

CHAPTER 38: CODE ENFORCEMENT

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GENERAL PROVISIONS

§38.01 ESTABLISHMENT AND PURPOSE.

(A) The purpose of this chapter is to provide for the welfare, safety and health of the citizens of the county by establishing a procedure wherein the ordinances of the county can be enforced. The Board specifically finds that enforcement procedures and remedies under existing county ordinances and state statutes involve substantial delay and high cost, thus deterring vigorous enforcement of such ordinances. In order to insure timely and uniform enforcement of county ordinances and to maintain public confidence and certainty in county ordinances, it is necessary to immediately enact the enforcement procedures in this chapter.

(B) The following county ordinances shall be enforced under the provisions of this chapter:

(1) The Umatilla County Comprehensive Plan including any city comprehensive plan co-adopted as part of the County Comprehensive Plan (adopted by reference in §151.02), and the Umatilla County Development Ordinance (Chapter 152).

(2) Any city zoning, development or land use ordinance co-adopted by the county pursuant to a Joint Management Agreement.

(3) The Umatilla County Solid Waste Ordinance (Chapter 50 of this code), to the extent that it is not enforced under specific enforcement procedures contained in Chapter 50.

(4) Burning permits (§§ 91.01 through 91.10)

(5) Smoke Management Ordinance.

(Ord. 90-01, passed 3-26-90; Am. Ord. 90-OIA, passed 6-19-91; Ord. 2000-08, passed 11-22-2000)

§38.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD. The Umatilla County Board of Commissioners.

ENFORCEMENT OFFICER. The person(s) appointed by the Board who may conduct investigations, issue stop work or stop use orders, issue citations, and generally initiate and prosecute enforcement actions under this chapter.

HEARING OFFICER. The person(s) officially appointed by the Board to conduct enforcement hearings under this chapter, or a Circuit Court Judge of Umatilla County.

PERSON. This term includes any public or private corporation, limited liability company, local governmental unit, public agency,

individual, partnership, association, firm, trust, estate or any other legal entity, contractor, subcontractor or combination thereof.

RESPONSIBLE PARTY/VIOLATOR. An owner, title holder, contract seller, contract buyer, possessor or user of the land upon which a violation is occurring, or the person responsible for the action, conduct, or omission which constitutes a violation, may each be held responsible for a violation of a county ordinance.

VIOLATION. Failure to comply with any provision or requirement of a county ordinance, order, permit approval, consent agreement, endorsement order or state statute which the county has the authority to enforce. (Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

ENFORCEMENT PROCEDURE

§38.05 INITIATION OF ENFORCEMENT ACTION.

(A) An enforcement action may be used to enforce any provision or requirement of a county ordinance, order, permit approval, consent agreement, endorsement order or state statute which the county has the authority to enforce.

(B) Enforcement procedures may be initiated by any of the following: any knowledgeable employee of the county (such as a Planner, County Commissioner, or Code Enforcement Officer); or the written complaint of any person. All enforcement actions shall be initiated by a written statement and filed with the Enforcement Officer. The statement must contain the following information:

- (1) The location or address where the

suspected violation occurs, and the date of the occurrence, if applicable;

(2) The name of the responsible party(s) (if known);

(3) A brief description of the nature of the suspected violation.

(C) Immediately upon receipt of the signed statement, the Enforcement Officer shall open an official enforcement file. The Enforcement Officer shall then investigate the facts contained in the statement, and if enforcement action is warranted, proceed with the enforcement process.

(Ord. 90-01, passed 3-26-90; Am. Ord. passed 7-27-94; Ord. 2000-08, passed 11-22-2000)

§38.06 ADMINISTRATIVE PROCEDURES

The Enforcement Officer (hereinafter “EO”) shall generally conform with the following in processing all enforcement complaints and actions:

(1) Intake and preliminary investigation:

(a) Signed, written complaint is received by EO.

(b) EO opens enforcement file.

(c) Preliminary EO investigation.

(d) Referral to other agency where appropriate.

(2) If problem/violation is resolved, referred or determined not to be a violation, EO notifies the responsible party(s) complainant. If resolution of the violation involves the filing of a permit application, further enforcement action shall be suspended pending completion of the permit process.

(3)The EO shall provide copies of all

stop work/use orders, warning notices, and citations to County Counsel.

(4) The setting of priorities among different complaints and enforcement actions shall be within the discretion of the EO, upon consultation with the county department(s) involved.

(5) If responsible party(s) is cited, or if a stop work/use order is issued, the EO shall notify complainant of the hearing date.

(Ord. 2000-08, passed 11-22-2000)

§38.07 INVESTIGATION AUTHORITY; ENTRY ON PREMISES.

Where authorized by statute or law or as a condition of permit approval, consent agreement, or agreed condition of a prior enforcement order, the Enforcement Officer shall have the power to enter upon and inspect, at any reasonable time, any public or private property, with the exception of a private residence, to investigate an alleged violation of county ordinance, order or permit approval, a violation of a statute which the county has the authority to enforce, or to ascertain compliance or noncompliance of this chapter.

(Ord. 2000-08, passed 11-22-2000)

§38.08 WARNING.

(A) *Warning optional.* A warning of a violation may be issued, at the discretion of the EO, based on one or more of the following circumstances:

(1) The gravity of the violation(s);

(2) The degree to which the violation(s) affects others;

(3) Whether the person in violation knew or reasonably should have

known that a condition or action is in violation of a Umatilla County ordinance;

- (4) Whether there is a history of previous violations or enforcement actions concerning the violator or the property in violation;
- (5) The presence or absence of other mitigating factors.

(B) *Warning notice.*

(1) The optional warning notice shall state the following:

(a) That unless steps are taken immediately to cure or correct the violation, or to contact the Enforcement Officer, a citation will be issued;

(b) A brief description of the violation alleged to exist;

(c) The ordinance and section(s) allegedly violated;

(d) The specific steps necessary to correct the violation;

(e) The date of the warning;

(f) The time within which correction or contact must be made;

(g) The potential penalties for the alleged violation(s); and

(h) The address and phone number at which the Enforcement Officer can be reached; and

(I) The signature of the Enforcement Officer.

(2) The warning notice shall be issued

on a form approved by Board order.

(C) *Service.* The warning shall be:

(1) Posted on the subject property; or

(2) Served upon the responsible party(s) either in person, by certified mail with return receipt, or by any form of mail for which a return receipt can be obtained.

(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.09 CONSENT AGREEMENT.

(A) *Contents.* The county and the responsible party(s) may enter into a consent agreement to abate the violation. The consent agreement shall specify any corrections necessary to bring the actions, conduct, omissions or property in violation into conformance with the applicable county ordinance(s). If the agreement is signed prior to the issuance of a citation, the consideration for the responsible party's performance is the suspension of further formal enforcement proceedings during the period of the agreement.

(B) *Signers.* The responsible party(s), or its attorney(s), if any, and the Enforcement Officer shall sign the consent agreement. If the agreement is entered after the issuance of a citation, the agreement must be approved and signed by the Hearing Officer.

(C) *Final adjudication.* A consent agreement entered after a citation is issued shall be considered a final adjudication of the action and dismissal of the action, shall be effective only upon agreed performance.

(D) *Violation of consent agreement.* Failure to comply with the consent agreement shall be considered a separate violation for which the

county may issue a separate citation and seek an additional penalty for each calendar day that the violation continues. In addition, the county may seek any other or additional remedies provided under this chapter or otherwise by law. (Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.10 STOP WORK OR STOP USE ORDER.

The Enforcement Officer, having reasonable grounds to believe that a person has committed a violation, in lieu of or in addition to issuing a citation, may issue a stop work or stop use order according to the provisions of this section.

(A) *Grounds for issuance.* A stop work or stop use order may be issued by the Enforcement Officer at any point in the enforcement process, if the violation observed is one which requires immediate remedial action:

- (1) To protect the public health, safety or welfare;
- (2) Because the responsible party refuses to cooperate with the Enforcement Officer; or
- (3) Because the violation continues despite notice to the responsible party(s) of the violation or notice to obtain a necessary permit.

(B) *Form.* A stop work or stop use order shall only be issued on a form approved by Board order.

(C) *Contents.* A stop work or stop use order shall be in writing and contain the following:

- (1) An order that all work or action in violation of county ordinance stop immediately;

- (2) The name of the person or entity to whom it is issued (if known);
- (3) The effective date of the order;
- (4) The date the order is issued;
- (5) The location or situs address of the violation;
- (6) The tax account identification number;
- (7) The specific sections of the county ordinance(s) violated;
- (8) A factual description of the nature of the violation;
- (9) The specific steps which the responsible party must take to cure the violation;
- (10) The name and signature of the Enforcement Officer; and
- (11) An address and phone number where the Enforcement Officer can be contacted.

(D) *Service.* A copy of a stop work or stop use order shall be posted on the property where the violation is occurring (hereinafter “subject property”) and personally served to the following:

- (1) All owners and contract purchasers of the subject property;
- (2) Any known lessees;

A copy shall also be sent certified mail with return receipt to the following:

- (1) The State Building Division;

(2) Any known contractors doing construction work on the subject property which would be in violation of county ordinance; and

(3) Any other person identifiable as a responsible party.

(E) *Hearing.* A stop work or stop use order shall be given priority for hearing, if a hearing is requested, over all other citations and be heard by the Hearing Officer on the next available hearing date.

(F) *Violation of order.* If the responsible party fails to obey the order, the Enforcement Officer shall promptly issue a citation for violation of a stop work or stop use order. Violation of a stop work or stop use order constitutes a separate violation.

(G) *Impact on other permits.* No building permit, sanitation permit, or other permit or license may be issued, or any work continued under such permits while a stop work or use order is in effect.

(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.11 CITATION, COMPLAINT AND SUMMONS.

(A) *Issuance.* The EO may issue a citation for any violation of the county code committed in the officer’s presence, or which the officer personally observes.

(B) *Court Jurisdiction.* The decision to issue a citation in circuit court will be in the discretion of the EO.

(C) *Format.* The format of the citation, complaint and summons form shall be established by Board order.

(D) *Content.* The citation be the uniform citation form for violations adopted by the Oregon Supreme Court, and consist of a complaint, summons, abstract of court record, and police record.

(E) *Complaint/Summons.* The complaint/summons shall at a minimum contain the following:

(1) The name(s) of the responsible party(s);

(2) The ordinance and sections violated;

(3) A brief summary of the facts constituting the violation;

(4) A statement of the potential penalties for the violation;

(5) The time and place set for appearance;

(6) A statement that failure to appear could result in an additional penalty up to the maximum amount of fines, assessments and other costs allowed by law, and a decision entered against them;

(7) The date of issuance;

(8) A statement certified by the EO that the EO has reasonable grounds to believe and does believe that the person named in the complaint committed the violation

(9) If applicable, the name of the Circuit Court, and the name of Umatilla County as plaintiff, and that a complaint will be filed with the court based on the violation.

(F) *Violation.* Except where otherwise prohibited by statute, each calendar date on which the violation occurs shall constitute a

separate violation. After a violation has been initially cited, a new citation for each calendar day need not be issued; rather, the Enforcement Officer may present evidence of repeated violations at the time of the hearing, and the Hearing Officer may consider such evidence to determine if multiple violations have occurred.

(G) *Potential penalty statement.* A statement of potential penalties on a notice, warning or citation shall not limit the amount or number of penalties which the Hearing Officer has the power to assess.

(H) *Multiple violations.* The prosecution of an individual violation shall not bar the subsequent prosecution of any additional violations which occurred at the same time or as part of the same act.

(I) *Service.* A copy of the citation, complaint and summons shall be delivered personally by a County employee.

(J) *Filing.* In addition to service on the responsible party(s) the EO shall also file one copy of the citation and complaint with the Hearing Officer or Umatilla County Circuit Court, one copy with County Counsel and one copy shall be placed in the enforcement file, within three days of completion of service. The citation, complaint and summons must be served a minimum of 7 days prior to the scheduled date of the hearing.
(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.12 ANSWER TO SUMMONS.

After the citation, complaint, and summons is served upon the responsible party(s), the party(s) must answer the summons according to this section.

(A) *Methods.*

(1) A person served with a summons shall answer the summons by one of the following methods:

(a) By personally appearing at the time and place specified in the summons for a hearing; or

(b) Make an appearance as otherwise provided by law.

(B) *Failure to appear.* If the person cited fails to either appear at the scheduled hearing, or otherwise appear, the Hearing Officer may assess an additional penalty for failure to appear according to the penalties established by Board order or law.

(C) *Order to Show Cause.* The county may also seek the Hearing Officer to issue an order to appear and show cause why the defendant should not be held in contempt. Service of the show cause order may be made by certified mail, return receipt requested.
(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§ 38.13 ADMINISTRATIVE WARRANT

(A) The County may obtain an administrative warrant for purposes of enforcing the Umatilla County Code of Ordinances.

(B) In addition to other methods provided in the Umatilla County Code of Ordinances, whenever a code enforcement officer requires entry to property for purposes of inspections pursuant to the Code or permit or the officer has probable cause to believe there has been a violation of the Code or that a nuisance or dangerous condition exists, the officer may

enter upon a site for the purpose of investigation if an administrative warrant is obtained. Unless unreasonable under the circumstances, a code enforcement officer shall seek to obtain the consent of the owner or person in charge of property to enter onto property before applying for an administrative warrant.

(C) An application for an administrative warrant shall be presented to a court of competent jurisdiction by County Counsel.

(1) The application shall be accompanied by a supporting affidavit containing the following, together with such other information as the court deems necessary, including:

(a) The nature of the warrant sought, and action sought to be authorized;

(b) The affiant's employment background, experience and authority;

(c) A description of the property sought to be entered onto;

(d) The Code provision, permit or other law alleged to have been violated or otherwise supporting issuance of the warrant together with facts, information and belief demonstrating cause for issuance of the administrative warrant; and

(e) A statement that consent to entry or other action has been sought but not obtained, or facts or circumstances reasonably showing the purpose of the warrant might be frustrated if consent was sought.

(D) The Umatilla County Circuit Court shall have jurisdiction to issue administrative warrants for service within the unincorporated areas of Umatilla County. An inspection

warrant shall be issued only upon cause, which shall be deemed to exist if there is probable cause to believe that a condition of nonconformity with the Umatilla County Code of Ordinances 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 the Ordinances.

(E) Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness to be satisfied of the existence of grounds for granting such application.

(F) 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 name and title of the person or persons authorized to execute the warrant, the place 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 the inspection warrant cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

(G) The person authorized by the court to execute a warrant shall, before entry, make a 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, except that the person authorized to execute the warrant may promptly enter the designated property if it is, or is reasonably believed to be, vacant or unoccupied and need not inform

anyone of the person’s authority and purpose.

(H) A peace officer may be requested to assist in the execution of the administrative warrant. Such officer may assist the person authorized to execute the warrant, including using any reasonable force necessary, to enter the property if the administrative warrant specifically allows the use of reasonable force to execute the warrant.

(I) An inspection warrant must be executed and returned to the judge by whom it was issued within 10 days from the date of issue, unless such judge before the expiration of such time, by endorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant is void unless executed
(Ord. 2023-09, passed 11-21-2023)

HEARING PROCEDURE

§38.15 SCHEDULE OF HEARINGS.

(A) *Frequency.* Enforcement hearings shall be scheduled as frequently as necessary to avoid undue delay in the enforcement process. All citations shall generally be scheduled for hearing within 60 days of the date of service on the responsible party(s), unless in the discretion of the Hearing Officer extraordinary or unusual circumstances exist which would justify a departure from the 60 day requirement. The Hearing Officer shall have the discretion to limit the number of hearings held on any given date; to reschedule a hearing to a different date certain; or to adjourn and continue a hearing to another date certain if the hearing cannot be concluded within a reasonable hour.

(B) *Stop work/use orders.* Hearings on stop work or use orders shall take priority over all other types of hearings. Such shall be held at the

request of a responsible party, and shall be scheduled on the next regularly scheduled hearing date unless otherwise requested by the responsible party. Hearings on stop work or use orders may be combined with other related enforcement hearing matters provided there is sufficient time to properly serve any citation prior to the hearing.

(C) *Continuances.* The Hearing Officer may continue a hearing to a date certain so that additional evidence may be made a part of the record. The date, place, and time when the hearing will reconvene shall be announced by the Hearing Officer. No additional notice of hearing need be given for a continued hearing, provided the new hearing date is announced at the scheduled hearing. If a date certain cannot be announced at the hearing, and all persons entitled to notice as of right, and all persons who request notification at the hearing, shall be provided with written notice of the continued hearing date at least 10 days before the hearing.

(D) *Postponements.* The Hearing Officer has the discretion to postpone a scheduled hearing to another date certain for good cause. The date of the postponed hearing shall be announced at proceedings on the date the original hearing was scheduled, unless all interested persons are notified before that date.

(E) *Recess.* The Hearing Officer has the discretion to recess a hearing for brief periods as circumstances or convenience dictate. The Hearing Officer also has the power to have any person removed or barred from the hearing room, or to adjourn the hearing if necessary, for disorderly, abusive or disruptive conduct.
(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.16 CONDUCT OF HEARINGS.

(A) The Hearing Officer shall preside over all enforcement hearings.

(B) Proceedings shall be tried to the Hearing Officer sitting without jury.

(C) Counsel for the defendant shall not be provided at public expense.

(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.17 RECORDING.

All enforcement hearings shall be tape recorded or otherwise reported. A separate tape need not be made of each case; rather all hearings conducted on a single date may be taped sequentially together. Each tape shall be numbered, marked with the date, and the case number and name for each hearing on the tape. Each tape shall also be clearly marked as side 1 or 2. If it is necessary to continue a hearing from one tape to another, the second tape shall be identified as a continuation of a hearing from the specific number of the prior tape. (Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.18 COMMENCEMENT OF HEARING.

The Hearing Officer shall announce the hearings scheduled to be heard and briefly summarize the hearing procedures. The Hearing Officer shall also announce at this time any hearings on the schedule which have been continued or postponed. (Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.19 EX PARTE CONTACTS.

After opening the record, the Hearing

Officer shall announce the substance of any ex parte contact with the Hearing Officer made prior to the hearing. A written report of such a contact shall be placed in the hearing file. Discussion with the Enforcement Officer about a specific case shall constitute an ex parte contact. General procedural questions or discussion with staff, Enforcement Officer or counsel, does not constitute ex parte contact. (Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.20 PRELIMINARY OBJECTIONS.

(A) Any objections concerning procedural irregularities, such as improper notice or service, or conflict of interest, shall be raised and considered immediately after the record is opened. A challenge to jurisdiction should also be raised at this time, although it may be made at any point in the proceeding.

(B) The Hearing Officer may take such objections under advisement, and make a ruling in writing after the hearing.

(1) *Notice/service.* Except in the case a private right of action under §38.40 of this chapter, the Hearing Officer has the discretion to reschedule rather than dismiss a hearing, upon a finding that notice or service does not conform to the requirements of this chapter. Notice shall not be deemed deficient for failure of any person to receive the notice, if the notice was properly sent.

(2) *Jurisdiction.* If the Hearing Officer lacks jurisdiction to consider a case, it shall be dismissed.

(3) *Conflicts of interest.* The Hearing Officer shall not preside over any hearing in which the Hearing Officer has a direct or substantial interest such as that described in

ORS 244.135. If a conflict is not discovered until the commencement of a hearing, the hearing shall either be continued to another date certain, or rescheduled with another Hearing Officer and new notice provided. If the conflict is anything other than is described in ORS. 244.135, upon full disclosure and agreement by all responsible parties and the Enforcement Officer or the complainant in a private right of action, the Hearing Officer has the discretion to proceed to hear the case.

(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.21 APPEARANCES.

(A) *Responsible party(s)*. All responsible parties summoned must appear at the scheduled hearing unless other arrangements have been made and approved by the Hearing Officer prior to the hearing date. If a responsible party fails to appear and to demonstrate good cause for such failure, that party shall be bound by the final decision of the Hearing Officer.

(B) *Enforcement Officer*. Except in a private right of action, the Enforcement Officer shall fill the role of prosecuting the county's action against the responsible party(s) for the violations cited. The Enforcement Officer is the primary witness on behalf of the county, and is responsible for presenting sufficient evidence to prove the violation(s) cited against the responsible party(s). The Enforcement Officer may call other witnesses and present all evidence on behalf of the county. The county may appear through the Enforcement Officer, and shall not be required to appear through County Counsel. County Counsel may appear if defendant is represented by counsel or on showing of good cause.

(C) *Complainant*. In a private right of action under §38.40 of this chapter, the complainant

shall be responsible for presenting sufficient evidence to prove the alleged violation(s) by the responsible party(s). If the complainant fails to appear without a good cause in such a case, the case shall be dismissed. The Enforcement Officer is not required to appear in a private right of action case.

(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.22 DEFAULT ORDER.

If a cited person fails to appear at the scheduled hearing, or to waive the hearing and file a written sworn statement, the Hearing Officer, upon an independent determination based on the record that a violation has occurred, may enter a decision in favor of the county and award to the county any scheduled penalties applicable to the violation(s) or costs authorized under §38.30 of this chapter.

(Ord. 90-01, passed 3-26-90)

§38.23 BURDEN OF PROOF.

The burden of proving that a violation(s) has occurred shall lie with the Enforcement Officer, or with the complainant in a private right of action, and shall be by a preponderance of the evidence.

(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.24 ORDER OF PRESENTATION.

(A) Evidence will generally be received in the following order:

(1) Testimony of Enforcement Officer and presentation of written Enforcement Officer report, including any exhibits; or, in a private right of action, testimony of complainant

including exhibits.

(2) Testimony including exhibits of any witnesses on behalf of Enforcement Officer or complainant;

(3) Testimony including exhibits of responsible party(s).

(4) Testimony including exhibits of any witnesses on behalf of responsible parties.

(5) After direct testimony by each witness, the opposing side, in the discretion of the Hearing Officer, may either directly question the witness, or present questions to the Hearing Officer to be asked of the witness. The Hearing Officer has the authority to directly question any witness.

(6) After all testimony is concluded, each side shall be entitled to make a brief summation.

(B) Enforcement hearings shall not be subject to the Oregon Rules of Civil Procedure. Procedure in enforcement hearings shall only be subject to the requirements of this chapter and state law, and the discretion of the Hearing Officer to apply the appropriate procedure and flexibility as needed to make complete findings and a proper disposition of the cases.

(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.25 REPRESENTATION BY COUNSEL.

The complainant, and any responsible party may be represented by counsel at the hearing. (Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.26 RULES OF EVIDENCE.

Enforcement hearings shall not be bound by any formal rules of evidence except as specified herein.

(A) *Oath or affirmation.* Other than legal argument presented by duly licensed Oregon attorneys, all testimony shall be taken under oath or affirmation. A witness giving oral testimony at the hearing will be sworn at the time the testimony is presented. Any testimony submitted in written form must be by sworn affidavit, administered by an official empowered to administer oaths, unless stipulated by all parties. Duly licensed Oregon attorneys may make legal argument without being sworn, so long as any facts on which the argument is based are supported by sworn oral testimony or written affidavit. Argument not based on sworn testimony or affidavit shall not be considered in reaching a decision.

(B) *Identification.* All persons appearing before the Hearing Officer shall initially state their full name, spell their last name, give their complete address, and state any representative capacity for the record. Any person claiming to represent an organization, including a business or corporation, may be required to present written authorization showing that the speaker is authorized by the organization to speak on its behalf.

(C) *Admissibility.* All evidence presented is the discretion of the Hearing Officer to exclude or limit any testimony or other evidence which is repetitious, irrelevant or immaterial. Objections to admission of evidence shall be noted in the record. Generally, objections will be considered with respect to the weight to be given to the particular evidence offered. The Hearing Officer shall have the discretion to reserve ruling on the admissibility or exclusion of such evidence until the time that the final order is issued.

(D) *Official notice.* The Hearing Officer may take official notice of the following without presentation of further evidence at the hearing:

(1) Facts which are judicially noticeable;

(2) Ordinances, resolutions, rules and regulations of the United States, the State of Oregon, Umatilla County, and of the incorporated cities within the county;

(3) Photostatic copies of public records submitted for the record, or citations thereto, which are not controverted, or true copies certified by the official public keeper of record.

(E) *View of subject properly.* The Hearing Officer shall have the discretion to inspect any property which is the subject of a public hearing. The Hearing Officer shall not visit the property with a party or their representative, unless all parties are afforded a reasonable opportunity to be present. If the Hearing Officer inspects a property, it shall be noted in the record.
(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.27 CLOSING THE RECORD.

Generally, the record will be closed at the conclusion of the hearing, unless the Hearing Officer has declared that the record will be held open to receive additional evidence, or to continue the hearing to a date certain. The Hearing Officer has the discretion to reopen the record if it is deemed necessary to receive additional evidence material to the case under consideration. If the Hearing Officer decides to reopen the record, another hearing must be scheduled and all participants at the original hearing must be provided written notice at least

10 days before the new hearing. Once the record is closed, except for the provisions for reopening above, no further evidence or testimony will be accepted or considered by the Hearing Officer.

(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.30 PENALTIES; ABATEMENT; COSTS;

(A) *Monetary Penalties.* Specific penalties for violations of county ordinances shall conform to the classification and schedule established by Board Order.

(B) *Base Amount.* The base monetary penalty for each separate violation found under this ordinance is \$500.00 for a non-continuing violation and \$1000.00 for a continuing violation.

(C) *Penalties.* Failure to correct the violation by the date ordered by the Hearings Officer will be an additional violation. Continued failure to correct the violation each week following the ordered date will be subject to the imposition of additional monetary penalties as follows:

- (1) \$200.00 per week for the first week;
- (2) \$300.00 per week for the second week;
- (3) \$400.00 per week for the third week;
- (4) \$500.00 per week for the any week beyond the third week.

(D) *Abatement.* Where a responsible party either fails or refuses to correct the violation within the time specified in the Hearing Officer’s order, in addition to other remedies provided by law, the county shall have the right to enter and clean up or abate the violation where authorized by statute, consent agreement,

permit approval, or an agreed condition of a prior enforcement action.

(E) *Costs recoverable.*

(1) If a violation of ordinance is found by the Hearing Officer, the violator may, in the discretion of the Hearing Officer and in addition to any penalties assessed, be ordered to pay the following:

(a) Any expenses of prosecution incurred by the county and authorized by Board order; and

(b) Any expenses incurred by the county to clean up or abate an ordinance violation.

(2) A complainant pursuing a private right of action under §38.40 of this chapter shall not be entitled to any recovery of costs or penalties assessed.

(Ord. 2000-08, passed 11-22-2000)

§38.31 FINAL DECISION; NOTICE.

(A) (1) *Written.* A decision of the Hearing Officer shall not be final and effective until issued in written form. The decision shall be dated and signed by the Hearing Officer. The decision shall be based solely upon evidence contained in the record.

(2) *Content.* The decision shall include the following:

(a) Identification of the persons cited and a specific finding of the responsible party(s);

(b) The specific violation(s) cited;

(c) A description of the proceedings,

including the date of the hearing;

(d) Specific findings of fact and conclusions for each violation cited;

(e) An order specifying the disposition of the case, including:

1. The imposition of any penalties and the basis thereof, and any costs awarded to the county;

2. Any suspension of penalty, the applicable time period, and any conditions of suspension;

3. Any requirement to obtain a permit or any other measure to correct any condition that contributed to the violation;

4. Any stop work or use order imposed by the Hearing Officer;

5. Revocation of an existing permit;

6. Any abatement requirements;

7. Any other specific conditions or requirements;

8. Whether it is a default order; or

9. A statement of dismissal and the reasons therefor.

(3) *Conditions.* The Hearing Officer has the authority in addition to any penalty, to impose any conditions or requirements which are authorized by statute or ordinance, including requiring the violator to obtain a permit; imposing a stop work or use order; revocation of an existing permit; imposing abatement requirements; adding conditions to an existing

permit; or suspending a penalty imposed, for a specific period not to exceed one year, pending the performance of certain specific conditions.

(B) *Notice of decision.* A copy of the decision of the Hearing Officer shall be sent to each responsible party and to the complainant. Copies shall also be provided to the Enforcement Office, and placed in the hearing file. In addition, a copy of the Hearing Officer decision shall be filed with the Office of County Records.
(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.32 RETURN OF EXHIBITS.

After the expiration of any applicable appeal period, an exhibit may be returned to the person who introduced the exhibit, or to that person’s agent, provided the return was requested prior to the expiration of the appeal period. If return is not requested, the exhibit may be destroyed after the expiration of all applicable appeal periods.
(Ord. 90-09, passed 5-2-90; Ord. 2000-08, passed 11-22-2000)

§38.33 LIENS.

Penalties and costs assessed against a violator(s) by order of the Hearing Officer shall be a judgment lien and if not paid within 60 days of the date of the order or as otherwise specified in the order, be county liens as provided under ORS 30.460 or as otherwise provided by statute, and are collectible in the same manner as other such debts owed to the county.
(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.34 APPEAL.

A decision of the Umatilla County Hearing Officer on an enforcement action must be appealed to the Circuit Court within 60 days of the date of the decision, in accordance with the requirements of ORS 34.010 through 34.100 for a writ or review. A decision of the Umatilla County Circuit Court is appealed as provided by state statute.
(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.35 DISPOSITION OF PENALTIES AND COSTS COLLECTED.

All penalties and costs received by the county under this chapter shall be credited to the department(s) performing the enforcement functions. (Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.40 PRIVATE ENFORCEMENT.

(A) Any person whose interest is or may be seriously affected by a violation of county ordinance authorized to be enforced under this chapter may, in addition to other remedies provided by law, prosecute an enforcement action.

(B) Such enforcement action shall be carried out in the following manner:

(1) *Complainants statement.* File a written, signed statement describing the alleged violation as provided in §§38.05 through 38.40. The statement must include the telephone number (if available) and address where the complainant can be contacted.

(2) *Tender of prosecution.*

(a) If the Enforcement Officer has taken no action within 60 days of the date the complainant's statement was filed, the complainant may prepare the standard citation, complaint and summons form as specified in §38.11 and present it to the Enforcement Officer. If the Enforcement Officer fails to act upon the complaint within 30 days, the complainant may submit the complaint to County Counsel.

(b) Within 15 business days, County Counsel shall notify the complainant in writing of the county's intent to either:

1. Initiate the enforcement procedure provided under this chapter; or
2. Decline to pursue an enforcement action.

(3) *Citation, complaint and summons.* If County Counsel refuses to proceed with the enforcement action, the complainant, within 60 days of the mailing date of notice from County Counsel, shall have the authority to bring an action against the alleged violator in the manner and form required of the Enforcement Officer in §38.11.

(4) *Dismissal.* If a citation, complaint and summons filed under this section does not meet the requirements of §38.11, the Hearing Officer shall dismiss the case.

(5) *Costs.* The complainant shall be responsible for all costs of investigation, prosecution, and required notice to the alleged violator. Should the complainant prevail, any penalty(s) or costs imposed shall be awarded to the county.

(6) *Harassment.* Under this section, if the Hearing Officer finds that the complaint is without merit and was initiated solely for the

purpose of harassment, the Hearing Officer has the authority and the discretion to dismiss the case.

(7) *Standing.*

(a) An interest which is or may be seriously affected by a violation is a question of fact to be determined by the Hearing Officer.

(b) The Hearing Officer's final decision shall contain a written finding concerning whether the interest of the complainant is seriously affected.

(c) If the Hearing Officer finds that a violation has occurred, the case may not be dismissed for lack of standing, except as provided in subdivision (4) of this division, and the Hearing Officer shall order the correction of the violation and may impose any applicable penalties.
(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

§38.41 REMEDIES

The remedies provided herein shall be in addition to any other remedies provided by law.
(Ord. 2000-08, passed 11-22-2000)

§38.42 RECORDS TO BE KEPT

All records of enforcement proceedings shall be permanent county records. All Hearing Officer enforcement orders, consent agreements and stop work or stop use orders shall be filed with the Office of County Records.
(Ord. 90-01, passed 3-26-90; Ord. 2000-08, passed 11-22-2000)

