

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS**  
Sitting/Acting as (if applicable)

**Policy Session Worksheet**

**Presentation Date:** June 12, 2024

**Approx. Start Time:** 1:30

**Approx. Length:** 1 hour

**Presentation Title:** Administrative warrants and other amendments to Chapter 7.01 – Vehicle Parking and Towing, and Chapter 2.07 – Compliance Hearings Officer

**Departments:** CCSO and County Counsel

**Presenters:** Scott Ciecko, Assistant County Counsel; Jesse Ashby, Undersheriff

**WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

Direction about whether to proceed with the proposed amendments to Chapter 7.01 and Chapter 2.07 of the County Code by bringing them before the Board for adoption at upcoming business meetings.

**EXECUTIVE SUMMARY:**

The proposed amendments focus on three primary issues:

(1) Nuisance Recreational Vehicles: Granting authority to the CCSO to request administrative warrants in Circuit Court, which would allow towing of RVs and campers parked in County rights of way that (a) are being lived in, (b) are refusing to move despite prior notice and outreach efforts, and (c) are causing health or safety impacts.

This update also includes a minor change to 7.01.120, regarding inventories of towed vehicles. The change is necessary because if/when RVs are towed, CCSO is required by law to inventory and list the vehicle's contents. This section must be updated to clarify that only valuables, weapons, and other items kept by the CCSO will be listed in the inventory report.

(2) Code Enforcement: Amending Chapter 2.07 to clarify that administrative warrants may be sought when necessary to investigate all types of code violations, as opposed to current language in the Code, which limits administrative warrants to investigation of marijuana offenses and chronic nuisance properties.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

**Is this item in your current budget?**       YES       NO

**What is the cost?** Proposed amendments are not expected to have significant financial implications.

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**What is the funding source?** If and when administrative warrants are sought and/or executed they will require staff time, and any related costs will come from department budgets and existing funding sources.

**STRATEGIC PLAN ALIGNMENT:**

- **How does this item align with your Department's Strategic Business Plan goals?**

As to the CCSO and DTD, which are the two departments that are primarily impacted by the proposal, the amendments align with department goals of fostering safe, livable communities.

- **How does this item align with the County's Performance Clackamas goals?**

The proposed Code amendments align with the County's Performance Clackamas goals of building public trust through good government and ensuring safe, healthy and secure communities.

**LEGAL/POLICY REQUIREMENTS:**

The legal requirements for adoption of the proposed amendments are approval by the Board at two business meetings at least thirteen (13) days apart, at which point the amendments shall take effect 90 days after the second approval, unless an emergency is declared and an earlier effective date is established by the Board.

Upon adoption by the Board, impacted departments may choose to adopt policies, procedures, and/or practices pertaining to implementation of the Code amendments.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

Numerous County departments have been consulted about the proposed amendments regarding administrative warrants for RVs, and department representatives have expressed support. Departments including CCSO, DTD, H3S, and the District Attorney's Office all support the amendments.

Although there has not been any specific public outreach on the proposed amendments, there has been consistent concerns expressed by residents about both occupied and abandoned RVs in the County. Additionally, County Staff has been engaged in a cooperative working relationship with several community partners including LoveOne and Clackamas Service Center, and will continue working closely with these and other community partners regarding the implementation of the proposed amendments.

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**OPTIONS:**

1. Direct staff to bring the proposed amendments before the Board for adoption at two business meetings not less than 13 days apart;
2. Direct staff to make changes to the proposed amendments and then bring them before the Board for adoption at two business meetings not less than 13 days apart; or
3. Direct staff not to move forward with the proposed amendments at this time.

**RECOMMENDATION:**

Staff respectfully recommends option number 1 above, that the Board direct staff to bring the proposed amendments before the Board for adoption at two business meetings not less than 13 days apart.

**ATTACHMENTS:**

Proposed Code amendments with additions shown by underline text and deletions shown by strikethrough are contained in Exhibits 1 and 2 hereto.

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_  
Department Director/Head Approval \_\_\_\_\_  
County Administrator Approval \_\_\_\_\_

*Jane E. Vetto*  
Digitally signed by Jane E. Vetto  
Date: 2024.06.04 16:40:50 -07'00'

For information on this issue or copies of attachments, please contact Scott Ciecko @ 503-655-8362

## Chapter 7.01

### 7.01 VEHICLE PARKING AND TOWING

#### 7.01.10 Definitions

This chapter incorporates the definitions set out in the Oregon Vehicle Code (ORS chapters 801 to 822), or elsewhere in Oregon statutes, except:

- A. AUTHORIZED OFFICER means the Sheriff, any Sheriffs Deputy, or any other person expressly authorized by the Clackamas County Sheriff to issue parking citations or order vehicles towed under this chapter.
- B. VEHICLE means every device in, upon, or by which any person or property is, or may be, transported or drawn upon any street or highway, and includes any hulk or component thereof, including, but not limited to campers, recreational vehicles, motor homes, pickup trucks, pickup truck canopies, and trailers, except devices:
  - 1. Designed to be moved exclusively by human power; or
  - 2. Designed to be used exclusively upon stationary rails or tracks.
- C. BOOT means a device placed over the wheel of a vehicle which prevents the vehicle from being moved.
- D. HEARINGS OFFICER means the Parking and Towing Hearings Officer designated to hold hearings, make decisions and act on behalf of the Board of County Commissioners in accordance with this chapter.
- E. LAW ENFORCEMENT OFFICER means any police officer, sheriff, sheriff's deputy, medical examiner, deputy medical examiner, or probation officer.
- F. THE SHERIFF means the Clackamas County Sheriff, or any of the Sheriff's deputies or any person appointed by the Sheriff pursuant to ORS 204.635. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]
- G. RESIDENTIAL AREA means an area zoned as an urban or rural residential district under section 300 of the Clackamas County Zoning and Development Ordinance. [Added by Ord. 02-2005, 8-17-05]
- H. COMMERCIAL AREA means an area zoned as a commercial district under section 500 of the Clackamas County Zoning and Development Ordinance. [Added by Ord. 02-2005, 8-17-05]
- I. INDUSTRIAL AREA means an area zoned as an industrial district under section 600 of the Clackamas County Zoning and Development Ordinance. [Added by Ord. 02-2005, 8-17-05]

#### 7.01.020 Parking Restrictions Enforceable by Citation and Fine

- A. No vehicle shall be parked, stopped, or left standing in violation of ORS 811.550 to 811.560, or 811.570 to 811.575.
  - B. No vehicle shall be parked upon any County roadway in a location within twelve feet of any mailbox used for pickup or delivery of the United States mail.
  - C. No trailer shall be parked upon any County highway unless it is attached to a motor vehicle by which it may be propelled or drawn. This paragraph shall not
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## Exhibit 1 - Page 2 of 14

- apply to trailers which are disabled to such an extent that the driver cannot avoid temporarily leaving the disabled trailer on the highway, provided that the trailer must be removed within seven days. This paragraph also shall not apply to trailers owned or operated under authority of the State or County when necessary to perform work on the roadway.
- D. No vehicle shall be parked upon any County highway in violation of “No Parking” signs or markings, where the Director of the Clackamas County Department of Transportation and Development, or designee, authorizes such signs or markings,
  - E. No vehicle shall be parked upon any County roadway adjacent to any yellow curb, where the Director of the Clackamas County Department of Transportation and Development, or designee, authorizes such curb.
  - F. No vehicle shall be parked upon any County roadway in a manner such that less than 18 feet of unobstructed roadway width is left available for the passage of other vehicles.
  - G. No vehicle shall be parked upon any County highway in a manner other than parallel to the roadway and facing in the direction of travel of the nearest travel lane unless specifically designated by signs or markings which are authorized by the Director of the Clackamas County Department of Transportation and Development, or designee.
  - H. No vehicle shall be parked in violation of ORS 811.615 (failure to display disabled parking permit), ORS 811.625 or 811.630 (unlawful use of disabled parking permit).
  - I. No vehicle shall be parked on any County highway for more than 72 hours without moving at least three vehicle lengths away.
  - J. No vehicle shall be parked where it is impeding or likely to impede the normal flow of vehicular, bicycle, or pedestrian traffic; where it is a hazard or is likely to be a hazard to vehicular, bicycle, or pedestrian traffic; or where it is obstructing the required width of a fire apparatus access road.
  - K. No vehicle shall be parked or operated on a highway when the vehicle registration as indicated by registration stickers or registration card has been expired for 90 days or more, the vehicle is required to be registered when operated on a highway, and the vehicle is parked or being operated on a County highway. [Codified by Ord. 05-2003, 7/13/00; Amended by Ord. 06-2003, 4/10/03]
  - L. No person shall use any vehicle or trailer to camp in or live in while parked upon a County roadway or highway in a residential area, commercial area, or industrial area. [Added by Ord. 02-2005, 5-19-05]

### **7.01.030 Person in Violation, Affirmative Defense**

- A. A person commits the violation of illegal parking, stopping, or standing if:
    - 1. The person parks, stops, or leaves standing a vehicle in a place where such action is prohibited by this chapter; or
    - 2. The person is the owner of an unattended vehicle parked in a place where such parking is prohibited by this chapter.
  - B. An authorized officer who finds a vehicle standing upon a highway in violation
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## Exhibit 1 - Page 3 of 14

of this chapter may move the vehicle, cause it to be moved, or require the driver or other person in charge of the vehicle to move it. The authority to take such action under this section is in addition to the authority granted under section 7.01.080.

- C. It is an affirmative defense to the prosecution of the owner of a vehicle under subsection A.2. of this section, that the owner did not authorize the use of the vehicle, either expressly or by implication.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.040 Citation**

- A. When any authorized officer finds a vehicle parked in violation of this chapter, the authorized officer may issue a citation to the owner or operator of the vehicle. The authorized officer issuing a citation shall:

1. If the operator is present, issue the citation to the operator; or
2. If the operator is not present, affix one copy of the citation to the vehicle and mail another copy to the owner(s) or other person(s) who reasonably appear to have an interest in the vehicle within 72 hours, Saturdays, Sundays, and holidays excluded. Additional citations shall not be issued for the same violation on the same vehicle unless at least 24 hours have passed since the previous citation.

- B. The citation shall contain the following information:

1. A description of the specific violation alleged;
2. The date, time and location of its occurrence;
3. The amount of the fine for the violation alleged;
4. That the fine must be paid or a hearing requested within 14 days, and that upon failure to do so within 14 days, opportunity for a hearing is forfeited, and the fine doubles;
5. A form for either admitting the violation alleged and paying the fine, or denying the violation alleged, paying the equivalent bail, and requesting a hearing;
6. The address to which the form should be sent; and
7. The telephone number of the person or facility which may be contacted for information.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.050 Fines**

- A. Fines in an amount set by resolution of the Board of County Commissioners shall be assessed for each violation of Section 7.01.020.
- B. Each fine or the equivalent bail must be paid within 14 days of the date the citation is issued or the fine shall be doubled.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 06-2003, 4/10/03]

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## Exhibit 1 - Page 4 of 14

### **7.01.060 Response to Citations**

Upon receiving a citation under this chapter, the vehicle owner(s) or operator may:

- A. Within 14 days, deliver to the Sheriff the form provided with the citation, admitting the violation(s), forfeiting and paying the amount of the fine(s) indicated on the citation; forfeiture may be made by mail but must be actually received by the Sheriff within 14 days from the date of the citation; or
- B. Within 14 days, deliver to the Sheriff the form provided with the citation, denying all or part of the violation(s), and posting bail by paying a refundable deposit equivalent to the amount of fine(s) indicated on the citation; response may be made by mail, but must be actually received by the Sheriff within 14 days from the date of the citation.

Upon receipt of a denial, the Sheriff's Department shall inform the Hearings Officer, who shall set a hearing within 30 days of the Sheriff's receipt of the denial and bail, and shall notify the vehicle owner(s) and any other person who reasonably appears to have an interest in the vehicle; notification of the hearing date, time and place shall be mailed within 15 days of the Sheriff's receipt of the denial and bail.

- C. Failure to perform any part of either subsection A or B, including failure to respond within 14 days, shall be presumed an admission of the violation(s) cited, and the fine(s) shall be doubled.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.070 Violation Hearing Procedure**

- A. The hearing shall afford a reasonable opportunity for the person(s) requesting it to present evidence that the citation was invalid or unjustified.
  - B. The Hearings Officer may administer oaths and take the testimony of witnesses. The Hearings Officer may issue subpoenas in accordance with Oregon Rules of Civil Procedure 55, provided that subpoena requests be received in writing no later than 5 days before the scheduled hearing. If the person charged with the violation(s) requests a subpoena, the person shall pay a deposit for each witness in an amount set by resolution of the Board of County Commissioners. Witnesses appearing by subpoena shall be allowed the same fees and mileage as allowed in civil cases in circuit court, to be paid by the person requesting the subpoena.
  - C. A person who receives a citation may be represented by an attorney or other person at any hearing, provided that in the case of representation by an attorney, the person gives written notice to the Hearings Officer two days prior to the hearing so that the County may, at its discretion, arrange for representation by an attorney on its behalf.
  - D. If the Hearings Officer, after due consideration, determines that the violation(s) alleged has been established, then the Hearings Officer shall issue a decision that the citation is valid and make brief findings of fact, and shall order the person cited to pay the appropriate fine to the County general Fund. The decision and order may be oral and issued at the conclusion of the hearing, but in all cases must be recorded in the record of the hearing. The Hearings Officer will also determine the amount of witness fees to be paid out of any deposit, or refunded.
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## Exhibit 1 - Page 5 of 14

E. The decision of the Hearings Officer is final.  
[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 06-2003, 4/10/03]

### **7.01.080 Towing Without Prior Notice**

The Sheriff may, without prior notice, order a vehicle towed when:

- A. Three or more parking citations have been issued for violations of sections 7.01.020 or 6.06.11, which have not been paid or contested within the time allowed by law;
  - B. The Sheriff has probable cause to believe that the vehicle operator is driving uninsured in violation of ORS 806.010;
  - C. The vehicle registration as indicated by registration stickers or registration card has been expired for 90 days or more, the vehicle is required to be registered when operated on a highway, and the vehicle is parked or being operated on a County highway;
  - D. The vehicle is parked on property owned, operated, or occupied by the County, other than highways or clearly designated public parking spaces, without express County permission;
  - E. A boot has been affixed to the vehicle for more than 10 days; fines, boot fee, or bail have not been fully paid, and a hearing has not been requested pursuant to section 7.01.160;
  - F. The Sheriff has probable cause to believe the vehicle is stolen;
  - G. The Sheriff has probable cause to believe that the vehicle or its contents constitute evidence of any offense, if such towing is reasonably necessary to obtain or preserve such evidence;
  - H. The vehicle was in possession of a person taken into custody by any law enforcement officer, and towing of the vehicle appears to the officer to be the most reasonable disposition of the vehicle which is available;
  - I. The vehicle alarm system disturbs, injures, or endangers the peace, quiet, comfort, repose, health or safety of the public or any person, if no other reasonable disposition of the vehicle can be made and the owner cannot be contacted by reasonable efforts;
  - J. The vehicle is impeding, or likely to impede, the normal flow of vehicular, bicycle, or pedestrian traffic; the vehicle or is a hazard or is likely to be a hazard to vehicular, bicycle, or pedestrian traffic; or the vehicle is obstructing the required width of a fire apparatus access road;
  - K. The vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane where parking is limited to designated classes of vehicles, or is prohibited in excess of a designated time period, or during certain hours, or on designated days, or is prohibited during a construction project defined by designated hours or days;
  - L. The Sheriff has probable cause to believe that the vehicle operator is driving while suspended or revoked in violation of ORS 811.175 or 811.182;
  - M. The Sheriff has probable cause to believe that the vehicle operator is operating a vehicle without driving privileges, or in violation of license restrictions, in violation of ORS 807.010;
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## Exhibit 1 - Page 6 of 14

- N. The Sheriff has probable cause to believe that the vehicle operator, at or just prior to the time the Sheriff stops them, is driving under the influence of intoxicants in violation of ORS 813.010;
- O. The Sheriff has probable cause to believe that the vehicle operator, at or just prior to the time the Sheriff stops them, is speed racing on a County highway, in violation of ORS 811.125;
- P. The vehicle is parked, stopped, or left standing in any County park area after the daily closing time and before the daily opening time, or in violation of any “No Parking” signs or markings authorized by the Park Supervisor, or otherwise in violation of the Clackamas County Park Rules Chapter;
- Q. The Sheriff has probable cause to believe the driver of the vehicle has been fleeing or attempting to elude a police officer (ORS 811.540), and the vehicle is abandoned by the driver; or
- R. The Sheriff has probable cause to believe the driver of the vehicle has failed to perform the duties of a driver when property damaged or persons injured (ORS 811.700 or 811.705), and the vehicle is abandoned by the driver.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03; Amended by Ord. 03-2022, 7/21/22]

### **7.01.090**      **Warrants**

When it is necessary to tow a vehicle or trailer from public property or right of way that reasonably appears to be currently occupied by a person or persons as their primary living quarters, the Sheriff’s Office may seek a judicial warrant in Clackamas County Circuit Court to obtain authorization to enter and remove the occupant(s), using reasonable force if necessary, so that the vehicle or trailer can be safely towed.

A. The affidavit in support of such a warrant shall be submitted in the same manner as a criminal search warrant, and shall include at least the following information:

1. The factual and legal basis justifying the tow;
2. The health, life, and safety impacts caused by the vehicle’s presence;
3. The prior efforts to persuade the vehicle’s owner(s)/occupant(s) to voluntarily move the vehicle and/or mitigate the impacts therefrom; and
4. The prior efforts to offer or provide social services to the vehicle’s owner(s)/occupant(s).

B. A warrant under this section is properly issued if the reviewing Court determines that there is probable cause to find that the vehicle or trailer is parked in violation of State or local law, and that removal of the occupant(s) and towing of the vehicle is reasonable under the totality of circumstances.

### **7.01.100**      **Reserved**

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06- 2003, 4/10/03]

### **7.01.110**      **Notice After Tow**

After a vehicle has been towed under this chapter, notice shall be provided as set forth in ORS 819.180, which provides as follows:

**“ORS 819.180 Notice after removal; method; contents.** (1) If an authority takes custody of a vehicle under ORS 819.120, the authority shall provide, by certified mail within 48 hours of the removal, written notice with an explanation of procedures available for obtaining a hearing under ORS 819.190 to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation. The notice shall state that the vehicle has been

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## Exhibit 1 - Page 7 of 14

taken into custody and shall give the location of the vehicle and describe procedures for the release of the vehicle and for obtaining a hearing under ORS 819.190. The 48-hour period under this subsection does not include holidays, Saturdays or Sundays.

“(2) Any notice given under this section after a vehicle is taken into custody and removed shall state all of the following:

“(a) That the vehicle has been taken into custody and removed, the identity of the appropriate authority that took the vehicle into custody and removed the vehicle and the statute, ordinance or rule under which the vehicle has been taken into custody and removed.

“(b) The location of the vehicle or the telephone number and address of the appropriate authority that will provide the information.

“(c) That the vehicle is subject to towing and storage charges, the amount of charges that have accrued to the date of the notice and the daily storage charges.

“(d) That the vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if the charges are not paid by a date specified by the appropriate authority.

“(e) That the owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested.

“(f) The time within which a hearing must be requested and the method for requesting a hearing.

“(g) That the vehicle and its contents may be immediately reclaimed by presentation to the appropriate authority of satisfactory proof of ownership or right to possession and either payment of the towing and storage charges or the deposit of cash security or a bond equal to the charges with the appropriate authority.”

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.120 Vehicle Inventory and Report**

- A. Every vehicle impounded by the Sheriff’s office shall have its contents inventoried as described herein, as soon as practical after impoundment is ordered. An inventory of an impounded vehicle is not a search for evidence of criminal activity. The purpose of the inventory is:
1. To protect private property located within impounded vehicles;
  2. To prevent or reduce the assertion of false or spurious claims for lost or stolen property; and,
  3. To protect people and property from any hazardous condition, material, or instrumentality that may be associated with an impounded vehicle.
- B. Areas of an impounded vehicle to be inventoried shall include:
1. The entire passenger compartment including but not limited to:
    - a. Any pockets or storage areas found on doors or seats;
    - b. Any console areas between seats or in the dash;
    - c. Under floor mats and under seats;
    - d. Any other areas that are part of the vehicle and designed to store items.
  2. Hatchback areas;
  3. Glove boxes;
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## Exhibit 1 - Page 8 of 14

4. Trunks;
  5. Car-top containers.
- C. Closed containers that are found within an impounded vehicle shall be inventoried as follows:
1. The following containers shall be opened and their contents inventoried:
    - a. Containers ~~normally used to carry~~ designed or likely to contain money and/or valuables. Examples include, but are not limited to; money bags, deposit bags, purses, coin purses, wallets, billfolds, money belts, fanny packs, briefcases, and computer cases;
    - b. Clear containers. This includes any container the content of which can be viewed in whole or in part without opening the container; and
    - c. Containers that appear to contain hazardous or other materials imminently harmful to persons or property.
  2. Where a container is not otherwise subject to being opened, the deputy shall seek consent to open the container to inventory its content and shall inquire if the container contains any valuables. If proper consent is obtained or if the container is identified as containing valuables it shall be opened and the contents inventoried. Otherwise the container shall be listed in the inventory as a container with a description of its outward appearance.
- D. Any locked compartment described in subsection B of this section or locked container subject to inventory under subsection C of this section shall be unlocked and inventoried if the keys are available and will be released with the vehicle to a third party towing company, or, an unlocking mechanism is located within the vehicle.
- E. Any non-evidence valuables and/or weapons found within an impounded vehicle shall be entered into an evidence locker for safe keeping unless returned to their owner.
- F. Reports to be completed by deputy:
1. Any items seized during an inventory (including; valuables, firearms, contraband, and evidence of criminal activity) shall be listed on a Property- In-Custody (PIC) report. A copy of the PIC report shall be given directly to the owner or operator of the vehicle, or, if such a person is not present, shall be left in a conspicuous place inside the vehicle and a copy shall be mailed to the registered owner of the vehicle.
  2. Regardless of whether any items are seized, a Property Evidence/Vehicle Inventory Report (PE/VI Report) shall be completed and signed by a deputy and given to the registered owner and to any other person(s) who reasonably appear(s) to have an interest in the vehicle. If no such person is present when the vehicle is towed, a copy of the report shall be left in a conspicuous place inside the vehicle and a copy shall be mailed to the registered owner of the vehicle. The PE/VI Report shall include:
    - a. The reason for the tow;
    - b. The name of the company towing the vehicle;
    - c. The name of the company or agency having custody of the vehicle for storage; and,
    - d. A list of ~~the contents of the vehicle~~ of any items seized as evidence
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and any valuables, weapons, or other items held by the Sheriff's Office for safekeeping; and-

- e. Responses to questions asked under subsection C(2).
- G. Severability. If any clause or provision within this code section is declared unconstitutional or invalid for any reason, the remaining portion of this section shall remain in full force and effect and be valid as if the invalid portion had not been incorporated herein.
- H. Nothing in this section shall be construed as limiting or restricting the authority of a deputy to engage in searches and seizures for purposes other than the inventory of impounded vehicles.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03; Amended by Ord. 06-2009, 12/18/08]

**7.01.130      Affixing Boot Without Prior Notice**

The Sheriff may, without prior notice, order a boot placed on a vehicle when:

- A. Three or more parking citations have been issued for violations of sections 7.01.020 or 6.06.11, which have not been paid or contested within the time allowed by law;
  - B. The Sheriff has probable cause to believe that the vehicle operator is driving uninsured in violation of ORS 806.010;
  - C. The vehicle registration as indicated by registration stickers or registration card has been expired for 90 days or more, the vehicle is required to be registered when operated on a highway, and the vehicle is parked or being operated on a County highway;
  - D. The vehicle is parked on property owned, operated or occupied by the County, other than highways or clearly designated public parking spaces, without express County permission;
  - E. The Sheriff has probable cause to believe the vehicle is stolen;
  - F. The vehicle is parked on any County highway for more than 72 hours without being moved at least three vehicle lengths away;
  - G. The vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane where parking is limited to designated classes of vehicles or is prohibited in excess of a designated time period, or during certain hours, or on designated days, or is prohibited during a construction project defined by designated hours or days;
  - H. The Sheriff has probable cause to believe that the vehicle operator, at or just prior to the time the Sheriff stops them, is speed racing on a highway, in violation of ORS 811.125;
  - I. The vehicle is parked, stopped, or left standing in any County park area after the daily closing time and before the daily opening time, or in violation of any "No Parking" signs or markings authorized by the Park Supervisor, or otherwise in violation of the Clackamas County Park Rules Chapter;
  - J. The vehicle is parked in violation of ORS 811.615 (failure to display disabled parking permit), ORS 811.625 or 811.630 (unlawful use of disabled parking permit);
  - K. The Sheriff has probable cause to believe the driver of the vehicle has been fleeing or attempting to elude a police officer (ORS 811.540), and the vehicle is abandoned by the driver; or
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## Exhibit 1 - Page 10 of 14

- L. The Sheriff has probable cause to believe the driver of the vehicle has failed to perform the duties of a driver when property damaged or persons injured (ORS 811. 700 or 811.705), and the vehicle is abandoned by the driver.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03; Amended by Ord. 03-2022, 7/21/22]

### **7.01.140 Notice After Affixing Boot**

- A. After a boot has been affixed to a vehicle pursuant to this chapter, notice will be provided to the registered owner(s) and any other person(s) who reasonably appear to have an interest in the vehicle. Notice shall be provided by:
1. Affixing a notice to the vehicle; and
  2. Mailing a notice to the registered owner(s) and any other person(s) who reasonably appear to have an interest in the vehicle within 72 hours (Saturdays, Sundays, and holidays excluded) after the boot is affixed.
- B. The affixed notice and mailed notice shall state:
1. That a boot has been affixed to the vehicle;
  2. The address and telephone number of the person or facility that may be contacted for information on the fines and fees that must be paid before the boot will be removed and the procedures for obtaining the removal of the boot;
  3. That the boot will not be removed until payment of a fee in an amount set by the Board of County Commissioners to offset the County's costs in applying the boot ("boot fee") plus any unpaid, outstanding fines (or the equivalent bail);
  4. That a hearing may be requested to contest the validity of the placement of the boot; and the method of requesting a hearing, including the time within which a hearing must be requested; and
  5. That all fines and fees, or bail, must be paid, or a hearing requested, within 9 days after the boot is affixed, or the vehicle will be subject to tow.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 062-2003, 4/10/03]

### **7.01.150 Unidentifiable Vehicle**

A notice otherwise required by this chapter is not required when:

- A. A vehicle required by law to display license plates does not display license plates, or displays plates registered to a vehicle not matching the subject vehicle, and the vehicle identification number is not visible or does not indicate the ownership of the vehicle after inquiry to the Oregon Motor Vehicles Division records; or
- B. The owner of the vehicle, or other person(s) with an interest in the vehicle, cannot be determined after inquiry to the licensing and registration agency of the state from which the license plates originate.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.160 Request for Hearing**

- A. Any person who has an interest in a vehicle subject to towing or booting under this chapter may request a hearing to contest the validity of the towing or booting.
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## Exhibit 1 - Page 11 of 14

Any such person may also request a hearing to contest the reasonableness of the towing or storage charges, unless the person, or the owner, specifically requested the tow or storage company used.

- B. The request for hearing must be in writing and must state the grounds upon which the person requesting the hearing believes the tow (or boot) to be invalid. The request for hearing must also contain such other information relating to the purposes of this chapter as the Hearings Officer may require.
- C. Such a request for hearing must be received by the Sheriff's Department within the following number of days:
  - 1. If the hearing is to contest a citation, within 14 days from the issuance of the citation;
  - 2. If the hearing is to contest a tow without prior notice, within 14 days of the tow;
  - 3. If the vehicle has been booted, within 9 days of the date the vehicle was booted.
- D. The Hearings Officer will set and conduct an administrative hearing on the matter within 72 hours of receipt of a timely request for hearing (not including Saturdays, Sundays, or holidays), except in cases where the vehicle is not in custody because it has not yet been towed or has been reclaimed from the tow company. In such cases, the hearing will be set and conducted within 14 days of the date re request for hearing is received (excluding Saturdays, Sundays and holidays).

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.170 Hearing**

- A. Tow hearings shall afford a reasonable opportunity for the person(s) requesting them to demonstrate, by the statements of witnesses and other evidence, that the tow or placement of a boot is invalid, or that the towing or storage charges are unreasonable where the company was not specifically requested by the person or the owner.
- B. The towing and storage charges shall be presumed reasonable.
- C. The County shall have the burden of showing that the tow, or proposed tow, or the placement of the boot, was or would be, valid.
- D. The Office of the Parking and Towing Hearings Officer is hereby established. The Hearings Officer shall hold hearings on cases of disputed citations and tows, and act on behalf of the Board of County Commissioners in accordance with this chapter. The Hearings Officer shall be appointed by the Board of County Commissioners and serve at its pleasure. The Hearings Officer may establish necessary rules and regulations regarding the conduct of such hearings, consistent with this section.
- E. The decision of the Hearings Officer is the County's final decision.
- F. The owner(s) and any other person(s) who have an interest in the vehicle are entitled to only one hearing for each seizure of that vehicle.
- G. If the person requesting a hearing fails to appear at the hearing, the Hearings Officer may enter an order finding the tow or boot to be valid, and assessing towing and storage charges against the owner.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

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## Exhibit 1 - Page 12 of 14

### **7.01.180 When Tow or Boot Found Invalid**

If the Hearings Officer finds the tow or boot was, or would be invalid, the Hearings Officer shall order:

- A. That the vehicle immediately be released if already towed, and any money paid by the person requesting the hearing for tow and storage charges to be returned to that person;
  - B. That the vehicle not be towed if it has not yet been towed; or
  - C. That the boot be removed from the vehicle if a boot has been affixed, and the boot fee waived; and
  - D. That appropriate disposition is made of any bail, which has been posted.
- [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.190 Reserved [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]**

### **7.01.200 When Tow or Boot Found Valid**

If the Hearings officer finds the tow or boot to be valid, the Hearings Officer shall:

- A. Assess the amount of the fine under this chapter;
  - B. If the vehicle is still booted or held, order that it continue to be booted or towed to storage or held until all charges, fines, and fees have been paid, or until County ordinances or State statutes allow for further disposition or sale;
  - C. If the vehicle is subject to towing after prior notice, order the vehicle to be towed and impounded until all fines, fees and charges have been paid, or until ordinances and statutes allow for other disposition; and
  - D. Order appropriate disposition of any bail, which has been posted.
- [Codified by Ord. 05-2003, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

### **7.01.210 Payment of Towing Charges; Reasonableness**

- A. If the Hearings Officer finds the towing or booting was valid, or if the validity of the tow cannot be challenged because prior notice was given and no hearing was requested in a timely manner, they shall determine whether the towing and storage charges are reasonable, and order that the towing and storage charges be paid:
  - 1. By the person requesting a hearing, or other person claiming possession of the vehicle, to the extent the charges are reasonable; and
  - 2. By the County or the tow company to the extent the charges are unreasonable.
- B. If the Hearings Officer finds the towing or booting was invalid, they shall determine whether the towing and storage charges are reasonable, and order that the towing and storage charges be paid by the County or the towing company.
- C. The Hearings Officer shall not order that the towing or storage charges be paid by the County in any case where the State Police have ordered the vehicle towed and

## Exhibit 1 - Page 13 of 14

then transferred authority over the vehicle to the County under ORS 819.140 (1)(a).

- D. Payments already made to tow or to storage companies may be offset or reimbursed in appropriate cases.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03; Amended by Ord. 03-2022, 7/21/22]

### **7.01.220 Lien for Towing Charges; Release of Vehicle**

- A. Any person who tows or stores any vehicle pursuant to this chapter shall have a lien on the vehicle and its contents, in accordance with ORS 87.152, for the just and reasonable charges for the tow and storage services performed. The person may retain possession of the vehicle, consistent with law, until towing and storage charges have been paid.
- B. A towed or booted vehicle and its contents must be immediately released to the person(s) entitled to lawful possession once the following obligations are satisfied:
1. Payment of towing and storage charges;
  2. Payment of outstanding fees, fines or the equivalent bail (including but not limited to fines under chapter 6.06 and 7.01);
  3. Proof of liability insurance covering the vehicle, if the vehicle was towed for the operator's failure to have liability insurance;
  4. Proof of registration, if the vehicle was towed for expired registration;
  5. Proof of ownership, a valid driver's license, and liability insurance covering the vehicle, if the vehicle is towed for any of the following:
    - a. Driving while suspended or revoked;
    - b. Driving without driving privileges or in violation of license restrictions;
    - c. Driving under the influence of intoxicants;
    - d. Speed racing on highway;
    - e. Fleeing or attempting to elude a police officer; or
    - f. Failure to perform the duties of a driver; and
  6. A release by the responsible officials of the Sheriff's Office or District Attorney's Office of a vehicle impounded as evidence, when it is no longer needed as evidence.
- C. If towing and storage charges and outstanding fees, fines, or the equivalent bail have not been paid, a vehicle will not be released, except upon order of the Hearings Officer.
- D. A vehicle towed or booted pursuant to this chapter may only be released to the owner, or to the person who was lawfully in possession or control of the vehicle at the time it was towed or booted, or to a person who purchased it from the owner and who produces written proof of ownership. In all cases, adequate evidence of the right to possession of the vehicle must be presented prior to release.
- E. If a vehicle has been towed by order of the Sheriff, or if authority over a towed vehicle has been transferred to the Sheriff, the person claiming the vehicle shall pay to the Sheriff's Department an administrative fee in an amount set by
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## Exhibit 1 - Page 14 of 14

resolution of the Board of County Commissioners in order to obtain release of the vehicle.

- F. If a vehicle has been towed for driving uninsured, driving while suspended or revoked, driving without driving privileges or in violation of license restrictions, or for violation of ORS 809.715 or 809.720, the person claiming the vehicle shall pay to the Sheriff's Department an administrative fee in an amount set by resolution of the Board of County Commissioners in order to obtain release of the vehicle.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3/13/03; Amended by Ord. 06-2003, 4/10/03]

### **7.01.230 Sale of Vehicle**

- A. Any vehicle that is not reclaimed within the time allowed by law may be sold, provided however that if a hearing or decision of the Hearings Officer is pending, the vehicle shall not be sold until 7 days after a decision is rendered. The contents of any vehicle are subject to the same conditions of sale as the vehicle in which they were found. A vehicle is not "reclaimed" until the owner(s) or other person(s) entitled to possession of the vehicle has fully paid all required fines, fees, and charges, and provided such other documentation as is required under this chapter.
- B. Vehicles to be sold shall be sold:
1. At public auction in the manner provided in ORS 87.172 to 87.206 (60 days to reclaim); or
  2. Vehicles appraised at a value of \$1,000 or less, may be sold under the provisions of ORS 819.220 (15 days to reclaim); or
  3. Abandoned vehicles appraised at a value of \$500 or less, may be disposed of as provided in ORS 819.215 (15 days to reclaim).
- C. The proceeds of such sale or disposition will be first applied to payment of the cost of such sale and expense incurred in the preservation and custody of such vehicles and the balance, if any, will be credited to the General Fund of the County.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2003, 4/10/03]

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## Chapter 2.07

### 2.07 COMPLIANCE HEARINGS OFFICER

#### **2.07.010 Philosophy and Purpose**

Clackamas County's philosophy on code enforcement is to first take the approach of voluntary compliance and use an enforcement approach only as a last resort. To implement this philosophy, a protocol has been developed as the basis for the enforcement of the code. The approach is to develop solutions based on individual situations and provide broad-based public education. The assumption of the Board of Commissioners is that education regarding the requirements of our codes will solve most issues and our public contacts will include an understanding and helpful approach to resolving potential enforcement issues.

The purpose of this chapter is to implement this philosophy and provide the prompt, effective, and efficient enforcement of the Clackamas County Zoning and Development Ordinance and the following chapters of this code: the Clackamas County Solid Waste and Waste Management chapter, the Application and Enforcement of the Clackamas County Building Code chapter, specifically including all administrative rules and referenced provisions of Section 9.02.040 of that chapter, the Noise Control chapter, the Excavation and Grading chapter, the Road Use chapter, and the Abatement of Dangerous Buildings chapter, Chronic Nuisance chapter, the Graffiti chapter and the Short-Term Rental chapter. The Office of Compliance Hearings Officer is hereby created. The Compliance Hearings Officer shall act on behalf of the Board of County Commissioners ("BCC") in considering and applying regulatory enactments and policies set forth in this chapter. The Compliance Hearings Officer shall be appointed by the BCC to serve at the pleasure of, and shall be paid a fee for service fixed by, the BCC.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 06-2000, 10/12/00; Amended by Ord. 4-2003, 3/13/03; Amended by Ord. 07-2008, 12/18/08; Amended by Ord. 04-2016, 9/22/16; Amended by Ord. 08-2020, 10/1/20; Amended by Ord. 09-2020, 11/25/20; Amended by Ord. 03-2022, 7/21/22]

#### **2.07.020 Jurisdiction Of Compliance Hearings Officer**

The Compliance Hearings Officer shall have jurisdiction and authority to enforce the chapters cited in Section 2.07.010. In cases filed by the County with the Hearings Officer, the Hearings Officer's decision shall be the County's final determination. Judicial review of the Hearing Officer's decision may be sought before the Clackamas County Circuit Court as provided by Section 2.07.130.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 42003, 3/13/03]

#### **2.07.030 Process for Enforcement of Code**

A. Review of Reports - Sufficiency

## Exhibit 2 - Page 2 of 10

1. Allegation Letter. When an alleged violation is reported to the County, staff shall evaluate the complaint and conduct a preliminary investigation to identify the priority level, established by policy of the BCC, into which the violation falls. Staff shall inform the respondent by letter of the allegation and the code sections that are alleged to be violated.
  2. Sufficiency of Evidence. The County shall not proceed further with the matter if it is determined that there is not sufficient evidence to support the allegation, or if the County determines that the investigation finds that the alleged violation is not of a priority to be enforced consistent with policy determined by the BCC. [Added by Ord. 4-2003, 3/13/03; Amended by Ord. 03-2022, 7/21/22]
  3. Violation Letter. Once a violation is verified by the County, staff shall prepare and send a letter to respondent that identifies the code sections violated, the priority of the violation and that the Administrative Compliance fee described in section E below will be imposed. [Added by Ord. 03-2022, 7/21/22]
- B. Voluntary Compliance Agreement.
1. The County may enter into a written voluntary compliance agreement with respondent before or after a citation is issued. The agreement shall include the required corrective action, time limits for compliance and shall be binding.
  2. The fact that a person alleged to have committed a violation enters into a voluntary compliance agreement shall not be considered an admission of having committed the violation for any purpose.
  3. The County will delay further processing of the alleged violation during the time allowed in the voluntary compliance agreement for the completion of the required corrective action. The County shall take no further action concerning the alleged violation if all terms of the voluntary compliance agreement are satisfied, other than steps necessary to terminate the proceedings against respondent. [Added by Ord. 4-2003, 3/13/03]
- C. Failure to Comply with Voluntary Compliance Agreement. Failure to comply with any term of the voluntary compliance agreement constitutes a separate violation, and shall be handled in accordance with the procedures established by this chapter, except no further notice after the voluntary compliance agreement has been signed need be given before further enforcement proceedings are initiated. The County may also proceed on the alleged violation that gave rise to the voluntary compliance agreement. [Added by Ord. 4-2003, 3/13/03]
- D. Citation and Forfeiture; Abatement Requirements.
1. The County may issue respondent a citation, other than in enforcement of the Clackamas County Building Code, for committing the violation and may require the respondent to abate the violation and/or enter into a voluntary compliance agreement within a specified time period. The citation shall contain the same information required to be included in the complaint by section 2.07.040, and the forfeiture amount to be paid as a result of committing the violation. [Amended by Ord. 03-2022, 7/21/22]
  2. Respondent may admit the existence of a violation by paying the forfeiture amount and correcting the violation. Payment of the forfeiture does not relieve respondent of the requirement to correct the violation. If the violation is disputed,

## Exhibit 2 - Page 3 of 10

respondent may request a hearing before the Compliance Hearings Officer, as described in this chapter.

3. Citations may be served by first class U.S. Mail, by personal service on respondent, or by attaching the citation in a secure manner to the main entrance to that portion of the premises of which the respondent has possession.

[Amended by Ord. 01-2020, 1/9/20]

1. The County, in its discretion, may proceed directly into the state court system in any matter to secure compliance with the requirements of this Code. [Added by Ord. 4-2003, 3/13/03]
2. The forfeiture amount of the Citation shall be set by ordinance of the BCC and found in Appendix B to this code. The issuance of the Citation and forfeiture amount may be challenged in the manner described in 2.07.040. The County, in its discretion, may waive all or some of the citation forfeiture amount if respondent(s) promptly and voluntarily abate all violations identified on the property. [Added by Ord. 03-2022, 7/21/22]

### E. Administrative Compliance Fee

Beginning on the date when the County establishes probable cause that a violation exists, it may assess respondent(s) an administrative compliance fee every thirty days, or fraction thereof, until the violation is confirmed to be abated by the County. The County may request that the Compliance Hearings Officer provide that any Order issued include the fees assessed and unpaid at the time the Order is issued, and any Order may provide that the fee continue to be imposed until the violation is confirmed to be abated by the County. The administrative fee shall be set by resolution of the Board of County Commissioners and found in Appendix A to this code. Assessment of this fee may be challenged in the manner described in 2.07.040. The County, in its discretion, may waive all or some of the assessed administrative compliance fees if respondent(s) promptly and voluntarily abate all violations identified on the property. [Added by Ord. 02-2013, 6/6/13; Amended by Ord. 03-2022, 7/21/22]

### F. Immediate Remedial Action

If the County determines that the alleged violation presents an immediate danger to the public health, safety or welfare, the County may require immediate remedial action. If the County is unable to serve a citation on the respondent or, if after such service the respondent refuses or is unable to remedy the violation, the County may proceed to remedy the violation by any means available under law. [Added by Ord. 4-2003, 3/13/03; renumbered by Ord. 02-2013, 6/6/13]

### G. Administrative Warrants

The County is authorized to enter and inspect property believed to be operating in violation of County Code provisions subject to this Chapter. The Board of County Commissioners has made a policy decision to ~~limit the scope and application of~~ allow staff to seek, obtain, and execute administrative warrants ~~to those situations involving marijuana related operations or those properties considered to be chronic nuisances as set forth in Chapter 6.08 of this Code in Circuit Court when there is a reasonable suspicion to believe that a violation of the Clackamas County Code is occurring, and it is necessary to investigate and/or inspect premises despite the owner(s) and/or occupant(s) refusing to~~

allow inspection. In order to obtain an administrative warrant, the County will proceed as follows:

1. Prepare an affidavit in support of request for administrative warrant. The affidavit should describe the purpose for the inspection or search and explain why the warrant is necessary. The warrant should describe the property to be inspected, the manner of the inspection, and the timeframe for conducting the inspection.
2. Present the reviewing eCircuit eCourt judge with the affidavit and warrant.
3. If the judge signs the warrant, make a copy and take both the original and copy of the warrant to the property to be entered to execute the warrant.
4. County representatives shall be accompanied by a sworn member of the Sheriff's Office during warrant execution.
5. Upon arrival at the premises to be inspected, the County representative authorized to execute the warrant should tell the resident or person in apparent control their identity, authority, and purpose for being there.
6. The person executing the warrant should read the warrant out loud and give a copy of the warrant to the person in apparent control of the property. On the original warrant, note the date and time of entry onto the property and sign.
7. If the property is unoccupied or there is no one in apparent control, the person executing the warrant should post a copy of the warrant on the property, note on the posted warrant the date and time of entry, and sign the note.
8. Make copies of the original executed warrant for the County's file.
9. After execution, return the original warrant to the issuing judge along with a Return of Administrative Warrant.

[Subsection G added by Ord. 04-2016, 9/22/16; Amended by Ord. 03-2022, 7/21/22]

#### **2.07.040 Request For Hearing/Initiation of Proceedings**

- A. Respondent may initiate a proceeding before the Compliance Hearings Officer by providing a written request for a hearing. If a request for a hearing is filed, the County shall file a complaint with the Compliance Hearings Officer. The County may, for any violation, file a complaint with the Compliance Hearings Officer before or after a citation is issued. The complaint shall contain the following: name and address of respondent (s); address or location of the alleged violation; nature of violation, including ordinance provision, County Code provisions, statute or administrative rules section violated; relief sought; and department initiating procedure. Employees of the County's Department of Transportation and Development are authorized to sign and file complaints on behalf of the County.
- B. In a case in which a citation has been issued and the respondent does not wish to contest the existence of the violation and there is economic or financial hardship, respondent may appeal only the forfeiture amount imposed by the citation by initiating a proceeding before the Compliance Hearings Officer. The only issue before the Compliance Hearings Officer in such a proceeding is whether the respondent establishes sufficient economic or financial hardship to justify reduction of the forfeiture amount.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

## Exhibit 2 - Page 5 of 10

### **2.07.050 Notice of Hearing**

- A. The notice shall contain a statement of the time, date, and place of the hearing. A copy of the Complaint and the Statement of Rights described in Section 2.07.060 shall be attached to the notice. Notice shall be mailed or delivered at least 15 days prior to the hearing date.
- B. The County shall cause notice of the hearing to be given to the respondent(s) by:
  - i. First Class U.S. Mail; or,
  - ii. Personal service; or
  - iii. Attaching the hearing notice in a secure manner to the main entrance to that portion of the premises of which the respondent has possession.
- C. Notice may be delivered to the property or to the mailing address of the owner of the property as listed on the County tax roll. Notice is considered complete on the date of personal delivery or upon deposit in the U.S. mail.
- D. The Compliance Hearings Officer shall disregard technical deficiencies in notice provided the Compliance Hearings Officer finds that the respondent received actual notice in advance of the hearing.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03; Amended by Ord. 01-2020, 1/9/20]

### **2.07.060 Statement of Rights**

- A. The Compliance Hearings Officer shall inform each party in writing of the following matters:
  - 1. A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens of production of evidence;
  - 2. That a record shall be made of the proceedings and the manner of making the record and its availability to the parties;
  - 3. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the order of the Compliance Hearings Officer;
  - 4. Whether an attorney will represent the County in the matters to be heard and the respondent's right to be represented by an attorney at their expense;
  - 5. The title and function of the Compliance Hearings Officer, including the effect and authority of the Compliance Hearings Officer's determination; and,
  - 6. That the decision of the Compliance Hearings Officer may be appealed as described in Section 2.07.130, and that the appellant shall pay all costs of the appeal including costs for preparation of a transcript.
- B. The failure to give notice of any item specified in Subsection A of this Section shall not invalidate any order of the Compliance Hearings Officer unless on review a court finds that the failure affects the substantive rights of one of the parties. In the event of such a finding, the court shall remand the matter to the Compliance Hearings Officer for a

## Exhibit 2 - Page 6 of 10

reopening of the hearing and shall direct the Compliance Hearings Officer as to what steps shall be taken to remedy any prejudice to the rights of any party.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

### **2.07.070 Procedure In Compliance Hearings**

- A. Hearings to determine whether a violation has occurred shall be held before the Compliance Hearings Officer. The County must prove the violation alleged by a preponderance of the admissible evidence.
- B. Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing, by stipulation, consent order, agreed settlement, or default.
- C. A Party may elect to be represented by counsel at their own expense and to respond to and present evidence and argument on all issues involved.
- D. A Party may request that a hearing be held telephonically. The Compliance Hearings Officer has the discretion to grant or deny a request for a telephonic hearing for any reason.
- E. A Party may request that an appeal to the Compliance Hearings Officer be conducted solely based on written submissions by the parties, without a hearing. The Compliance Hearings Officer may grant a request for appeal based only on written submissions if, and only if, all parties agree in writing to waive a hearing and to proceed through written submission only.
- F. An order adverse to a party may be issued upon default only upon a prima facie case made on the record before the Compliance Hearings Officer.
- G. Testimony shall be taken upon oath or affirmation of the witness. The Compliance Hearings Officer may administer oaths or affirmations to witnesses.
- H. The Compliance Hearings Officer shall issue subpoenas to any party upon showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the County, shall receive fees and mileage as prescribed by law for witnesses in civil actions from the party requesting their testimony. Any party requesting the issuance of a subpoena shall pay applicable fees and mileage at the time the issuance of a subpoena is requested.
- I. If any person fails to comply with any subpoena so issued, or any party or witness refuses to testify on any matters on which he/she may be lawfully interrogated, a judge of the Circuit Court for Clackamas County, on the application of the Compliance Hearings Officer, or of the party requesting the issuance of the subpoena, may compel obedience by proceedings for Contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.
- J. The Compliance Hearings Officer shall place on the record a statement of the substance of any written or oral ex parte communications made to the Compliance Hearings Officer on a fact in issue during the pendency of the proceedings. The Compliance Hearings Officer shall notify the parties of the communication and of their right to rebut such communications.
- K. The record of the case shall include:
  - 1. All pleadings, motions, and intermediate rulings;
  - 2. Evidence received;

## Exhibit 2 - Page 7 of 10

3. Stipulations;
  4. A statement of matters officially noticed;
  5. Questions and offers of proof, objections, and ruling thereon;
  6. A statement of any ex parte communications on a fact in issue made to the Compliance Hearings Officer during the pendency of the proceedings;
  7. Proposed findings and exceptions; and
  8. The final order prepared by the Compliance Hearings Officer.
- L. A verbatim, written or mechanical record shall be made on all motions, rulings, and testimony. The record need not be transcribed unless requested for purposes of court review. The Compliance Hearings Officer shall charge the party requesting transcription the cost of transcription in advance. Failure to pay the transcription fees shall constitute a separate ground for denial of review of the decision of the Hearings Officer.
- M. Enforcement proceedings before the Compliance Hearings Officer shall be conducted in accordance with the procedure set forth in this Chapter. The Compliance Hearings Officer may promulgate reasonable rules and regulations, not inconsistent with this Chapter, concerning procedure and the conduct of hearings.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

### **2.07.080 Presentation of Evidence**

- A. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Erroneous rulings on evidence shall not preclude action by the Compliance Hearings Officer unless shown on the record to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Compliance Hearings Officer shall give effect to the rules of privilege recognized by law.
- B. All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in Subsection D of this Section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.
- C. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.
- D. The Compliance Hearings Officer may take notice of judicially recognizable facts, and the Compliance Hearings Officer may take official notice of general, technical, or scientific facts within the specialized knowledge of County employees. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/3/03]

### **2.07.090 Powers Of The Compliance Hearings Officer**



## Exhibit 2 - Page 8 of 10

- A. The Compliance Hearings Officer shall order a party found in violation to comply within such time as the Compliance Hearings Officer may by order allow. The order may require such party to do any and all of the following:
1. Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
  2. Obtain any and all necessary permits, inspections and approvals;
  3. Order compliance as appropriate under the State Building Code, as defined in ORS 455.010(8);
  4. Install any equipment necessary to achieve compliance;
  5. Pay to Clackamas County a civil penalty, the amount of which shall be determined by the Compliance Hearings Officer within the range established by the Board of County Commissioners pursuant to Section 2.07.120;
  6. Reimburse Clackamas County for actual costs incurred in conjunction with the enforcement action;
  7. Pay the administrative compliance fee described in Section 2.07.030(E);
  8. Order the eviction of any tenant from any property on which there exists a violation. Such an eviction will be performed in compliance with Oregon law;
  9. Abate or remove any nuisance;
  10. Change the use of the building, structure, or real property involved;
  11. Pay a reduced forfeiture amount;
  12. Undertake any other action reasonably necessary to correct the violation.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03; Amended by Ord. 04-2010, 4/22/10; Amended by Ord. 02-2013, 6/6/13]

### **2.07.100 Orders Of The Compliance Hearings Officer**

- A. Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.
- B. Findings of fact and conclusions of law shall accompany a final order. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Compliance Hearings Officer's order.
- C. The Compliance Hearings Officer shall notify the respondent of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the respondent or, if applicable, the respondent's attorney of record. The Compliance Hearings Officer shall issue a final order within 14 days from the conclusion of the hearing.
- D. Every final order shall include a citation of the ordinance or title, chapter and section under which the order may be judicially reviewed.
- E. A final order shall become effective ten calendar days after the date it is signed by the Compliance Hearings Officer unless a party makes objections to the form of the order before it becomes effective. If objections are made, the final order shall become effective on the date the Compliance Hearings Officer signs the amended final order, or the date the Compliance Hearings Officer states in writing that the final order will not be amended.

## Exhibit 2 - Page 9 of 10

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

### **2.07.110 Enforcement Of Compliance Hearings Officer Orders**

- A. Fines and costs are payable upon the effective date of the final order declaring the fine and costs. Fines and costs under this Chapter are a debt owing to the County, pursuant to ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If fines or costs are not paid within 60 days after payment is ordered, the County may file and record the order for payment 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 Compliance Hearings Officer, including, an action to obtain judgment for any civil penalty imposed by an order of the Compliance Hearings Office pursuant to Section 2.07.090.5 and/or any assessment for costs and administrative compliance fees imposed pursuant to Sections 2.07.090.A.6 and 2.07.090.A.7.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

### **2.07.120 Civil Penalty**

The civil penalties for this chapter of the Code, that may be imposed by the Compliance Hearings Officer, shall be set by resolution of the Board of County Commissioners

[Added by Ord. 04-2003, 3/13/03; Amended by Ord. 04-2010, 4/22/10]

### **2.07.130 Judicial Review**

Review of the final order of a Compliance Hearings Officer under this Chapter by any aggrieved party, including Clackamas County, shall be by writ of review as provided in ORS 34.010 - 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.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 4-2003, 3/13/03]

