

Multnomah County Procedures for Land Use and Transportation Code Compliance Hearings

A code compliance hearing is triggered by an appeal of a Notice of Violation.

Notice of Appeal MCC 39.1530(C)

“An appeal, if any, from a Notice of Violation shall be made in accordance with MCC 39.1550(A) and by submitting to the Code Compliance Specialist (CCS) a written request for an appeal hearing together with the appeal fee indicated in the Notice of Violation within 14 days of the date of service of the Notice of Violation.”

Persons Authorized to Appeal Notice of Violation MCC 39.1550(A)

- (1) “The Notice of Violation may be appealed by the respondent, owner of the subject property, the property owner’s representative or other person who has been included as part of the Notice of Violation.”
- (2) “A representative of the property owner must have documentation demonstrating that they are an authorized agent of the property owner.”

Notice of Hearing MCC 39.1550(B)

- (1) “The notice shall contain the time, date, and place of the hearing. A copy of the Notice of Violation and a description of the appeal process and associated rights shall be attached to the notice.”
- (2) “Notice shall be served on the respondent and property owner, if different, by personal service or certified mailed, return receipt requested at least 15 days prior to the hearing date. Notice is considered complete on the date of personal delivery or upon deposit in the U.S. mail. Notice will also be provided to surrounding properties within 750 feet of the subject property, complainant if known and other known interested parties who have made a written request for notice. Written notice includes email and faxes in addition to surface mail or hand-delivered documents.”
- (3) “Failure of any person to receive notice properly given shall not invalidate or otherwise affect the proceedings under this Enforcement Code.”

Staff Report and Case Exhibits

- (1) The Planning Director shall prepare a staff report on the Notice of Violation which describes the property ownership, case background, the alleged violations, calculation of civil penalty, staff recommendations for Hearings Officer, and case exhibits list.

- (2) The staff report and case exhibits will be prepared and made available online to the public on the same date as Notice of Hearing.

Appeal Hearing

- (1) “Hearings to determine whether a violation has occurred shall be held before the Hearings Officer. The County must prove the violation alleged by a preponderance of the evidence.” MCC 39.1550(C)(1).
- (2) At the beginning of the public hearing, a statement shall be announced to those in attendance, that:
 - (a) The County must prove all violations alleged by a preponderance of the evidence;
 - (b) The hearing will proceed in the following general order: staff report, appellant’s presentation, testimony in favor of the Notice of Violation, testimony in opposition to the Notice of Violation, staff response, appellant rebuttal, record closes, deliberation and decision;
 - (c) All testimony and evidence submitted, orally or in writing, must be directed toward the allegations in the Notice of Violation. The Hearings Officer may reasonably limit oral presentations in length or content depending upon time constraints. Any person may submit written materials of any length while the public record is open;
 - (d) Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, may preclude appeal on that issue;
 - (e) Any person wishing a continuance or to keep open the record must make that request while the record is still open;
 - (f) The Hearings Officer shall disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing.
- (3) The Hearings Officer may continue the hearing from time to time to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as the Hearings Officer establishes a time certain and location for the continued hearing. Similarly, the Hearings Officer may close the hearing but keep open the record for at least 7 days for the submission of additional written material or other documents and exhibits. The Hearings Officer may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

- (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 the Hearings Officer renders a decision.

Procedural Objections

Any party who objects to the procedure followed in a code compliance proceeding must make a procedural objection prior to the Hearings Officer rendering a final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights.

Hearings Officer Final Order

“The Hearings Officer’s order shall be in writing and may be accompanied by an opinion.” MCC 39.1550(C)(3).

If the Hearings Officer affirms the Notice of Violation, “The Hearings Officer shall set a time within which the respondent must comply. The order may require the respondent to do any of the following:

- (a) Obtain any and all necessary permits, inspections and approvals;
- (b) Install any equipment necessary to achieve compliance;
- (c) Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
- (d) Reimburse the County for actual costs of remediation, its reasonable administrative costs, as well as its attorney fees and costs for its enforcement actions, including appeals;
- (e) Pay a civil fine for the violation and any fees and costs to the County;
- (f) Pay a reduced fine;
- (g) Undertake any other action reasonably necessary to remedy the violation.” MCC 39.1550(2).

If the Hearings Officer does not affirm the Notice of Violation, the violations will be dismissed and the Code Case closed.

Calculation of Civil Fine(s) MCC 39.1560

“Violations as defined in MCC 39.1510 may be subject to fines and liens. Fines may be assessed for each violation each day.

- (A) The maximum fines per violation shall not exceed \$3,500 for each day of noncompliance; the minimum fine per violation shall not be less than \$45 for each day of noncompliance.
- (B) The Director shall set criteria for determining the fines, appeal fees and administrative fees as appropriate.” The criteria for calculation of civil fines are outlined under Rule 4.2 of the Multnomah County Enforcement Code Administrative Rules.

Appeal of Final Order MCC 39.1565

Review of the final order of a Hearings Officer under this subchapter by any aggrieved party shall be by writ of review as provided in ORS 34.010 through 34.100, unless the Hearings Officer makes a land use decision, in which case the land use decision may be reviewed by the Land Use Board of Appeals pursuant to ORS Chapter 197. Any appeal of a Hearings Officer decision in the National Scenic Area may be reviewed by the Columbia River Gorge Commission.

Enforcement of Hearings Officer Order MCC 39.1555

- (A) “Fines, fees and costs are payable on the effective date of the order and are a debt owed to the County, under ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If fines, fees or costs are not paid within 60 days after payment is ordered, the County may file and record the order in the County Clerk Lien Record.”
- (B) “The County may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any order of the Hearings Officer, including, an action to obtain judgment for any civil fine, fees or costs imposed by such order.”