

Enforcement Code Administrative Rules



**MULTNOMAH
COUNTY**

March 1, 2011

Code Compliance Office
Land Use and Transportation Division
Department of Community Services
Multnomah County, Oregon
1600 SE 190th Ave., Suite 116
Portland, OR 97233
Ph: (503) 988-5508
Fax: (503) 988-3389

ENFORCEMENT CODE ADMINISTRATIVE RULES

The Enforcement Code Administrative Rules set forth herein are hereby adopted pursuant to Multnomah County Code (MCC) 37.0925(B).

Dated this 1st Day of March, 2011.

CECILIA A. JOHNSON, DIRECTOR OF
MULTNOMAH COUNTY DEPARTMENT
OF COMMUNITY SERVICES



Karen Schilling, Planning Director
Land Use and Transportation Program
Department of Community Services
Multnomah County

REVIEWED:

HENRY H. LAZENBY, JR., COUNTY ATTORNEY
FOR MULTNOMAH COUNTY



Jed R. Tomkins, Assistant County Attorney
Of Attorneys for Multnomah County

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1. GENERAL PROVISIONS

RULE 1.1 TITLE; CITATION OF RULES

These rules may be referred to as "Enforcement Code Rules," "ECR," or "rules" and shall be cited, for example, as ECR 1.1(a).

RULE 1.2 DEFINITIONS

Unless the context or subject matter requires otherwise, the terms used in these rules shall be defined as provided in MCC 37.0910 and as follows:

- (a) "Complaint" means an oral or written statement received by the county alleging a violation;
- (b) "Enforcement Code" means the Enforcement Code as well as prior provisions of the MCC relating to code enforcement if the context requires;
- (c) "Legal holiday" means legal holiday as defined in ORS 187.010 and 187.020;
- (d) "MCC" means the Multnomah County Code;
- (e) "Subject property" means the tax lot(s) or lot or parcel that is the subject of a complaint; and
- (f) "Violation" has the meaning provided in MCC 37.0910 and, as required by the context of these rules, includes both an alleged and an affirmed violation, whether presently occurring, potentially occurring in the future, or occurring in the past and whether occurring on an on-going, intermittent or one-time basis.

RULE 1.3 AUTHORITY

The Director adopts these rules pursuant to MCC 37.0925(B). The Director may amend or repeal these rules and may adopt new rules as necessary for the administration of the enforcement program.

RULE 1.4 EFFECTIVE DATE

- (a) These rules shall apply to all matters that became subject to the provisions of the Enforcement Code on or after May 6, 2004.

(b) Paragraph (a) of this rule shall apply except to the extent that in the opinion of the Director, the Hearings Officer, or the court the application of these rules in a particular matter or proceeding would not be feasible or would work an injustice, in which event the former or current rule most consistent with the fair and expeditious resolution of the matter under consideration shall be applied.

RULE 1.5 INTERPRETATION

These rules shall be construed in conformity with Multnomah County ordinances, resolutions, and orders and with state and federal laws, rules and regulations, all of which supersede any conflicting provisions in these rules. If any provision, sentence, phrase, clause or word in these rules shall for any reason be held to conflict with any superior authority or is held unconstitutional, illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such conflict or holding shall not invalidate the remainder of these rules, but shall be confined to the provision, sentence, phrase, clause or word held unconstitutional, illegal, invalid or otherwise unenforceable.

RULE 1.6 OWNERSHIP OF RECORDS; PUBLIC RECORDS STATUS

(a) The records of the Multnomah County Department of Community Services and of its officers, employees and other agents relating to matters subject to the Enforcement Code are the property of such department.

(b) Except as exempt or protected by law from disclosure, the records described in paragraph (a) of this rule are available for public inspection.

RULE 1.7 TIME

(a) In computing any period of time prescribed or allowed by the Enforcement Code or these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday or legal holiday.

(b) Notwithstanding paragraph (a) of this rule, civil fines are assessed on the date a Notice of Violation is served or on the date ordered by a hearings officer or the court, whichever is applicable. In accordance with MCC 37.0965, additional civil fines may be assessed for the same violation for each day the violation remains unresolved after the date on which the civil fines are first assessed.

RULE 1.8 ADDRESS TO BE USED

Any mailing required under the Enforcement Code or these rules shall be mailed to the recipient's last known address, which shall be the address listed in the Multnomah County tax records unless the Director has actual written notice of the recipient's preferred mailing address.

2. COMPLAINT AND INVESTIGATION

RULE 2.1 PRIORITY OF MATTERS

(a) The Director shall process all matters subject to the Enforcement Code to the extent permitted by County resources and in the order that maximizes the efficient use of County resources. In the event that County resources limit the Director's implementation of the Enforcement Code, the Director may, in the Director's sole discretion, process any matter in the order of priority set forth in this rule, regardless of the order in which the Director receives notice of such matter. When processing a matter having priority, the Director may process an associated matter that does not have priority in order to maximize efficient use of resources.

(b) In the sole discretion of the Director, County enforcement resources may be dedicated first to those violations that:

- (1) Present an existing or imminent threat to public health or safety;
- (2) Present an existing or imminent threat to natural resources;
- (3) Respondent affirmatively seeks to resolve; and/or
- (4) Are subject to a court order.

RULE 2.2 COMPLAINT

(a) Complaint Intake

Any person may file a complaint with the Director. The complainant name and contact information is required to file a complaint. Submission of anonymous complaints and/or complainant's unavailability as a witness will result in dismissal of the complaint. The complaint may be submitted in person, by mail, by telephone, by facsimile or by e-mail, but the Director may require the complaint to be submitted in writing before taking any action. Except as provided in Rule 2.1, the Director shall investigate each complaint for the purpose of determining whether one or more violations exist on the subject property.

(b) Confidentiality of Complaints

The County is required by law to disclose complainants name if complainant is going to be a witness in an enforcement hearing. Under Oregon law, the contents of a complaint filed become a matter of public record and may be disclosed to the public unless disclosure is prohibited or nondisclosure is authorized by law.

(c) Withdrawn Complaint

The Director may dismiss a complaint that is withdrawn by the complainant prior to commencement of the Director's investigation. The Director shall file a written determination to dismiss a withdrawn complaint in the file in which the Complaint Form is filed.

RULE 2.3 INVESTIGATION RECORD

(a) Contents of Investigation Record

The investigation record shall consist of the complaint; the supplementary documentation submitted to or obtained or created by the Director, including the Director's notes and reports on communications or site visits made in the course of investigation, that is material to the determination on investigation; and the determination on investigation.

(b) Record of Complaint

Each complaint shall be recorded on a Complaint Form (Appendix A). The Complaint Form may be completed by complainant(s) or the Director based on the statements of complainant(s). The Director shall file the Complaint Form and any attachments in an open Under Review, Right-of-Way or Zoning Violation file for the subject property, if any, otherwise the Director shall open a new Under Review, Right-of-Way or Zoning Violation file for the subject property and include the Complaint Form therein.

(c) Record of Supplementary Documentation

The following information shall be included in the investigation record:

- (1) Case number;
- (2) Copy of the Multnomah County Assessor's records for the subject property, including the tax lot, tax account number and tax summary;
- (3) Address of the subject property, if known, or location information if no situs address assigned;

- (4) To the extent possible, the name and mailing address of the property owner(s), contract purchaser(s), and/or lessee(s) of subject property;
- (5) To the extent possible, the identity, including name, address and telephone number, and statements of all actual, alleged and potential Respondents;
- (6) To the extent possible, the identity, including name, address and telephone number, and statements of all persons that have or may have information relevant to the determination of the existence of one or more violations on the subject property;
- (7) Determination of Multnomah County jurisdiction over the subject property pursuant to the Enforcement Code;
- (8) Zoning applicable to the subject property;
- (9) Determination of the status of any land use, building or forest practice permits on the subject property;
- (10) Determination of the existence and status of any prior or current violations of the MCC on the subject property or concerning one or more of the actual, alleged or potential Respondents;
- (11) Determination of the provision(s) of the MCC violated;
- (12) Record of the Director's actions and communications with the public that are material to the determination on investigation; and
- (13) Copy of any other supplementary documentation submitted to or obtained or created by the Director, including the Director's notes or reports on communications or field investigations, that is material to the determination on investigation.

RULE 2.4 FIELD INVESTIGATION

- (a) For the purpose of determining and documenting evidence pertaining to a determination of the existence of one or more violations on the subject property, the Director may, in addition to any other manner of investigation, conduct a field investigation, including site inspection of the subject property, observation of the subject property from public or private locations, and identification and interviewing of persons having or potentially having information relevant to the investigation.
- (b) The Director may enter private property for the purpose of making contact with a person having a possessory interest in such property to the extent allowed by law. Otherwise, the Director shall not enter private property without first obtaining either

informed consent from a person having a possessory interest in such property or an administrative inspection warrant authorizing the Director's entry onto such property.

(c) Subject to paragraph (b) of this rule, the Director may conduct a site inspection with or without prior notice to the owner(s), contract purchaser(s), and/or lessee(s) of subject property or Respondent(s), if different. The determination of whether or not to give prior notice shall be made after consideration of one or more of the following criteria:

(1) Whether the violation(s) alleged in the complaint present or potentially present an existing or imminent threat to public health or safety or to natural resources;

(2) Whether prior notice will make detection and documentation of the violation(s) alleged in the complaint more difficult; and

(3) Whether prior notice will unnecessarily increase the known or reasonably foreseeable risk of harassment of, or harm to, the Director or others.

(d) The Director shall not conduct a field investigation under circumstances that present a known or reasonably foreseeable risk of harassment of, or harm to, the Director or others, unless the Director implements measures reasonably calculated to ensure the personal safety of the Director and/or others.

(e) The Director shall include a written report on each completed field investigation, together with any material supporting documentation, in the investigation record. The field investigation report shall include the following information:

(A) Name and title of investigator;

(B) Date, time and place of field investigation;

(C) Any evidence obtained, such as photographs;

(D) Reasonable description of the subject property, which may include apparent condition, uses, events, disturbances and the like;

(E) To the extent possible, identification and explanation of possible code violation(s) observed and, to the extent possible, identification and explanation of possible corrective actions;

(F) If applicable, an explanation of why one or more violations alleged in the complaint was not observed;

(G) If applicable, and to the extent possible, the identity, including name, address and telephone number, and statements of all persons

interviewed that have a legal interest in the subject property, including the property owner(s), contract purchaser(s), lessee(s), and lien holder(s) or other security interest holder(s);

(H) If applicable, and to the extent possible, the identity, including name, address and telephone number, and statements of all actual, alleged and potential Respondents interviewed;

(I) If applicable, and to the extent possible, the identity, including name, address and telephone number, and statements of all persons interviewed that have or may have information relevant to the determination of the existence of a violation; and

RULE 2.5 DIRECTOR'S DETERMINATION ON INVESTIGATION

If, after completing the investigation of a complaint, the Director determines that one or more violations exist on the subject property, the complaint shall be subject to further processing under the Enforcement Code in accordance with Rule 2.1. Otherwise, the complaint will be dismissed. The Director shall include in the investigation record a written determination on investigation in accordance with Rule 2.3(a) explaining the decision made under this paragraph.

RULE 2.6 ZONING VIOLATION FILE

Further processing under the Enforcement Code of each Complaint that is not dismissed under Rule 2.5(a) shall be documented in a Zoning Violation file. Only one Zoning Violation file shall be open at a time for each subject property.

3. VOLUNTARY COMPLIANCE

RULE 3.1 VOLUNTARY COMPLIANCE

(a) For purposes of MCC 37.0925 (A), the Director shall, except as provided in Rule 2.1, consider the following factors to determine whether voluntary compliance measures are practicable:

(1) Whether Respondent and/or property owner, if different, is responding timely to voluntary compliance requests or terms of agreement;

(2) The severity and/or magnitude of the violation as measured by the imminence of the threat to public health or safety or to natural resources, physical size, geographic extent, duration of time, frequency of occurrence, actual or

potential economic harm or otherwise as well as by the risk that the severity and/or magnitude of the violation might increase if the Director continues the voluntary compliance process;

(3) The degree to which respondent and/or property owner, if different, is motivated to participate in the voluntary compliance process as measured by the economic benefit from continuing the violation or otherwise;

(4) Whether the circumstances presented by a violation are best addressed under MCC 37.0945 or MCC 37.0946; and

(5) Any other relevant factor.

(b) Pursuant to MCC 37.0935, breach of a voluntary compliance agreement constitutes a violation for which a civil fine may be assessed under MCC 37.0965.

(c) The Director shall consider the following factors prior to entering an agreement under MCC 37.0935 (B):

(1) Whether respondent has committed any prior violation subject to the Enforcement Code within the last five years;

(2) The history of respondent in taking all feasible steps or procedures necessary or appropriate to resolve each violation or resolve any delinquencies;

(3) The gravity and magnitude of each violation;

(4) Whether each violation was repeated or continuous;

(5) Whether each violation was due to unavoidable accident, other conditions or circumstances beyond respondent's reasonable control, negligence, or an intentional act of respondent;

(6) The opportunity and degree of difficulty to correct each violation or resolve any delinquencies;

(7) The economic or financial benefit accrued or likely to accrue to respondent as a result of the violation;

(8) Respondent's cooperativeness and efforts to correct each violation for which the civil fine was assessed;

(9) The costs to the County of investigation, enforcement and correction or attempted correction of each violation;

- (10) The total costs to the County for principal, penalty, billing, interest and collection charges; and
- (11) Any other relevant factors.

4. ENFORCEMENT AND APPEAL

RULE 4.1 NOTICE OF VIOLATION

- (a) Service of a Notice of Violation is complete at the date and time of personal delivery or upon deposit in the United States mail.
- (b) Correction of a violation does not relieve respondent of the obligation to pay an associated civil fine.
- (c) Each Notice of Violation shall include an explanation of the recipient's right to appeal the notice that is substantially similar to the following:

"APPEAL RIGHTS

"YOU MAY APPEAL ONE OR MORE DETERMINATIONS IN THIS NOTICE OF VIOLATION BY COMPLETING AND RETURNING THE ENCLOSED NOTICE OF VIOLATION APPEAL FORM AND A \$250.00 APPEAL FEE, PAYABLE TO "MULTNOMAH COUNTY," BY HAND DELIVERY OR BY MAIL, TO:

Code Compliance Specialist
Department of Community Services
1600 SE 190th Ave.
Portland, OR 97233.

"YOUR COMPLETED NOTICE OF VIOLATION APPEAL FORM AND \$250.00 APPEAL FEE MUST BE SUBMITTED WITHIN 14 DAYS AFTER THE DATE OF THIS NOTICE OF VIOLATION.

"IF YOU DO NOT APPEAL, the Multnomah County Code Compliance Specialist will forward this Notice to a Code Compliance Hearings Officer for review and final determination of the validity of the alleged violations and any Civil Fines. If the Hearings Officer affirms the imposition of the Civil Fines, or any portion thereof, the Hearings Officer will issue an Order of Civil Fine setting forth your payment obligations.

"If Civil Fines, or any portion thereof, are not paid within 60 days after payment is ordered by the Hearings Officer, the County will begin to charge

interest on any unpaid civil fines at a rate of 9% per annum and will have the right to record the Order of Civil Fine in the Clerk Lien Record for any Oregon county. The lien for payment of the Civil Fines will attach to all of your real property located in each county in which the Order is recorded.”

RULE 4.2 CALCULATION OF CIVIL FINE

(a) The Director shall document the calculation of each civil fine imposed by the Director. The civil fine shall be calculated as follows in this and the subsequent sections of this rule:

$$\text{Civil Fine (\$)} = (X)(Y)(\$15)$$

(b) Variable **X** = [**H**+**P**+**R**+**C**+**E**] is calculated as follows:

(1) **H** is the rating of Respondent’s performance of the required corrective actions requested or demanded by the Director for a particular violation. **H** shall equal:

(A) **0** if Respondent took actual and substantial steps, more than verbal assurance, towards attempting full performance of the required corrective actions or other resolution of the matter;

(B) **1** if Respondent took actual, but minor, steps, more than verbal assurance, towards attempting full performance of the required corrective actions or other resolution of the matter; and

(C) **4** if Respondent took inconsequential or no actual steps; regardless of verbal assurance, towards attempting full performance of the required corrective actions or other resolution of the matter.

(2) **P** is the number of prior, affirmed violations of the same section of the MCC by Respondent. **P** shall equal:

(A) **1** if there are no prior violations.

(B) **2** if there has been one violation within the last five years; and

(C) **4** if there have been two or more violations within the last five years.

(3) **R** is the frequency of occurrence of the violation. **R** shall equal:

(A) **1** if the violation occurred as a one-time event; and

(B) 2 if the violation is occurring or occurred as an intermittent, repeated or continuous event.

(4) C is Respondent's intent to cause the violation. C shall equal:

(A) 1 if Respondent did not intend the violation, but rather the violation was inadvertent. An inadvertent violation is one that is unavoidable, accidental or caused by others not under the control or influence of Respondent;

(B) 2 if the violation occurred as a result of Respondent's negligence. A violation occurs as a result of Respondent's negligence if Respondent fails to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation;

(C) 4 if the violation occurred as a result of Respondent's reckless or intentional acts. A violation occurs as a result of Respondent's reckless act if Respondent acts with indifference to the consequences of that act. A violation occurs as a result of Respondent's intentional act if Respondent knows the results that will flow from the act and desires those results to occur, regardless of whether Respondent knows that the act is a violation of law.

(5) E is the rating of Respondent's responsiveness to the Director's communications and/or requests. E shall equal:

(A) 0 if Respondent was highly responsive such that repetition of the Director's communications and/or requests was minimal;

(B) 1 if Respondent was moderately responsive such that the Director found a need to repeat only a small portion of prior communications and/or requests; and

(C) 2 if Respondent was minimally responsive or not responsive.

(c) Variable $Y = [A \times G]$ is calculated as follows:

(1) A is the number of prior requests or demands by the Director for Respondent's performance of required corrective actions. A shall equal:

(A) 1 if this is the first such request or demand by the Director within the last five years;

(B) 2 if this is the second such request or demand by the Director within the last five years; and

(C) 3 if there have been more than two such requests or demands by the Director within the last five years.

(2) G is the severity and magnitude of the violation as measured by the imminence of the threat to public health or safety or to natural resources, physical size, geographic extent, duration of time, frequency of occurrence, actual or potential economic harm or otherwise. Partial correction of a violation by any person after the NOV is issued does not reduce the value assigned to this factor. G shall equal:

(A) 1 if there is no immediate threat to public health or safety or to natural resources, and the remaining measures of severity and magnitude of the violation prove minor;

(B) 2 if there is no immediate threat to public health or safety or to natural resources, but the remaining measures of severity or magnitude of the violation prove moderate. The remaining measures of severity or magnitude of a violation prove moderate when required corrective actions can be taken in due course without a risk of irreparable harm; and

(C) 3 if the violation poses an immediate threat to public health or safety or to natural resources or the remaining measures of severity or magnitude of the violation prove substantial. The remaining measures of severity or magnitude of a violation prove substantial when required corrective actions must be taken immediately to prevent irreparable harm.

RULE 4.3 REVIEW OF CIVIL FINE

(a) The hearings officer shall affirm, or affirm as amended by the hearings officer, a civil fine assessed by the Director if the Director has:

(1) Established the existence of the violation for which the civil fine is imposed; and

(2) Has afforded Respondent due process of law.

(b) Strict compliance with the Enforcement Code or these rules is not required to affirm a violation or a civil fine if the Director's substantial compliance with the Enforcement Code or these rules actually affords Respondent due process of law.

(c) The hearings officer may amend the civil fine as calculated and assessed by the Director, but the hearings officer may not set the civil fine aside on account of improper calculation or correction of the violation prior to the day of hearing.

Rule 4.4 REVIEW OF NOTICE OF VIOLATION

- (a) Whether final determination on the Notice of Violation proceeds under MCC 37.0950 or MCC 37.0955, the Director shall file with the hearings officer a true and accurate copy the Notice of Violation together with a Staff Report in support thereof.
- (b) The Staff Report in paragraph (a) of this rule shall contain:
- (1) A report, together with supporting documentation, on the actions taken to date by the Director and Respondent with respect to the violation;
 - (2) Evidence sufficient to establish the existence of each violation alleged in the Notice of Violation that is being offered to the hearings officer for affirmation;
 - (3) An explanation of the necessity of required corrective actions and the deadlines for complete performance thereof; and
 - (4) A copy of the fine calculation matrix for each civil fine imposed by the Director.

Rule 4.5 APPEAL FEE

Pursuant to MCC 37.0940(C), an appeal shall be accompanied by an appeal fee of \$250. The Hearings Officer shall dismiss an appeal filed without the appeal fee, unless the appeal fee is subsequently filed within the time allowed under MCC 37.0940(C). If a check providing the appeal fee is returned for insufficient funds and the appeal fee is not paid within the time set by the Director, the Hearings Officer shall dismiss the appeal.

5. RESOLUTION OF MATTERS

Rule 5.1 FILE CLOSURE

- (a) The Director shall not take further action on a matter subject to the Enforcement Code after that matter has been closed. The Director may close a matter subject to the Enforcement Code after the occurrence of any of the following:
- (1) Determination to dismiss a withdrawn complaint under Rule 2.2(c);
 - (2) Determination of dismissal under Rule 2.5;
 - (3) Resolution of the violation and payment of the civil fine, if any;

- (4) Final action by a public body to which the Director designated all enforcement duties;
 - (5) Issuance of a court order or an order of the hearings officer dismissing the matter or otherwise enjoining Multnomah County or the Director from taking further action on the matter under the Enforcement Code; or
 - (6) Determination by the Director that the matter is not likely to be successfully resolved within a reasonable time or a reasonable expenditure of resources due to factors beyond the control of Multnomah County.
- (b) Prior to closing a matter subject to the Enforcement Code, the Director shall include in the file for the matter a written determination of closure explaining the basis for closing the matter.

APPENDIX A

Land Use and Right-of-Way Complaint Intake Form