



OFFICE OF MULTNOMAH COUNTY ATTORNEY

JENNY M. MADKOUR
County Attorney

KATHRYN A. SHORT
Deputy County Attorney

B. ANDREW JONES
*Deputy County Attorney
Litigation Manager*

501 S.E. HAWTHORNE, SUITE 500
PORTLAND, OREGON 97214

FAX 503.988.3377
503.988.3138

NICK BALDWIN-SAYRE
ASHLEY BANNON MOORE
JUNE BRADLEY
CARLOS J. CALANDRIELLO
CHRISTOPHER A. GILMORE
WILLIAM H. GLASSON
CINDY L. HAHN
JON HIMES
ANDREW MACKENDRICK
LOUISA H. MCINTYRE
CARLOS A. RASCH
VERONICA R. RODRIGUEZ
ROBERT E. SINNOTT
JONATHAN P. STRAUHULL
KATHERINE C. THOMAS
JED R. TOMKINS
ANDREW T. WEINER
Assistants

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Via email to david@dfd-law.com

RE: *Multnomah County v. Scott and Stacy Reed*
Zoning Violation CCPR1-2025-0003

Hearings Officer Doughman:

The following is the County's response to Respondents' "Motion to Dismiss Proceeding for Lack of Jurisdiction and Alternative Motion for an Order Determining Procedural Process" dated June 10, 2026 (referred to herein after as the "Opening Brief").

ORS Chapter 153 does not deprive the Hearings Officer of jurisdiction over these administrative enforcement proceedings and, therefore, the Hearings Officer should deny Respondents' request to dismiss. Additionally, the County's administrative enforcement procedures, as outlined in Multnomah County Code ("MCC" or the "Code") 39.1550 – 39.1565, MCC 39.1140, and the Code Compliance Hearing Script, satisfy due process requirements, and, therefore, the Hearings Officer should issue an order confirming that these proceedings will continue following those procedures. Attachment 1, Updated Code Compliance Hearing Script.¹

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¹ Since the script was provided to Respondents, it was updated to correct a misstatement of the burden of proof and to cover the submission of virtual testimony. At the time the script was provided to Respondents, Respondents were informed that these changes would be made. Opening Brief, Exhibit C at 7.

I. RESPONSE

A. ORS Chapter 153 does not deprive the Hearings Officer of jurisdiction over these administrative enforcement proceedings and, therefore, the Hearings Officer should deny Respondents' request to dismiss.

ORS Chapter 153 does not prohibit a local government from providing for administrative enforcement of its own, local laws that have no statutory equivalent, including enforcement through imposition of monetary penalties, by establishing procedures and conducting hearings before a hearings officer. ORS 153.030(4)-(6). The final sentence of ORS 153.030(4) does not provide otherwise.

“The analytical process for determining whether state law preempts a local law in Oregon is well established. The question is whether a local law is incompatible with state law.” *21+ Tobacco & Vapor Retail Ass'n of Oregon v. Multnomah Cnty.*, 339 Or. App. 554, 565, 570 P.3d 287 (2025) (internal quotation marks and citation omitted). In determining whether there is an incompatibility, we “assume that the legislature does not mean to displace local civil or administrative regulation of local conditions by a statewide law unless that intention is apparent.” *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or. 437, 450, 353 P.3d 581 (2015) (internal quotation marks and citation omitted). We “should seek to reconcile the operation of both state and local laws if possible.” *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457, 471, 228 P.3d 650 (2010). Only when a statute's text, context, and legislative history “unambiguously expresses an intention to preclude local governments from regulating in the same area as that governed by the statute” will the statute preempt local ordinances. *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or. 450-51.

ORS 153.030(4) does not contain an unambiguous expression of the legislature's intent to preempt all administrative enforcement of ordinances where fines are imposed (other than parking ordinances), as Respondents assert. Rather, the statutory text, context, and legislative history demonstrate that the final sentence of ORS 153.030(4) is intended solely to prohibit local administrative enforcement for statutorily designated offenses (*i.e.*, conduct defined and made punishable as an offense by statute). Therefore, the final sentence of ORS 153.030(4) does not limit the County's ability to use administrative enforcement here, where the violations at issue are created only by local law.

1. Text.

ORS 153.030(4) provides:

“* * * Nothing in this chapter affects the ability of any other political subdivision of this state to provide for the administrative enforcement of the charter, ordinances, rules and regulations of the political subdivision, including enforcement through imposition of monetary penalties. Except for ordinances governing the parking of vehicles, administrative enforcement as described in this subsection may not be used for any prohibition designated as an offense.”

The first sentence preserves (“[n]othing in this chapter affects”) the broad authority of local governments to administratively enforce their own, local laws (“the charter, ordinances, rules and regulations of the political subdivision”) by fine (“including enforcement through imposition of monetary penalties”). The final sentence prohibits outright (“may not be used”) local administrative enforcement for any prohibition specifically named (“designated”) as an offense, unless enforcement is of a parking ordinance.

A closer look at the wording of the final sentence reveals that the legislature was focused on preempting the use of administrative enforcement for offenses specifically identified as offenses in state law. The plain meaning of “prohibition” is “something (as a law) that prohibits a certain act.” “Prohibition,” Webster’s Third New International Dictionary (1961). The plain meaning of “designate” is “to call by a distinctive title, term, or expression.” “Designate,” Webster’s Third New International Dictionary (1961). Therefore, a “prohibition designated as an offense” is a law that prohibits a certain act that is specifically named as an offense. Under ORS 161.505, “offenses” include crimes and violations, so prohibitions designated as offenses would also include acts specifically named as crimes or violations.

The text of ORS 153.030(4) is ambiguous as to who is responsible for designating an act as an offense; the modifier “designated as an offense” is in passive voice and the actor is left unstated. However, as discussed below, the context and legislative history make clear that the actor is the legislature and the designation is in statute. Therefore, a prohibition designated as an offense is an act specifically by statute named as an offense, crime, or violation (*see, e.g.*: ORS 163.709, naming unlawful directing of light from a laser pointer as an offense; ORS 164.132, naming unlawful distribution of cable television equipment as a crime; ORS 196.993, naming unauthorized use of Willamette Lock Falls as a Class D violation).²

2. Context.

Other uses of the word “designated” in ORS Chapter 153 clarify that “designated” is used in that context when referring to an act defined and made punishable as an offense, crime, or violation by the statute defining or describing the prohibited conduct:

² To the extent that Respondents might argue that ORS 203.065 designates violation of an ordinance adopted by the County as an offense, that provision only applies to ordinances adopted by general law counties. ORS 203.065(1) provides: “Subject to ORS 153.025, violation of an ordinance adopted by a county governing body under ORS 203.030 to 203.075 is a Class A violation.” ORS 203.030 to 203.075 define the legislative powers and procedures for general law counties. *Allison v. Washington Cnty.*, 24 Or. App. 571, 581, 548 P.2d 188 (1976) (“Home rule counties derive their legislative power from Art. VI, s[ection] 10 of the Oregon Constitution and from their individual charters. * * * General law counties derive their legislative power from specific statutory grants and from the broad general stat[u]tory grant in ORS 203.035”); ORS 203.045 (procedures for adoption of ordinances pursuant to ORS 203.035 do not apply to a county that prescribes by charter the manner of adopting ordinances). Multnomah County is a home rule county with a charter that prescribes the manner for adopting ordinances. See Multnomah County Home Rule Charter, Chapter V. Ordinances. Therefore, ORS 203.065 does not apply to County ordinances.

- ORS 153.008(a): “The offense is *designated as a violation in the statute defining the offense.*” (Emphasis added).
- ORS 153.015: “(1) An offense *described in the Oregon Revised Statutes that is designated as a violation* but does not specify the classification of the violation is an unclassified violation. * * * (2) A specific fine violation is any offense *described in the Oregon Revised Statutes that is designated as a specific fine violation* or: (a) Is not *designated as a crime or as a class A, B, C or D violation[.]*” (Emphasis added).
- ORS 153.025(1): “*If a statute provides that violation of the ordinances of a political subdivision of this state constitutes an offense*, as described in ORS 161.505, the political subdivision may by ordinance specify that violation of a specific ordinance of the political subdivision is subject to a specific fine, or a specific maximum fine, that is less in amount than the maximum fine for the offense *specified by the statute*. In addition, the political subdivision may specify that violation of the specific ordinance is a Class A, B, C or D violation under the provisions of ORS 153.012 as long as the class specified in the ordinance is lower than *the statutory classification for the offense.* (Emphasis added.)”

Those uses of the term “designated” demonstrate that the legislature used that term in ORS Chapter 153 to refer to classifications made by statute, not to refer to *any* prohibition that could fall within the definition of a violation or offense.

3. Legislative history.

The legislative history further illustrates that the legislature wanted to strike a balance between preserving local autonomy to use administrative enforcement for conduct not specifically designated as an offense by the state, while providing uniform procedures for offenses designated in state law.

The purpose of the bill which created ORS Chapter 153 (1999 S.B. 20) was to standardize the state court procedures for non-criminal offenses created by statute. Brad Swank, State Court Administrator’s Office, House Judiciary Tape 172, Side A (May 24, 1999) at 2:34 – 5:10 (the bill was aimed at standardizing procedures for “a number of different series [for non-criminal offenses] *in the ORS*, all of which had their own processes, all of which operated similarly but not exactly the same”) (emphasis added).

The purpose of the bill was not to prohibit or limit local administrative enforcement of local laws, including by fine. The adopting legislature understood that ORS 153.030(4) would not affect the ability of local governments to bring administrative enforcement proceedings “for building codes, etc[.]” and would operate similarly to ORS 3.136(3), but for other cities and counties. Attachment 2, S.B. 20 Memo to Senate Judiciary Committee and Proposed Amendments, at 3, 10. ORS 3.136(3) allows the City of Portland to employ “one or more quasi-judicial hearings officers empowered to hold hearings concerning violations of the charter, ordinances, rules and regulations of the city, to adopt rules and regulations relating to the conduct of the hearings process and to *impose civil penalties* and grant other relief *as may be necessary to enforce and obtain compliance with the charter, ordinances, rules and regulations of the city.*” (Emphasis added.) The wording at issue in ORS 153.030(4) was added specifically to address this concern and to “make

sure that administrative enforcement proceedings of political subdivisions w[ere] not affected by th[e] measure.” Attachment 2 at 3, 26. *See also* Brad Swank, State Court Administrator’s Office, House Judiciary Tape 172, Side A (May 24, 1999) at 5:15 (referring to “‘comfort amendments’ on the part of local governments to make sure [the bill] didn’t affect * * *, in a number of instances, how they enforce *their local ordinances that they’ve created*”) (emphasis added).

In sum, the text, context, and legislative history of ORS 153.030(4) demonstrate that the purpose of the provision is to ensure that all offenses created by state law are subject to the same state court procedures. In keeping with that purpose, the final sentence of ORS 153.030(4) prohibits local administrative enforcement for offenses created by state law, but not for offenses created solely by local law.

To illustrate the application of ORS 153.030(4):

- ORS 608.990(3) designates permitting a hog to run at large as a violation. Because that conduct is defined and made punishable as a violation by statute, under ORS 153.030(4), a local government cannot use administrative enforcement for an identical violation created by ordinance.
- ORS 811.555(5) designates parking on a sidewalk as a violation. Though that conduct is defined and made punishable as a violation by statute, under ORS 153.030(4), a local government can use administrative enforcement for an identical violation created by ordinance because it is an ordinance governing the parking of vehicles.
- Respondents are alleged to have violated MCC 39.6210 and MCC 39.5510. MCC 39.6210 prohibits conducting ground disturbing activity without a permit and MCC 39.5510 prohibits development within the Significant Environmental Concern – Stream (SEC-s) overlay without a permit. Respondents do not identify where in statute that same conduct is designated as a violation. Under ORS 153.030(4), the County can use administrative enforcement for violations of MCC 39.6210 and MCC 39.5510 because the violations at issue are created only by local law.

4. Respondents’ Interpretation

Respondents argue the final sentence of ORS 153.030(4) is intended to refer to any conduct that falls within the general statutory definition of “offense”—*i.e.*, any conduct for which a fine is imposed. ORS 161.505. Under Respondents’ proposed interpretation of ORS 153.030(4), a local government is prohibited from using administrative enforcement to impose fines for a violation of a local law unless the local law is a parking ordinance. That interpretation is unsupported by the text.

In the construction of a statute, we must not omit what has been inserted. ORS 174.010. The final sentence of ORS 153.030(4) does not read: “administrative enforcement as described in this subsection may not be used for *any offense*.” Instead, it reads: “administrative enforcement as described in this subsection may not be used for *any prohibition designated as an offense*.”

Omitting the words “prohibition designated as an” from ORS 153.030(4) disregards legislative intent and is not permitted under the rules of statutory construction.

Where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all. ORS 174.010. Interpreting the final sentence of ORS 153.030(4) to limit local administrative enforcement involving fines to “ordinances governing the parking of vehicles” is irreconcilable with the preceding sentence, which explicitly allows for local administrative enforcement of the charter, rules, and regulations (in addition to ordinances) through the imposition of monetary penalties. Such a construction of ORS 153.030(4) is not compelled by the text and deprives the allowance for enforcement of other local laws by fine of effect. Notably, not only is a charter not an ordinance, it also does not make sense that a charter—which defines the organization, powers, functions and essential procedures of a county or city—would contain provisions governing parking.

Respondents attempt to distinguish “fines” from “monetary penalties,” the latter of which they state include “fees, assessments, abatement costs, or other monetary obligations.” Opening Brief at 9. However, a “fine” and a “monetary penalty” are definitionally the same. “Fine,” Webster’s Third New International Dictionary (1961) (defining “fine” as “a sum formerly paid as compensation or for exemption from punishment but now imposed as punishment for crime”); “Penalty,” Webster’s Third New International Dictionary (1961) (defining “penalty” as “the suffering in person, rights, or property that is annexed by law or judicial decision to the commission of a crime or public offense: punishment for crime or offense”). Additionally, fees, assessments, and abatement costs are not “penalties” in that they do not serve to punish the person charged. Rather, fees are charged for services rendered and assessments and abatement costs are charged to defray public expenses. It is not obvious what Respondents mean by “other monetary obligations,” but it is worth noting that “obligations” are a far broader category than “penalties.”

In addition to being unsupported by the text, Respondents’ interpretation of ORS 153.030(4) does not fit within the context or legislative history, which make clear that the legislature did not intend for ORS Chapter 153 to preempt local administrative enforcement of local laws, including through the imposition of fines. Even if Respondents’ interpretation were supportable, preemption has to be unambiguous. *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or. 450-51. If there are two possible interpretations, the Hearings Officer should adopt the one that is not preemptive.

Finally, Respondents’ interpretation of ORS 153.030(4) presents significant issues for the numerous other local governments that employ administrative enforcement for ORS 161.505 “offenses” unrelated to parking. For example:

- Washington County – Washington County Code of Ordinances 1.14.010 (providing that the compliance process for building and land use code is “in lieu of the process for violations provided for under Chapter 153 of the [ORS]”) and 1.14.210 – 1.14.220 (establishing monetary penalties for violation of building and land use code);
- Clackamas County – Clackamas County Code 2.07.090(A)(5) (permitting the hearings officer to require payment of a civil penalty for a violation the zoning and development code);

- Marion County – Marion County Code 1.25.240(B) (allowing building official to assess administrative civil penalty for building code violations) and 1.25.240(C) (providing that “[t]he rules of evidence as used by courts of law do not formally apply” to a hearing before the hearings officer on an appeal of a civil penalty); and
- Lane County – Lane Code 5.025.025(A)(1)(F) (allowing monetary penalties as an administrative remedy for violation of the zoning code), 5.025.035(B)(1) (providing that “[a]dministrative enforcement hearings are intended to be informal in nature” and “[f]ormal rules of evidence and discovery do not apply”), and 5.025.035(B)(2) (allowing the hearings officer to set “reasonable rules of procedure”).

For the foregoing reasons, ORS Chapter 153 does not deprive the Hearings Officer of jurisdiction over these administrative enforcement proceedings. Therefore, the Hearings Officer should deny Respondents’ request to dismiss.

B. The County’s administrative enforcement procedures, as outlined in MCC 39.1550 – MCC 39.1565, MCC 39.1140, and the Code Compliance Hearing Script, satisfy due process requirements, and, therefore, the Hearings Officer should issue an order confirming that these proceedings will follow those procedures.

Respondents argue that the County’s administrative enforcement procedures are insufficient under the Due Process Clause of the Fourteenth Amendment because: 1) the County’s procedures are not codified; and/or 2) the County’s procedures are not robust enough under *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976).

As to Respondents’ argument that the County’s procedures are insufficient because the County’s procedures are not codified, borrowing enforcement procedures from other areas of code, or employing informal procedures, is not *per se* a violation of due process. *Cookman v. Marion County*, 44 Or LUBA 630, 645 (2003) (the absence of codified procedures specifically governing local enforcement does not run afoul the due process clause where a local government applies other codified procedures consistent with due process requirements); *Emami, v. City of Lake Oswego*, 52 Or LUBA 18, 28–29 (2006) (the due process clause does not prohibit adoption of informal procedures that otherwise satisfy due process requirements).

The Code empowers the Director of the Department of Community Services and her delegates to “[e]xercise the county’s authority under the Enforcement Code.” MCC 39.1520(C). Pursuant to that authority, Code Compliance has chosen to supplement the procedures specific to a hearing on an appeal of a Notice of Violation under MCC 39.1550 – MCC 39.1565 with the procedures for quasi-judicial land use hearings under MCC 39.1140.

MCC 39.1550 provides the notice requirements and burden and standard of proof specific to enforcement proceedings: “[t]he County must prove the violation alleged by a preponderance of the evidence.” MCC 39.1550(B), (C)(1). MCC 39.1140 provides the applicable hearing procedures, including the opportunity to testify and present and rebut evidence, limitation of testimony and evidence to the applicable criteria, preservation of issues, and the requirement for the decisionmaker to disclose any *ex parte* contacts, conflicts of interest, or bias. MCC 1140(E)(1)-(6). MCC 39.1565 provides for judicial review of a final order of a Hearings Officer on a Notice

of Violation by the Circuit Court pursuant to ORS 34.010 through 34.100, or by the Land Use Board of Appeals (“LUBA”) pursuant to ORS Chapter 197, if the Hearings Officer makes a land use decision. These procedures are described in the Code Compliance Hearing Script.

In *Emami*, LUBA rejected the petitioners’ argument that the city could only make decisions consistent with due process pursuant to promulgated code because petitioners did not cite any authority demonstrating that due process prohibits adoption of provisional procedures. *Emami v. City of Lake Oswego*, 52 Or LUBA at 28-29. Similar to the petitioners’ failed argument in *Emami*, Respondents argue, without basis, that the County’s lack of formal, codified enforcement procedures creates a due process problem. Opening Brief at 12-13. That argument should be rejected for the same reason LUBA rejected the petitioners’ argument in *Emami*.

In *Cookman*, LUBA rejected the petitioners’ argument that the county’s undefined process for enforcement proceedings violated due process, observing that the administrative procedures the county asserted applied were consistent with the requirements for quasi-judicial land use hearings. *Cookman v. Marion County*, 44 Or LUBA at 639-640, 645. Like in *Cookman*, here, the County has chosen to apply the procedures outlined in the Code for quasi-judicial land use hearings to its enforcement proceedings. Those procedures should be upheld for the same reason LUBA upheld the procedures in *Cookman*.

Respondents also argue that, because the Notice of Hearing did not sufficiently detail the procedures governing the hearing, Respondents have been left to guess how the matter is being handled in violation of due process. Opening Brief, 13. None of the cases that Respondents cite stand for the proposition that adequate notice must explain the hearing procedures at some requisite level of detail, and, as discussed below, the Notice of Hearing was sufficient to satisfy minimum due process requirements. As a factual matter, the County timely provided additional information about the hearing procedures upon Respondents’ request. Opening Brief, Exhibit C at 7-13. Respondents do not appear to contend that the additional information was insufficient to notify them of the applicable procedures.

As to Respondents’ argument that the County’s procedures are insufficient because the County’s procedures are not robust enough under *Mathews*, the County’s procedures satisfy minimum due process requirements and the *Mathews* factors do not necessitate more than minimum due process in this circumstance. As Respondents correctly state, procedural due process is flexible, but, at least, requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. at 333.

1. Notice.

Due process requires that interested parties receive “notice reasonably calculated, under all circumstances, to apprise [them] of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652 (1950). The Notice of Hearing was sent by certified mail to Respondents, who actually received it. Record Exhibit C.9.a; Opening Brief, Exhibit B. The Notice of Hearing stated the date, time, and location of the hearing, with instructions for participation, including how to appear, testify, and submit written comments at or prior to the hearing. Record Exhibit C.9.a. Respondents

have actually availed themselves of the opportunity to present objections through written comment. Record Exhibit D.8, D.9.

Respondents separately argue that MCC 39.1550(B) requires that the Notice of Hearing must describe the appeal process and associated rights in “sufficient detail,” including the hearing procedures, and request that the County reissue the Notice of Hearing. Opening Brief at 4, 13. MCC 39.1550(B) states that “[a] copy of the Notice of Violation and a description of the appeal process and associated rights shall be attached to the notice.” Respondents fail to establish what level of detail would be sufficient to satisfy MCC 39.1550(B), and MCC 39.1550(B) does not require a description of the hearing procedures. Regardless, the County will reissue the Notice of Hearing following the Hearings Officer’s resolution of these procedural issues. The County agrees to include a description of the hearing procedures with the reissued notice.

2. Opportunity to be heard.

Due process requires the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187 (1965). Due process does not always require an adversarial hearing, a full evidentiary hearing, or a formal hearing. *Buckingham v. Sec’y of U.S. Dep’t of Agr.*, 603 F.3d 1073, 1082–83 (9th Cir. 2010) (citing *Hickey v. Morris*, 722 F.2d 543, 549 (9th Cir. 1983), *United States v. Clifford Matley Family Trust*, 354 F.3d 1154, 1162 (9th Cir. 2004), and *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. 1, 16 n. 17, 98 S. Ct. 1554, 56 L.Ed.2d 30 (1978)). “[A] hearing in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument however brief, and, if need be, by proof, however informal.” *Id.* at 1083 (quoting *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. at 16 n. 17). “The hearing need not even approximate a trial-like proceeding; in fact, it may be ‘very limited’ and still pass constitutional muster.” *Id.* (quoting *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 985 (9th Cir. 1998)).

The County’s procedures are consistent with the requirements for quasi-judicial land use hearings, which provide for an opportunity to be heard, including an opportunity to present and rebut evidence, a tribunal which is impartial in the matter, and a record made and adequate findings executed. *Fasano v. Bd. of Cnty. Comm’rs of Washington Cnty.*, 264 Or. 574, 588, 507 P.2d 23 (1973). These requirements guarantee that Respondents have the opportunity to be heard in a meaningful manner—a manner which allows Respondents to respond to the allegations against them with argument and evidence and to preserve their arguments for appeal. That opportunity is provided in advance of the imposition of any fines (*i.e.*, at a meaningful time), and Respondents were made aware of that opportunity in the Notice of Hearing. Record Exhibit C.9.a (stating “[a]ll interested parties may appear and testify virtually or submit written comment on the NOV at or prior to the hearing”).

Respondents argue that they must be afforded an opportunity to cross-examine witnesses at the hearing. Opening Brief at 16. The opportunity to cross-examine witnesses is not mandatory. *Buckingham v. Sec’y of U.S. Dep’t of Agr.*, 603 F.3d at 1083 (citing *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 266, 107 S. Ct. 1740, 95 L.Ed.2d 239 (1987) (due process is satisfied without the right of confrontation and cross-examination where other procedures guarantee decisional reliability) and see *Emmert v. Clackamas County*, 65 Or LUBA 1 (2012) (there is no right under the Due Process clause of the Fourteenth Amendment to cross-examination in quasi-judicial land

use hearings in Oregon). Further, as discussed below, the evidentiary standard applicable in quasi-judicial land use hearings in Oregon independently ensures that the evidence relied upon in decision-making is competent evidence.

3. Mathews Factors

The factors articulated in *Mathews* do not require a greater degree of procedural protection than what the County's quasi-judicial land use procedures will provide in this circumstance. *Mathews v. Eldridge*, 424 U.S. at 321.

a) The private interest that will be affected by the official action.

Respondents assert two distinct interests. The first interest Respondents assert is financial—a civil fine in the amount of \$525 per day beginning on the date of the Hearings Officer final order and continuing until the alleged violations are corrected.³ Opening Brief at 14-15. The second interest Respondents assert is the right to farm use of farmland under state law. Opening Brief at 15.

As to the first interest: The cases that Respondents cite (*Miranda*, *Fuentes*, and *Sniadach*) hold that due process applies to relatively minor financial deprivations. Opening Brief at 13. However, those cases do not state that more than the minimum due process requirements are required for financial deprivations of any magnitude. *See, e.g., Miranda v. S. Pac. Transp. Co.*, 710 F.2d 516, 522 (9th Cir. 1983) (stating simply that sanctions should not be assessed without fair notice and an opportunity for a hearing on the record).

As to the second interest: Respondents do not cite any authority to support the contention that deprivation of the right to use land in a particular manner triggers more than the minimum due process requirements. The limited relevant case law suggests that individualized notice and an informal hearing prior to deprivation of such an interest are sufficient to satisfy due process. *See Harris v. County of Riverside*, 904 F.2d 497, 502–03 (9th Cir.1990) (holding that a property owner was entitled to individualized notice before the county deprived him of his property interest by “severely altering the permissible uses of [his] land” through rezoning); *Weinberg v. Whatcom Cnty.*, 241 F.3d 746, 754 (9th Cir. 2001) (holding that a property owner was entitled to an “informal hearing” before the county “effectively deprived [him] of the economic value of his property and rendered nugatory his prior efforts and expenses incurred to develop it” by vacating his plats for environmental violations).

b) The risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards.

The risk of an erroneous deprivation is low where the County's procedures guarantee the rights to a quasi-judicial land use hearing before the Hearings Officer, appeal to LUBA (or the

³ Respondents claim that it is unclear how they can correct the alleged violations. Opening Brief at 15. However, the County explicitly described the means for correcting the alleged violations in the Notice of Violation. Record Exhibit C.6 at 6.

Circuit Court) for review of the legal and evidentiary adequacy of the County's decision, and review of the decision on appeal by the Court of Appeals. *Cookman v. Marion County*, 44 Or LUBA at 645. There is also the added safeguard of the burden of proof shouldered by the County. MCC 39.1550(C)(1) (the County must prove the alleged violations by a preponderance of the evidence).

Respondents claim that the risk of an erroneous deprivation is heightened by untested neighbor complaints. Opening Brief at 16. First, while the filing of a complaint triggers a code compliance investigation, the County conducted its own investigation to validate the complaints and to gather independent evidence to support the violations identified in the Notice of Violation. While Respondents have declined to allow the County onto the subject property, the County was able to gather independent evidence to support the alleged violations by observing the subject property from adjacent properties and the public right-of-way, conducting a document investigation, and reviewing aerial imagery. Record Exhibit C.10 at 3-6. As demonstrated by the Staff Report and the exhibits offered in support of the Notice of Violation, the County has not offered the complaints as evidence to prove the alleged violations, but as explanation for what triggered the investigation.⁴ Because the Notice of Violation does not rely on those complaints as proof, the County also will not rely on the complainants as witnesses. Even if the complainants appeared at the hearing, Respondents would have the opportunity to respond to complainants' testimony by submitting their own evidence into the record.

Second, untested complaints, without more, are not evidence that a reasonable person would rely on in determining whether Respondents have committed the alleged violations and, therefore would not constitute substantial evidence sufficient to support a decision affirming those violations in the context of a quasi-judicial land use hearing.⁵ ORS 197.835(9)(a)(C). Moreover, if the County were to attempt to prove the alleged violations with untested complaints, the County would not be able to meet the burden of proof under MCC 39.1550(C)(1). Finally, Respondents may refute or undermine any of the County's evidence by other evidence in the record, for example expert testimony. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994). Respondents have the opportunity to challenge the sufficiency of the County's evidence at, prior to, and following the hearing (should Respondents request that the record be held open) through written comment and oral testimony. MCC 39.1140(E); ORS 197.797(6). It is up to the Hearings Officer to determine what weight to give the evidence submitted by both the County and Respondents.

⁴ The complaints are referenced in the Case Background section of the Staff Report, Record Exhibit C.10 at 3-6, and not in the County's analysis of the violations, Record Exhibit C.10 at 8-13.

⁵ Respondents also assert that the mention of other, more recent complaints in the Staff Report prejudices Respondents before the Hearings Officer. Opening Brief at 16-17. However, the Staff Report clearly states that those complaints are under investigation, which means the County has not made any allegation of violation against Respondents in regard to those complaints. In other words, those references do not "unfairly impl[y] a broader pattern of wrongdoing" because the purpose of an investigation is to determine whether there has been a violation, and no such finding has been made. Opening Brief at 17.

The value of the additional safeguards Respondents request is low. Respondents request to “require complainants to appear under oath, subject to [Respondents’] right of cross examination.” Opening Brief at 16. Respondents also request disclosure of the complainants’ names. Opening Brief at 2. Again, the County has not relied on the complaints as evidence of the alleged violations. As a result, the County does not need the complainants to appear as witnesses to prove the alleged violations, and their names and their accounts are not relevant to this proceeding. Further, given the evidentiary standard applicable in quasi-judicial land use hearings, which requires the decisionmaker to filter evidence that is not reliable, along with the County’s heightened burden of proof, these additional safeguards do not provide a measurable benefit.

Respondents also request formal discovery, including “disclosure of probative evidence.” Opening Brief at 17. The County has provided all of the evidence it intends to offer in support of the alleged violations in the Staff Report and related exhibits. Record Exhibit C.10. Should the County intend to rely on any additional evidence, the County will provide such evidence to Respondents as it becomes available and at or prior to the hearing. The County does not have any “exculpatory evidence.” Opening Brief at 2. In this context, exculpatory evidence would be limited to evidence demonstrating that Respondents did not engage in the alleged development activities or that Respondents procured the requisite permits. Respondents’ character and propensity to commit code violations are not relevant to the applicable criteria.⁶ Opening Brief at 17; MCC 39.1140(E)(2). Because the County has already provided the relevant evidence, formal discovery also does not provide a measurable benefit.

c) The Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.

The County has a legitimate interest in employing its established procedures. The County is permitted to employ its own administrative enforcement procedures under ORS 153.030(4)-(6), and the fiscal and administrative burdens that would accompany the additional procedures that Respondents request—formal discovery, subpoena power, and cross-examination—are substantial and disproportionate to the interest asserted. Respondents point to the City of Portland as having a readily and easily adoptable model for local administrative enforcement procedures. Opening Brief at 18, Exhibit E. However, unlike the City of Portland, which has a dedicated hearings office with a staff of five, including multiple permanent hearings officers, the County contracts with independent hearings officers on a case-by-case basis and relies on the support of staff who have other primary roles. Attachment 3, Portland Hearings Office About Page. The additional procedures that Respondents request would require that the County dedicate significantly more staff, more time, or both, to implementing such procedures. In turn, this would place a greater and unnecessary administrative and financial burden on the County. The County also has a legitimate interest in timely resolving Code compliance complaints. The additional time required to institute and implement Respondents’ proposed procedures would considerably lengthen the time to resolution. Finally, the County has a legitimate interest in keeping the names of complainants who request confidentiality confidential. Disclosing the names of complainants would have a chilling

⁶ Prior, affirmed code violations of the same section of the MCC are factored into the calculation of civil fines; however, complaints of violations still under investigation are not. Record Exhibit C.8 at 2.

effect on the submission of complaints and would hinder the County's land use enforcement process, which is complaint-based.

For the foregoing reasons, the County's administrative enforcement procedures satisfy due process requirements. Therefore, the Hearings Officer should issue an order confirming that these proceedings will follow those procedures.

II. CONCLUSION

The County respectfully asks that the Hearings Officer deny Respondents' request to dismiss and issue an order confirming that these proceedings will follow the procedures outlined in MCC 39.1550 – 39.1565, MCC 39.1140, and the attached Code Compliance Hearing Script.

Thank you,

A handwritten signature in black ink, appearing to be 'JB' or similar initials, written in a cursive style.

June Bradley
Assistant County Attorney

cc: Dave Hunnicutt and Samantha Bayer, Attorneys for Respondents Scott and Stacy Reed
(by email and mail)
Megan Gibb, Planning Director
Kevin Cook, Principal Planner

Code Compliance Hearings Officer Script

Hearings Officer (HO): This is the time set for _____ (Zoning Violation case number and appellant name). I am _____ (HO name) and I am a Hearings Officer for the Multnomah County Code Compliance Program. I will be presiding at this hearing and will make a decision based on the record in this matter, which will include the evidence admitted today, along with everything in the county's file to date. This is a quasi-judicial proceeding; my duty is to apply the law, not to revise the law. This is also a de novo hearing, which means that it is an evidentiary hearing and all issues relevant to the violation criteria may be submitted and will be considered in this hearing. The evidence may be submitted in any form - such as testimony, land use permits, letters, petitions, photographs, maps, drawings or other items.

Based on the evidence and the applicable rules and regulations, I will determine whether the alleged violations exist, whether the Code Compliance Program has the authority to impose the civil fine associated with the Notice of Violation, whether the Code Compliance Program substantially complied with the procedures for imposing a civil fine, and whether the Code Compliance Program calculated the fine properly. The County must prove all violations alleged by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight of the evidence. It is such evidence that is more probably true and accurate than any opposing evidence. My duty is to determine whether the County has carried that burden.

I also must make a statement to the appellant that the failure of the appellant to raise any and all claims or issues, constitutional or otherwise, arising out of the issuance of the Notice of Violation must be raised in this proceeding with sufficient specificity to allow the local government or its designee to respond fully. If not raised in this proceeding, the appellant may lose the right to raise such claims in subsequent proceedings.

GUIDELINES:

I would like to announce several guidelines for those presenting testimony and participating in the hearing. The guidelines are established by the zoning code and state law and are as follows:

1. Any testimony and evidence you present must be directed toward the applicable criteria for the appeal of the civil fine imposed with the Notice of Violation, or other criteria in the County's comprehensive plan or zoning code which you believe apply to the Notice of Violation.
2. The Code Compliance Program staff will identify the applicable violation criteria as part of their staff report to the Hearings Officer. The staff report lists the criteria.

Code Compliance Hearings Officer Script

3. Before the closing of this hearing, any participant may ask for an opportunity to present additional evidence. If this request is made, I will either continue this hearing to another date or hold the record open for at least 7 days to provide an opportunity to submit additional evidence, arguments or testimony and will hold the record open for an additional 7 days after that to provide an opportunity for parties to respond to that new evidence, argument, or testimony.

4. After the record is closed to all parties, the appellant is entitled to ask for an additional 7 days to submit final written arguments before I make my decision.

5. If you fail to raise an issue supported by statements or evidence sufficient to give the Hearings Officer and the parties an opportunity to respond to the issue, you will be precluded from appealing to the Land Use Board of Appeals, the Circuit Court, or the Columbia River Gorge Commission if the property involved is within the Columbia River Gorge National Scenic Area, based on that issue.

DISCLOSURES:

[Any ex parte contacts or conflicts of interest should be disclosed at this time. If there are none that should be stated on the record.]

[If there are disclosures of ex parte contacts, participants should be given an opportunity to rebut the substance of any disclosure.]

[If there are any disclosures of conflicts of interest, the HO should state whether he/she can still be fair in conducting the hearing and making a decision.]

[If the HO has been on a site visit, that should be disclosed. The HO should describe the time and date of the visit, what he/she observed, who (if anyone) the HO talked to at the site and any other relevant facts or observations obtained as a result of the site visit. Then hearing participants should be invited to rebut any facts adduced in the disclosure.]

CONDUCT OF THE HEARING:

I will ask for testimony and other evidence in the following order:

1. Staff report
2. Appellant
3. Proponents/Supporters of the appeal
4. Opponents of the appeal
5. Rebuttal by staff, if necessary
6. Rebuttal by the appellant, if necessary
7. HO discussion, questions, deliberation

Code Compliance Hearings Officer Script

8. Future scheduling if necessary

HOW TO PRESENT YOUR TESTIMONY:

1. State your name and address
2. If you can, identify the violation criteria to which your testimony is directed, by stating the section of the zoning ordinance, comprehensive plan, state statute or other legal authority to which your evidence or arguments are directed.
3. Avoid repetitive testimony
4. During the hearing, I ask those in the audience to refrain from demonstrations in support or opposition.

Before we begin the hearing, I want to offer anyone here the opportunity to raise any preliminary matters, including any procedural concerns at this point.

If anyone has any concerns with the procedures in this matter to date or wishes to raise any other preliminary issue, please do so now.

["Seeing none, we will commence with presentation of the staff report."]

or

[Hear and resolve a concern, then state, "Any further concerns? None indicated, so we will now commence with presentation of the staff report."]

EXHIBIT: SB 20
 SENATE JUDICIARY COMMITTEE
 DATE: 2/17/99
 PAGES: 19
 SUBMITTED BY: Bradd Swank

MEMO - 2/17/99

to: Senate Judiciary Committee

from: Bradd A Swank, Oregon Judicial Department

cc: Travis Prestwich, Dave Heynderickx

re: Proposals an amendments to SB 20.

At the hearing on Senate Bill 20 on February 1, 1999, the Senate Judiciary Committee accepted my offer to talk to people about issues related to SB 20 and to have amendments prepared to address concerns people raised about the measure where such amendments did not change the intent of the measure.

The following table shows the questions on Senate Bill 20 from people who contacted me and discussed amendments. It also shows my recommendations concerning amendments in each situation and the LC amendments that have been done to address the specific issue.

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
		Tom Corr, Linn County counsel's office, works for Jason Carlisle and Paul Snider AOC, by phone 2-17-99	to -10 amendments, they want to make sure that they can bring a case in justice, municipal or circuit court as appropriate, the amendments limit them to circuit court	Agreed that it should not be limited to just circuit court	make change to -10 amendments	wor kin g

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
		Tom Corr, Linn County counsel's office, works for Jason Carlisle and Paul Snider AOC, by phone 2-17-99	to -10 amendments, they wanted to make sure that the violations provisions did not affect any existing authority they may have to bring other civil actions to enforce their ordinances in addition to administrative enforcement	Agreed that to the extent they have existing authority, these should not affect that authority	Make change	working
004	18	Tom Corr, Linn County counsel's office, works for Jason Carlisle 2-8-98	Section 7 amend to make sure that both "ordinances" and "agency" rules are modified by "governing the parking of vehicles".	Mr. Corr wasn't sure if language applied to both state agencies and ordinances because of location of the language. He suggested the following: In line 17, after "violations" insert "involving the parking of vehicles that are created by". In line 18 delete "governing the parking of vehicles"	Recommend some clarification	-8

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
004	20	Tom Corr, Linn County, County Counsel. He works for Jason Carlisle 2-8-99, by phone	Section 78. Local procedures on service, and administrative processes for enforcement, original concern, originally seen as a problem with page 24, lines 2-13	He wanted to make sure that administrative enforcement proceedings of political subdivisions was not affected by this measure. After discussion, he wanted something like ORS 3.136(3) for all cities and counties. Wants to make sure it doesn't affect their administrative processes for building codes, etc, other than traffic or parking. Probably a good idea to make sure that the administrative enforcement of ordinances through civil means is not affected for all local governments. Also make sure that this new language doesn't affect 3.136(3).	Add language like ORS 3.136(3) but apply to all local governments and also exclude any made into an offense	-10

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
004	27	Mark Landuauer, City of Portland	Section 9. Amend to allow photo-red light citations	Wondered how the bill affected their measure on photo red light citations. Problem arises because the person seeing the violation (the camera), would not be the person issuing the citation. There should be an amendment in the "photo red light" measure to address this	Not something for SB 20, but for photo red light bill	NO
004	35	Greg Moawad, Multnomah DA's Office	Section 10. Modify to give officers same authority to make inquiries for <u>all</u> violations that they currently have for traffic	This was a policy issue that was considered seriously by the work group and rejected as too big a substantive change for the scope of this measure. The work group felt interested parties should raise the issue in a separate measure where the policy questions specific to that issue could be addressed.	<u>Recommend no change.</u> OK with Mr. Moawad.	NO

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
004	35	Jason Carlisle, Linn DA. Dale Penn, Marion DA.	Section 10. Modify to clarify how this section relates to ORS 810.410 (the stop provisions for traffic offenses). Jason Carlisle and Dale Penn expressed concerned.	Originally, Carlisle presented some draft amendments prepared by Tim Sylwester (AG's office) to make the stop provisions the same for other violations as for Traffic. This was a policy issue that was considered seriously by the work group and rejected as too big a substantive change for the scope of this measure. The work group felt interested parties should raise the issue in a separate measure where the policy questions specific to that issue could be addressed. After discussion, Carlisle decided that what was needed was clarification.	Make amendments to clarify how section 10 relates to ORS 810.410 so that it is clear that the stop provisions for the traffic are retained and that officers have the time to issue a citation. Carlisle agreed to these amendments.	-9

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
005	4	Greg Moawad, Multnomah DA's Office	Section 11. Would like it to be clearer that this does not allow private individuals to bring misdemeanor offenses as violations, also would like service on DA and right of DA to pre-empt in appropriate circumstances	Trying to avoid situation where private party brings action for violation where DA may have contemplated bringing misdemeanor action. Wants these type actions to not interfere with DA prosecutions. Notes that, although current law allows these, it is not very clear how they relate to DA activities	Could be cleaned up., amend to require DA to be served and to allow DA to "pre-empt"	-3
007	2	Greg Moawad, Multnomah DA's Office	Section 16. Change language "shall deliver the summons" to "shall cause the summons to be delivered"	Does not want it to appear to require the officer who filled out the ticket to have to be the one who delivered it. Not sure current law is clear about direct service.	Yes, Make change. Issues related to how Uniform citation addresses this can be addressed when Uniform Citations adopted by Supreme Court	-8

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
007	2	Tom Corr, Linn County, works for Jason Carlisle 2-8-99, by phone	uniform citation, issuing person different from viewing person	language to allow citation to be witnessed and served (issued?) by two different people if it is an ordinance violation (just for violations). Sort of the same issue as on page 7, line 2, they think they have this power now. They were satisfied with the provision that allows the person to "cause" the citation to be delivered and with the clarification that they can establish their own procedures for administrative enforcement.	Yes, make some clarification about "causing" citations to be issued for violations and about how they control administrative (civil penalty) enforcement processes.	-8, -10
007	2	Paul Snider, AOC, by phone 2-16-99, for county counsel's	uniform citation, issuing person different from viewing person	Same issue as raised by Tom Corr.	Same solution as presented for Tom Corr on this issue.	-8, -10
007	4	Tom Corr, Linn County counsel's office, works for Jason Carlisle and Paul Snider AOC, by phone 2-17-99	They wanted to make sure that the provisions related to "causing to be served" related to both the copy served on the defendant and to the copies served on the court	Agreed that these should be parallel. Since it was made clear in one place, should be made clear in the other.	Make change	work ing

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
008	21	Greg Moawad, Multnomah DA's Office	Section 21. Wants to make sure "good cause" language stays in	No problem	No change required	NO
013	7	Greg Moawad, Multnomah DA's Office	Section 40(4). Concerned because of misdemeanors created by ordinances, didn't want them to go to separate court when cited for such and say a DUII	Decided no change was necessary because circuit courts have concurrent jurisdiction of ordinance misdemeanors.	No change required	NO
015	12	Greg Moawad, Multnomah DA's Office	Section 48. Change "any" to "an"	Feels that "any" requires missing of all appearances whereas "an" would make it clear that it could be defaulted if the person misses a single appearance	Make minor language change for clarification.	-8
017	45	Greg Moawad, Multnomah DA's Office	Section 57. After "if" insert "the procedure for".	Was concerned that the current wording would require DAs to approve each and every issuance of a citation and wanted to make sure that the DA could approve the general procedure for classes of cases	Make change to clarify	-8

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
019	22	Greg Moawad, Multnomah DA's Office, by phone	Section 61, Amend to conform to State v. Waggoner 228 OR 334 language	After discussion, he realized that the language used was the language approved in Waggoner	No change	NO
020	11-16	Greg Moawad, Multnomah DA's Office	Section 65. Amend to remove language about custody	Concern that this eliminates the power of police officers to make arrest of an offender for offensive littering. Difference in opinion about affect of existing law. His interpretation is that this controls <u>how</u> a person is to be cited <u>if</u> they are cited in lieu of arrest (without separate charging instrument) interpretation of drafter was that the section prohibited arrest and possibly prescribe procedures?	Repeal ORS section. It will not serve a function under the statute as changed.	-5
024		Tom Corr, Linn County, works for Jason Carlisle 2-8-99, by phone	203.065(1) \$ 500 limit on ordinance violations inconsistent with \$ 600 Class A violation, clarify	This needs to be clarified to show how it works because of the limit being lower than the \$600 for a Class A violation	Yes, need amendment to clarify	-2

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
024	2-13	Greg Moawad, Multnomah DA's Office	Section 78, clarify that it doesn't eliminate criminal sanctions for city code offenses.	After discussion, he decided this section was not an issue	No change	NO
024	2-13	Paul Snider, AOC, by phone 2-16-99, for county counsels	administrative enforcement of ordinances by political subdivision creating ordinance	They want something like ORS 3.136(3) for all cities and counties. Wants to make sure it doesn't affect their administrative processes for building codes, etc, other than offenses. Probably a good idea to make sure that the administrative enforcement of ordinances through civil means is not affected for all local governments. Also make sure that this new language doesn't affect 3.136(3).	Do something to clarify	-10
037	55	Paul Donheffner, State Marine Board	Insert "B" in blank offense level	The blank was an error, this change would correct the error	Make change	-4
038	22	Paul Donheffner, State Marine Board, by phone	Amend to require notice to marine board for failure to appear on boating violation	In current law, can't find here, see ORS 253.370 which is repealed by SB 20	Add provision	-4

pa	line	Made by	Proposed change	Discussion	Recommend	LC #
038	3	Paul Donheffner, State Marine Board	After '830.905' insert "and rules adopted thereunder"	This would clarify that rules adopted under these statutes were subject to the same penalties and provisions	Make the change	-4
118		ODOT/DMV	General transition provision to allow existing record and computer references to "infractions" to be "deemed" references to "violations" until they can be cleaned up	ODOT/DMV concern was how long it would take them and how much it would cost to reprogram their computers to only refer to "violations". They thought this might be a problem with others also.	Add a transition provision , ODOT and DMV agree that the -7 amendments solve their problem	-7
118	31	ODOT/DMV	Change effective date to some later date. Y2K, should any computer change take effect on Y2K	We talked about language indicating that references to "infractions" on existing documents, procedures or computer programs will be deemed references to "violations" until the programs can reasonably be changed. If effective date is delayed, the sections all become notes in the ORS and the work has to be done twice.	Created transition language so that references in computers and documents. Should eliminate the need to change effective date. ODOT and DMV agree that the -7 amendments solve their problem.	-7

JUDIC. (SC)

SB 20-2
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 1 of the printed bill, line 10, after "179.495," insert "203.065,".

2 On page 24, after line 13, insert:

3 **"SECTION 78a.** ORS 203.065 is amended to read:

4 "203.065. (1) **Subject to section 78 of this 1999 act**, violation of an or-
5 dinance adopted by a county governing body under ORS 203.030 to 203.075
6 *[shall be punishable, upon conviction, by a fine of not more than \$500 for a*
7 *noncontinuing offense and a fine of not more than \$1,000 for a continuing of-*
8 *fense]* **is a Class A violation. By ordinance, a county governing body**
9 **may establish a specific fine violation that provides for a higher fine**
10 **than established under section 6 of this 1999 Act for Class A**
11 **violations.**

12 "(2) The violator of a county ordinance may be prosecuted by the county
13 in the name of the county, or be made the defendant in a civil proceeding
14 by the county seeking redress of the violation.

15 "(3) Every act or thing done, or anything existing within the limits of a
16 county, which is declared by an ordinance of the county adopted under ORS
17 203.030 to 203.075 to be a nuisance, shall constitute a nuisance and may be
18 regarded as such in all actions, suits and proceedings, unless the ordinance
19 is declared void by a court of competent jurisdiction.

20 "(4) Fines recovered under ORS 203.030 to 203.075 shall be paid to the
21 clerk of the court in which recovery is had. After first deducting court costs
22 in the proceedings, the clerk shall pay the remainder to the treasurer of the
23 county for the general fund of the county.

24 "(5) Any peace officer, as defined by ORS 161.015, may enforce an ordi-

JADIC(SC)

SB 20-3
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 5 of the printed bill, line 21, after "defendant" insert "and shall
2 deliver a copy of the complaint to the district attorney for the county in
3 which the complaint is filed".

4 After line 27, insert:

5 "(6) The court shall dismiss a complaint filed under this section upon the
6 motion of the district attorney for the county if:

7 "(a) The district attorney has brought a proceeding against the defendant
8 named in the complaint or intends to bring a proceeding against the de-
9 fendant named in the complaint; and

10 "(b) The proceeding is brought by the district attorney by reason of the
11 same conduct alleged in the complaint.".

12

JUDIC (sc)

SB 20-4
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 37 of the printed bill, line 43, after "chapter" insert ", or any rule
2 adopted by the State Marine Board pursuant to those provisions,".

3 In line 44, delete the blank and insert "B".

4 On page 38, line 18, before "In" insert "(1)".

5 After line 22, insert:

6 "(2) In any proceeding for a violation under ORS 830.990 or 830.997, the
7 court shall notify the State Marine Board if the defendant fails to appear
8 at any time as required by law or the court, or fails to comply with any order
9 of the court.".

10

JuD. (sc)

SB 20-8
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 4 of the printed bill, line 17, delete "created by" and insert "that
2 govern the parking of vehicles and that are created by ordinance or by
3 agency rule."

4 Delete line 18.

5 On page 7, line 3, after "shall" delete the rest of the line and insert
6 "cause the summons to be delivered to".

7 On page 13, line 15, delete "subsection (2) of".

8 In line 17, delete "violations and misdemeanors" and insert "offenses".

9 After line 24, insert:

10 "(3) A justice court does not have jurisdiction over the trial of any
11 felony."

12 On page 15, line 12, delete "any" and insert "an".

13 In line 32, delete "violation" and insert "offense".

14 On page 17, line 45, after "if" insert "a procedure for".

15

JAD. (sc)

SB 20-10
(LC 319)
2/17/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 4 of the printed bill, after line 20 insert:

2 “(4) This chapter does not affect the ability of a city described in ORS
3 3.136 (1) to engage in the activities described in ORS 3.136 (3). Nothing in
4 this chapter affects the ability of any other political subdivision of this state
5 to provide for the administrative enforcement of the charter, ordinances,
6 rules and regulations of the political subdivision, including enforcement
7 through imposition of monetary penalties. Except as provided in subsection
8 (2) of this section, administrative enforcement as described in this subsection
9 may not be used for any prohibition designated as an offense.

10 “(5) Nothing in this chapter affects the ability of any political subdivision
11 of this state to establish rules relating to administrative enforcement as de-
12 scribed in subsection (4) of this section, including rules providing for the use
13 of citations or other procedures for initiating administrative enforcement
14 proceedings.

15 “(6) Nothing in this chapter affects the ability of any political subdivision
16 of this state to conduct hearings for administrative enforcement as described
17 in subsection (4) of this section, either before a hearing officer or before the
18 governing body of the political subdivision. The political subdivision may
19 enforce any order for administrative enforcement as described in subsection
20 (4) of this section by a civil action brought in the circuit court for the
21 county.”.

22

JUD. (SC)

SB 20-9
(LC 319)
2/17/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 4 of the printed bill, delete lines 38 through 45 and insert:

2 “(2) An enforcement officer may stop and detain any person if the officer
3 has reasonable grounds to believe that the person has committed a violation.
4 An enforcement officer may stop and detain any employee, agent or repre-
5 sentative of a firm, corporation or other organization if the officer has rea-
6 sonable grounds to believe that the firm, corporation or other organization
7 has committed a violation.

8 “(3) Except as provided in subsection (4) of this section, the period of
9 detention may be only as long as is necessary to:

10 “(a) Establish the identity of the person, firm, corporation or organization
11 believed to have committed the violation;

12 “(b) Conduct any investigation reasonably related to the violation; and

13 “(c) Issue a citation for the violation.

14 “(4) The authority of an enforcement officer to stop and detain a person
15 for a traffic violation as defined by ORS 801.550 is governed by ORS
16 810.410.”.

17 On page 5, delete lines 1 through 3.

18

JUD. (SC)

SB 20-5
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

- 1 On page 2 of the printed bill, line 2, after "133.080," insert "133.100,".
- 2 On page 20, delete lines 11 through 16 and insert:
- 3 **NOTE:** Section 65 was deleted by amendment. Subsequent sections were
- 4 not renumbered.".
- 5 On page 22, line 42, delete "and" and insert a comma and after "133.080"
- 6 insert "and 133.100".
- 7 _____

JUD.(SC)

SB 20-7
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 118 of the printed bill, after line 19, insert:

2 “(4) Any references to infractions in computer records or other records
3 of the Department of Transportation, or in the computer records or other
4 records of other agencies that enforce laws designated as infractions, that
5 may exist or be generated on or after the effective date of this 1999 Act, shall
6 be considered references to violations for the purposes of this 1999 Act.
7 References to Class A traffic infractions shall be considered references to
8 Class A violations under section 4 of this 1999 Act. References to Class B
9 traffic infractions shall be considered references to Class B violations under
10 section 4 of this 1999 Act. References to Class C traffic infractions shall be
11 considered references to Class C violations under section 4 of this 1999 Act.
12 References to Class D traffic infractions shall be considered references to
13 Class D violations under section 4 of this 1999 Act.”.

14

EXHIBIT: 2
 SENATE JUDICIARY COMMITTEE
 DATE: 2/17/99
 PAGES: 2
 SUBMITTED BY: James P. Redmond

SB 20-2
 (LC 319)
 2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
 SENATE BILL 20**

1 On page 1 of the printed bill, line 10, after "179.495," insert "203.065,".

2 On page 24, after line 13, insert:

3 **"SECTION 78a.** ORS 203.065 is amended to read:

4 "203.065. (1) **Subject to section 78 of this 1999 act**, violation of an or-
 5 dinance adopted by a county governing body under ORS 203.030 to 203.075
 6 [*shall be punishable, upon conviction, by a fine of not more than \$500 for a*
 7 *noncontinuing offense and a fine of not more than \$1,000 for a continuing of-*
 8 *fense*] **is a Class A violation. By ordinance, a county governing body**
 9 **may establish a specific fine violation that provides for a higher fine**
 10 **than established under section 6 of this 1999 Act for Class A**
 11 **violations.**

12 "(2) The violator of a county ordinance may be prosecuted by the county
 13 in the name of the county, or be made the defendant in a civil proceeding
 14 by the county seeking redress of the violation.

15 "(3) Every act or thing done, or anything existing within the limits of a
 16 county, which is declared by an ordinance of the county adopted under ORS
 17 203.030 to 203.075 to be a nuisance, shall constitute a nuisance and may be
 18 regarded as such in all actions, suits and proceedings, unless the ordinance
 19 is declared void by a court of competent jurisdiction.

20 "(4) Fines recovered under ORS 203.030 to 203.075 shall be paid to the
 21 clerk of the court in which recovery is had. After first deducting court costs
 22 in the proceedings, the clerk shall pay the remainder to the treasurer of the
 23 county for the general fund of the county.

24 "(5) Any peace officer, as defined by ORS 161.015, may enforce an ordi-

1 nance adopted under ORS 203.035.”.

2

SENATE JUDICIARY COMMITTEE
DATE: 2/17/99
PAGES: 1
SUBMITTED BY: Travis Freshwick

SB 20-3
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 5 of the printed bill, line 21, after "defendant" insert "and shall
2 deliver a copy of the complaint to the district attorney for the county in
3 which the complaint is filed".

4 After line 27, insert:

5 "(6) The court shall dismiss a complaint filed under this section upon the
6 motion of the district attorney for the county if:

7 "(a) The district attorney has brought a proceeding against the defendant
8 named in the complaint or intends to bring a proceeding against the de-
9 fendant named in the complaint; and

10 "(b) The proceeding is brought by the district attorney by reason of the
11 same conduct alleged in the complaint.".

12

EXHIBIT: 6 SB 20-4
SENATE JUDICIARY COMMITTEE
DATE: 2/17/99
PAGES: 1
SUBMITTED BY: Laws Practice

SB 20-4
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

- 1 On page 37 of the printed bill, line 43, after "chapter" insert ", or any rule
- 2 adopted by the State Marine Board pursuant to those provisions,".
- 3 In line 44, delete the blank and insert "B".
- 4 On page 38, line 18, before "In" insert "(1)".
- 5 After line 22, insert:
- 6 "(2) In any proceeding for a violation under ORS 830.990 or 830.997, the
- 7 court shall notify the State Marine Board if the defendant fails to appear
- 8 at any time as required by law or the court, or fails to comply with any order
- 9 of the court."

10

EXHIBIT: H 20-5
SENATE JUDICIARY COMMITTEE
DATE: 2/17/99
PAGES: 1
SUBMITTED BY: Wm. F. Fitch

SB 20-5
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

- 1 On page 2 of the printed bill, line 2, after "133.080," insert "133.100,".
- 2 On page 20, delete lines 11 through 16 and insert:
- 3 **"NOTE:** Section 65 was deleted by amendment. Subsequent sections were
- 4 not renumbered."
- 5 On page 22, line 42, delete "and" and insert a comma and after "133.080"
- 6 insert "and 133.100".

7

EXHIBIT: 1 30-0-01
SENATE JUDICIARY COMMITTEE
DATE: 2/17/99
PAGES: 1
SUBMITTED BY: Karis Froehlich

SB 20-7
(LC 319)
2/16/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 118 of the printed bill, after line 19, insert:

2 “(4) Any references to infractions in computer records or other records
3 of the Department of Transportation, or in the computer records or other
4 records of other agencies that enforce laws designated as infractions, that
5 may exist or be generated on or after the effective date of this 1999 Act, shall
6 be considered references to violations for the purposes of this 1999 Act.
7 References to Class A traffic infractions shall be considered references to
8 Class A violations under section 4 of this 1999 Act. References to Class B
9 traffic infractions shall be considered references to Class B violations under
10 section 4 of this 1999 Act. References to Class C traffic infractions shall be
11 considered references to Class C violations under section 4 of this 1999 Act.
12 References to Class D traffic infractions shall be considered references to
13 Class D violations under section 4 of this 1999 Act.”.

14

EXHIBIT: 5620-9
SENATE JUDICIARY COMMITTEE
DATE: 2/17/99
PAGES: 1
SUBMITTED BY: Jay's Freshwick

SB 20-9
(LC 319)
2/17/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 4 of the printed bill, delete lines 38 through 45 and insert:

2 “(2) An enforcement officer may stop and detain any person if the officer
3 has reasonable grounds to believe that the person has committed a violation.

4 An enforcement officer may stop and detain any employee, agent or repre-
5 sentative of a firm, corporation or other organization if the officer has rea-
6 sonable grounds to believe that the firm, corporation or other organization
7 has committed a violation.

8 “(3) Except as provided in subsection (4) of this section, the period of
9 detention may be only as long as is necessary to:

10 “(a) Establish the identity of the person, firm, corporation or organization
11 believed to have committed the violation;

12 “(b) Conduct any investigation reasonably related to the violation; and

13 “(c) Issue a citation for the violation.

14 “(4) The authority of an enforcement officer to stop and detain a person
15 for a traffic violation as defined by ORS 801.550 is governed by ORS
16 810.410.”.

17 On page 5, delete lines 1 through 3.

18

SENATE JUDICIARY COMMITTEE
DATE: 2/17/99
PAGES: 1
SUBMITTED BY: Travis Redman

SB 20-11
(LC 319)
2/17/99 (DH/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 20**

1 On page 4 of the printed bill, line 17, delete "created by" and insert "that
2 govern the parking of vehicles and that are created by ordinance or by
3 agency rule."

4 Delete line 18.

5 On page 7, line 3, after "shall" delete the rest of the line and insert
6 "cause the summons to be delivered to".

7 In line 4, delete "deliver" and insert "cause" and after "to" insert "be
8 delivered to".

9 On page 13, line 15, delete "subsection (2) of".

10 In line 17, delete "violations and misdemeanors" and insert "offenses".

11 After line 24, insert:

12 "(3) A justice court does not have jurisdiction over the trial of any
13 felony."

14 On page 15, line 12, delete "any" and insert "an".

15 In line 32, delete "violation" and insert "offense".

16 On page 17, line 45, after "if" insert "a procedure for".

17

EXHIBIT: LC 319
 SENATE JUDICIARY COMMITTEE
 DATE: 2/17/99
 PAGES: 1
 SUBMITTED BY: TRANS FREEDMAN

SB 20-12
 (LC 319)
 2/17/99 (DH/ps)

**PROPOSED AMENDMENTS TO
 SENATE BILL 20**

1 On page 4 of the printed bill, after line 20 insert:

2 “(4) This chapter does not affect the ability of a city described in ORS
 3 3.136 (1) to engage in the activities described in ORS 3.136 (3). Nothing in
 4 this chapter affects the ability of any other political subdivision of this state
 5 to provide for the administrative enforcement of the charter, ordinances,
 6 rules and regulations of the political subdivision, including enforcement
 7 through imposition of monetary penalties. Except as provided in subsection
 8 (2) of this section, administrative enforcement as described in this subsection
 9 may not be used for any prohibition designated as an offense.

10 “(5) Nothing in this chapter affects the ability of any political subdivision
 11 of this state to establish rules relating to administrative enforcement as de-
 12 scribed in subsection (4) of this section, including rules providing for the use
 13 of citations or other procedures for initiating administrative enforcement
 14 proceedings.

15 “(6) Nothing in this chapter affects the ability of any political subdivision
 16 of this state to conduct hearings for administrative enforcement as described
 17 in subsection (4) of this section, either before a hearing officer or before the
 18 governing body of the political subdivision.

19 “(7) Nothing in this chapter affects the ability of any political subdivision
 20 to bring a civil action to enforce the charter, ordinances, rules and regu-
 21 lations of the political subdivision, or to bring a civil action to enforce any
 22 order for administrative enforcement as described in subsection (4) of this
 23 section.”.

24



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About the Hearings Office

Information

Learn how the Hearings Office helps ensure open and accountable City government.

About the Hearings Office

Neither the Auditor's Office nor the Hearings Office makes public comments on hearings cases

Any member of the public seeking up-to-date information on any case status can log in as a guest to our case management system [aHO CMS](#) with the following credentials:

User Name: GuestUserPHO

Password: PHguestp\$\$wd5

All documents filed in every case, including evidence, orders, and final decisions, are posted there for public viewing.

In addition to being searchable in the case file, hearing schedules and Zoom viewing links can be found on our office's main landing page at [Hearings | Portland.gov](#)

Finally, audio recordings are available online within two business days after each hearing and are searchable by case number at [Find audio records of a hearing | Portland.gov](#)

Our purpose is to provide an objective hearing forum

Our Office's purpose is to provide a fast, fair, and impartial adjudication of alleged City Code violations and to provide persons adversely affected by administrative determinations and decisions with an effective and impartial appeal. We can review the legality and the appropriateness of a determination. (See [Portland City Code Title 22](#) for more details about our scope and process.)

Cases we handle

Our staff of five employees handles hundreds of cases each year. The types of cases we handle range greatly in their subject matter. They might include a towed vehicle with exclusion from a public park, a land use application proposal, property compliance application, permit denials, and penalties and fines, among others.

How we make decisions

Our office uses a quasi-judicial decision-making model. Our role is similar to that of an administrative law judge in that we conduct an evidentiary hearing where witnesses testify and are subject to cross examination, and the parties make arguments to support their position and produce evidence to support their claims. The Hearings Officer then makes findings of fact, applies the law as written by City Council, and issues a legal conclusion in the form of a written decision.

[Portland City Code Title 22](#) creates a citywide uniform process by which appeals can be filed directly with the Hearings Office. This standardization and uniformity means that all the cases that fall under Title 22 follow the same timelines and rules of procedure.

Appealing a decision of the Hearings Office

Generally, the Hearings Office decisions are the final decision of the City reviewable by the court or the land use board of appeals. There is an exception, in [Type III land use cases](#) which are appealable to City Council. For those applications, the Hearings Office provides the first public hearing, and if appealed, the second quasi-judicial review goes before City Council.
