

Chapter 5 - ADMINISTRATIVE ENFORCEMENT 1

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Chapter 5 - ADMINISTRATIVE ENFORCEMENT

5.005 – ADMINISTRATIVE ENFORCEMENT AND PENALTIES

5.005.005 - Definitions.

For purposes of these regulations, the following words and phrases mean:

“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.

“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.

“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 as defined by LC 5.025.005.

(Order 00-4-25-14, 4.25.00; Order 07-9-12-14, 9.12.07; Order 22-01-25-04, 2.8.22)

5.005.010 - Coordination of Compliance and Permitting.

Upon receipt of a land-use application or other permit application, Land Management Division staff shall review the document and determine if there are any compliance actions pending as to the subject property. If pending compliance actions are found, Land Management Division staff shall refer the application to Compliance Program staff.

(Order 10-10-5-2, 11.26.2010)

5.005.015 - Administrative Civil Penalty.

- A. Any notice of failure to comply authorized by LC Chapter 5 shall:
1. Be in writing, signed by the Director or their designee;
 2. Include those matters set forth in LC 5.025.025A.
 3. Specify the amount of the monetary penalty imposed;
 4. State the starting date of the penalty. If applicable, state that each day the violation continues to exist is a separate failure to comply for which the monetary penalty will be assessed. The penalty assessments will continue daily until the corrections are made;
 5. State that the responsible person receiving the notice of failure to comply has the right to appeal to a hearings official no later than ten (10) calendar days from receipt of the notice of failure to comply.
- B. The amount of the monetary penalty assessed shall be determined in accordance with LM 5.005.020 below.

- C. The notice of failure to comply shall be deemed received for purposes of any time computations hereunder on: the date the notice is served personally on the responsible person; three (3) days after the date the notice is mailed to the responsible person at an address within the state of Oregon; or seven (7) days after the date the notice is mailed to a responsible person outside of this state.
- D. The monetary penalty shall become final upon expiration of the time for filing an appeal and entry of a hearing official's order of civil penalty, unless a responsible person properly appeals pursuant to LM 5.005.025 below or other duly adopted regulations. If appealed, the penalty shall become final, if at all, upon the hearing official's decision affirming the imposition of the civil penalty.

(Order 00-4-25-14, 4.25.00; Order 22-01-25-04, 2.8.22)

5.005.020 - Determination of Monetary Penalty.

The amount of the monetary penalty to be assessed under LM 5.005.015 above shall be determined in accordance with the following formula, as described herein.

- A. The dollar amount of the assessment is calculated by multiplying the amount of the BASE (LM 5.005.020A.1) by the MULTIPLIER (LM 5.005.020A.2) and multiplying that by twenty dollars (\$20). Notwithstanding this formula, the maximum assessment for a violation for a single day shall be two thousand dollars (\$2,000) except as provided for cases involving commercial gain in paragraph LM 5.005.020B.
 - 1. The BASE is the sum of "H" plus "P" plus "R" plus "C" plus "E" where:
 - a. "H" is the history of the responsible person taking all feasible steps of procedures necessary or appropriate to correct the failure to comply. The value of "H" shall be:
 - (1) 0, if the responsible person has taken a major, active role in attempting to resolve the failure to comply. There must have been a physical effort that resulted in significant improvement. Verbal communication is not sufficient by itself, but it may be considered a part of the necessary effort.
 - (2) 1, if the person has made minor attempts to correct the failure to comply, but not significant improvement resulted. Verbal communication is not sufficient by itself, but it may be considered as a part of the necessary effort.
 - (3) 4, if the person took little or no action whatsoever. This includes verbal contact or assurances that the problem will be resolved, but with no noticeable physical effort to correct the failure to comply.
 - b. "P" is the number of prior failures to comply or violations of the code provision upon which the current failure to comply is based. This number is based on prior similar complaints verified as valid, whether or not further enforcement action occurred. The value of "P" shall be:
 - (1) One (1), if the present failure to comply is the first failure to comply within the past three (3) years.
 - (2) Two (2), if the present failure to comply is the second similar occurrence within the past three (3) years.
 - (3) Four (4), if the present failure to comply is the third or subsequent similar occurrence within the past three (3) years.

- c. "R" is the nature of the occurrence, considering whether it was repeated or continuous as opposed to a single occurrence. The value for "R" shall be:
 - (1) One (1), if the failure to comply was a one (1) time occurrence.
 - (2) Two (2), if the failure to comply was repeated or continuous in nature.
 - d. "C" is whether the cause of the failure to comply was an inadvertent, negligent, or a reckless or intentional act. The value of "C" shall be:
 - (1) One (1), if the failure to comply was unavoidable accident or caused by others. This category is used when the monetary penalty is assessed either (a) against a person who is responsible for the property, such as an owner, but who was not physically in charge of the property when the failure to comply occurred; or (b) against someone who did cause the failure to comply but could not have reasonably foreseen that the failure to comply would occur.
 - (2) Two (2), if the failure to comply was caused by a responsible person's negligence. Negligence is the failure to exercise the care that a prudent person would exercise under the circumstances. This category is used where someone either caused the failure to comply by carelessness or was negligent in taking the necessary corrective steps within the allowed time-period.
 - (3) Four (4), if the failure to comply was due to reckless or intentional acts. A reckless act is marked by a lack of proper caution, or carelessness or consequences. An intentional act is an act done by intention or design.
 - e. "E" is the responsible person's cooperativeness and efforts directed toward correcting the failure to comply. The value of "E" shall be:
 - (1) Zero (0), if the person was cooperative resulting in the need for minimal enforcement effort on the part of the enforcement officer.
 - (2) Two (2), if the person was not cooperative.
2. The MULTIPLIER is the product of "A" multiplied by "G" where:
- a. "A" is the number of prior enforcement actions taken against this responsible person by Lane County, whether at this property or another, and whether for this type of failure to comply or another. The value of "A" shall be:
 - (1) One (1), if this failure to comply is the first enforcement action against this responsible person in the past (5) five years.
 - (2) Two (2), if there has been one (1) prior enforcement action taken against this person within the past five (5) years.
 - (3) Three (3), if this failure to comply is at least the third enforcement action taken against this responsible person within the past five (5) years.
 - b. "G" is the immediacy and magnitude of the failure to comply. This factor is evaluated at the time the enforcement officer initiates compliance efforts. The value of this factor does not decrease if, after enforcement action is initiated, County efforts reduce the gravity of the occurrence or the responsible person makes corrections only at the insistence of the enforcement officer. The value of "G" shall be:

- (1) One (1), for a failure to comply that is not an immediate threat to health, safety or the general welfare and has only minor potential consequences. These situations pose non-immediate threats to lives or property such that the failure to comply can be tolerated while corrective action is taken.
- (2) Two (2), for a failure to comply that is significant, but does not pose an immediate threat to health, safety or the general welfare. These occurrences pose significant potential consequences, though the threat is not immediate. These situations can be tolerated for a limited period of time with interim measures taken to minimize the threat.
- (3) Three (3), for a failure to comply that is substantial and poses an immediate threat to health, safety or the general welfare. These situations pose immediate threats to lives such that the threat cannot be tolerated. Action must be taken immediately to prevent occupancy of the premises or to remove the hazard.

- B. In cases involving commercial gain, the dollar amount of the assessment calculated using the formula in paragraph LM 5.005.020A above shall be multiplied by a factor of three (3) provided that the maximum assessment for a failure to comply of a single day for a case involving commercial gain shall be two thousand five hundred dollars (\$2,500).

(Order 00-4-25-14, 4.25.00; Order 07-9-12-14, 9.12.07; Order 22-01-25-04, 2.8.22)

5.005.025 - Appeal Procedure.

- A. Appeals and hearings shall be governed by LC 5.025.035, and as set forth herein or in other regulations authorized and adopted pursuant to provisions of the Lane Code.
- B. Any appeal of an administrative civil penalty pursuant to LC 5.025.035 shall require an appeal fee of one thousand five hundred dollars (\$1,500). In lieu of paying the entire appeal fee initially, an appellant may deposit one hundred dollars (\$100) of the required appeal fee with the request for an appeal. The remainder of the appeal fee shall be due and payable if the appeal is denied, and shall be added to the accrued penalty.
- C. Except as otherwise set forth below, the hearings official will affirm the administrative civil penalty if the County has authority to impose the administrative civil penalty, the County substantially complied with applicable procedures, and the amount of the monetary penalty was properly determined in accordance with LM 5.005.020. The hearings official may modify the amount of the monetary penalty based on the record and testimony received at the appeals hearing and the hearings official's application of the evidence to the criteria contained in LM 5.005.020. The hearings official may set aside the administrative civil penalty only if the County did not have authority to impose an administrative civil penalty or if the County substantially failed to comply with applicable procedures.

(Order 00-4-25-14, 4.25.00; Order 07-9-12-14, 9.12.07; Order 22-01-25-04, 2.8.22)

5.005.030 - Compliance Certification.

- A. At any time following issuance of a notice of failure to comply, the person receiving such notice may submit a compliance certification and documentary evidence indicating that the failure to comply has been corrected or abated.
- B. By submitting a compliance certification, a person authorizes access to his/her property by the Land Management Division to determine whether the failure to comply has been corrected or abated. If

such access is subsequently denied, the failure to comply shall be deemed to have continued until such time that the Land Management Division is allowed access to make such a determination.

- C. Accrual of civil penalties will cease on the day the compliance certification was received by the Land Management Division, so long as the Land Management Division confirms that the violation has been corrected or abated.
- D. If, after receiving a compliance certification, the Land Management Division determines that the failure to comply continues, the accrual of civil penalties shall continue uninterrupted from the date of the notice of failure to comply until it is corrected or abated.

(Order 07-9-12-14, 9.12.07; Order 22-01-25-04, 2.8.22)