial. No building permit shall issue unless all requirements of the City Code are satisfied, including, but not limited to, zoning, floodplain, stormwater, or other applicable sections of the City Code of Delaware City.

**Section 53-12 Expiration of Building Permit**

Every building permit shall expire if the authorized work has not commenced within six months after the date of issuance, or has not been completed within 12 months from such date. The City Manager may authorize in writing the extension of either of the above periods for an additional six months, following which no further work is to be undertaken without a new building permit.

**Section 53-13 Suspension or revocation.**

The Building Code Inspector is authorized to suspend or revoke a building permit issued under the provisions of this Code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this Code.

**Section 53-13 Stop-work orders.**

A. Whenever the Building Code Inspector finds any work regulated by this Code being performed in a manner either contrary to the provisions of this Code or dangerous or unsafe, the department supervisor is authorized to issue a stop-work order.

B. 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. Upon issuance of a stop-work order, the cited work shall immediately cease. The stop-work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

C. 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 to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

**Section 53-14 Placement of permit.**

The building permit or copy thereof shall be kept on the site of the work and conspicuously displayed at a location visible from the street until the completion of the project.

**Section 53-15 Responsibility.**

It shall be the duty of every person who performs work for the installation or repair of building, structure, electrical, gas, mechanical or plumbing systems, for which this Code is applicable, to comply with this Code.

**Section 53-16 Requirements for Occupancy Permit.**

A permit (or certificate of occupancy) shall be required for any of the following:

- A. Occupancy and use of any building hereinafter erected.
- B. Change in use of any building to a use of a different classification.
- C. Occupancy and use of vacant land, or change in the use of land to a different classification.
- D. Any change in use or extension of a non-conforming use; the building permit and certificate of occupancy (C.O.) shall indicate that the proposed use of such building or land is in conformity with the provisions of the article.
- E. Any premises not occupied during renovation or rehabilitation shall require a certificate of occupancy (C.O.) before it may be occupied again.

**Section 53-17 Issuance of Certificate of Occupancy; Temporary Certificates; Records.**

- A. Use and Occupancy
  - 1. It shall be unlawful to use or permit the use of any building, structure or premises or part thereof, hereafter created, erected, changed, converted, altered, enlarged, wholly or partly, in its use or structure, except for minor alterations involving no change in the floor area or use, until a certificate of occupancy shall have been issued by the Building Code Inspector. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this Code or of other provisions of the Delaware City Code. Certificates presuming to give authority to violate or cancel the provisions of this Chapter or other provisions of the Delaware City Code shall not be valid.

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2. Exceptions. Certificates of occupancy are not required for work exempt from permits. In cases where no building permit is required, preliminary approval prior to construction or alteration of a building may be given under the procedure outlined in the preceding Section of this Article.

B. As-builts.

1. All single-family detached and semidetached dwelling units shall submit a final grade as-built, signed and sealed by a Delaware registered professional engineer or professional land surveyor, to the department supervisor prior to the issuance of a certificate of occupancy. The intent of the as-built is to certify that the lot has been graded in accordance with the approved grading plan for the lot.

2. If for any reason the as-built indicates that the final grade does not meet the approved grading plan, the Building Code Inspector shall have the authority to decide whether to withhold the certificate of occupancy until the required corrections are made, or allow the issuance of the certificate of occupancy contingent upon the required corrections being made in a time frame determined by the department supervisor. A revised as-built shall be submitted to the department supervisor upon completion of the corrections.

3. Townhouse units shall submit the final grade as-built for the side and rear yards prior to the issuance of the certificate of occupancy for the first dwelling unit in the group. Front yards for townhouse units shall be excluded from the as-built requirement to allow for the construction of improvements including, but not limited to, driveways, steps, porches and sidewalks.

4. A winter yard grading letter will be accepted by the Building Code Inspector for the period of December 15 through May 15 of the following year. The letter shall state that all disturbed areas have been straw and tacked to receive the certificate of occupancy. After May 15, an as-built, signed and sealed by a Delaware registered professional engineer or professional land surveyor, shall be submitted to the department supervisor no later than June 15 of the same year for review. Failure by the builder to submit an as-built by June 15 will result in further action by the department supervisor, including, but not limited to, the suspension of inspections until the builder has completed and submitted an approved as-built.

C. Issuance.

After the Building Code Inspector inspects the building or structure and finds no violations of the provisions of this Code or other laws that are enforced by the Department of Building Code Inspection and Enforcement, the City, or other applicable agencies, the Building Inspector shall issue a certificate of occupancy which shall contain the following:

1. The building permit number.
2. The address of the structure.

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3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this Code.
6. The edition of the code under which the permit was issued.
7. Any special stipulations and conditions of the building permit.

D. Pending completion of a building or of alterations thereto, a temporary C.O. may be issued by the City Manager, at the recommendation of the Building Code Inspector, for the use of part or all of the building, provided that such a temporary occupancy or use shall not tend in any way to jeopardize life or property.

E. A record of all permits and certificates shall be kept on file in an office of the City. Copies of said reports may be requested per the Freedom of Information Act (FOIA) regulations as adopted by the City of Delaware City.

F. The Building Code Inspector shall, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this Code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of the Delaware City Code.

G. Any preliminary approval of a certificate of occupancy issued under this Section shall be valid for a period of one (1) year from the date of issuance. If the final certificate of occupancy has not been obtained at the expiration of the one (1) year period, application may, however, be made for renewal of the preliminary approval for an additional one (1) year period.

**Section 53-18 Fees.**

A. Fees for building permits shall be paid in accordance with the fee schedule provided in Chapter 46-147 of Delaware City Code, and all such fees shall be paid into the City Treasury at the time of application for the permit. A permit shall not be valid until the fees prescribed by law have been paid; nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

B. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

C. Building permit valuation shall include total value of the work for which a permit is being issued, such as electrical, gas, mechanical, plumbing equipment and other permanent systems, including evaluation of total project cost.

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D. For all planned residential developments, major and minor subdivisions and all construction projects that require engineering reviews, making periodic inspections or both, the applicants shall make a cash deposit in an amount to be determined by the Building Code Inspector for the purpose of covering all costs and expenses incurred by the City of Delaware City in using any outside consultant or resource (engineer, scientists, consultant, etc.) in considering, examining, reviewing and making reports and recommendations concerning the plan, as submitted, or making inspections during construction.

E. Upon the final review and approval of the submitted plans, but prior to the issuing of a building permit, the Building Code Inspector shall determine the costs which have been incurred by the City for any outside consultant or resource and shall deduct those costs from the deposit made by the applicant(s). If the deposit exceeds the costs incurred by the City, the Building Code Inspector shall refund the remaining funds to the applicant(s) without interest. If the deposit is less than the costs incurred by the City, the applicant(s) shall pay the difference to the City prior to the issuance of any approval for construction by any City official, committee, or commission.

**Section 53-19 Fines.**

Fines shall be paid in accordance with the fee schedule provided in the Delaware City Code, and all such fines shall be paid into the City Treasury.

**Section 53-20 Denial of Permits or Approval for Failure to Comply with Required Payments, Actions or Filings.**

Prior to any administrative agency or official of the City charged with evaluation and approval of any permit required so that legal or equitable owners of real property located in the City may utilize City services or otherwise involve the City officers, agents, or employees to permit any use of such real property, approving or issuing any permit or other indication of approval, that administrative agency or official shall make reasonable efforts to determine that no payments, actions, or filings related to obligations due to or requirements by the City for the use of that parcel or any other parcel of real property remain incomplete or in violation of the City requirements. If any such noncomplying or incomplete payments, actions, or filings are determined to exist, then the administrative agency or official shall, in writing, deny the permit or other form of approval until such existing requirement for payment, action, or filing has been fully complied with or completed as to that parcel, identifying in that written denial the payment, action or filing to be completed or complied with. Failure by the appropriate administrative agency or official to issue such written denial within ten (10) working days from receipt of an application shall enable the applicant to have the application reviewed without consideration of the requirements of this section.

**ARTICLE III: APPEALS AND LIABILITY**

**Section 53-21 Appeals**

All appeals by any aggrieved person of decisions made by the Building Code Inspector or the Code Enforcement Officer shall be directed to the City Manager. Said appeals shall be made in writing and shall document the issue that is being appealed in addition to the section of the Code that precipitates the appeal. The City Manager shall respond to the applicant within ten calendar (10) days with a facts and findings report that shall be binding based on the Manager's investigation. Any party aggrieved by the decision of the City Manager may appeal the decision to the Board of Adjustment within thirty (30) days. To the extent this provision conflicts with the provisions of Chapter 52, this appeals provision in Chapter 52 control.

**Section 53-22 Liability**

The Building Code Inspector, the Code Enforcement Officer, the City Manager or any employee/agent charged with the enforcement of the Delaware City Code pursuant to this Chapter, acting in good faith and without malice for the City in the discharge of his/her said duties, shall not thereby render himself/herself liable personally and is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of his/her duties. Any suit brought upon the City of Delaware City, the Code Enforcement Officer, the Building Code Inspector or their appointed assistants due to an act or omission performed during the enforcement of any provision of this Code, acting in good faith and without malice for the City in the discharge of his/her said duties, shall be defended by the legal counsel designated by the City or its insurers until final termination of the proceedings. The determination of acting in good faith and without malice in the discharge of duties shall be made by the City Council.