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## CHAPTER 3 ADMINISTRATIVE ENFORCEMENT

### **SECTION 3.010 Establishment of Administrative Civil Enforcement Procedures**

Pursuant to ORS 203, administrative civil enforcement procedures are hereby established for the purpose of providing for the remediation of any failure to comply with County Ordinances.

It is further intended that a civil administrative process be established in order to provide a convenient and practical forum for the administrative hearing of any appeal arising out of any failure to comply with this Ordinance, and for the hearing and determination of factual issues as may be relevant in connection with, but not limited to, nuisance abatement.

It is the County's policy to maximize code compliance and to increase the incentives for compliance by also creating a County administrative procedure for assessing and collecting civil penalties against County code violators. The County believes the assessment and collection of civil penalties through such an administrative procedure is the most effective way to obtain code compliance.

Abatement of a nuisance by the County will only be initiated if all other administrative remedies to correct violations have failed or if the nuisance constitutes a health or safety hazard.

### **SECTION 3.020 Authorization to Inspect**

The Compliance Officer is authorized to make inspections of property for the purposes of enforcing this Ordinance.

### **SECTION 3.030 Right of Entry; Inspection Warrants**

- A. Right of Entry: The Compliance Officer may enter property, including the interior of structures, at all reasonable times whenever an inspection is necessary to enforce this Ordinance, or whenever the Compliance Officer has reasonable cause to believe that there exists in any structure or upon any property any condition in violation of this Ordinance.

In the case of entry into areas of property that are plainly enclosed to create privacy and to prevent access by unauthorized persons, the following steps shall be taken:

1. Occupied Property: If any structure on the property is occupied, the Compliance Officer shall first present proper credentials and request voluntary consent to enter and inspect. If voluntary consent is not given, the Compliance Officer may attempt to obtain entry by obtaining an inspection warrant;

2. Unoccupied Property:

- a. If the property is unoccupied, the Compliance Officer shall contact the person in charge of the property and seek voluntary consent to enter and inspect. If voluntary consent is not given, the Compliance Officer may attempt to obtain entry by obtaining an inspection warrant.
- b. If structures on the property are unoccupied, the Compliance Officer shall first make a reasonable attempt to locate the person in charge of the property and request entry. If entry is refused, the Compliance Officer may attempt to obtain entry by obtaining an inspection warrant.

B. Grounds for Issuance of Inspection Warrants; Affidavit

1. Affidavit: An inspection warrant shall be issued only upon cause, supported by written affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the inspection or investigation, the property to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the written affidavit shall contain either a statement that entry has been sought and refused, or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.
2. Cause: Cause shall be deemed to exist if there is probable cause to believe that a condition of nonconformity with this Ordinance exists with respect to the designated property, or an investigation is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with this Ordinance.

C. Procedure for Issuance of Inspection Warrant

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

3. Police Assistance: In issuing a written inspection warrant on unoccupied property, including abatement warrants pursuant to this Ordinance, the Judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and assist the Compliance Officer or representative of the County inspecting the property in any way necessary to complete the inspection.

#### D. Execution of Inspection Warrants

1. Occupied Property: Except as provided in Subsection 2. of this section, in executing a written inspection warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to a person in charge of the property designated in the warrant and provide the occupant or person in possession of the property with a copy of the warrant upon request.
2. Unoccupied Property: In executing a written inspection warrant, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection 1 of this section, but may promptly enter the property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the warrant shall be conspicuously posted upon the property.
3. Return: A written inspection warrant must be executed within 10 days of its issue and returned to the Judge by whom it was issued within 10 days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.

#### SECTION 3.040 Interference with Repair, Demolition, or Abatement Prohibited

It is unlawful for any person to obstruct, impede, or interfere with any person lawfully engaged in:

- A. The work of repairing, vacating, warehousing, or demolishing any structure pursuant to the provisions of this Ordinance;
- B. The abatement of a nuisance pursuant to the provisions of this Ordinance; or
- C. The performance of any necessary act preliminary to or incidental to such work as authorized by this Ordinance or directed pursuant to it.

#### SECTION 3.050 Enforcing Compliance

To enforce any of the requirements of this Ordinance, the Compliance Officer may gain compliance by:

- A. Instituting any enforcement action as set out in this Ordinance
- B. Causing appropriate action to be instituted in a court of competent jurisdiction; or
- C. Taking other action as the Compliance Officer in the exercise of the Compliance Officer's discretion deems appropriate.

#### SECTION 3.055 Enforcement Of Hearings Officer Order

Penalties, fees and County charges are payable on the effective date of the order and are a debt owed to the County, under ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If penalties, fees, and County charges are not paid within 60 days after payment is ordered, the County may file and record the order in the County Clerk Lien Record. The cost of filing and releasing the lien shall be added to the amount of the lien and the responsibility of the owner of record or person in charge of the property.

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 the Hearings Officer, including, an action to obtain judgment for any civil penalties, fees, or County charges imposed by such order.

The Compliance Officer shall notify the owner of record or person in charge of the property that the penalty and associated County charges have been assessed against the real property upon which the failure to comply occurred, and has been entered in the County Clerk's Lien Record. The lien 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.

#### SECTION 3.060 Separate Violations

Each day's violation of a provision of this Ordinance shall constitute a separate offense.

#### SECTION 3.070 Citation Procedure

In addition to the abatement procedures set forth in this Ordinance, the County staff person enforcing said ordinance section may issue a citation for a nuisance violation, which will result in the filing of a complaint in the Circuit Court.

#### SECTION 3.080 Initiation of Enforcement Action

Enforcement action will be initiated pursuant to the policy established by the Board of Commissioners in consideration of staff resources and nuisance priorities. While both anonymous and written and signed complaints are accepted, it is up to the discretion of the Compliance Officer as to the level of action given to anonymous complaints.

### SECTION 3.090 Compliance Notices and Compliance Orders:

The following shall be applicable to all notices described in this Chapter.

#### A. Effective Date of Compliance Notices and Compliance Orders:

All Compliance Notices or Compliance Orders served pursuant to this section shall be considered served as of the date and time of mailing or the date of posting the property, if the property is posted, whichever is later.

#### B. Owner of Record Information: An error in the name of the owner or address listed in the County assessment and taxation records for the property shall not render the Compliance Notice or Compliance Order void, but in such case the posted Compliance Notice or Compliance Order, if it was posted on the property, shall be deemed sufficient.

#### C. Days: Any days referenced shall be calendar days. In the event the final day falls on a holiday, weekend or other day the applicable County Office is closed, the final day shall be on the next business day following the holiday, weekend or other day the applicable County Office is closed.

#### D. Affidavit: Upon completion of each mailing and/or posting, the Compliance Officer will create an affidavit of Compliance Notice or Compliance Order.

### SECTION 3.100 Notice of Violation (Step 1)

#### A. Initial Response: All conditions defined in Chapter 2 of this Ordinance shall constitute a nuisance. Any person whose duty it is to correct such nuisances and who fails to do so shall be subject to the penalties provided for by this Ordinance.

When the Compliance Officer is made aware of a potential violation, the property is researched to determine ownership, zoning, prior contacts with Planning or Health Departments and related information. The Compliance Officer visits the property where possible to determine if a violation exists. If a violation is determined, it is documented with photos where possible and a 15 day Notice of Violation is sent via First Class Mail and certified mail, return receipt requested to the owner of record or person in charge of the property or served by personal service. Notice to the owner of record or person in charge of the property may also be accomplished by posting notice on the property or personal property.

In cases where the County Health Officer, County Environmental Health Specialist, County Planning Department Director, County Sheriff or Fire Chief, determines that it is necessary to take immediate action in order to protect the public health, safety or welfare, summary abatement of such nuisances pursuant to Section 3.110 is authorized.

B. The Notice of Violation shall include:

1. The street address or a description sufficient for identification of the property on which the nuisance exists;
2. A statement that one or more violations of this Ordinance exist at the property with a general description of the violation(s) and the section(s) violated;
3. A request that the person in charge of the property contact the Compliance Officer to resolve the violation(s);
4. Specification of a 15 day response period during which the property may be brought into compliance with this Ordinance;
5. A statement that the owner of record or person in charge of the property may extend the deadline for compliance by entering into verbal or written abatement agreement with the Compliance Officer that establishes an approved process and timetable to abate the nuisance;
6. An outline of the compliance process including but not limited to penalties, charges, liens, abatement and recorded notice of violation in the deed records of the property if voluntary compliance is not achieved; and
7. Disclose the right of the owner of record or person in charge of the property to appeal the findings of the Notice of Violation and a description of the time limits for requesting an appeal, as described in Section 3.210 Right to Appeal.

C. Voluntary Compliance: If the owner of record or person in charge of the property responds to the Notice of Violation the timelines can be suspended to allow for compliance. If compliance cannot be achieved immediately a verbal or written abatement plan with a timeline shall be agreed upon by both the owner of record or person in charge of the property and the Compliance Officer. It shall be the discretion of the Compliance Officer whether a verbal or written abatement plan shall be required. If within this timeframe the violation has been abated a compliance letter will be sent and the file will be closed.

D. Failure to Comply: If following a site visit either after the end of the 15 days identified in the Notice of Violation if the owner of record or person in charge of the property does not contact the Compliance Officer or after the timeline in the abatement agreement, the violation has not been satisfactorily abated, an Order to Correct (Step 2) will be sent to the owner of record or person in charge of the property. However, the Compliance Officer does have the discretion to allow for additional time if they feel the owner of record or person in charge of the property will abate the violation.

E. Expanded Enforcement Options for Illegal Dwellings and Structures:

Illegal dwellings and structures present special problems for enforcement; because removal of the dwelling or structure may often be the only way to correct the violation. In addition, purchasers of a property containing an illegal dwelling or structure may be initially unaware of an illegal dwelling or structure violation.

As a result, the Compliance Officer is authorized to use the following methods to deal with illegal dwellings and structures:

1. When entering into a written abatement agreement with the owner of record or person in charge of the property, the Compliance Officer will work with the Planning Department to determine a reasonable timeframe and method for legalizing the dwelling or structure where possible.
2. If following the expiration of verbal or written abatement agreement, any illegal dwelling or structure described in the notice of violation has not been removed, made legal, or cause shown, as specified in this Ordinance, why such nuisance should not be removed, or where the terms of a written abatement agreement have been violated, the Compliance Officer, in consultation with the Planning Department Director, may carry out one or more of the following actions:
  - a. Record a Notice of Violation with the deed of trust pursuant to Section 3.250.
  - b. Assess Administrative Penalties as described in Section 3.130.
  - c. Assess double Administrative Penalties if, after receiving an Order to Correct (Step 2), the owner of record or person in charge of the property continues to build an illegal structure or dwelling or adds additional illegal structures or dwellings to the property.
  - d. Order the demolition and removal of the illegal structures or dwellings using the process defined in Section 3.160, Order to Abate Nuisances.

#### SECTION 3.110 Summary Abatement (Step 1)

- A. When summary abatement is authorized by this Ordinance, the decision regarding whether or not to use summary abatement shall be at the County Official's discretion. In the case of summary abatement, notice to the owner of record or person in charge of the property prior to abatement is not required. However, following summary abatement, the Official shall post upon the property liable for the abatement a notice describing the action taken to abate the nuisance violation. In addition, a Notice of Summary Abatement shall be mailed to the owner of record or person in charge of the property. Notice to the owner of record or person in charge of the property may also be accomplished by posting notice on the property.
- B. The Notice of Summary Abatement shall include:

1. The date the nuisance on the property was abated;
2. The street address or a description sufficient for identification of the property on which the nuisance exists;
3. A statement of the violations of this Ordinance that existed at the property and were summarily abated;
4. Disclosure that penalties, charges and liens will result from the summary abatement subject to Section 3.190, Abatement Costs; and
5. Disclose the right to appeal the findings of the Notice of Summary Abatement, and a description of the time limits for requesting an appeal, as described in Section 3.210, Right to Appeal, to the owner of record or person in charge of the property.

#### SECTION 3.120 Order to Correct (Step 2)

A. Order to Correct Site Visit: If following the site visit described in Section 3.100(D), the owner of record or the person in charge of the property has failed to voluntarily abate the violation, an Order to Correct shall be sent via First Class Mail and certified mail, return receipt requested to the owner of record or person in charge of the property or served by personal service. Notice to the owner of record or person in charge of the property may also be accomplished by posting notice on the property or personal property.

#### B. The Order to Correct Shall Include:

1. The street address or a description sufficient for identification of the property on which the nuisance exists;
2. A statement that one or more violations of this Ordinance exist at the property with a general description of the violation(s) and the section(s) violated;
3. A request that the owner of record or person in charge of the property contact the Compliance Officer to resolve the violations;
4. Specification of a 15 day response period during which the property may be brought into compliance with this Ordinance before penalties, charges, or liens will be assessed;
5. A statement that the owner of record or person in charge of the property may extend the deadline for compliance by entering into a written abatement

agreement with the Compliance Officer that establishes an approved process and timetable to abate the nuisance;

6. An outline of the compliance process including but not limited to penalties, charges, liens, abatement and recorded notice of violation in the deed records of the property if voluntary compliance is not achieved; and
  7. Disclose the right to appeal the findings of the Order to Correct and a description of the time limits for requesting an appeal, as described in Section 3.210 Right to Appeal, to the owner of record or person in charge of the property.
- C. Voluntary Compliance: If the owner of record or person in charge of the property responds to the Order to Correct, the timelines can be suspended to allow for compliance. If compliance cannot be achieved immediately a written abatement plan with a timeline shall be agreed upon by both the Disclose the right to appeal the findings of the Notice of Summary Abatement, and a description of the time limits for requesting an appeal, as described in Section 3.210, Right to Appeal, to the owner of record or person in charge of the property and the Compliance Officer. If within this timeframe the violation has been abated a compliance letter will be sent and the file will be closed.
- D. Failure to Comply: If either following a site visit after the end of the 15 days identified in the Order to Correct, the owner of record or person in charge of the property does not contact the Compliance Officer, or after the timeline in the written abatement agreement, the violation has not been satisfactorily abated, a Notice of Failure to Comply/Administrative Civil Penalty (Step 3) will be sent to the owner of record or person in charge of the property. However, the Compliance Officer does have the discretion to allow for additional time if they feel the owner of record or person in charge of the property will abate the violation.

### SECTION 3.130 Establishment of Administrative Civil Penalties (Step 3)

- A. Administrative Penalty Site Visit: If following the site visit described in Section 3.120(D), the owner of record or the person in charge of the property has failed to voluntarily abate the violation, a Notice of Failure to Comply/Administrative Civil Penalty shall be sent via First Class Mail and certified mail, return receipt requested to the owner of record or person in charge of the property or served by personal service. Notice to the owner of record or person in charge of the property shall also be accomplished by posting the Notice of Failure to Comply/Administrative Civil Penalty on the property or personal property.
- B. The Notice of Failure to Comply/Administrative Civil Penalties Shall Include:
1. The street address or a description sufficient for identification of the property on which the nuisance exists;

2. A statement that one or more violations of this Ordinance exist at the property with a general description of the violation(s) and the section(s) violated;
  3. A request that the owner of record or person in charge of the property contact the Compliance Officer to resolve the violation(s);
  4. Specification of a 15 day response period during which the property may be brought into compliance with this Ordinance before penalties, County charges, or liens will be assessed;
  5. An outline of the compliance process including but not limited to County charges, penalties, liens, abatement and recorded notice of violation in the deed records of the property if voluntary compliance is not achieved;
  6. A statement of the amount of the penalties and County charges imposed;
  7. A statement that abatement is required and that failure to abate the act or condition may result in continued County charges and penalties accruing on a daily basis at the stated amount until proof of completion of abatement is received;
  8. If the penalty is to be imposed pursuant to Subsection E below, a short and plain statement of the basis for concluding that said subsection applies; and
  9. Disclose the right to appeal the findings of the Notice of Failure to Comply/Administrative Penalty and a description of the time limits for requesting an appeal, as described in Section 3.210, Right to Appeal, to the owner of record or person in charge of the property.
- C. Voluntary Compliance: If the owner of record or person in charge of the property responds to the Notice of Failure to Comply/Administrative Penalties and achieves voluntary compliance within 15 days of the notice, a compliance letter will be sent and the file will be closed.
- D. Failure to Comply: If the owner of record or person in charge of the property does not contact the Compliance Officer, or if following an additional site visit no sooner than 15 days after the Notice of Failure to the Comply/Administrative Civil Penalty the violation has not been not satisfactorily abated, administrative civil penalties may be assessed and abatement may occur subject to Sections 3.140 through Section 3.190 and Subsection I below.
- E. Notwithstanding the Notice of Violation or Order to Correct, the Compliance Officer may issue a Notice of Failure to Comply/Administrative Civil Penalty without having issued a Notice of Violation, Order to Correct or making attempts to secure voluntary

correction, where the Compliance Officer determines that the failure to comply reasonably appears to:

1. Pose an immediate threat to public health, safety or welfare, or
  2. Be immediately remediable by a person in charge of the property, or
  3. Be the same act or condition that served as the basis for a previous order to comply, or
  4. Be done deliberately by a responsible person who had knowledge that the actions in question would constitute a failure to comply.
- F. Utilizing the procedure set forth in Section 3.140, Determination of Amount of Penalty, the Compliance Officer shall determine the penalty amount that may be imposed for a particular violation. No monetary penalty imposed under this section shall exceed \$2,000, per violation, per day. Except for illegal structures and illegal dwellings, the maximum accrued penalty plus all County charges shall not exceed \$10,000. Unless they are recorded as a lien, reach the penalty cap, or are otherwise addressed in an agreement written into the abatement plan, unpaid penalties will double after 6 months and again after 1 year from the date they are originally assessed at which time the County may record the penalty as a lien.
- G. Any person who pays the monetary penalty within 15 days of when it was ordered shall only be required to pay 90 percent thereof. Unless an agreement or payment schedule is written into the abatement plan, failure to pay a penalty imposed hereunder within 15 days after the penalty becomes final as provided in Subsection D above shall constitute a failure to comply with this section.

Each day after the initial 15 day period for payment that the penalty is not paid and the violation or nuisance remains active on the property, shall constitute a separate failure to comply. The Compliance Officer is also authorized to collect the penalty by any administrative or judicial action or proceeding authorized by Subsection K below, other provisions of this Ordinance or state statutes, and may enforce delinquent liens or assessments pursuant to ORS 223.510.

NOTE: If the violation is still active on the property, penalties and County charges resulting from an illegal dwelling or structure will be paid to the County at the time the property is sold by collection of the lien amount. If the illegal dwelling or structure remains in violation on the property the fine will be assessed daily up to \$20,000 or the assessed value of the dwelling or structure; whichever is higher, then be recorded as a lien against the property.

- H. The administrative civil penalty authorized by this section shall be in addition to:

1. County charges incurred by the County in processing, remediation, cleanup or abatement, and
  2. Any other assessments, fees or actions authorized by law.
- I. Hearings Officer Order: If the owner of record or person in charge of the property does not file a written appeal within 15 days of the date when the Notice of Failure to Comply/Administrative Civil Penalty is served or mailed, the Compliance Officer shall forward the Notice of Failure to Comply/Administrative Civil Penalty along with a statement of the assessed penalty plus fees, and County charges to the Hearings Officer for review and issuance of a written order. However, the Compliance Officer does have the discretion to allow for additional time if they feel the owner of record or person in charge of the property will abate the violation.

If the Hearings Officer determine(s) the findings, penalties, fees, County charges, or other information were lawful, the Hearings Officer shall issue a written order affirming the findings, penalties, fees, County charges or other information in the Notice of Failure to Comply/Administrative Civil Penalty and the owner of record or person in charge of the property shall be responsible for meeting the requirements of the Notice of Failure to Comply/Administrative Civil Penalty and paying all penalties, fees, and County charges on or before a date set by the Hearings Officer.

If the Hearings Officer determine(s) any part of the findings, penalties, fees, County charges or other information were not lawful, the owner of record or person in charge of the property shall be responsible for meeting the requirements of the Notice of Failure to Comply/Administrative Civil Penalty and paying all penalties, fees, and County charges that were found to be lawful on or before a date set by the Hearings Officer.

A copy of the Hearings Officer Order shall be sent to the owner of record or person in charge of the property by certified mail

- J. In addition to enforcement mechanisms authorized elsewhere in this Ordinance, failure to pay an administrative civil penalty imposed pursuant to this Section shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or licenses.

### SECTION 3.140 Determination of Amount of Administrative Civil Penalty (Step 3)

The Compliance Officer shall determine the amount of the administrative civil penalty to be assessed under this Ordinance in accordance with the following schedule:

- A. Solid Waste and Junk Nuisances: \$280 per day, per violation

- B. Vehicular Nuisances: \$100 per day, per vehicle
- C. Land Use and Zoning Nuisances, except illegal dwellings or structures: \$280 per day, per violation
- D. LUDO Site Violations: \$280 per day, per violation
- E. Illegal dwellings or structures, permanent: \$2,000 per day, per violation. Penalty ceases to accrue when it reaches the assessed value of the dwelling or structure or \$20,000, whichever is higher. If the assessed value is not available then the fine amount may be set to cease at \$20,000. Penalty is forgiven when the violation is addressed (removed, permitted, or converted to an allowed use) by owner of record or person in charge of the property.
- F. Illegal dwellings or structures, temporary: \$2,000 per day, per violation. Penalty ceases to accrue when it reaches the assessed value of the dwelling or structure or \$20,000, whichever is higher. If the assessed value is not available then the fine amount may be set to cease at \$20,000. Penalty is forgiven when the violation is addressed (removed, permitted, or converted to an allowed use) by owner of record or person in charge of the property.
- G. For violations listed in subsections A through D above that are the second similar violation within 2 years from the date the first similar violation was resolved, the calculated penalty will be doubled.

#### SECTION 3.150 Abatement of Nuisance as Last Resort (Step 4)

Except in the case of summary abatement, abatement of a nuisance by the County shall only proceed if the owner of record or person in charge of the property has not satisfactorily abated the violation within 15 days of the Notice of Failure to Comply/Administrative Civil Penalties.

Abatement of a nuisance by the County will only be initiated if all other remedies to correct the violation have failed.

#### SECTION 3.160 Order to Abate Nuisances (Step 4)

If, following 15 days after the Notice of Failure to Comply/Administrative Civil Penalties, any nuisance (illegal dwellings and structures are subject to Section 3.100 (E)) described in the Notice has not been removed and abated, or cause shown, as specified in this Ordinance, why such nuisance should not be removed or abated, or where summary abatement is authorized, or where the terms of a written abatement agreement have been violated, in addition to the imposition of Administrative Civil Penalties, the Compliance Officer may cause the nuisance to be removed and abated, including disposal in an approved manner by:

- A. Causing an Order to Abate Nuisance to be posted on the premises where the nuisance exists directing the removal of such nuisance.
- B. At the time of posting, the Compliance Officer shall cause a copy of such notice to be forwarded via First Class Mail and certified mail, return receipt requested to the owner of record or person in charge of the property or served by personal service.
- C. The Order to Abate Nuisances Shall Include:  
The Notice shall be entitled "Order to Abate Nuisance" and shall contain:
  - 1. The street address or a description sufficient for identification of the property on which the nuisance exists;
  - 2. A statement that one or more violations of this Ordinance exist at the property with a general description of the violation(s) and the section(s) violated;
  - 3. An order to abate the nuisance within 15 days from the date of the notice;
  - 4. A statement that unless the nuisance is removed, the County may abate the nuisance and the cost of abatement, penalties, fees, and any County charges, shall be charged to the owner of record or person in charge of the property and be attached to the property as a lien; and
  - 5. Disclose the right to appeal the findings of the Order to Abate Nuisance and a description of the time limits for requesting an appeal, as described in Section 3.210 Right to Appeal, to the owner of record or person in charge of the property
- D. Failure To Comply: If following 15 days after the Order to Abate Nuisance, the violation has not been not satisfactorily abated, the violation will be abated pursuant to Section 3.170 – Section 3.190 and Subsection E below.
- E. Hearings Officer Order: If the owner of record or person in charge of the property does not file a written appeal within 15 days of the date when the Order to Abate Nuisance is served or mailed, the Compliance Officer shall forward the Order to Abate Nuisance along with a statement of the estimated abatement cost plus any penalties, fees, and County charges to the Hearings Officer for review and issuance of a written order. However, the Compliance Officer does have the discretion to allow for additional time if they feel the owner of record or person in charge of the property will abate the violation.

If the Hearings Officer affirms the Order to Abate Nuisance, the Hearings Officer shall issue a written order affirming the findings, abatement costs, penalties, fees, and County charges or other information found in the Order to Abate Nuisance, the Compliance Officer will proceed with abatement subject to Section 3.170 – Section 3.190 and the owner of record or person in charge of the property shall be

responsible for paying all abatement costs, penalties, fees, and County charges on or before the date set by the Hearings Officer.

A copy of the Hearings Officer Order shall be sent to the owner of record or person in charge of the property by certified mail

#### SECTION 3.170 Abatement of Vehicular Nuisances (Step 4)

- A. Order to Abate Vehicular Nuisance: If, following 15 days after the Notice of Failure to Comply/Administrative Civil Penalties, any vehicle which qualifies as a nuisance under Chapter 2 but is not subject to Summary Abatement, the Compliance Officer shall affix an Order to Abate Vehicular Nuisance notice to the abandoned vehicle. In the case of an abandoned vehicle on private property, permission to enter the property to affix the notice to the vehicle shall be obtained from the owner of record, person in charge of the property or shall be authorized by Section 3.030, Right of Entry; Inspection Warrants.

#### The Order to Abate Vehicular Nuisances Shall Include the following information:

1. That the vehicle will be subject to being impounded by the County if the vehicle is not removed from the private property or public property within 15 days of the date of the notice. If the vehicle is to remain on private property, it must be moved and stored within an enclosed structure or covered by a device specifically designed to protect the vehicle from the elements.
  2. The section of this Ordinance which has been violated and under which the vehicle will be removed.
  3. The place where the vehicle will be impounded and the telephone number to find out information about where the vehicle will be stored.
  4. The vehicle, if impounded, will be subject to towing and storage charges, County charges, and a lien will be attached to the vehicle and its contents.
  5. The vehicle will be sold to satisfy the costs of towing, storage, and County charges if these costs are not paid by the owner.
  6. Disclose the owner's right to appeal the findings of the Order to Abate Vehicular Nuisance and a description of the time limits for requesting an appeal, as described in Section 3.210 Right to Appeal.
- B. Abatement Proceedings: In the event the person responsible does not voluntarily comply by removing the vehicle from the private property or the public right-of-way, or by storing the vehicle within an enclosed structure, or underneath an approved coverage device, within the specified time period, the Compliance Officer shall institute abatement proceedings to have the abandoned vehicle towed from the

private property or the public right-of-way and impounded. If the vehicle is on private property the vehicle shall be abated pursuant to Section 3.180, Nuisance Abatement Warrants.

The Compliance Officer shall mail a notice to the registered owner of the vehicle and to any lessors or security interest holders as shown in the state Motor Vehicle Department records, and to the person responsible for creating the nuisance, if that person is not the registered owner of the vehicle and the County has been able to identify that person, that the vehicle has been impounded. The notice shall be sent by regular mail and by certified mail, return receipt requested, and be mailed within 48 hours of the impoundment.

The Impoundment Notice Shall Include the following information:

1. The location where the vehicle will be stored.
  2. That the vehicle and its contents are subject to a lien for the payment of storage and towing charges and an administrative fee of \$100, and that the vehicle and its contents will be sold if those charges and administrative fee are not paid.
  3. That the vehicle will not be released until the owner provides proof that the vehicle is currently licensed and registered, that the nuisance conditions will not be resumed, and that all towing and storage fees and the \$100 administrative fee have been paid, and the County has authorized the release of the vehicle in writing.
  4. Disclose the owner's right to request an appeal hearing to contest the validity of the impoundment or the liability for towing charges and the administrative fee. The Request for an appeal shall be made as described in Section 3.210, Right to Appeal.
- C. Disposal of abandoned vehicles which have been impounded under this section shall be carried out in accordance with the applicable provisions of Chapter 819 of the Oregon Revised Statutes. The County shall be entitled to recover the costs of the nuisance abatement, including the \$100 administrative fee, in an appropriate action at law.
- D. Removal of an abandoned vehicle from one private property to another private property, or removal of an abandoned vehicle from private property onto a public right-of-way, or removal of an abandoned vehicle from one location to another location on a public right-of-way, after a notice has been affixed to the vehicle under subsection (A) of this section, shall not prevent the County from proceeding with the process to have the vehicle towed from a private property or the public right-of-way and impounded under the provisions of Subsection (B) of this section, above.

## SECTION 3.180 Nuisance Abatement Warrants (Step 4)

The Compliance Officer may request any Circuit Court Judge to issue a nuisance abatement warrant whenever entry onto private property is necessary to remove and abate any nuisance.

### A. Grounds for Issuance of Nuisance Abatement Warrants;

1. Affidavit: A nuisance abatement warrant shall be issued only upon probable cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the removal and abatement of the nuisance, the building or property to be entered, the basis upon which probable cause exists to remove or abate the nuisance, including the existence of prior violations, and a statement of the general types and estimated quantity of the items to be removed or conditions abated.
2. Probable Cause: Probable cause shall be deemed to exist if it is believed that a nuisance violation exists, as defined in this Ordinance, with respect to the designated property.

### B. Procedure for Issuance of a Nuisance Abatement Warrant:

1. Examination: Before issuing a nuisance abatement warrant, the Judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
2. Issuance: If the Judge is satisfied that probable cause for the removal and abatement of any nuisance exists and that the other requirements for granting the application are satisfied, the Judge shall issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the Judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
3. Police Assistance: In issuing a nuisance abatement warrant, the Judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the Compliance Officer in any way necessary to enter the property and remove and abate the nuisance.

### C. Execution of Nuisance Abatement Warrants

1. Occupied Property: Except as provided in subsection 2, below, of this section, in executing a nuisance abatement warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and to show the occupant or person in possession of the property the warrant or a copy thereof upon request.
  2. Unoccupied Property: In executing a nuisance abatement warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection 1 of this section, but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the nuisance abatement warrant shall be conspicuously posted on the property.
  3. Return: A nuisance abatement warrant must be executed within 10 days of its issue and returned to the Judge by whom it was issued within 10 days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.
- D. Disposal of Nuisance Items Removed: The Compliance Officer may cause the nuisance items that were removed, pursuant to the nuisance abatement warrant, to be disposed of in an approved manner whenever the Compliance Officer, in the Compliance Officer's sole discretion, finds that the fair and reasonable value of the items at resale would be less than the cost of storing and selling the items. In making the above determination, the Compliance Officer may include in the costs of sale the reasonable cost of removing the items to a place of storage, of storing the items for resale, of holding the resale including reasonable staff allowances, and all other reasonable and necessary expenses of holding the sale.

#### SECTION 3.190 Abatement Cost (Step 4)

##### A. Responsibility for Costs

If more than one (1) person is responsible for the creation or continuation of a nuisance, they shall be jointly and severally liable for abating the nuisance or for all costs incurred by the County in abating the nuisance.

An accurate record of the abatement costs shall be kept and shall include a surcharge of 25% of the cost of the abatement for administrative overhead.

A Notice of Abatement Cost shall be forwarded via First Class Mail and certified mail, return receipt requested to the owner of record or person in charge of the property or served by personal service, to the owner of record or person in charge of the property. The notice shall contain:

1. The street address or a description sufficient for identification of the property on which the nuisance exists;
2. A statement that one or more violations of this Ordinance existed at the property with a general description of the violation(s) and the section(s) violated;
3. The date the violation was abated and actions taken to abate the violation;
4. The total cost, including the administrative overhead, of the abatement;
5. A statement that the cost as indicated will become a lien against the property unless paid within 60 days.
6. Disclose the right to appeal the amount of abatement costs and a description of the time limits for requesting an appeal, as described in Section 3.210, Right to Appeal, to the owner of record or person in charge of the property

**SECTION 3.200 Distribution of Administrative Penalties (Step 4)**

All Administrative Civil Penalties, payments for abatement costs, fees, and other County charges collected under this Ordinance shall be deposited in the Wasco County General Fund.

**SECTION 3.210 Right to Appeal**

- A. Whenever an owner of record or person in charge of the property has been given any Compliance Notice or Compliance Order pursuant to this Ordinance and the owner of record or person in charge of the property believes the findings, penalties, fees, County charges, or other information in the Compliance Notice or Compliance Order were in error, the owner of record or person in charge of the property may appeal.

If an appeal hearing is sought, the owner of record or person in charge of the property shall submit a written request to the Compliance Officer within 15 days of the date of the Compliance Notice or Compliance Order.

- B. Appeals will be heard by a Hearings Officer appointed by the Board of Commissioners. The person requesting an appeal shall be given the opportunity to present evidence to the Hearings Officer. Following the appeal hearing, the Hearings Officer shall issue a written determination.

If the person appealing the Compliance Notice or Compliance Order is unsatisfied with the result of the appeal hearing, they may appeal the decision subject to Section 3.230. The request for an appeal shall be submitted in writing to the

Compliance Officer within 15 days of the issuance of the written determination notice.

- C. The Wasco County Code Compliance and Nuisance Abatement Ordinance Appeals Hearing Procedure (Section 3.260 Attachment A) shall govern any requested appeal hearing.
- D. The County shall have the burden of proving by a preponderance of the evidence the findings, abatement costs, penalties, fees, County charges or other information in the Compliance Notice or Compliance Order were lawful pursuant to this ordinance.

If the Hearings Officer determine(s) the findings, abatement costs, penalties, fees, County charges, or other information were lawful, the Hearings Officer shall enter a written order affirming the findings, abatement costs, penalties, fees, County charges or other information in the Compliance Notice or Compliance Order and the owner of record or person in charge of the property shall be responsible for meeting the requirements of the Compliance Notice or Compliance Order and paying all abatement costs, penalties, fees, and County charges.

If the Hearings Officer determine(s) the findings, abatement costs, penalties, fees, County charges or other information were not lawful, the owner of record or person in charge of the property shall not be responsible for meeting the requirements of the Compliance Notice or Compliance Order. If there is a lien, storage costs or other payment for abatement costs, those shall be the responsibility of the County.

The Hearings Officer may modify the amount of the civil penalty based on the record and testimony received at the appeal hearing and subject to Section 3.220(C).

### SECTION 3.220 Appeal Fees and Deposits

- A. To help defray the costs of processing the appeal, all appeals shall be accompanied by an appeal fee of \$100 established by the Board of Commissioners, as well as a deposit in the amount of any monetary penalty plus all County charges accrued to the date the deposit is received. The appeal shall not be heard unless these are paid prior to the end of the 15 days indicated in the Compliance Notice or Compliance Order.
- B. Filing of an appeal shall cause the penalty to cease accruing on a daily basis as of the date the appeal is filed with the Code Compliance Officer until 7 days after the date of the appeal hearing decision.
- C. In the event that the appeal is upheld or partially upheld by the Hearings Officer:
  - If upheld completely the appeal fee and the deposit shall be refunded

- If upheld partially: up to half of the appeal fee and only that part of the deposit not used to cover remaining<sup>1</sup> accrued penalties and County charges shall be refunded.
- D. In the event the appeal is not upheld; the Hearings Officer shall issue a written order affirming the findings, abatement costs, penalties, fees and County charges or other information in the Compliance Notice or Compliance Order, and the abatement costs, penalties, fees, plus all County charges shall immediately become due and payable, and the deposit submitted with the appeal request will be applied toward payment of those abatement costs, penalties, fees, and County charges.
- E. The penalty shall continue to accrue on any remaining<sup>1</sup> violations or nuisances beginning 7 days after the date of the Appeal Hearing decision until such time as the owner of record or person in charge of the property submits proof to the Compliance Officer of having abated the act or condition constituting the failure to comply.
- F. Nothing in this Section shall limit the authority of the Compliance Officer to initiate a proceeding under this Ordinance.

#### SECTION 3.230 Further Appeals

All appeals of the Hearings Officer determination pursuant to Section 3.210, Right to Appeal, shall be by writ of review as authorized by ORS 34.010 - 34.100.

#### SECTION 3.240 Restricting Issuance of Development Permits

It is the County's policy, to the extent authorized by law, not to issue permits or approvals, nor to renew or extend permits and approvals, for development on any property on which there already exist uncorrected violations. This restriction shall continue until such violations are corrected.

It is also the County's policy not to issue permits or approvals, nor to renew or extend permits or approvals, for "accessory" structures, such as garages and outbuildings, on vacant property, on property on which there does not already exist a permitted primary residential or commercial use, and on property for which a permit or approval for a "primary" use is not sought simultaneously with the "accessory" use permit or approval. This restriction shall continue until the primary permitted use is established or a permit for it is sought.

If review of Wasco County Planning Department records and/or consultation with Code Compliance staff reveals the existence of unresolved code violations on the subject property, Planning staff shall not accept applications for requested permit(s) or approvals or renewals or extensions thereof, nor shall staff issue permits or approvals or renewals or extensions thereof. Instead, staff shall promptly consult with the

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<sup>1</sup> Includes all appealed violations and/or nuisances not upheld in the hearing

Compliance Officer to determine whether the permit or approval, or the renewal or extension thereof, is being sought in order to correct the existing code violation(s).

If the requested permit or approval, or renewal or extension thereof, is determined to be required for code compliance, the application shall be accepted, or the permit or approval shall be issued if all necessary conditions have been met. Planning Department staff shall refer persons not allowed to apply for permits or approvals, or to whom issuance of permits or approvals or renewals or extensions thereof has been denied under this subparagraph, to the Compliance Officer to discuss required corrective action.

### SECTION 3.250 Recorded Notice of Violation

If the Compliance Officer finds violations of this Ordinance on any property, the Compliance Officer may record with the County Clerk information regarding County code violations and the potential for liens to be placed on the property as a result of these violations. The document will notify a prospective buyer that the property is tainted and can not legally be developed.

- A. The Code Compliance Officer will send a Notice of Failure to Comply: Violation Recorded on Deed via First Class Mail and certified mail, return receipt requested to the owner of record or person in charge of the property or served by personal service. Notice to the owner of record or person in charge of the property may also be accomplished by posting the Notice of Failure to Comply: Violation Recorded on Deed on the property or personal property.
- B. The Notice of Failure to Comply: Violation Recorded on Deed Shall Include:
  - 1. The street address or a description sufficient for identification of the property on which the nuisance exists;
  - 2. A statement that one or more violations of this Ordinance exist at the property with a general description of the violation(s) and the section(s) violated;
  - 3. A request that the owner of record or person in charge of the property contact the Compliance Officer to resolve the violation(s);
  - 4. Specification of a 15 day response period during which the property may be brought into compliance with this Ordinance before a Recorded Notice of Violation is attached to the property deed record.
  - 5. Disclose the right to appeal the findings of the Notice of Failure to Comply/Administrative Penalty and a description of the time limits for requesting an appeal, as described in Section 3.210, Right to Appeal, to the owner of record or person in charge of the property.

- C. Voluntary Compliance: If the owner of record or person in charge of the property responds to the Notice of Failure to Comply: Violation Recorded on Deed and achieves voluntary compliance within 15 days of the notice, a compliance letter will be sent and the file will be closed (see also sub-section F).
- D. Hearings Officer Order: If the owner of record or person in charge of the property does not file a written appeal within 15 days of the date when the Notice of Failure to Comply: Violation Recorded on Deed is served or mailed, the Compliance Officer shall forward the Notice of Failure to Comply: Violation Recorded on Deed to the Hearings Officer for review and issuance of a written order. However, the Compliance Officer does have the discretion to allow for additional time if they feel the owner of record or person in charge of the property will abate the violation.

If the Hearings Officer determine(s) the findings, or other information were lawful, the Hearings Officer shall issue a written order affirming the findings, or other information in the Notice of Failure to Comply: Violation Recorded on Deed and shall sign and submit a Recorded Notice of Violation to the Wasco County Clerk.

If the Hearings Officer determine(s) the findings, or other information were not lawful, the owner of record or person in charge of the property shall not be responsible for meeting the requirements of the Notice of Failure to Comply: Violation Recorded on Deed.

A copy of the Hearings Officer Order shall be sent to the owner of record or person in charge of the property by certified mail

- E. Recording Notice of Compliance: At such time as the violation is abated by the owner, a Notice of Compliance will be mailed via first class mail. The owner may record this document on the property deed with the County Clerk to cover the Recorded Notice of Violation at the owner's expense.

### SECTION 3.260 Attachments

#### ATTACHMENT A - WASCO COUNTY CODE COMPLIANCE AND NUISANCE ABATEMENT ORDINANCE APPEALS HEARING PROCEDURE

- A. Open the hearing (read the following)
  - 1. The name of the appellant;
  - 2. The location of nuisance;
  - 3. The nature of the nuisance as determined by staff; and
  - 4. The nature of the appeal.

B. Rules of Evidence:

1. No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence;
2. Evidence received shall be of a quality that reasonable persons rely upon in the conduct of their daily affairs; and
3. Testimony and evidence must be directed toward the criteria applicable to the subject hearing.

C. Disclosure of Interest or Ex Parte Contact:

1. The Hearings Officers must disclose any personal or financial interest in the matter. If the personal or financial interest could affect the decision, the Hearings Officer(s) must disqualify themself;
2. The Hearings Officer(s) must report any significant ex parte or pre-hearing contacts;
3. Any member of the audience may challenge the right of the Hearings Officer(s) to hear the matter; and
4. Any member of the audience may question the jurisdiction of the Hearings Officer(s) to act on behalf of Wasco County in the matter.

D. Staff presents their report.

E. The Appellant or their Representative is allowed to testify (required to sign name and address).

F. Any person may testify for the Appellant (required to sign name and address).

G. Any person may testify against the Appellant (required to sign name and address).

H. The Appellant or their Representative may rebut any testimony against them.

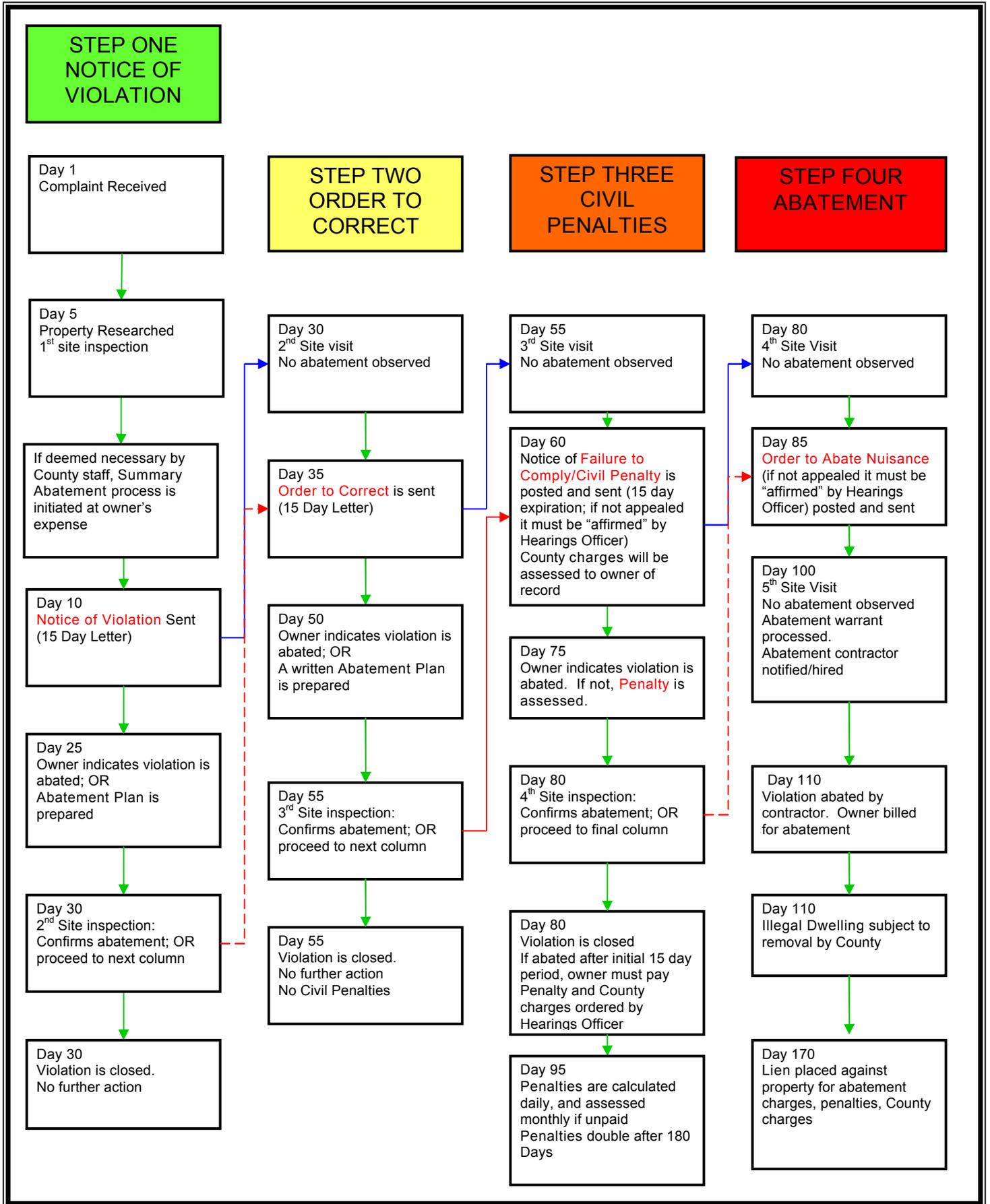
I. The public hearing will close and the Hearings Officer(s) will deliberate. The Hearings Officer(s) may ask additional questions of staff or the Appellant during deliberation.

J. Decision

1. The Hearings Officer(s) will make a decision; or

2. The Hearings Officer(s) will move, second, discuss and vote to make a decision. A majority vote is required to overturn the staff's determination.





NOTE: ALL DATES ARE APPROXIMATE AND USED FOR ILLUSTRATIVE PURPOSES ONLY. ACTUAL TIME FRAMES ARE CASE SPECIFIC AND MAY VARY.