

38. CODE COMPLIANCE

38.1 APPLICATION

This ordinance applies throughout the unincorporated areas of Clatsop County, Oregon, except that this ordinance shall not apply within the urban growth boundary of any incorporated city if by inter-governmental agreement that city has assumed authority for enforcement of the matter in question. This ordinance shall also apply within the incorporated areas of any city in Clatsop County if by intergovernmental agreement Clatsop County has assumed authority for enforcement of the matter in question.

38.2 PURPOSE

The purpose of this ordinance is to provide a procedure for achieving compliance with various county ordinances and certain state statutes, which authorize enforcement by county officials.

38.3 DEFINITIONS

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

38.3.1 "Authorized person" means a person authorized under Section 38.6 to enforce the provisions of this ordinance.

38.3.2 "Board" means the Board of County Commissioners for Clatsop County, Oregon.

38.3.3 "Code Compliance Specialist" means a county employee specifically designated to seek compliance with and enforce county ordinances.

38.3.4 "Compliance Order" means an order issued by the Code Compliance Specialist or the County Hearings Officer as a result of a notice of violation. Each Compliance Order shall determine:

A. If there has been a violation of a county ordinance and whether it is still continuing.

B. Whether corrective action is appropriate what specific corrective action to order and a schedule for that corrective action.

C. Whether the county's expense of investigation and prosecution should be imposed and the amount of this assessment.

D. What fine should be assessed for a violation, whether a continuing fine is appropriate and under what circumstances the daily fine shall cease or be reduced.

E. Whether it is appropriate to order that no further land use permits be issued to the violator or issued for any property owned in whole or in part by the violator until the decision is complied with.

If fines or costs are imposed the order shall include a notice to the responsible party that the county will file and record the order for payment in the County Clerk Lien Records and if such amounts are not paid within 60 days after the date of the order the responsible party shall be personally liable to the County for the amount of any unpaid fines or costs.

38.3.5 "County Hearings Officer" or "Hearings Officer" means an administrative officer appointed at the pleasure of the Board to preside over hearings on enforcement actions.

38.3.6 "Enforcement Action" includes the issuance of a warning pursuant to Section 38.8, the issuance of a notice under Section 38.11, any administrative proceeding resulting from the issuance of a Notice of Violation and any other act necessary to carry out the purposes of this ordinance.

38.3.7 "Offense" means any act declared an infraction under Section 38.5.

38.3.8 "Person" means the definition it has under ORS 161.015 or its successor provisions.

38.3.9 "Responsible Party" means a person who commits an offense and, in offenses involving the use or occupation of real property, includes the owner, an agent of the owner or occupant who allows an offense to continue. The responsible party may consist of more than one person.

38.4 ENACTMENTS ENFORCEABLE UNDER THIS ORDINANCE

Any county ordinance, order, resolution, license or permit and any state statute or administrative rule which the county is authorized to enforce is enforceable pursuant to the provisions of this ordinance. Excepted from the provisions of this shall be: Dog Hearing Proceedings under ORS 609.150 and Clatsop County Code Chapter III, Section 31.

38.5 NUISANCE AND INFRACTION DECLARED

Violation of any license, permit, statute, administrative rule, ordinance, order or resolution, or any provision thereof, enforceable under this ordinance is unlawful and an offense. Such an offense is hereby declared to be a nuisance

and an infraction and is subject to the penalties provided herein or otherwise provided by law. Each day of violation constitutes a separate offense.

38.6 PERSONS AUTHORIZED TO TAKE ENFORCEMENT ACTION

38.6.1 The persons holding the following positions are specifically authorized to take enforcement action under this ordinance:

- A. The County Administrator
- B. Code Compliance Specialist

38.6.2 Authority to take enforcement action shall automatically terminate when any person ceases to hold a position described in Section 38.6 1. The County Administrator may at any time, for any reason revoke the authority of any person to take enforcement action under this ordinance.

38.7 PERSONS AGAINST WHOM ENFORCEMENT ACTION MAY BE TAKEN

Enforcement action may be taken against anyone who commits an offense. In the case of offenses involving real property, enforcement action also may be taken against owners, agents of owners and occupants of real property that allow an offense to exist or continue.

38.8 ISSUANCE OF WARNINGS

An authorized person may, in lieu of issuing a notice, issue a written warning for the commission of any offense.

38.9 SERVICE OF NOTICE AND WARNINGS

Notices and warnings authorized under this ordinance may be served upon property owners and occupants of real property by posting the notice on site and mail sent return, receipt requested. Alternative service may be made in person or any other manner reasonably calculated to give notice including certified mail, return receipt requested.

38.10 NOTICE FORM AND CONTENT

A notice issued under this ordinance shall be substantially in the following form.

Notice of Violation

To:

You are hereby notified of your violation of Clatsop County Ord. No. _____ .

This violation constitutes a nuisance and an infraction. You are hereby notified to remove and abate the nuisance described below within 15 days of the date of this notice and to demonstrate to the Code Compliance Specialist of Clatsop County within that time that no nuisance exists by filing a written statement with the Clatsop County Code Compliance Specialist.

Your nuisance consists of:

If you fail to remove the nuisance within the time set forth above, Clatsop County may cause the nuisance to be abated and charge the cost of abatement, plus overhead. In addition or as an alternative Clatsop County may impose a civil fine. Each day that the nuisance continues may be considered to be a separate nuisance and may result in a separate and additional fine. These costs and fines will be your personal liability and when recorded in the county lien record will be a lien against any real property you own.

After 15 days from the date of this notice, this matter will be set for administrative review. At that time, a decision will be made concerning the existence of and your responsibility for the nuisance described in this notice. Any information that you would like to have considered must be submitted to the Clatsop County Code Compliance Specialist prior to that time.

DATE:

Clatsop County Code Compliance Specialist

38.11 ABATEMENT BY OWNER, ADMINISTRATIVE REVIEW

Within 15 days after service of a notice of violation, a responsible party shall remove and abate such nuisance or show that no nuisance in fact exists. Such showing may be made by filing a written statement with the Clatsop County Code Compliance Specialist. Upon expiration of 15 days from service of the notice, the Code Compliance Specialist shall schedule the matter for administrative review.

38.12 ADMINISTRATIVE REVIEW

38.12.1 The Code Compliance Specialist shall review all actions and decisions concerning the alleged nuisance.

38.12.2 The responsible party shall be given the opportunity to present evidence to the Code Compliance Specialist in the course of said review.

38.12.3 Upon completion of administrative review the code compliance specialist shall prepare a Compliance Order.

38.13 NOTICE OF ASSESSMENT, APPEALS OF CHARGES

38.13.1 Upon completion of review, the Code Compliance Specialist shall mail a copy of the Compliance Order to the responsible party. In the event that the order is not complied with within 30 days, the Code Compliance Specialist shall record the Compliance Order, or a summary of that order, in the County Lien Record which shall thereafter constitute a lien against any property of the responsible party and be collected by the County as provided by law.

38.13.2 If a responsible party believes the Compliance Order to be in error, written notice of the claimed error shall be given the Code Compliance Specialist within 20 days of the date of the notice of assessment. The Code Compliance Specialist shall thereupon either amend the order or schedule an appeal to the Hearings Officer.

38.13.3 If a timely appeal is received, a de novo hearing shall be scheduled and held on the matter. Except as otherwise provided, if a timely appeal is not received the Compliance Order is a final order as to the Responsible Party.

38.14 APPEARANCE BY RESPONSIBLE PARTY

38.14.1 The responsible party shall either appear before the Hearings Officer at the time indicated or prior to such time deliver to the

Hearings Officer a statement of matters in explanation or mitigation of the offense charged.

38.14.2 If a responsible party has submitted to a written statement in explanation or mitigation of the offense, the statement constitutes a waiver of hearing and consent to judgment. The Hearings Officer may reach a decision on the basis of the statement and any testimony or written statement of the person issuing the citation or other person who may be presented to the court.

38.14.3 The responsible party shall provide to the county hearings officer an address to which information and notices shall be sent. Any notice or information sent to the address provided by the responsible party shall be conclusively presumed to have been received by the responsible party.

38.14.4 If a responsible party fails to appear at the time fixed for the hearing, the Hearings Officer may consider such failure to comply as a waiver of the responsible party's right to a hearing and proceed to hear the case in responsible party's absence.

38.15 HEARING PROCEDURE

38.15.1 The Hearings Officer shall have authority to conduct a public hearing and:

- A. Determine who qualifies as a party.
- B. Regulate the course, sequence and decorum of the hearing;
- C. Dispose of procedural requirements or similar matters;
- D. Rule on offers of proof and relevancy of evidence and testimony;
- E. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation and rebuttal testimony;
- F. Take such other action appropriate for conduct commensurate with the nature of the hearing.

38.15.2 Any hearing under this ordinance shall be without a jury and shall be conducted as follows.

- A. Announce the nature and purpose of the hearing and summarize the rules of conducting the hearing.
- B. Allow the County or its representative to be heard.
- C. Allow the responsible party or a representative of the responsible party to be heard;
- D. Allow parties or witnesses in favor of the County to be heard;

- E. Allow parties or witnesses in favor of the responsible party to be heard;
- F. Allow the County to offer rebuttal evidence and testimony limited to rebuttal of points raised. New testimony will not be heard;
- G. Conclude the hearing and announce a decision or take the matter under advisement.

38.15.3 The County shall have the burden of proving the alleged offense by a preponderance of the evidence but proof of a culpable mental state is not an element of any offense enforceable under this ordinance.

38.15.4 A responsible party may not be required to be a witness against himself in the hearing of any offense under this ordinance.

38.15.5 At hearing of an offense under this ordinance, defense counsel shall not be provided at public expense.

38.15.6 At hearing of an offense under this ordinance, a prosecuting attorney may, but need not, appear unless counsel for the responsible party appears. The Hearings Officer shall ensure that the prosecuting attorney is given timely notice if defense counsel is to appear at hearing.

38.16 DECISION AND ORDER OF HEARINGS OFFICER

Upon conclusion of the hearing the Hearings Officer shall prepare a Compliance Order. A copy of the order shall be mailed or personally delivered to the Responsible Party and the Code Compliance Specialist. The Compliance Order shall be final as to each party upon such mailing or delivery.

38.17 REVIEW OF COMPLIANCE ORDER FOR LACK OF NOTICE

38.17.1 If, after a Compliance Order has been entered in the County Lien Record, there is a written request of a responsible party who alleges that the responsible party did not receive a notice of violation, the Code Compliance Specialist shall refer the matter for review by the Hearings Officer.

38.17.2 The Compliance Order may be canceled or amended by the Hearings Officer, on review, if it is determined that the responsible party did not receive the Compliance Order and did not previously have knowledge of the Notice of Violation or of any nuisance abatement work constituting the basis of the violation, could not, in the exercise of reasonable care or diligence, have had such knowledge, and in addition, that the circumstances are such that a cancellation or amendment of the

order would have been appropriate had the matter been reviewed prior to recording the County Lien Record.

38.18 SCHEDULES OF FINES

38.18.1 The Board may by order establish and modify recommended schedules of minimum fines for offenses enforceable under this ordinance. The Hearings Officer may accept or modify such minimum fine schedules.

38.18.2 Until modified by order of the Board, the minimum fine shall be:

- A. \$100.00 for the first notice of violation filed under this ordinance.
- B. \$250.00 for a second notice of violation for the same violation.
- C. \$500.00 for the third notice of violation for the same violation.
- D. \$750.00 for the fourth notice of violation for the same violation.
- E. \$1,000.00 for the fifth and all subsequent notices of violation for the same violation.

38.18.3 The maximum fine for any single offense imposed under this ordinance shall be \$20,000.

38.18.4 After service of a notice of violation, each day that a nuisance continues may be treated as a separate violation and treated with a separate and continuing fine. This continuing fine may be in addition to a fine for the original violation and the county's assessments. If a Compliance Order imposes a continuing fine the minimum fine schedule shall be employed for each daily violation.

38.19 DISPOSITION OF FORFEITED BAIL OF FINES RECEIVED

Fines and assessments recovered under this ordinance shall be paid to Clatsop County for the general fund of the county.

38.20 RESPONSIBILITY TO REMEDY

Payment of a fine and assessments on a notice issued under this ordinance does not relieve a responsible party of the responsibility to remedy the violation and such offender may be subject to additional enforcement as provided by this ordinance.

38.21 APPEALS

An appeal from the Compliance Order of the Hearings Officer may be taken to the Board of county Commissioners by either party pursuant to the

provisions for appeals of land use matters, LWDUO Section 2.230 *et. seq*, except that no final decision of the board of commissioners maybe appealed to LUBA except as provided in ORS 197.825.

38.22 OTHER REMEDIES PRESERVED

County Counsel shall have the authority to prosecute any person cited under this ordinance in the name of the county. If any offense under this ordinance is also an offense under state law, the District Attorney and any Deputy District Attorney of Clatsop County shall retain all authority given under state law to prosecute the alleged offender in the name of the state under the provisions of state law.

In lieu of, or in addition, to the procedure set forth in this ordinance the County may exercise any and all remedies available at law or in equity for the enforcement of any County ordinance, resolution or order or any state statute or administrative rule.

38.23 ENFORCEMENT ACTION DISCRETIONARY

A decision to take any enforcement action pursuant to this ordinance including a decision to seek a fine or any equitable relief, is permissive and not mandatory. Any decision made not to take enforcement action is declared to be an act of discretion as described by ORS 30.265(3)(c).

38.24 INTERGOVERNMENTAL AGREEMENTS

The Board may enter into intergovernmental agreements with any city or cities in Clatsop County and with any administrative agency of the State of Oregon to further the purposes of this ordinance. An agreement under this section shall be in accordance with ORS Chapter 190.

38.25 INSPECTION WARRANTS

38.25.1 Warrants. Whenever an inspection is necessary to investigate or enforce an Enforcement Action, or whenever the Code Compliance Specialist has reasonable cause to believe that a nuisance or infraction exists in any building or upon any property, the Code Compliance specialist may request a Circuit court judge issue an inspection warrant for the inspection or investigation oa any building or upon any property. The inspection warrant is an order authorizing a safety or health inspection or investigation to be conducted at a designated building or property.

38.25.2 Grounds for issuance of Inspection Warrants; Affidavit

- A. Affidavit.** An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation thought to be violated, the building or property to be inspected or investigated, and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.
- B. Cause.** Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to any building or upon any property, or there is cause to believe that a nuisance or infraction exists with respect to the designated property, or an investigation is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with any license, permit, statute, administrative rule, ordinance, order or resolution.

38.25.3 Procedure for Issuance of Inspection Warrant.

- A. Examination.** Before issuing an inspection warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
- B. Issuance.** If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any other time of the day or night.

38.25.4 Execution of Inspection Warrants.

- A. Occupied Property.** Except as provided in subsection B of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry into the occupied

premises, make reasonable effort to present the person's credentials authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request.

- B. Unoccupied Property.** In executing an inspection warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection 1 of this section, but may promptly enter the designated property if it is reasonably believed to be unoccupied or in the possession of any person. In such case a copy of the search warrant shall be conspicuously posted on the property.
- C. Police Assistance.** In issuing an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and assist the building inspector or County representative inspecting the property in any way necessary to complete the inspection.
- D. Return.** An inspection warrant must be executed within 10 working days of its issue and returned to the judge by whom it was issued within 5 working days from its date of execution, unless such judge before the expiration of such time extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.