

BEFORE THE MULTNOMAH COUNTY HEARINGS OFFICER

Multnomah County v. Scott and Stacy Reed
Code Case: CCPR1-2025-0003

ORDER Denying Motion To Dismiss and
 Granting Alternative Motion In Part

Introduction

This matter relates to an enforcement proceeding Multnomah County (“County”) initiated against Scott and Stacy Reed (“Respondents”). The Respondents own real property located at 12424 NW Springville Rd (the “Property”). On March 5, 2026, the County issued a “Notice of Civil Violation” (the “Notice”) alleging that Respondents engaged in activity on the Property in violation of sections 39.6210 and 39.5510 of the Multnomah County Code (“Code” or “MCC”). The County seeks civil fines of \$525.00 per day beginning upon issuance of a final order and continuing until Respondents comply with the Code.

Respondents filed a timely appeal of the Notice, and the County scheduled a hearing for May 29 before a County hearings officer. Prior to the hearing, Respondents raised concerns regarding the jurisdiction of the hearings officer to consider the alleged violations as well as the procedures to be employed in any hearing on the merits. The hearings officer granted the Respondents’ request for additional briefing on those concerns, which resulted in Respondents filing the motions that are the subject of this order.

Specifically, Respondents move to dismiss the enforcement proceeding. Pursuant to ORS 153.030(4), ORS 153.036, and ORS 197.825(3), they assert that Multnomah County Circuit Court has exclusive jurisdiction over the proceeding. Alternatively, if the hearings officer determines he has jurisdiction, they ask for an order that would require a new notice of hearing and establish a process resembling what would exist if the circuit court considered the matter.

In response, the County asserts that because the alleged violations have no equivalent under state law, and exist only by operation of local law, ORS Chapter 153 does not deprive the hearings officer of jurisdiction, and the County may address the alleged violations through administrative enforcement in accordance with ORS 153.030(4) through (6). In addition, the County argues the procedures governing this matter are adequate to satisfy due process requirements in an administrative context.

DiscussionJurisdictional Issue

As provided in ORS 153.030(1), the procedures in ORS Chapter 153 apply to violations described in ORS 153.008. However, according to ORS 153.030(4), “[n]othing in [ORS Chapter 153] affects the ability” of the County to administratively enforce its charter, ordinances, rules, and regulations, “including enforcement through the imposition of monetary penalties.” In addition,

pursuant to ORS 153.030(5) and (6), “[n]othing in [ORS Chapter 153] affects the ability” of the County to establish rules and procedures relating to administrative enforcement or to conduct administrative enforcement hearings before a hearings officer.

The final sentence of subsection (4) states that “[e]xcept 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.” This language ultimately raises the question of whether the County may enforce the alleged violations administratively in accordance with its Code and rules, or whether the County must bring an action in circuit court.

Appellate authorities have not previously addressed this specific issue, and it is one of first impression for the hearings officer. The Respondents’ arguments certainly have merit. They note that ORS 153.008(1)(c) includes within the definition of a “violation” certain offenses created by local ordinance that are punishable by a fine but not imprisonment. They also note that ORS 161.505 defines an “offense” to include conduct for which a fine or imprisonment is provided by state law or by local law or ordinance. However, those definitions do not ultimately resolve whether the text or context of subsection (4) unambiguously prevents the administrative enforcement of every locally enacted code provision for which a fine may be imposed.

With respect to home rule jurisdictions such as the County, whether state law preempts local legislation depends on whether the local law is “incompatible” with state law, either “because both cannot operate concurrently” or “because the legislature meant its law to be exclusive.”¹ Whether the Oregon Legislature meant for state law to be exclusive depends on whether it “unambiguously expressed its intent” to preempt local law from regulating the subject matter at issue.²

As the County notes, courts seek to “reconcile the operation of both state and local laws if possible.”³ For the reasons offered by the Respondents, the last sentence of ORS 153.030(4) certainly *could* be read to preempt local governments from administratively enforcing alleged violations of virtually all local laws that are punishable by fines. However, the hearings officer concludes the Oregon Legislature did not unambiguously express that intent when it adopted the statute.

As noted, “nothing” in Chapter 153 limits the County from enforcing its own charter, ordinances, rules, and regulations administratively, which includes conducting enforcement hearings before a hearings officer, establishing rules related to such enforcement, and includes “enforcement through imposition of monetary penalties.” The statute does not plainly state that all locally enacted prohibitions subject to fines must be treated as Chapter 153 offenses. If the last sentence of subsection (4) eliminated administrative enforcement whenever a local ordinance

¹ *La Grande/Astoria v. PERB*, 281 Or 137, 148, 576 P2d 1204, 1211 (1978); see also *Owen v. City of Portland*, 368 Or 661, 667, 497 P3d 1216 (2021) and *21+ Tobacco & Vapor Retail Ass’n of Oregon v. Multnomah Cnty.*, 339 Or App 554, 565, 570 P3d 287, 294 (2025).

² *Owen* at 668; *21+ Tobacco* at 566.

³ *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 471, 228 P3d 650 (2010).

permits a monetary penalty, it would substantially narrow the authority that the previous sentence of subsection (4) and other subsections of the statute expressly preserve. Whatever the specific intent the legislature possessed when it enacted the statute, one cannot reasonably describe that intent as unambiguous.

Because the statute broadly allows for the administrative enforcement of local laws subject to monetary penalties, except where administrative enforcement is used for a “prohibition designated as an offense,” that phrase refers to conduct that is also designated as an offense under state law, according to the County. The County notes that other provisions in the chapter, including ORS 153.008 and ORS 153.015, use the word “designated” when referring to classifications made in the statute defining an offense, and that this context supports the County’s reading of the phrase.

In response, the Respondents note that the final sentence of ORS 153.030(4) contains no express limitation to state-designated offenses. In addition, because “offense” is defined in ORS 161.505 to include conduct punishable by fine under local ordinance, the Respondents argue that the statute applies to the alleged violations, even if they do not have an equivalent under state law. While that reading is plausible, the hearings officer believes the County’s interpretation is more consistent in the context of Chapter 153. Given the ambiguity regarding who is acting to designate the offense, the County’s interpretation is also most consistent with precedent that seeks to reconcile the operation of both state and local laws to the extent possible.

The parties also devote substantial attention to the legislative history of the statute. Respondents cite legislative materials and argument in support of the proposition that, if a local government chooses to make prohibited conduct an offense, enforcement must proceed under Chapter 153. The County relies on the same broader legislative setting to argue that the purpose of the legislation was to standardize state-court procedures for statutory civil offenses while preserving local administrative enforcement of local laws.

On the record before the hearings officer, the legislative history does not supply so clear an answer as to overcome the otherwise ambiguous intent of the Oregon Legislature regarding the jurisdictional issue. Accordingly, for the reasons discussed above, the hearings officer finds that the County has jurisdiction to proceed with administrative enforcement of the alleged violations.

Process Issue

Respondents’ arguments regarding process do not rest solely on a preference for more elaborate procedure. Among other concerns, they note that this is an enforcement matter initiated by the County; that substantial daily fines are at stake; and that the initial Notice the County provided lacked an adequate description of the hearing process or associated rights.

The Notice states that the hearing will follow the “Hearings Officer’s Rules of Procedure” and that the procedure will be explained at the hearing. Respondents are correct that the Notice

itself does not set out, in detail, matters such as burden allocation, record preservation, ex parte disclosures, post-hearing submissions, or the precise order of presentation. According to the hearings officer's understanding, the County later provided additional information, including the hearing script and an explanation that the County intended to use procedures that track its land use hearings as described in the Code, with the County bearing the burden of proving the violations by a preponderance of the evidence.⁴ Nevertheless, Respondents fairly observe that the initial Notice itself was rather sparse.

The County states that it will reissue a notice of the hearing following resolution of these procedural issues and agrees to include a description of the hearing procedures with the reissued notice. The hearings officer agrees that is appropriate and will be required as part of this order.

Respondents also argue that trial-like safeguards are required because neighbor complaints served to initiate the matter, because credibility disputes may arise and because of the potential significant monetary penalties to which they could be subject, among other reasons. In response, the County states that while complaints served as a trigger for an investigation, they do not serve as substantive proof of the alleged violations. Rather, the County conducts its own investigation, including observations from adjacent properties and the public right-of-way, document review, and aerial imagery. The staff report appears consistent with that account in that it acknowledges receipt of a complaint and then describes document investigations, permit-history review, site inspections, aerial-image review, and staff findings concerning specific development areas and alleged code violations.

If the County were attempting to prove the violations through the truth of anonymous or untested neighbor accusations, the due process concerns the Respondent identifies would be sharper. But because the County disclaims any reliance on such complaints as proof and instead intends to rely on independent evidence gathered through staff investigation, the necessity for cross-examination of complainants, based on the County's representations, is not necessary.

Respondents also point to potentially prejudicial material, including references in the staff report to additional complaints still under investigation. That concern is understandable and adjudication must be limited to the specific violations the County has alleged in the Notice. At the same time, the County notes in the staff report that those additional matters are still under investigation and are not included in this proceeding. The hearings officer will ensure that the hearing is limited to the alleged violations in the Notice and the evidence in the record relevant to them.

The Respondents cite to the *Matthews*⁵ case, among others, in arguing that the existing procedures are not sufficient. They correctly note that due process is a flexible depending on the circumstances but at least includes proper notice and a meaningful opportunity to be heard.

⁴ The updated version of the hearing script is attached to the County's June 30 response.

⁵ *Mathews v. Eldridge*, 424 U.S. 319 (1976).

However, the hearings officer does not believe the process that will accompany the enforcement proceeding must mimic those that one would expect in a trial-court setting. The County identifies legitimate administrative burdens associated with layering formal civil-trial procedures onto a contracted hearings process and an interest in timely resolution of code compliance matters. The County's procedures, as supplemented in this order, will be sufficient to ensure that the Respondents' receive the process to which they are due.

The County identifies MCC 39.1550 through 39.1565, MCC 39.1140, and the updated hearing script as the procedural framework for the hearing. That framework includes a de novo hearing before the hearings officer. The County has the burden to prove the alleged violations by a preponderance of the evidence under MCC 39.1550(C)(1). Respondents may submit documentary evidence, testimony, and argument. They may respond to evidence the County submits and may preserve issues for review.⁶ The hearings officer will disclose any ex parte contact, conflicts of interest, or other matter bearing on impartiality and will decide the matter based on the record before him and applicable law. The Respondents will have an opportunity after the hearing to submit additional evidence and argument and will have the right to appeal any decision.

While those procedures are not identical to those in civil litigation, the differences do not create a due process violation per se. Appellate authority as cited in the County's June 30 response recognizes that Oregon local governments may rely on procedures used in quasi-judicial land use proceedings when enforcing alleged local code violations. Here, that includes the procedures identified in MCC 39.1550 through 39.1565 along with the procedures identified in MCC 39.1140. In this case, it also includes the County reissuing the Notice and including a description of the hearing procedures in that notice.

Accordingly, some of the Respondents' requests related to process are warranted, in particular advance notice of the hearing procedures and the control of irrelevant or prejudicial material. However, based on precedent and the County's representations, the hearings officer does not believe it is necessary to order other measures, including discovery, cross-examination, or the disclosure or compulsory appearance of complainants when the County will not rely on the complaints in order to prove the alleged violations.

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⁶ That includes the issues raised in the motions and briefing, which the Respondents have preserved for judicial review.

Order

Based on the discussion above, the hearings officer orders as follows:

1. The Respondents' Motion to Dismiss is denied.
2. The hearing in this matter will proceed under the procedures the County identified in its response, namely MCC 39.1550 through 39.1565 and MCC 39.1140, and in accordance with the updated hearings officer script the County attached to its June 30 response.
3. Prior to a rescheduled hearing, the County must reissue a Notice of Hearing to Respondents and include with it a description of the hearing procedures consistent with its representations in its June 30 response.



David Doughman
Hearings Officer
July 24, 2026