



## AGENDA COVER MEMO

Memorandum Date: November 15, 2023  
First Reading Date: November 28, 2023  
Second Reading/Public Hearing Date: December 12, 2023

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TO: Board of County Commissioners  
DEPARTMENT: Public Works/Office of Legal Counsel  
PRESENTED BY: Rebekah Dohrman, Assistant County Counsel  
Keir Miller, LMD Manager  
AGENDA ITEM TITLE: ORDINANCE 23-10/ In the Matter of Amending Lane Code to Update Administrative Enforcement

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### **I. MOTION**

#### **1. November 28, 2023 (1st Reading):**

MOVE TO APPROVE THE FIRST READING OF ORDINANCE NO. 23-10, AND TO SET THE SECOND READING AND PUBLIC HEARING FOR DECEMBER 12<sup>th</sup>, 2023, AT 1:30 PM TIME CERTAIN.

#### **2. December 12, 2023 (2nd Reading and Public Hearing):**

1) MOVE TO APPROVE AND ADOPT ORDINANCE NO. 23-10 AS PRESENTED.

**OR**

2) MOVE TO DIRECT STAFF TO REVISE ORDINANCE NO. 23-10 AS DIRECTED BY THE BOARD OF COMMISSIONERS [SUMMARIZE REVISIONS]; SET A THIRD READING; AND CONTINUE THE PUBLIC HEARING TO [DATE AND TIME CERTAIN].

**OR**

3) MOVE TO DECLINE ADOPTION OF ORDINANCE NO. 23-10 AS PRESENTED AND TAKE NO FURTHER ACTION.

## II. AGENDA ITEM SUMMARY

The Board is asked to approve the first reading of Ordinance No. 23-10 and to set the second reading and public hearing. (**Option 1**, above.) The main purpose for this ordinance is to amend Lane Code Chapter 5 to allow for the restoration of code sections that were inadvertently removed. While preparing these code amendments, staff also requested additional housekeeping modifications. In summary, Ordinance No. 23-10 reestablishes super priority for County liens, replaces omitted definitions, and adds cross-references to other Lane Code chapters. **Attachment 1** is Ordinance No. 23-10. **Exhibit A** contains the code amendments (clean version, changes accepted); and a legislative version of the code amendments follows **Exhibit A**.

## III. BACKGROUND/IMPLICATIONS OF ACTION

### A. Board Action and Other History

On February 8<sup>th</sup>, 2022, the Board of County Commissioners approved Ordinance No. 22-02 which was meant to modernize several Lane Code chapters. The modernization project was focused on updating general organizational functions, procedures, and processes. Ordinance No. 22-02 included Lane Code Chapters 2, 5, 6, and 9.

At the same time as the modernization efforts, there was a separate change to Lane Code Chapter 5 and Lane Manual Chapter 5 underway. These separate changes were intended to update administrative enforcement specifically and adjust the penalties under the code to be incorporated into Lane Manual Chapter 5. The separate changes were adopted through Order No. 22-01-25-04.

Unfortunately, rather than working together, Ordinance No. 22-02 resulted in the omission of parts of the code amendments adopted through Ordinance No. 22-01-25-04.

Ordinance No. 23-10 will restore the inadvertently omitted sections and make other needed adjustments and updates. The current updates include adding additional cross-references to the “Administrative Citation” section and adjusting the timeline on appeals from calendar to business days.

### B. Policy Issues

Adoption of Ordinance No. 23-10 is needed to correct the omissions and allow Code Enforcement operations to continue as necessary. Primarily, the previous code amendments omitted designation of the County’s liens as super priority liens. That omission makes it challenging, if not impossible in some cases, for Code Enforcement to collect on County liens that have been recorded against properties that have failed to abate code compliance issues. Inserting the super priority language back into LC Chapter 5 will allow for Code Enforcement to prioritize receiving payment on liens it has issued prior to any other creditor receiving payment. This would not change any of the decision-making behind which

properties are foreclosed on, but rather establishes the right to initially collect to ensure the value of the property can cover the cost of the liens. This super priority language is something the courts have recognized that local governments can create through their legislative processes.

The other amendments that are part of Ordinance No. 23-10 provide clarity in application of the code and allow additional time for appeals of administrative enforcement orders. Additionally, the code amendments proposed in Ordinance No. 23-10 will add cross-references to other Lane Code chapters clarifying the applicability of LC Chapter 5 to enforcement issues that arise out of those other chapters.

C. Board Goals

The proposed code amendments help address Strategic Priority #4 in their advancement of organizational health. Code Enforcement's funding comes from proper administration and payment of citations and fines and these changes in the code allow for Lane County to prioritize its own liens over liens issued by other entities. While these changes do not override debts coming from taxes, it will allow for Code Enforcement to collect over other creditors who may have an interest in foreclosed properties. Furthermore, by ensuring this section of code operates correctly, it helps align Lane Code with best practices the division has identified.

D. Financial and/or Resource Considerations

Implementation of this ordinance would allow liens issued by Code Enforcement to be paid prior to other creditors. This would only serve to increase resources available to the department with no cost in implementation.

E. Health Implications

There are no significant health implications for this item.

F. Analysis

The code changes proposed in this ordinance are meant to restore previous code sections that had existed prior to the revisions in early 2022. After legal review was conducted to ensure the changes would be appropriate to have restored into Lane Code, these changes were drafted to fix some of the issues present due to the omissions. While these changes are substantive in nature and, thus, cannot be adopted through an administrative revision, they are not a significant departure from what was in the code prior to the revisions.

The code changes of note that are a departure from the previous code sections include new cross-references in the administrative citation section to allow for the potential to address disputes in zoning and application review and an increase in the number of days allowed for appeal by transitioning from 10 calendar days to 10 business days.

G. Alternatives/Options

1. Move to set a second reading and public hearing.
2. Request changes to the ordinance language.

**IV. RECOMMENDATION**

Staff recommends **Option 1** above.

**V. TIMING/IMPLEMENTATION**

If the Board moves to set a second reading and public hearing on Ordinance No. 23-10, then, if adopted, the ordinance will take effect 30 days after it is adopted.

**VI. FOLLOW-UP**

If the Board passes the recommended motion in **Option 1**, then staff will return to the Board of Commissioners for a second reading and public hearing on December 12<sup>th</sup>, 2023.

**VII. ATTACHMENTS**

1. Draft Ordinance No. 23-10 (1 page)  
**Exhibit A:** Proposed Changes to Lane Code Chapter 5 (9 pages)  
\*Legislative version of code amendments follows Exhibit A

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 23-10

IN THE MATTER OF AMENDING LANE  
CODE TO UPDATE ADMINISTRATIVE  
ENFORCEMENT  
(LC 5.025.005, LC 5.025.010, LC 5.025.025,  
LC 5.025.030, LC 5.025.035)

The Board of County Commissioners of Lane County ordains as follows:

Lane Code Chapter 5 is amended by removing, substituting and adding the following sections:

**REMOVE THESE SECTIONS**

5.025.005  
5.025.010  
5.025.025  
5.025.030  
5.025.035

**INSERT THESE SECTIONS**

5.025.005  
5.025.010  
5.025.025  
5.025.030  
5.025.035

These sections are attached hereto and incorporated herein by this reference. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion constitutes a separate, distinct and independent provision, and such holding does not affect the validity of the remaining portions hereof.

Nothing herein is intended to, nor acts to amend, replace, or otherwise conflict with any other ordinances of Lane County or any other Code or statutory provisions unless expressly so stated.

**ENACTED** this \_\_\_\_ day of \_\_\_\_\_ 2023.

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Pat Farr, Chair  
Lane County Board of Commissioners

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Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date \_\_\_\_\_ Lane County

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OFFICE OF LEGAL COUNSEL

### **5.025.005 – Definitions.**

For purposes of this chapter, the following terms are defined as follows:

“Abatement” means any action taken to remove or alleviate a nuisance, including, but not limited to, demolition, removal, repair, cleaning, boarding, and securing or replacement of property.

“Administrative citation” means a citation issued by a County official in response to any code violation that imposes fines or penalties associated with the code violation.

“Administrative civil penalty” means a financial penalty imposed for restitution for code violation.

“Board” means the Lane County Board of Commissioners.

“Building” means something that is framed, erected, constructed or placed to stand temporarily or permanently on a tract of land. This definition specifically includes a mobile home, manufactured home and accessories thereto, gas or liquid storage tanks principally above ground and revetments, rip-rap, boat docks or bridges.

“Case Involving Commercial Gain” means any compliance case where the failure to comply involves a property or structure being used for commercial or industrial purposes, or where the failure to comply involves an activity that generates revenue or income.

“Code” means Lane Code, unless otherwise specified.

“County” means Lane County, Oregon.

“Department” means any department or subdivision of the County, including, but not limited to County Administration, Operations/Finance, Public Works, PW/Land Management, PW/Parks, Health and Human Services, HH/Public Health, or any subsequently established county department.

“Director” means the County Administrator, the Public Works Director, or the Health and Human Services Director, or their designees.

“Enforcement Officer” means the person authorized by the Director or designee to enforce particular provisions of the Lane Code under which administrative enforcement is authorized.

“Failure to Comply” means any failure to comply with an ordinance where the ordinance does not specify that it is punishable by a fine or incarceration, but which is subject to administrative enforcement.

“Hearings Official” means a Hearings Official appointed by a Director or their designee to conduct appeal hearings provided for under LC 5.025.035. Hearings Official shall be funded by contract with the County and shall be appointed subject to removal by the Director.

“Lien” means a debt recorded with the County recorder’s office for the purposes of collecting outstanding administrative citation fines, civil penalties, and administrative costs imposed as part of a cost recovery for an administrative code enforcement action. Liens, as defined by this definition or as provided elsewhere in this chapter, may be enforced in the same manner as a judgment, or as a lien for street improvements, and shall bear interest at the rate prescribed in ORS 82.010. The interest shall commence from the date of the hearings official’s order of civil penalty. The lien, as defined here or as provided elsewhere in this chapter, shall be given priority over all liens except those for taxes and assessments. The County reserves the right to sell or assign liens without recourse to the County.

“Misdemeanor” means a violation of an ordinance specifically remediable by incarceration.

“Notice of failure to comply” means a written notice issued by a code Enforcement Officer that informs a responsible party that the assessment of fines will begin to accrue and provides information regarding the right to appeal.

## Lane Code

“Operate” or “engage in” includes to carry on, keep, conduct, maintain, or cause or allow to be kept or maintained.

“Order to Comply” means a written order issued by a code Enforcement Officer that informs a responsible party that a code violation has occurred or is ongoing; lists the required compliance actions the responsible party must undertake to remedy the code violation; provides a timeline by which compliance is required; and provides the possible consequences that may result for failure to remedy the code violation.

“Owner” means a person on the title to real property as shown on the latest assessment records in the office of the Lane County Tax Assessor. Owner also includes a person whose name does not appear in the latest tax assessment records, but who presents to the County a recorded copy of a deed or contract of sale signed by the owner of record as shown in the Lane County Tax Assessor’s records. The term shall include any part owner, joint owner, tenant in common, or joint tenant, or the whole or a part of such building or land. The term also includes the person who holds title to a recreational vehicle or manufactured home.

“Person” unless it otherwise appears from the context used, means any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district or other special district, the State of Oregon, its political subdivisions and/or instrumentalities thereof, or any other entity which is recognized by law as the subject of rights or duties.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips. The term “premises” shall include recreational vehicles.

“Recreational Vehicle” means a vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motorhomes, travel trailers and truck campers.

“Property owner” means the record owner of real property, as listed on the current Lane County Tax Assessor’s records.

“Regulations” means these regulations, and rules or regulations promulgated pursuant to sections of the Lane Code that authorize imposition of an administrative civil penalty.

“Repeat or repetitive failure to comply” means a failure to comply which is similar to another failure to comply by the responsible person within the preceding five (5) years.

“Responsible Person” means for violations of or failure to comply with LC Chapter 5, LC Chapter 9, LC Chapter 10, LC Chapter 11, LC Chapter 13, LC Chapter 15, and LC Chapter 16, the owner of a building or property where a violation or failure to comply has occurred, the person in charge of the building or property, the violator or the person, or parent or legal guardian of a person, failing to comply with the ordinance, and where such person works for a contractor, either as an employee, subcontractor, or independent contractor, the contractor and/or other employer; and any licensee, permittee, or agent, manager, or person in charge. When a building is owned by an entity that is registered with the Oregon Secretary of State, that entity’s registered agent is deemed a responsible person.

“State” means the State of Oregon.

“Street” means all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, parkways, or other public ways that have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

“Tenant” or “occupant,” as applied to a building or land, means any person who occupies the whole or part of such building or land, whether alone or with others.

“Violation” means a violation of an ordinance specifically remediable by a fine, but that does not provide for punishment by a term of incarceration.

(Ordinance 2-82, 4.9.82; Ordinance 21-83, 11.29.83; Ordinance 4-85, 6.26.85; Ordinance 13-86, 11.7.86; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00; Ordinance 9-07, 10.12.07; Ordinance 22-02, 2.8.22)

**5.025.010 – Applicability.**

The provisions of this Chapter apply to Lane Code Chapters 6, 9, 10, 11, 12, 13, 14, 15, and 16, or portions thereof, as specified in those chapters.

(Ordinance 22-02, 2.8.22)

**5.025.025 – Administrative Remedies.**

**A. Failure of Compliance.**

1. Order to Comply. Whenever an Enforcement Officer determines that a failure to comply with the Lane Code or applicable state code pertaining to real property exists, the Enforcement Officer may issue an Order to Comply to a responsible person. Each and every day a failure to comply continues to exist after the date specified in the Order to Comply shall constitute a separate failure to comply. An Order to Comply shall include the following information:
  - a. The name of the property's record owner;
  - b. Street address or property identification;
  - c. The code sections that have been violated;
  - d. A description of the property condition that violates the applicable codes;
  - e. A list of necessary corrections to bring the property into compliance;
  - f. A deadline or specific date to correct the failure to comply listed in the Order to Comply, and that penalties, not to exceed two thousand dollars (\$2,000) per violation per day, will begin accruing if not remedied by that date. For cases involving commercial gain, no monetary penalty imposed under this section shall exceed two thousand five hundred dollars (\$2,500) per day;
  - g. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline including, but not limited to: issuance of a Notice of Failure to Comply, civil injunction, administrative abatement, administrative civil penalties, revocation of permits, recording of a lien on the property, and withholding of future permits.
2. Service of Order to Comply. The Order to Comply must be served on the property owner by regular and certified mail at the address shown on the current Lane County assessment records, and on the responsible person, if not the property owner, by one of the following methods:
  - a. Personal service. Personally delivered to the responsible person at their place of residence.
  - b. Mail. By regular and certified mail, return receipt requested. For service by certified mail, service will be deemed made on the date signed by the responsible person. For service by regular mail, service will be deemed received three (3) days after the date mailed if to an address within this state and seven (7) days after the date mailed if to an address outside of this state.
  - c. Posting. Where the responsible person cannot be located, by posting a sign in a prominent location on the property where the failure to comply occurred.
3. Notice of Failure to Comply. Where a responsible person fails to remedy an alleged violation within the time provided in an Order to Comply, an Enforcement Officer may issue a Notice of Failure to Comply to each person to whom the Order to Comply was issued. A Notice of Failure to Comply shall include the following information:
  - a. The name of the property's record owner;
  - b. Street address or map and tax lot number;
  - c. The code sections that have been violated;

- d. A description of the property condition that violates the applicable codes;
  - e. The date on which the Order to Comply was issued and the date by which correction was to be made;
  - f. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline, including but not limited to: civil injunction; administrative abatement by the County, including actual costs and administrative costs of such abatement; administrative civil penalties, the date the penalties will begin accruing on a daily basis at the stated amount until proof of correction is received; revocation of permits; withholding future permits; and recording a lien on the property;
  - g. A brief description of the procedure to appeal the Notice of Failure to Comply, including time limitations.
4. Service of Notice of Failure to Comply. The Notice of Failure to Comply shall be served as provided in LC 5.025.025A.2.
5. Notwithstanding LC 5.025.025A.1, LC 5.025.025A.2, and LC 5.025.025A.3, the Director may issue a Notice of Failure to Comply without having issued an Order to Comply where the City of Springfield or the City of Eugene notifies the County that enforcement actions under LC 9.021 could not be resolved, or where the Director determines that the failure to comply reasonably appears to:
- a. Pose an immediate threat to public health, safety or welfare, or
  - b. Be immediately remediable by a person in charge of the property, or
  - c. Be the same act or condition that served as the basis for a previous order to comply, or
  - d. Be done deliberately by a responsible person who had knowledge that the actions in question would constitute a failure to comply.
  - e. Appeal. Appeal of a Notice of Failure to Comply may be filed pursuant to LC 5.025.035A.1 and LC 5.025.035A.2.
- B. Administrative Citation.
1. General Provisions.
- a. Any person who has committed a violation of any provision of the Lane Code Chapters 6, 9, 10, 11, 12, 13, 14, 15, and 16 or applicable state code may be issued an administrative citation by an Enforcement Officer as provided in this chapter.
  - b. Each and every day a violation of the Lane Code exists constitutes a separate and distinct offense for which an administrative citation may issue.
2. Contents of Administrative Citation. The administrative citation shall include the following information:
- a. The date and location of the violations and the approximate time the violations were observed.
  - b. The code sections violated and how the sections are violated.
  - c. A description of the action required to correct the violations.
  - d. If applicable, a statement requiring the responsible person to immediately correct the violations and an explanation of the consequences of failure to correct the violations.

- e. The amount of administrative civil penalty imposed for the violations.
  - f. Directions how the penalty shall be paid, the time period by which it shall be paid, and the consequences of failure to pay the penalty.
  - g. Notice of the right to appeal.
  - h. The signature of the Enforcement Officer and, where possible, the signature of the responsible person. However, failure to locate or obtain the signature of the responsible person shall not affect the validity of the citation.
3. Service.
- a. In the case of a business, the Enforcement Officer shall attempt to locate the business owner and issue the business owner an administrative citation. If the Enforcement Officer can only locate the manager of the business or the person in apparent charge of the business, the administrative citation may be issued to such person, who may sign or receive the administrative citation as agent for the responsible person or owner of the business. A copy of the administrative citation shall also be mailed to the business owner or responsible person in the manner prescribed by LC 5.025.025A.2.
  - b. Once the responsible person is located, the Enforcement Officer shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.
  - c. If the Enforcement Officer is unable to locate the responsible person for the violation, then the administrative citation shall be mailed to the responsible person in the manner prescribed in LC 5.025.025A.2.
  - d. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by LC 5.025.025A.2.
4. Classification of Violations. Unless the Lane Code provides otherwise, fines and penalties for violations shall be as set forth in ORS Chapter 153. An unclassified violation is a Class B violation.
5. Appeal. Appeal of the administrative citation may be filed pursuant to LC5.025.035.
- C. Abatement. Any violation of the Lane Code provisions subject to enforcement under this chapter constituting a nuisance may be abated as set forth in LC 9.057 through LC 9.057.592 nuisance provisions. Nothing in Lane Code Chapter 5 or Lane Code Chapter 9 is deemed to limit or otherwise modify the ability of the County to abate nuisances through alternative remedies as provided for under the law.
- D. Cumulative Remedies. The administrative enforcement remedies provided by this chapter are not exclusive, but are in addition to other remedies – civil, equitable, or criminal – afforded to the County under the law.

(Ordinance 22-02, 2.8.22)

#### **5.025.030 – Administrative Civil Penalties.**

- A. Determination of Civil Penalties.

1. Civil penalties begin to accrue on the date identified in the Notice of Failure to Comply or any other written correspondence advising the responsible person of the existence of a failure to comply. In no event shall civil penalties start to accrue later than the date the responsible person is deemed to have received the Notice of Failure to Comply.
2. The assessment of civil penalties shall end when all action required by the Order to Comply has been completed.
3. In determining the amount of the civil penalty to be assessed on a daily rate, an Enforcement Officer may consider some or all of the following factors:
  - a. The duration of the violation.
  - b. The frequency or recurrence of the violation.
  - c. The seriousness of the violation.
  - d. The history of the violation.
  - e. The responsible person's conduct after issuance of the notice and order.
  - f. The good faith effort by the responsible person to comply.
  - g. The impact of the violation upon the community.
  - h. Whether the civil penalty is a result of a Case Involving Commercial Gain.
4. The Director has incorporated the factors into a matrix that are found at LM 5.005.020.

(Ordinance 22-02, 2.8.22)

#### **5.025.035 – Appeal.**

##### **A. Filing of Appeal.**

1. Appeals shall be filed in writing, by mailing or delivering a written appeal, on a designated appeal form, no later than ten (10) business days after receipt of the determination or notice being challenged. Assessment of civil penalties shall cease accruing on the date an appeal is filed. Failure to file a timely appeal shall constitute a waiver of the right to an appeal hearing.
2. Appeals shall be accompanied by the required fee and shall contain the following information:
  - a. Name or names of appellants(s);
  - b. A brief statement setting forth the action or decision being appealed;
  - c. A concise statement of the error alleged and the reasons the action or decision was in error;
  - d. The signature of the appellant(s), the appellant(s) telephone number and mailing address.
3. Upon receiving the appeal, the Director or their designee shall (1) schedule an appeal hearing with the Hearings Official, and (2) provide notice of such hearing.
4. Written notice of the date, time and place of the hearing shall be served at least ten calendar days prior to the date of the hearing on the person appealing the notice by any one of the methods listed in LC 5.025.025A.2.

##### **B. Conduct of Appeal Hearing.**

## Lane Code

1. Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply.
  2. The Hearings Official shall preside over the hearing and may set reasonable rules of procedure designed to facilitate orderly and efficient presentation of evidence and a fair hearing process. The Hearings Official may rule on requests for continuation and other motions relevant to the substance and procedure of the hearing.
  3. The County bears the burden of proof at an administrative enforcement hearing to establish the existence of a violation or failure to comply with applicable provisions of the Lane Code and of the reasonableness of any civil penalty provided for by the Enforcement Officer.
  4. The standard of proof to be used by the Hearings Official in deciding the issues at an administrative enforcement hearing is a preponderance of the evidence standard.
  5. Each party shall have the opportunity to be represented by a lawyer, to cross-examine witnesses, and to present evidence in support of their case.
  6. The responsible person may be represented by a lawyer at the responsible person's expense so long as written notice is provided to the Hearings Official at least four days prior to the date scheduled for the hearing. Even if represented, the responsible person must appear in person at the hearing. For purposes of this subsection, the term "in person" shall include any form of remote participation allowed by the Hearings Official.
  7. All testimony at the hearing shall be under oath, and each party shall have the right to call and examine witnesses, introduce exhibits and cross-examine opposing witnesses on any matter relevant to the issues. The Hearings Official also has the authority to subpoena people and records, order rulings on violations, assess fines and order liens to be placed upon property.
- C. Authority of Hearings Official.
1. The Hearings Official, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed by the Hearings Official to be relevant (necessary) to the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena.
  2. The Hearings Official shall retain jurisdiction over the subject matter of an administrative enforcement hearing for the purposes of granting a continuance, ensuring compliance with an administrative enforcement order, modifying an administrative enforcement order, or where extraordinary circumstances exist, granting a new hearing.
  3. Where a responsible person has not corrected a failure to comply within the time specified by the Enforcement Order or Notice of Failure to Comply, the Hearings Official may order corrective action be achieved by the County and costs assessed to the responsible person.
- D. Final Decision.
1. Once all evidence and testimony are completed, the Hearings Official shall issue an administrative enforcement order that affirms or rejects the Enforcement Officer's Administrative Citation or Notice of Failure to Comply or which modifies the daily rate or duration of the civil penalties. The Hearings Official may decrease the total amount of civil penalties and costs that are assessed by the Officer's Notice of Failure to Comply.

## Lane Code

2. The Hearings Official may issue an administrative enforcement order that requires the responsible person to cease from violating the Lane Code or applicable state codes and to make necessary corrections.
  3. As part of the administrative enforcement order, the Hearings Official may establish specific deadlines for the payment of civil penalties and costs and condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines.
  4. The Hearings Official may issue an administrative enforcement order that imposes additional civil penalties that will continue to be assessed until the responsible person complies with the Hearing Official's decision and corrects the violation.
  5. The Hearings Official may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.
  6. The final order shall include a statement that the responsible person may seek judicial review by filing a petition for a writ of review with the Lane County Circuit Court within sixty (60) days of the date of the decision.
  7. A copy of the final written order resolving the appeal shall be mailed to appellant(s) within ten (10) working days of the hearing.
  8. Order becomes final on the sixtieth (60<sup>th</sup>) day after issuance, unless appealed pursuant to LC 5.025.035.
- E. Further appeal. Judicial review of an administrative enforcement order may be sought through filing a writ of review in Lane County Circuit Court, pursuant to ORS Chapter 34 (2021).

(Ordinance 22-02, 2.8.22)

Lane Code

**5.025.005 – Definitions.**

For purposes of this chapter, the following terms are defined as follows:

“Abatement” means any action taken to remove or alleviate a nuisance, including, but not limited to, demolition, removal, repair, cleaning, boarding, and securing or replacement of property.

“Administrative citation” means a citation issued by a County official in response to any code violation that imposes fines or penalties associated with the code violation.

“Administrative civil penalty” means a financial penalty imposed for restitution for code violation.

~~“Assessment lien” or “code enforcement lien” means a lien recorded with the County recorder’s office for the purposes of collecting outstanding administrative citation fines, civil penalties, and administrative costs imposed as part of a cost recovery for an administrative code enforcement action.~~

“Board” means the Lane County Board of Commissioners.

“Building” means something that is framed, erected, constructed or placed to stand temporarily or permanently on a tract of land. This definition specifically includes a mobile home, manufactured home and accessories thereto, gas or liquid storage tanks principally above ground and revetments, rip-rap, boat docks or bridges.

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“Lien” means a debt recorded with the County recorder’s office for the purposes of collecting outstanding administrative citation fines, civil penalties, and administrative costs imposed as part of a cost recovery for an administrative code enforcement action. Liens, as defined by this definition or as provided elsewhere in this chapter, may be enforced in the same manner as a judgment, or as a lien for street improvements, and shall bear interest at the rate prescribed in ORS 82.010. The interest shall commence from the date of the hearings official’s order of civil penalty. The lien, as defined here or as provided elsewhere in this chapter, shall be given priority over all liens except those for taxes and assessments. The County reserves the right to sell or assign liens without recourse to the County.

Lane Code

“Misdemeanor” means a violation of an ordinance specifically remediable by incarceration.

“Notice of failure to comply” means a written notice issued by a code Enforcement Officer that informs a responsible party that the assessment of fines will begin to accrue and provides information regarding the right to appeal.

“Operate” or “engage in” includes to carry on, keep, conduct, maintain, or cause or allow to be kept or maintained.

“Order to Comply” means a written order issued by a code Enforcement Officer that informs a responsible party that a code violation has occurred or is ongoing; lists the required compliance actions the responsible party must undertake to remedy the code violation; provides a timeline by which compliance is required; and provides the possible consequences that may result for failure to remedy the code violation.

“Owner” means a person on the title to real property as shown on the latest assessment records in the office of the Lane County Tax Assessor. Owner also includes a person whose name does not appear in the latest tax assessment records, but who presents to the County a recorded copy of a deed or contract of sale signed by the owner of record as shown in the Lane County Tax Assessor’s records. The term shall include any part owner, joint owner, tenant in common, or joint tenant, or the whole or a part of such building or land. The term also includes the person who holds title to a recreational vehicle or manufactured home.

“Person” unless it otherwise appears from the context used, means any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district or other special district, the State of Oregon, its political subdivisions and/or instrumentalities thereof, or any other entity which is recognized by law as the subject of rights or duties.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips. The term “premises” shall include recreational vehicles.

“Recreational Vehicle” means a vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motorhomes, travel trailers and truck campers.

“Property owner” means the record owner of real property, as listed on the current Lane County Tax Assessor’s records.

“Regulations” means these regulations, and rules or regulations promulgated pursuant to sections of the Lane Code that authorize imposition of an administrative civil penalty.

“Repeat or repetitive failure to comply” means a failure to comply which is similar to another failure to comply by the responsible person within the preceding five (5) years.

“Responsible Person” means for violations of or failure to comply with LC Chapter 5, LC Chapter 9, LC Chapter 10, LC Chapter 11, LC Chapter 13, LC Chapter 15, and LC Chapter 16, the owner of a building or property where a violation or failure to comply has occurred, the person in charge of the building or property, the violator or the person, or parent or legal guardian of a person, failing to comply with the ordinance, and where such person works for a contractor, either as an employee, subcontractor, or independent contractor, the contractor and/or other employer; and any licensee, permittee, or agent, manager, or person in charge. When a building is owned by an entity that is registered with the Oregon Secretary of State, that entity’s registered agent is deemed a responsible person.

At left margin indicates changes  
**Bold** indicates material being added  
~~Strikethrough~~ indicates material being deleted

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“State” means the State of Oregon.

“Street” means all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, parkways, or other public ways that have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

“Tenant” or “occupant,” as applied to a building or land, means any person who occupies the whole or part of such building or land, whether alone or with others.

“Violation” means a violation of an ordinance specifically remediable by a fine, but that does not provide for punishment by a term of incarceration.

(Ordinance 2-82, 4.9.82; Ordinance 21-83, 11.29.83; Ordinance 4-85, 6.26.85; Ordinance 13-86, 11.7.86; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00; Ordinance 9-07, 10.12.07; Ordinance 22-02, 2.8.22)

**5.025.010 – Applicability.**

The provisions of this Chapter apply to Lane Code Chapters 6, 9, 10, 11, 12, 13, 14, 15, and 16, or portions thereof, as specified in those chapters.

(Ordinance 22-02, 2.8.22)

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**5.025.025 – Administrative Remedies.**

A. Failure of Compliance.

1. Order to Comply. Whenever an Enforcement Officer determines that a failure to comply with the Lane Code or applicable state code pertaining to real property exists, the Enforcement Officer may issue an Order to Comply to a responsible person. Each and every day a failure to comply continues to exist after the date specified in the Order to Comply shall constitute a separate failure to comply. An Order to Comply shall include the following information:
  - a. The name of the property's record owner;
  - b. Street address or property identification;
  - c. The code sections that have been violated;
  - d. A description of the property condition that violates the applicable codes;
  - e. A list of necessary corrections to bring the property into compliance;
  - f. A deadline or specific date to correct the failure to comply listed in the Order to Comply, and that penalties, not to ~~excess-exceed~~ two thousand dollars (\$2,000) per violation per day, will begin accruing if not remedied by that date. For cases involving commercial gain, no monetary penalty imposed under this section shall exceed two thousand five hundred dollars (\$2,500) per day;
  - g. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline including, but not limited to: issuance of a Notice of Failure to Comply, civil injunction, administrative abatement, administrative civil penalties, revocation of permits, recording of a lien on the property, and withholding of future permits.
2. Service of Order to Comply. The Order to Comply must be served on the property owner by regular and certified mail at the address shown on the current Lane County assessment records, and on the responsible person, if not the property owner, by one of the following methods:
  - a. Personal service. Personally delivered to the responsible person at their place of residence.
  - b. Mail. By regular and certified mail, return receipt requested. For service by certified mail, service will be deemed made on the date signed by the responsible person. For service by regular mail, service will be deemed received three (3) days after the date mailed if to an address within this state and seven (7) days after the date mailed if to an address outside of this state.
  - c. Posting. Where the responsible person cannot be located, by posting a sign in a prominent location on the property where the failure to comply occurred.
3. Notice of Failure to Comply. Where a responsible person fails to remedy an alleged violation within the time provided in an Order to Comply, an Enforcement Officer may issue a Notice of Failure to Comply to each person to whom the Order to Comply was issued. A Notice of Failure to Comply shall include the following information:
  - a. The name of the property's record owner;
  - b. Street address or map and tax lot number;

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- c. The code sections that have been violated;
  - d. A description of the property condition that violates the applicable codes;
  - e. The date on which the Order to Comply was issued and the date by which correction was to be made;
  - f. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline, including but not limited to: civil injunction; administrative abatement by the County, including actual costs and administrative costs of such abatement; administrative civil penalties, the date the penalties will begin accruing on a daily basis at the stated amount until proof of correction is received; revocation of permits; withholding future permits; and recording a lien on the property;
  - g. A brief description of the procedure to appeal the Notice of Failure to Comply, including time limitations.
4. Service of Notice of Failure to Comply. The Notice of Failure to Comply shall be served as provided in LC 5.025.025A.2.
5. Notwithstanding LC 5.025.025A.1, LC 5.025.025A.2, and LC 5.025.025A.3, the Director may issue a Notice of Failure to Comply without having issued an Order to Comply where the City of Springfield or the City of Eugene notifies the County that enforcement actions under LC 9.021 could not be resolved, or where the Director determines that the failure to comply reasonably appears to:
- a. Pose an immediate threat to public health, safety or welfare, or
  - b. Be immediately remediable by a person in charge of the property, or
  - c. Be the same act or condition that served as the basis for a previous order to comply, or
  - d. Be done deliberately by a responsible person who had knowledge that the actions in question would constitute a failure to comply.
  - e. Appeal. Appeal of a Notice of Failure to Comply may be filed pursuant to LC 5.025.035A.1 and LC 5.025.035A.2.
- B. Administrative Citation.
1. General Provisions.
- a. Any person who has committed a violation of any provision of the Lane Code Chapters 6, 9, 10, 11, 12, 13, 14, 15, and 16 or applicable state code may be issued an administrative citation by an Enforcement Officer as provided in this chapter.
  - b. Each and every day a violation of the Lane Code exists constitutes a separate and distinct offense for which an administrative citation may issue.
2. Contents of Administrative Citation. The administrative citation shall include the following information:
- a. The date and location of the violations and the approximate time the violations were observed.
  - b. The code sections violated and how the sections are violated.
  - c. A description of the action required to correct the violations.

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- d. If applicable, a statement requiring the responsible person to immediately correct the violations and an explanation of the consequences of failure to correct the violations.
  - e. The amount of administrative civil penalty imposed for the violations.
  - f. Directions how the penalty shall be paid, the time period by which it shall be paid, and the consequences of failure to pay the penalty.
  - g. Notice of the right to appeal.
  - h. The signature of the Enforcement Officer and, where possible, the signature of the responsible person. However, failure to locate or obtain the signature of the responsible person shall not affect the validity of the citation.
3. Service.
- a. In the case of a business, the Enforcement Officer shall attempt to locate the business owner and issue the business owner an administrative citation. If the Enforcement Officer can only locate the manager of the business or the person in apparent charge of the business, the administrative citation may be issued to such person, who may sign or receive the administrative citation as agent for the responsible person or owner of the business. A copy of the administrative citation shall also be mailed to the business owner or responsible person in the manner prescribed by LC 5.025.025A.2.
  - b. Once the responsible person is located, the Enforcement Officer shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.
  - c. If the Enforcement Officer is unable to locate the responsible person for the violation, then the administrative citation shall be mailed to the responsible person in the manner prescribed in LC 5.025.025A.2.
  - d. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by LC 5.025.025A.2.
4. Classification of Violations. Unless the Lane Code provides otherwise, fines and penalties for violations shall be as set forth in ORS Chapter 153. An unclassified violation is a Class B violation.
5. Appeal. Appeal of the administrative citation may be filed pursuant to LC5.025.035.
- C. Abatement. Any violation of the Lane Code provisions subject to enforcement under this chapter constituting a nuisance may be abated as set forth in LC 9.~~0570~~ through LC 9.**057**.592 nuisance provisions. Nothing in Lane Code Chapter 5 or Lane Code Chapter 9 is deemed to limit or otherwise modify the ability of the County to abate nuisances through alternative remedies as provided for under the law.
- D. Cumulative Remedies. The administrative enforcement remedies provided by this chapter are not exclusive, but are in addition to other remedies – civil, equitable, or criminal – afforded to the County under the law.

(Ordinance 22-02, 2.8.22)

**5.025.030 – Administrative Civil Penalties.**

A. Determination of Civil Penalties.

1. Civil penalties begin to accrue on the date identified in the ~~Order~~Notice of Failure to Comply or any other written correspondence advising the responsible person of the existence of a failure to comply. In no event shall civil penalties start to accrue later than the date the responsible person is deemed to have received the Notice of Failure to Comply.
2. The assessment of civil penalties shall end when all action required by the Order to Comply has been completed.
3. In determining the amount of the civil penalty to be assessed on a daily rate, an Enforcement Officer may consider some or all of the following factors:
  - a. The duration of the violation.
  - b. The frequency or recurrence of the violation.
  - c. The seriousness of the violation.
  - d. The history of the violation.
  - e. The responsible person's conduct after issuance of the notice and order.
  - f. The good faith effort by the responsible person to comply.
  - g. The impact of the violation upon the community.
  - h. Whether the civil penalty is a result of a Case Involving Commercial Gain.
4. The Director has incorporated the factors into a matrix that are found at LM 5.005.020.

(Ordinance 22-02, 2.8.22)

**5.025.035 – Appeal.**

A. Filing of Appeal.

1. Appeals shall be filed in writing, by mailing or delivering a written appeal, on a designated appeal form, no later than ten (10) ~~calendar~~business days after receipt of the determination or notice being challenged. Assessment of civil penalties shall cease accruing on the date an appeal is filed. Failure to file a timely appeal shall constitute a waiver of the right to an appeal hearing.
2. Appeals shall be accompanied by the required fee and shall contain the following information:
  - a. Name or names of appellants(s);
  - b. A brief statement setting forth the action or decision being appealed;
  - c. A concise statement of the error alleged and the reasons the action or decision was in error;
  - d. The signature of the appellant(s), the appellant(s) telephone number and mailing address.
3. Upon receiving the appeal, the Director or their designee shall (1) schedule an appeal hearing with the Hearings Official, and (2) provide notice of such hearing.

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4. Written notice of the date, time and place of the hearing shall be served at least ten calendar days prior to the date of the hearing on the person appealing the notice by any one of the methods listed in LC 5.025.025A.2.
- B. Conduct of Appeal Hearing.
1. Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply.
  2. The Hearings Official shall preside over the hearing and may set reasonable rules of procedure designed to facilitate orderly and efficient presentation of evidence and a fair hearing process. The Hearings Official may rule on requests for continuation and other motions relevant to the substance and procedure of the hearing.
  3. The County bears the burden of proof at an administrative enforcement hearing to establish the existence of a violation or failure to comply with applicable provisions of the Lane Code and of the reasonableness of any civil penalty provided for by the Enforcement Officer.
  4. The standard of proof to be used by the Hearings Official in deciding the issues at an administrative enforcement hearing is a preponderance of the evidence standard.
  5. Each party shall have the opportunity to be represented by a lawyer, to cross-examine witnesses, and to present evidence in support of their case.
  6. The responsible person may be represented by a lawyer at the responsible person's expense so long as written notice is provided to the Hearings Official at least four days prior to the date scheduled for the hearing. Even if represented, the responsible person must appear in person at the hearing. For purposes of this subsection, the term "in person" shall include any form of remote participation allowed by the Hearings Official.
  7. All testimony at the hearing shall be under oath, and each party shall have the right to call and examine witnesses, introduce exhibits and cross-examine opposing witnesses on any matter relevant to the issues. The Hearings Official also has the authority to subpoena people and records, order rulings on violations, assess fines and order liens to be placed upon property.
- C. Authority of Hearings Official.
1. The Hearings Official, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed by the Hearings Official to be relevant (necessary) to the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena.
  2. The Hearings Official shall retain jurisdiction over the subject matter of an administrative enforcement hearing for the purposes of granting a continuance, ensuring compliance with an administrative enforcement order, modifying an administrative enforcement order, or where extraordinary circumstances exist, granting a new hearing.
  3. Where a responsible person has not corrected a failure to comply within the time specified by the Enforcement Order or Notice of Failure to Comply, the Hearings Official may order corrective action be achieved by the County and costs assessed to the responsible person.
- D. Final Decision.
1. Once all evidence and testimony are completed, the Hearings Official shall issue an administrative enforcement order that affirms or rejects the Enforcement Officer's Administrative

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Citation or Notice of Failure to Comply or which modifies the daily rate or duration of the civil penalties. The Hearings Official may decrease the total amount of civil penalties and costs that are assessed by the Officer's Notice of Failure to Comply.

2. The Hearings Official may issue an administrative enforcement order that requires the responsible person to cease from violating the Lane Code or applicable state codes and to make necessary corrections.
  3. As part of the administrative enforcement order, the Hearings Official may establish specific deadlines for the payment of civil penalties and costs and condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines.
  4. The Hearings Official may issue an administrative enforcement order that imposes additional civil penalties that will continue to be assessed until the responsible person complies with the Hearing Official's decision and corrects the violation.
  5. The Hearings Official may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.
  6. The final order shall include a statement that the responsible person may seek judicial review by filing a petition for a writ of review with the Lane County Circuit Court within sixty (60) days of the date of the decision.
  7. A copy of the final written order resolving the appeal shall be mailed to appellant(s) within ten (10) working days of the hearing.
  8. Order becomes final on the sixtieth (60<sup>th</sup>) day after issuance, unless appealed pursuant to LC 5.025.035.
- E. Further appeal. Judicial review of an administrative enforcement order may be sought through filing a writ of review in Lane County Circuit Court, pursuant to ORS Chapter 34 (2021).

(Ordinance 22-02, 2.8.22)