

Code Enforcement Ordinance Outline

1.04 Uniform Enforcement Procedures

1.04.010 Enforcement of Jefferson County Code. The purpose of this Chapter is to provide the effective and efficient enforcement of the Jefferson County Code and the Jefferson County Zoning Ordinance for the welfare, safety and health of the citizens of the county.

A. Ordinances in both the County Code and the Zoning Ordinances and specifically including building, zoning, sanitation and nuisance ordinances, will be enforced through this policy.

B. The Jefferson County Board of Commissioners may appoint a code enforcement officer to conduct investigations, issue stop work or stop use orders, issue citations, and generally initiate and prosecute enforcement actions under this chapter. In addition, enforcement procedures may be initiated by a knowledgeable employee of the county such as a planner, building official, county commissioner, sanitarian or member of law enforcement. References to the county include any employee designated by the Board to enforce the county code.

C. Definitions.

1. **Hearings Officer.** The person(s) officially appointed by the Board to conduct enforcement hearings under this chapter, or a Circuit Court Judge of Jefferson County.

2. **Responsible Party.** An owner, title holder, contract seller, contract buyer, possessor or user of the land upon which a violation is occurring, or the person responsible for the action, conduct, or omission which constitutes a violation, may each be held responsible for a violation of a county ordinance.

3. **Violation.** Failure to comply with any provision or requirement of a county ordinance, order, permit approval, consent agreement, or state statute which the county has authority to enforce; more than one violation may be addressed in the same citation, summons, complaint and/or hearing.

1.04.020 Compliance Hearings Officer.

A. The office of compliance hearings officer is hereby created. The hearings officer shall act on behalf of the Board of County Commissioners in considering and applying regulatory enactments and policies set forth in this chapter.

B. The hearings officer shall be appointed by the Board of Commissioners to serve at the pleasure of, and shall be paid a fee for service fixed by, the Board of Commissioners.

C. The hearings officer shall have jurisdiction and authority to enforce the chapters cited in Section 1.04.010. In cases filed by the county, the hearings officer's decision shall be the county's final determination. Appeal of the hearing officer's decision may be pursuant to Section 1.04.100.

1.04.030 Code Enforcement Process.

A. Complaints of code violations shall be submitted to the code enforcement officer in writing and signed by the complaining party. A suspected violation may be investigated without the filing of a complaint.

B. When a complaint is received or an investigation is initiated, the code enforcement officer shall prepare a statement of facts. The statement shall include a description of the location and date of the alleged violation, any known names of responsible parties and a brief description of the nature of the alleged violation. Based on the statement of facts and the best interest of the county, the code enforcement officer shall determine if enforcement action is warranted.

C. The code enforcement officer may issue a warning of the violation depending on the gravity of the violation, history of previous violation or other mitigating factors. If a warning is issued, it shall state the nature of the violation, the ordinance allegedly violated, the steps necessary to correct the violation and the time within which correction must be made.

D. The county and the responsible party or the property owner may enter into a written voluntary compliance agreement before or after a citation is issued. The agreement will be binding and shall include the required corrective action and time limits for compliance. The county will suspend further enforcement proceedings for the violation during the time limit established in the agreement.

E. In lieu of or in addition to a citation, the enforcement officer may issue a stop work or stop use order requiring immediate remedial action in the event the violation presents an immediate danger to public health, safety or welfare. Such order shall be posted on the property where the violation is occurring and must be served on the property owners and lessees, if any. If the county is unable to serve an order on the responsible party or the responsible party refuses or is unable to remedy the violation after such service, the county may proceed to remedy the violation by any means available under law.

F. Citation/Complaint/Summons.

1. The enforcement officer may issue a citation for any violation of the county code which the officer personally observes. Such citation may be to the hearings officer or to the Jefferson County Circuit Court and may be delivered in person or by certified mail. The citation may include the summons and complaint on the same form and must contain the following information: name and address of responsible party, location of the alleged violation, nature of the violation including ordinance, code, statute or regulation violated, department initiating citation and base fine.

2. Responsible party may admit the existence of a violation by paying the forfeiture amount on the citation and correcting the violation. Payment of the forfeiture does not relieve responsible party of the requirement to correct the violation. Upon receipt of payment and correction of the violation, the citation will be dismissed.

3. If responsible party disputes the violation, a hearing will be held before the hearings officer or circuit court at the time and date provided in the citation.

G. Continuing Violations. After a violation has been initially cited, a new citation for each calendar day need not be issued; rather, the enforcement officer may present evidence of repeated violations at the time of the hearing, and the hearing officer may consider such evidence to determine if a continuing violation or multiple violations has occurred.

H. Remedies sought by the county are cumulative for each violation, not exclusive; election by the county to pursue one remedy is not a condition precedent to pursuing any

other remedy; and, remedies listed in this chapter do not preclude the county from resorting to any other remedy that may be available or allowed at law or equity.

1.04.040 Hearings.

A. If the responsible party disputes the violation or claims a hardship that would prevent payment of forfeiture amount, responsible party must personally appear at the time and place specified in the complaint for a hearing or make an appearance as otherwise provided by law.

B. Failure to appear may result in a default order in favor of the county awarding any penalties applicable to the violation(s) or costs authorized under this ordinance.

C. Prior to a hearing before a hearings officer, the county will send notice of the hearing along with a Statement of Rights. Failure to give notice of any information in the Statement of Rights will not invalidate any order of the hearings officer unless, on review, a court finds that the failure affects the substantive rights of one of the parties.

The Statement of Rights will include the following information:

1. A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burden of proof;
2. That a record shall be made of the proceedings and the manner of making the record and its availability to the parties;
3. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the order of the hearings officer;
4. Whether an attorney will represent the county in the matters to be heard and the responsible party's right to be represented by an attorney at their expense;
5. The title and function of the hearings officer, including the effect and authority of the hearings officer's determination; and,
6. That the decision of the hearings officer may be appealed as described in Section 1.04.100, and that the appellant shall pay all costs of the appeal including costs for preparation of a transcript, if required.

D. Frequency. Enforcement hearings shall be scheduled as frequently as necessary to avoid undue delay in the enforcement process. The hearings officer shall have the discretion to limit the number of hearings on any given date, to reschedule a hearing to a different date certain, or to adjourn and continue a hearing to another date certain if the hearing cannot be concluded within a reasonable time.

1.04.050 Compliance Hearings Procedures

A. Preliminary objections. Any objections concerning jurisdiction or procedure, such as improper notice or service, or conflict of interest, shall be raised and considered immediately after the record is opened. The hearings officer may take such objections under advisement and make a ruling in writing after the hearing.

1. Notice Objections. The hearings officer has the discretion to reschedule rather than dismiss a hearing, upon a finding that notice or service does not conform to the requirements of this chapter. Notice shall not be deemed deficient for failure of any person to receive the notice, if the notice was properly sent.

2. Jurisdiction Objections. If the hearings officer lacks jurisdiction to consider a case, it shall be dismissed.
 3. Conflicts of Interest. The hearings officer shall not preside over any hearing in which the hearings officer has a direct or substantial interest such as that described in ORS 244.135. If a conflict is not discovered until the commencement of a hearing, the hearing shall either be continued to another date certain, or rescheduled with another hearings officer and new notice provided. If the conflict is anything other than is described in ORS. 244.135, upon full disclosure and agreement by all responsible parties and the enforcement officer, the hearings officer has the discretion to proceed to hear the case.
- B. Burden of Proof. The county shall have the burden of proving that a violation has occurred by a preponderance of the evidence.
- C. Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing, by stipulation, consent order, agreed settlement, or default.
- D. A party may elect to be represented by counsel at his/her own expense and to respond to and present evidence and argument on all issues involved.
- E. A party may request that a hearing be held telephonically. The hearings officer has the discretion to grant or deny a request for a telephonic hearing for any reason.
- F. A party may request that an appeal to the hearings officer be conducted solely based on written submissions by the parties, without a hearing. The hearings officer may grant a request for appeal based only on written submissions if, and only if, all parties agree in writing to waive a hearing and to proceed through written submission only.
- G. An order adverse to a party may be issued upon default only upon a prima facie case made on the record before the hearings officer.
- H. Witnesses.
1. Testimony shall be taken upon oath or affirmation of the witness. The hearings officer may administer oaths or affirmations to witnesses.
 2. The hearings officer may issue subpoenas in accordance with ORS Chapter 136 to any party upon showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the county, shall receive fees and mileage as prescribed by law for witnesses in civil actions from the party requesting their testimony. Any party requesting the issuance of a subpoena shall pay applicable fees and mileage at the time the issuance of a subpoena is requested.
 3. If any person fails to comply with any subpoena so issued, or any party or witness refuses to testify on any matters on which he/she may be lawfully interrogated, a judge of the Circuit Court for Jefferson County, on the application of the hearings officer, or of the party requesting the issuance of the subpoena, may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.
- I. The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communications made to the hearings officer on a fact in issue during the pendency of the proceedings. The hearings officer shall notify the parties of the communication and of their right to rebut such communications.
- J. The record of the case shall include:

1. All pleadings, motions, and intermediate rulings;
2. Evidence received;
3. Stipulations;
4. A statement of matters officially noticed;
5. Questions and offers of proof, objections, and ruling thereon;
6. A statement of any ex parte communications on a fact in issue made to the hearings officer during the pendency of the proceedings;
7. Proposed findings and exceptions; and
8. The final order prepared by the hearings officer.

K. A verbatim, written or mechanical record shall be made on all motions, rulings, and testimony. The record need not be transcribed unless requested for purposes of court review. The hearings officer shall charge the party requesting transcription the cost of transcription in advance. Failure to pay the transcription fees shall constitute a separate ground for denial of review of the decision of the hearings officer.

L. Enforcement proceedings before the hearings officer shall be conducted in accordance with the procedure set forth in this Chapter. The hearings officer may promulgate reasonable rules and regulations, not inconsistent with this Chapter, concerning procedure and the conduct of hearings.

1.04.060 Compliance Hearings Officer Orders

A. The hearings officer shall order a party found in violation to comply within such time as the hearings officer may by order allow. The order may require such party to do any and all of the following:

1. Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
2. Obtain any and all necessary permits, inspections and approvals;
3. Order compliance as appropriate under the State Building Code, as defined in ORS 455.010(8);
4. Install any equipment necessary to achieve compliance;
5. Pay to Jefferson County a civil penalty for the class of violation committed, the amount of which shall be determined by the hearings officer within the range established by Section 1.04.080;
6. Reimburse Jefferson County for actual costs incurred in conjunction with the enforcement action;
7. Pay an administrative compliance fee established by the Board of County Commissioners pursuant to Section 1.04.080, which will be an estimated amount of the cost of enforcement, not to exceed actual cost;
8. Order the eviction of any tenant from any property on which there exists a violation. Such an eviction will be performed in compliance with Oregon law;
9. Abate or remove any nuisance;
10. Change the use of the building, structure, or real property involved;
11. Pay a reduced forfeiture amount;
12. Undertake any other action reasonably necessary to correct the violation.

B. The order of the hearings officer must be in writing with findings of fact and conclusions of law including a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support

the hearings officer's order. Every final order shall also include a citation of the ordinance or title, chapter and section under which the order may be appealed or judicially reviewed.

C. The hearings officer shall notify the responsible party of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the responsible party or, if applicable, the responsible party's attorney of record. The hearings officer shall issue a final order within 14 days from the conclusion of the hearing.

D. A final order shall become effective ten calendar days after the date it is signed by the hearings officer unless a party makes objections to the form of the order before it becomes effective. If objections are made, the final order shall become effective on the date the hearings officer signs the amended final order, or the date the hearings officer states in writing that the final order will not be amended.

1.04.070 Enforcement of Hearings Officer Orders

A. Fines and costs are payable upon the effective date of the final order declaring the fine and costs, which may include a payment plan. Fines and costs under this Chapter are a debt owing to the county, pursuant to ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If fines or costs are not paid within 60 days after payment is ordered, the County may file and record the order for payment in the County Clerk Lien Record.

B. The county may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any order of the hearings officer, including, an action to obtain judgment for any civil penalty and/or any assessment for costs and administrative compliance fees imposed pursuant to Section 1.04.080.

C. Abatement of the nuisance.

1. The hearings officer's order for abatement may require the property owner to abate the nuisance, may direct the county to abate the nuisance or may direct the county to abate the nuisance in the event the property owner fails to do so after a specified amount of time.

2. If the county is to abate the nuisance, county personnel may do the work or contract for it to be done in accordance with laws, rules, and ordinances governing public contracts. Jefferson County and its agents are not liable for trespass to or conversion of any real or personal property necessarily arising in the course of abating the nuisance.

3. In the event the county abates the nuisance, accurate record of the abatement costs shall be kept and shall include a surcharge of the greater of \$100.00 or 10% of the cost of the abatement for administrative overhead. A billing for the amount of the costs shall be forwarded by certified or registered mail, return receipt requested, to the owner. Payment shall be due to Jefferson County within 60 days from the date of the billing, failure to do so may result in a lien against the property. The lien shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate accruing from the date billing is sent to the owner of property.

1.04.080 Violations, Classifications, Penalties and Fees.

- A. Violation of a county ordinance shall be either an unclassified violation, a Class A violation or a Class B violation.
- B. An order to pay a fine for a violation of a county ordinance shall not exceed:
 - 1. Seven hundred fifty dollars (\$750.00) for an unclassified violation;
 - 2. Six hundred dollars (\$600.00) for a Class A violation;
 - 3. Three hundred dollars (\$300.00) for a Class B violation.
- C. An order to pay a fine for a continuing violation of a county ordinance shall not exceed one thousand dollars (\$1,000.00).
- D. An administrative compliance fee not to exceed five hundred dollars (\$500.00) may be assessed by the hearings officer upon request by the county to recover costs associated with expenses of prosecution. Such fee may be in addition to any other penalties ordered by the hearings officer.

1.04.090 Disposition of Penalties. All penalties and costs received by the county under this chapter shall be credited to the department(s) performing the enforcement functions.

1.04.100 Appeals. Any aggrieved party may appeal an enforcement action decision of the hearings officer. Such appeal, other than a land use decision, shall be to the Circuit Court within 60 days of the date of the decision, pursuant to ORS 34.010 through 34.100 for a writ of review. A decision of the Jefferson County Circuit Court is appealed as provided by state statute. Appeals of enforcement action resulting in a land use decision may be reviewed by the Land Use Board of Appeals pursuant to ORS Chapter 197.

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