

**IN THE MATTER OF ADOPTION OF)
CHAPTER 1.08 - CODE ENFORCEMENT) **ORDINANCE NO. 308**
ORDINANCE)**

WHEREAS, it is the desire of Hood River County to have an Ordinance in place that governs the enforcement of the Hood River County Code and County Ordinances and the prosecution of all county violations, and;

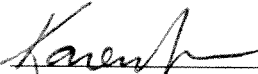
IT IS HEREBY ORDAINED, that Hood River County Ordinance No. 306 is adopted as Chapter 1.08 – Code Enforcement in the County Code as per the attached.

Adopted this 16th day of April 2012.

HOOD RIVER COUNTY
BOARD OF COMMISSIONERS



Ron Rivers, Chair



Karen Joplin, Commissioner

Maui Meyer, Commissioner



Robert Benton, Commissioner



Les Perkins, Commissioner

Chapter 1.08
CODE ENFORCEMENT

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1.08.010. Definitions.

As used in this chapter, unless the context requires otherwise:

Administrative Enforcement Proceeding, or Administrative Proceeding means enforcement proceedings related to a county violation held before an administrative hearings officer.

Administrative Hearings Officer means a person designated under this Chapter to adjudicate Administrative Enforcement Proceedings.

Board means the Hood River County Board of Commissioners.

Citation means a formal summons and complaint issued to a Defendant under this Chapter.

Code Enforcement Officer or Enforcement Officer means a person authorized and designated by the County to enforce the county code, ordinances, or certain provisions thereof.

County means Hood River County.

County Counsel means an attorney representing Hood River County.

County Violation means a civil violation of county law, being either the county code or an un-codified county ordinance.

Defendant means a person against whom the County has filed a civil complaint for county violation.

First Appearance means the initial hearing in a civil enforcement proceeding at which the Defendant is advised of the alleged violation(s) as well as the Defendant's rights and responsibilities in regard to all further proceedings.

Judicial Enforcement Proceeding, or Judicial Proceeding means enforcement proceedings related to a county violation held before a court of law.

Person means any individual, partnership, corporation, or association.

1.08.020. Scope.

- A. This chapter governs the enforcement of the Hood River County Code and County ordinances and the prosecution of all county violations.
- B. This chapter provides for and governs both administrative and judicial enforcement proceedings. Unless otherwise provided, the provisions of this chapter shall apply to all enforcement proceedings.
- C. Enforcement venues:
 - (1) Unless otherwise provided, County Violations may be prosecuted through administrative or judicial enforcement proceedings.
 - (2) The Board may limit the enforcement of certain county violations to either administrative or judicial proceedings.
 - (3) In accordance with Oregon law, all building code violations shall be enforced through administrative proceedings.
- D. In all cases, regardless of the enforcement process, a civil penalty is in addition to any other legal remedy available to redress a violation.

1.08.030. Jurisdiction.

- A. Unless otherwise provided, the Circuit Court for the County of Hood River and the Hood River Justice Court shall have concurrent jurisdiction over all county violations.
- B. Unless otherwise provided, administrative hearings officers appointed under this chapter shall have authority to adjudicate all county violations.

1.08.040. Hearings Officers: appointment, qualifications, authority.

- A. Administrative hearings officers shall be appointed by the county administrator.
- B. All persons appointed to serve as an administrative hearings officer shall be a member in good standing of the Oregon State Bar.
- C. Administrative hearings officers shall have authority to preside over administrative proceedings under this chapter; and

- (1) Shall render informed, just and appropriate decisions regarding all issues of procedure, law and fact.
- (2) Shall impose civil penalties in accordance with this chapter.
- (3) May direct a Defendant to correct a violation.
- (4) May set reasonable rules of procedure designed to facilitate orderly and efficient presentation of evidence provided the rules do not conflict with this chapter.
- (5) May continue a hearing for good cause.
- (6) May require additional appearances or conferences where reasonably necessary to resolve issues or otherwise facilitate the progress of any matter.

1.08.050. Decisions by hearings officers.

- A. All decisions rendered by an administrative hearings officer under this chapter shall be in writing and shall:
- (1) Be issued within fourteen (14) days from the date of the hearing.
 - (2) State whether or not a violation was proven by a preponderance of evidence and briefly state facts in support of that finding.
 - (3) Impose a civil penalty for each admitted or proven violation.
 - (4) Where applicable, direct Defendant to correct a violation, including terms and conditions for such correction.
 - (5) Advise the Defendant of the right to seek judicial review by filing a petition for a writ of review with the circuit court within 60 days of the date of the decision.
 - (6) Be mailed to the parties via first class mail or delivered in person.
- B. Written decisions issued by an administrative hearings officer shall take effect upon personal delivery to the violator or upon mailing, whichever occurs first.
- C. The decision of an administrative hearings officer is the final decision of the County.

1.08.060. Authority to prosecute enforcement proceedings.

- A. The following persons may initiate and prosecute county enforcement proceedings provided they have reasonable grounds to believe that a county violation has been committed:
1. A duly authorized county enforcement officer;
 2. A peace officer;
 3. County Counsel; or

4. The District Attorney
- B. Decisions, made by persons authorized under this section, to prosecute or not prosecute an alleged zoning violation, shall not constitute a land use decision.

1.08.070. Initiating an enforcement proceeding.

Enforcement proceedings shall be initiated by:

- A. Service of a citation on the Defendant; and
- B. Filing a copy of the citation with either:
 - (1) The court, to initiate a judicial enforcement proceeding; or
 - (2) The county administrator, to initiate an administrative enforcement proceeding.

1.08.080. Citations.

- A. Citations issued under this chapter shall constitute:
 - (1) Notice of an enforcement action against the Defendant;
 - (2) A complaint sufficient to initiate administrative or judicial proceedings; and
 - (3) A summons to appear.
- B. Citations shall contain the following information:
 - (1) The name of the Defendant;
 - (2) The county code section or county ordinance allegedly violated;
 - (a) Where a county provision incorporates Oregon law, the notice shall also cite the applicable provisions of the state statute or rule.
 - (b) Where a county provision incorporates separate regulations such as a uniform code, the notice shall also cite the applicable regulation.
 - (3) A clear and concise description of the alleged violation;
 - (4) The date(s) on which the violation is believed to have occurred;
 - (5) The location of the alleged violation;
 - (6) The class of the violation under this chapter;
 - (7) The proposed civil penalty for each alleged violation as established under this chapter;

- (8) A Summons to Appear, which shall include clear and concise statements advising the Defendant of the following:
 - (a) The right to a hearing;
 - (b) The type of hearing provided to the Defendant, specifying either:
 - (i) A judicial proceeding, before a court of law; or
 - (ii) An administrative proceeding, before an administrative hearings officer;
 - (c) The date and time of the hearing;
 - (d) Notice that the Defendant is required to either:
 - (i) Appear in person to answer the allegations, or
 - (ii) Pay the proposed civil penalty no less than 24 hours prior to the date and time of the scheduled hearing;
 - (e) The location of the hearing, as well as the physical address and mailing address to which the Defendant may provide payment of the proposed fine no less than 24 hours prior to the date and time of the hearing.
 - (f) Notice to the Defendant that failure to either (1) appear in person the established day and time; or (2) pay the proposed civil penalty no less than 24 hours prior to the established day, may result in, the following:
 - (i) The full amount of the proposed civil penalty being assessed;
 - (ii) An order requiring the Defendant to correct any continuing violations.
 - (iii) An additional violation being brought against the Defendant for Failing to Appear on a County Violation.
- (9) The date the citation was issued; and
- (10) The name, title, and signature of the person issuing the citation.

C. Corrections.

- (1) Any errors or omissions in the citation may be corrected at any time with the permission of the court or administrative hearings officer. Such permission shall not be withheld unless the correction would unduly prejudice the Defendant.
- (2) Any claim that an error or omission in the notice constitutes a defense to the violation must be asserted prior to the conclusion of the Defendant's first appearance. Failure to assert a defense under this section shall constitute a waiver and shall bar all further such claims.

- (3) A citation may be set aside only if the Defendant is prejudiced by the error or omission.
 - (4) If a citation is dismissed or set aside due to an error or omission, the county may re-institute civil penalty proceedings based upon the same conduct, condition, or circumstance alleged in the prior citation.
- D. County Counsel shall approve the form of county citations, which may include information in addition to that required by this section.
- E. Where the form and content of a citation is regulated by State law, proper use of the appropriate state-mandated form shall be deemed to satisfy all provisions of this section.

1.08.090. Service of Citations

- A. Manner of service:
- (1) A citation shall be served in any manner reasonably calculated, under all the circumstances, to apprise the Defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.
 - (2) Service to an individual Defendant may be made by:
 - (a) Personal service of the citation upon Defendant or an agent of Defendant authorized to receive process;
 - (b) Substituted service by leaving a copy of the citation:
 - (i) At the Defendant's dwelling house or usual place of abode with another resident of that dwelling who is at least 14 years of age.
 - (ii) At the Defendant's office or place of business, with an employee of the business who is apparently authorized or relied upon to receive and distribute messages, correspondence or other communications.
 - (3) Where substituted service is used the county shall also, as soon as reasonably possible, mail, by first class mail, a copy of the citation to the Defendant at Defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time under this chapter, substitute service shall be complete 3 calendar days after such mailing is posted.
 - (4) Service upon minor or incapacitated persons shall be made in accordance with Oregon Rules of Civil Procedure Rule 7D(3)(a).
 - (5) Service upon a corporation, limited liability company, limited partnership, general partnership, limited liability partnership, or unincorporated association subject to suit under a common name shall be made in accordance with the applicable provisions of Oregon Rules of Civil Procedure Rule 7D(3)(b)-(i).

- B. The Defendant may be served with the original citation or a copy thereof; copies need not be certified true copies.
- C. (1) Actual notice of the existence and pendency of the action, regardless of the means of communication, shall constitute service.
(2) Actual notice, absent additional means of service, may not give rise to an additional violation for failure to appear or respond.
- D. Service shall be complete upon personal service, actual notice, or where substituted service is used, three calendar days after mailing additional notice as required under Section A(3).

1.08.100. Discovery and disclosure.

- A. Disclosure to Defendant.
 - (1) The county shall disclose to a Defendant the following items and information within its possession or control:
 - (a) The names of persons whom the County intends to call as witnesses at trial or hearing, together with any relevant written or recorded statements or summarized statements of such persons.
 - (b) Any record of statements made by the Defendant that relate to the alleged violation.
 - (c) Any reports or statements of experts made in connection with the alleged violation.
 - (d) Any books, papers, documents, photographs or tangible objects:
 - (i) Which the county intends to offer in evidence at the trial or hearing; or
 - (ii) Which were obtained from or belong to the Defendant.
- B. In addition to the disclosures required of the County under Section A, either party may obtain discovery by one or more of the following methods:
 - (1) Request for production of documents or things, including written disclosure of the identity and location of a person having knowledge relevant to any claim of defense of any party.
 - (2) Request for permission to enter upon land or other property for inspection and other purposes.
- C. Unless otherwise limited for just cause by either the court or hearings officer, the scope of discovery under Section B is as follows:

- (1) Parties may inquire regarding any matter, not privileged, which is relevant to a claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge relevant to any claim or defense of any party.
- (2) It is not ground for objection that the information sought will be inadmissible at the trial or hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
- (3) Materials prepared for trial or hearing by or for another party or that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) are not discoverable.

1.08.110 Defendant: appearance, representation.

- A. Except as provided in sub-section B, the Defendant shall appear in person at all proceedings unless waiver has been granted by the court or the hearings officer.
- B. The Defendant may, in lieu of personal appearance, submit to the county payment in full of the proposed civil penalty, provided such payment is:
 - (1) Actually received by the county, at the location specified in the citation, no less than 24 hours prior to the date and time of the initial hearing;
 - (2) In the amount of the proposed civil penalty set forth in the citation.
- C. Defendants who are not individuals must be represented by a director, officer, managing agent, member, or employee who has the authority to act and give sworn statements on the Defendant's behalf. The representative shall appear in person and shall attest under oath to his or her authority.
- D. Defendants may be represented by an attorney licensed to practice law in Oregon. The appearance of an attorney does not alter the requirement that the Defendant be personally present.

1.08.120 Trials and Hearings

- A. The process and procedure for adjudicating a county violation shall be as follows:
 - (1) At the first appearance the court or hearings officer shall advise the Defendant of:
 - (a) All alleged violations.
 - (b) The potential civil penalty.
 - (c) The recommended civil penalty; and
 - (d) The Defendant's rights and responsibilities.

- (2) At the first appearance the Defendant shall either admit or deny the alleged violation(s). If the Defendant refuses to either admit or deny the allegations a denial shall be entered on behalf of the Defendant.
 - (a) If the Defendant admits the alleged violation the court or hearings officer:
 - i. Shall impose an appropriate civil penalty; and
 - ii. May issue additional orders reasonably calculated to correct an existing or continuing violation.
 - (b) If the Defendant denies the alleged violation the court or hearings officer:
 - i. Shall set a time and date for a trial or contested hearing;
 - ii. May set schedule for the completion of disclosure and discovery.

B. At all trials and contested hearings for a county violation:

- (1) All testimony must be given under oath.
- (2) The Oregon Rules of Evidence shall not apply when:
 - (a) Any relevant evidence shall be admitted if it is of the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
 - (b) Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay or needless presentation of cumulative evidence.
- (3) Each party may make an opening statement, present evidence, question witnesses and make a closing argument. The county shall proceed first and shall be given an opportunity to rebut testimony and argument.
- (4) The county shall have the burden of proving each violation by a preponderance of evidence.

1.08.130. Imposition of penalty and other orders.

A. A civil penalty shall be imposed for each established violation, as follows:

- (1) The amount of the civil penalty shall be the amount of the proposed civil penalty adopted by the county under this chapter, unless the court or hearings officer finds, based upon the evidence or statements, that a lesser civil penalty is required to avert an injustice.

- (2) A decision imposing a lesser penalty shall state with particularity the reasons why a lesser penalty is justified under this section.
 - (3) Unless ordered otherwise, the payment of the civil penalty shall be due immediately. With good cause, the court or hearings officer may extend the date of payment, but in no case by more than 90 days from the date of the decision.
- B. In addition to any civil penalty imposed, the court or hearings officer may require the Defendant to correct any existing violation; in doing so, the court or hearings officer shall set a specific date for completion of the correction.
 - C. The imposition of a requirement to correct an existing violation under this section shall not preclude any other legal remedy available to redress a violation.
 - D. Failure to correct a violation as ordered by the court or hearings officer shall be a Class II County Violation.

1.08.140. Collection of civil penalties.

- A. Civil penalties ordered by a court under this chapter may be collected in accordance with the rules of court and the applicable state law.
- B. Unless ordered otherwise, civil penalties imposed by an administrative hearings officer shall be subject to the following:
 - (1) Payment shall be due immediately or prior to a date established by the hearings officer, but in no case later than 60 days after a decision is issued.
 - (2) Unpaid civil penalties shall accrue interest at a rate of 9% per annum.
 - (3) The county has a lien on the real property where the violation occurred and on any real property in Hood River County owned by the Defendant for the amount of a civil penalty plus accrued interest.
 - (a) The county may record the hearings officer decision in the county lien records at any time after 60 days from the date the decision was issued.
 - (b) The lien attaches when the decision is mailed or personally delivered to the Defendant, whichever occurs first.
 - (c) An order granting a Defendant time within which to pay a civil penalty does not affect the county's lien.
 - (d) In all cases, the lien is for the full civil penalty together with accrued interest regardless of when payment is due.

1.08.150 Failure to appear

- A. A person commits the offense of failure to appear on a county citation, if the person has been served with a Citation issued under this chapter and the person knowingly fails to:

- (1) Personally appear at a first appearance as required by this chapter; or
- (2) Personally appear at the time set for trial or contested hearing.

B. Failure to appear on a county citation is a Class I County Violation.

1.08.160 Violations

- A. County violations are classified for the purpose of civil penalties into the following categories:
- (1) Class I County Violations; subject to a fine of not more than \$5000 for each violation.
 - (2) Class II County Violations; subject to a fine of not more than \$1000 for each violation.
 - (3) Class III County Violations; subject to a fine of not more than \$250 for each violation.
 - (4) Unclassified Violations, meaning:
 - i. Any violation established by this code or a county ordinance for which a classification is not specified; and
 - ii. Any violation for which the amount of the applicable civil penalty is governed by state law.
- B. The classification of each violation shall be expressly designated in the code section or county ordinance establishing the violation.
- C. Any county violation established by this code or a county ordinance, for which a classification is not specified, shall be considered a Class I County Violation.
- D. Any violation for which the applicable civil penalty is established or otherwise regulated by state law shall be considered a Class I County Violation.
- E. Each day on which a violation occurs may be considered a separate and distinct violation and may be subject to separate and distinct civil penalties.
- F. Separate and distinct violations of county law may be subject to separate and distinct civil penalties regardless of when the violations were committed.

1.08.170. Proposed civil penalties, schedule.

The county shall adopt a schedule setting forth the proposed civil penalties for each violation; the county may amend this schedule at its discretion.

1.08.180. Limitation periods for County Violations.

A prosecution for a county violation may be commenced within one year (365 days) from the commission of the violation.

1.08.190. Administrative Hearings, Oregon Administrative Proceedings Act.

When, in a contested case, an administrative hearings officer is required to rule on a procedural issue not addressed by this Chapter, the administrative hearings officer shall apply any relevant provisions of the Oregon Administrative Proceedings Act (APA), O.R.S. § 183.411-470, provided:

- A. The APA provision is merely procedural and does not affect the substantive rights or the parties;
- B. The APA provision does not conflict with this chapter; and
- C. The application is limited in scope to the case or cause at issue.