



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

September 22, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Second Reading of Ordinance 04-2016, Amending
Chapter 2.07 Compliance Hearings Officer of the Clackamas County Code
and Declaring an Emergency

Purpose/Outcomes	Authorize amendments to Code Ch. 2.07 to allow for administrative warrants
Dollar Amount and Fiscal Impact	Costs associated with administrative warrants are expected to be nominal
Funding Source	County General Fund
Duration	Indefinite until amended or repealed
Previous Board Action	Board discussed in policy session on July 5, 2016. First reading took place on September 8, 2016.
Strategic Plan Alignment	Build public trust through good government; Consistent, uniform, fair and effective responses to achieve compliance with county code provisions
Contact Person	Stephen Madkour, County Counsel x 5391

Background:

Pursuant to County Code Chapter 1.01.100, the County Counsel is responsible for maintaining and updating the County Code. A Code Update Committee periodically meets to consider Code changes that are either proposed by staff, citizens, or identified by members of County Counsel as necessary or appropriate.

The Code Update Committee has approved several proposed changes to the County Code for Board consideration on a variety of topics. The most recent concerns code enforcement and the issuance of administrative warrants.

Presently the County has no ability to access and inspect private property unless the owner voluntarily agrees to allow access. As a general rule, the government may not enter private property without first obtaining a warrant. There are exceptions, such as consent to inspect, emergencies, and open field or plain view. Absent these exceptions, government needs to obtain an administrative warrant to search private property.

Under Oregon Statutes, some government agencies have explicit authority to enter property or obtain administrative search warrants. Counties are not provided with this specific authority. Consequently, a County needs to establish probable cause to obtain an administrative warrant. The probable cause may be based not only on specific evidence of an existing violation but also on a showing that reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the location or there is probable cause to believe that the condition of nonconformity with health and safety regulations.

The process to obtain an administrative warrant would be carefully circumscribed. It is anticipated that administrative warrants would be the exception and not the rule, and sought only in the most challenging of situations. By Board direction, the administrative warrant would be available only in the limited situation of marijuana-related operations and those properties considered to be chronic nuisances.

Recommendation:

Staff recommends the Board of County Commissioners complete a second reading of the attached ordinance. At the first reading the Board of County Commissioners found it necessary to declare an emergency. Therefore the attached ordinance will be effective immediately following the second reading.

Respectfully submitted,

Stephen L. Madkour
County Counsel

ORDINANCE NO. 04-2016

**An Ordinance Amending Clackamas County Code
Chapter 2.07 Compliance Hearings Officer and Declaring an Emergency**

WHEREAS, Clackamas County currently does not have the ability to access and inspect private property unless the owner voluntarily agrees to allow access; and

WHEREAS, Clackamas County needs to obtain an administrative warrant to search private property;

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 2.07 Compliance Hearings Officer is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

Section 2: Emergency Clause

The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health and welfare of the residents of the County. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this 22nd day of September, 2016.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

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 of citizens regarding the requirements of our codes will solve most issues and our contacts with affected citizens will be to take 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 Excavation and Grading chapter, the Road Use chapter, and the Abatement of Dangerous Buildings chapter Chronic Nuisance, and the Graffiti chapter. The Office of Compliance Hearings Officer is hereby created. The Compliance Hearings Officer shall act on behalf of the Board of County Commissioners in considering and applying regulatory enactments and policies set forth in this chapter. The Compliance Hearings Officer shall be appointed by the Board of County Commissioners to serve at the pleasure of, and shall be paid a fee for service fixed by, the Board of County Commissioners.

[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]

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
 - 1. Statement of Facts. 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 Board of County Commissioners, into which the violation falls. The County shall prepare a statement of the facts and shall review the facts and circumstances surrounding the alleged violation.
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 it is not in the best interest of the County to proceed. [Added by Ord. 4-2003, 3/13/03]
- 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 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.
 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, respondent may request a hearing before the Compliance Hearings Officer, as described in this chapter.
 3. Citations may be served by personal service on respondent. Citations may also be served by certified mail, return receipt requested through the United States Postal Service.
 4. 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]
- E. Administrative Compliance Fee

Beginning on the date that the county verifies a violation, it may assess respondent(s) an administrative compliance fee every thirty days, or fraction thereof, until the violation is abated. The administrative fee shall be set by resolution of the Board of County Commissioners and found in Appendix A to this code. 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]

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 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 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 circuit court 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.
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 his or her 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.

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]

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 Compliance Hearings Officer shall cause notice of the hearing to be given to the respondent(s) either personally or by registered mail with return receipt requested. 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.
- C. The failure of any person to receive notice properly given shall not invalidate or otherwise affect the proceedings under this Chapter.

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

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 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 his/her 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;
 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

- 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.

[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]