

CHAPTER 31
ENFORCEMENT

ADMINISTRATION

31.005 Purpose. The purpose of this is to provide for the welfare, safety and health of the citizens of Benton County by establishing a procedure wherein the ordinances of Benton County can be enforced. [Ord. 99-0147]

31.010 Definitions. For the purposes of BCC Chapter 31, the following definitions shall be used:

(1) **“County ordinance”** as used in this ordinance shall include any County ordinance, order, resolution, license or permit and any State statute or administrative rule which the County is authorized to enforce. Excepted from this definition is "Dog Hearing Proceedings" under ORS 609.150 and Benton County Code Section 9.705.

(2) **“Infraction complaint”** means that document(s) which, when properly served upon the alleged ordinance violator, brings the matter before the appropriate court for resolution. The elements of an infraction complaint are set forth in Section 31.130 of this ordinance.

(3) **A “person” includes:**

(a) The United States or agencies thereof, any state, public or private corporation, limited liability company, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity, contractor, subcontractor or combination thereof. For the purpose of this ordinance, “person” also includes those residing in or conducting business or activities in the incorporated or unincorporated areas of Benton County; and

(b) The owner, title holder, contract seller, or contract buyer of the land upon which the violation is occurring, is equally responsible for the violation of County ordinance, as is the possessor of the land, user of the land, or the person who is taking the action, conduct or omission which constitutes a violation of any County ordinance.

(4) **“Enforcement officer”** means that person(s) who is appointed to serve infraction complaints pursuant to Sections 31.015, 31.020, and 31.105 of this Ordinance.

(5) **“Violator”** means any person who has admitted violation of County ordinance or a person who has been adjudicated to have violated a County ordinance. [Ord. 99-0147]

31.015 Enforcement Officers. The Benton County Planning Official, Building Official, Public Works Director, Health Administrator, Sheriff and/or County Counsel, or their appointed designee, shall act as enforcement officer(s) for the purpose of issuing infraction complaint(s), abstract of record and summons. [Ord. 99-0147; Ord 2021-0307]

31.020 Escalating Enforcement Response Procedure

(1) In responding to an apparent violation of County ordinance, the County's enforcement officer(s) shall proceed through the following escalating enforcement responses. The process may begin with either subsection (a) or (b) and shall move sequentially through subsections (c) through (e) as necessary to achieve compliance. For major violations as defined in subsection (2), the process may begin at any level deemed appropriate by the enforcement officer.

(a) **Verbal Notice of Violation:** The enforcement officer or designee communicates the nature of the violation and the ordinance sections violated verbally to the property owner or the property owner's agent or contractor, in person or by telephone, and documents the communication in appropriate County records.

(b) **Written Notice of Violation:** The enforcement officer or designee issues by mail or in person to the property owner and agent or contractor a Written Notice of Violation identifying the nature of the violation(s), the ordinance sections violated, the action(s) needed to correct the violation(s), and options for appeal. If a Verbal Notice of Violation was issued pursuant to subsection (a), a Written Notice of Violation shall be issued within five (5) working days if the violation is not corrected within that time.

(c) **Written Notice to Comply:** The enforcement officer or designee shall, in instances described in subsection (i) and (ii) below, issue by mail or in person to the property owner and agent or contractor a Written Notice to Comply. Said Notice shall describe the violations, expected corrections, a schedule for correction, and notification of appeal options. The Notice to Comply is to specifically document the date and time when a stop work order or a suspension of permits will be executed if the applicant does not comply.

(i) At least five (5) working days following transmittal of a Written Notice of Violation if the enforcement officer deems that the response to the Written Notice of Violation is inadequate; or

(ii) As an initial step for violations deemed to be major violations by the enforcement officer pursuant to subsection (2) of this section,

(d) **Written Stop Work Order, Suspension of Permits, and Warning of Legal Action and/or Fines:** The enforcement officer may issue any of these by mail or in person to the property owner and agent or contractor on or after the date specified in the Written Notice to Comply.

(e) **Legal Action and/or Citations:** The enforcement officer may issue infraction complaints or citations pursuant to Section 31.105.

(2) In instances where the enforcement officer deems that a violation is egregious, negligent, a direct threat to public health, safety or wellbeing, the environment, public infrastructure, or any combination thereof, enforcement may be escalated to levels (c) through (e) without verbal or written notice.

(3) Failure of an enforcement officer to conform to this escalating enforcement response procedure shall not invalidate an enforcement proceedings. If such failure prevented the violator

from being able to comply within deadlines to avoid fines, the remedy shall be the waiving of said fines.

[Ord 2021-0307]

INFRACTION COMPLAINT AND SUMMONS

31.105 Service of Infraction Complaint.

(1) Service of the infraction complaint shall be by the enforcement officer, their designated appointee or a peace officer upon the person(s) whose conduct, action(s) or omission(s) constitute the ordinance violation(s).

(2) If the ordinance violator is not the owner, title holder, contract buyer or contract seller of the property and is the person whose action, conduct or omission is creating or causing (by act or omission) the ordinance violation, then the owner, title holder, contract buyer and contract seller may also be served personally with an infraction complaint.

(3) If personal service cannot readily be made, substitute service can be made as provided by ORCP 7(D). [Ord. 99-0147]

31.110 Jurisdiction of the Courts. A justice court or circuit court have concurrent jurisdiction of all infraction complaints for violation of a county ordinance. [Ord. 99-0147]

31.115 Designation of Attorney for Benton County. The Benton County Board of Commissioners hereby elects to have the prosecution of infraction complaints and/or any other remedy provided by law to be conducted by Benton County Legal Counsel or Assistant Benton County Legal Counsel. [Ord. 99-0147]

31.120 Service of Summons, Complaint and Abstract of Record.

(1) An infraction complaint issued pursuant to this ordinance shall comply with the requirements of Sections 26.125, 26.130 and 26.135 respectively.

(2) The enforcement officer issuing an infraction complaint shall cause:

(a) The summons to be delivered to the person;

(b) A copy of the complaint, abstract of record and summons to be delivered to Legal Counsel within two (2) business days after service of the summons; and

(c) The complaint and abstract of record to be delivered to the appropriate court within two (2) business days after service of the summons. [Ord. 99-0147]

31.125 Infraction Complaint; Occurrence; Other Remedies.

- (1)
 - (a) Except as otherwise specifically provided in this ordinance, an infraction complaint may be used for violation of any County ordinance.
 - (b) Infraction complaints may be filed against the same person for repeated violations of the same ordinance or for a continuing violation of the same ordinance.
 - (c) Each 24-hour period constitutes a separate occurrence.
- (2) The County may, at any time, whether before or after the issuance of one or more infraction complaints, institute a complaint in the Benton County Circuit Court for any other remedy provided by law, including injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate the violation.
- (3) In addition to any other remedy provided by law to the County, the County may seek a fine of \$500 for each separate violation and a fine of \$1,000 for a continuing violation of any County ordinance, pursuant to this ordinance. [Ord. 99-0147]

31.130 Infraction Complaint.

- (1) The infraction complaint shall consist of four (4) parts. The required parts are:
 - (a) The complaint.
 - (b) The abstract of record.
 - (c) The enforcement officer record.
 - (d) The summons.

Each of the parts shall contain the information required by this ordinance.

- (2) The complaint shall contain a form or certificate in which the enforcement officer shall certify that he/she has sufficient grounds to believe, and does believe, the person served with the infraction complaint violated a County ordinance, contrary to law. A certificate conforming to this section shall be deemed equivalent to a sworn complaint.
- (3) Minimum requirements for infraction complaint: The infraction complaint is sufficient if it contains the following:
 - (a) The name of the court, the name of Benton County, in whose name the action is brought, and the name of the violator(s).
 - (b) A statement or designation of the alleged violation of County ordinance in such a manner as can be readily understood by a person making a reasonable effort to do so and

the date, time and place at which the violation of County ordinance is alleged to have occurred.

(c) A certificate signed by the enforcement officer issuing the infraction complaint.

(4) Motion to set aside. The complaint shall be set aside by the court upon motion of the violator, before a plea, when the complaint does not conform to the requirements of this section. A pretrial ruling on a motion to set aside may be appealed by the County. The court may allow Benton County to amend the complaint or to file an amended complaint. [Ord. 99-0147]

31.135 Summons. A summons in an infraction complaint is sufficient if it contains the following:

(1) The name of the court, the name of the person cited, the date on which the infraction complaint was issued, the name of the complainant, and the date, time and place at which the person cited is to appear in court.

(2) A statement or designation of the violation of County ordinance in such a manner as can be readily understood by the person making a reasonable effort to do so, and the date, time and place at which the ordinance violation is alleged to have occurred.

(3) A notice to the person cited that an infraction complaint will be filed with the court, based upon the alleged violation of County ordinance.

(4) The fine for violation of the ordinance:

(a) For a single occurrence, a minimum of \$25.00 and not to exceed \$500.00, unless otherwise specified.

(b) For a continuing occurrence, a minimum of \$25.00 and not to exceed \$1,000.00 unless otherwise specified.

(5) A written notice on the face of the summons that the County may seek any and all other legal remedies, including but not limited to injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate the ordinance violation. [Ord. 99-0147]

HEARING PROCEDURE

31.205 Violator's Appearance; Payment of Fine; Request for Hearing; Statement; Admission of Violation.

(1) The violator shall either appear in court at the time indicated in the summons, or prior to such time may:

(a) Request a hearing;

(b) Admit violation of the County ordinance and give a statement of matters in explanation or mitigation of the violation; or

(c) Submit to the court an executed appearance, waiver of hearing, and admission of violation as set forth on the summons. A statement in explanation or mitigation may also be submitted with the admission of violation of County ordinance.

(2) In any case in which the violator personally appears in court at the time indicated in the summons, and the violator desires to admit the violation of the County ordinance and court accepts the admission, the court shall hear any statement in explanation or mitigation that the violator desires to make.

(3) If the violator does not appear in court at the time indicated in the summons, and has not, prior to such time, submitted an executed appearance and waiver of hearing to the court together with cash, check or money order in the amount of the fine set forth in the summons, or requested in writing a continuance of the time to appear in court, the court shall enter a judgment against the violator in an amount equal to the fine set forth on the face of the summons, together with court costs and any special costs. [Ord. 99-0147]

31.210 Statement as Waiver of Hearing and Consent to Judgment; Fine Forfeiture. If a violator has not requested a hearing, but has submitted to the court any written statement in explanation or mitigation of the ordinance violation, the statement constitutes a waiver of hearing and consent to the entry of judgment against the violator. The court may declare a forfeiture of the fine or portion thereof on the basis of the statement and/or any testimony or written statement of the enforcement officer or other person, if any, which may be presented to the court. [Ord. 99-0147]

31.215 Hearing Date; Notice to Violator; Waiver.

(1) If the violator requests a hearing, the court shall fix a date and time for the hearing, and advise the violator of the date.

(2) If the violator fails to appear at the time set for the hearing without having previously requested a continuance in writing, the court shall enter a judgment against the violator in the amount of the fine set forth on the summons.

(3) No warrant of arrest can be issued for any violation of a County ordinance. [Ord. 99-0147]

31.220 Hearing; Trial; Commencement; Burden of Proof; Pretrial Discovery; Violator Witness.

(1) The hearing of any infraction complaint shall be by the court without a jury.

(2) The hearing of any infraction complaint shall not commence until the expiration of seven (7) days from the date of the infraction complaint.

(3) The County shall have the burden of proving the violation of the ordinance by a preponderance of the evidence.

(4) The pretrial discovery rules set forth in the Oregon Rules of Civil Procedure shall apply to infraction complaints. The County may call the violator as a witness at the hearing.

(5) Proof of negligence, malfeasance, misfeasance, nonfeasance, willful conduct, knowing conduct, intentional conduct, or any other culpable mental state is not an element of any ordinance violation.

(6) At any hearing involving an infraction complaint, an attorney shall not be provided at public expense. At any hearing involving an infraction complaint, the County's attorney may appear, but is not required to appear. [Ord. 99-0147]

31.225 Prosecution of Infraction Complaint. Notwithstanding any provision of the Oregon Rules of Civil Procedure or any other provision of this ordinance, the prosecution of one infraction complaint shall not bar the subsequent prosecution of additional County ordinance violations occurring or committed at the same time or as part of the same act or transaction or as part of the same occurrence as other ordinance violation(s). Evidence of prior ordinance violation(s) shall be admissible in any subsequent prosecution of any ordinance violation. [Ord. 99-0147]

31.230 Civil Judgment. A judgment upon an infraction complaint is a civil judgment, as is any other civil judgment at law. The judgment involves only a fine, and does not incur loss by forfeiture, suspension or revocation of any license or any other privilege or other civil penalty. A person against whom a judgment is issued does not suffer any disability or legal disadvantage, based upon said judgment, other than the enforcement by Benton County of the judgment. [Ord. 99-0147]

31.235 Consent Decree. The County and the violator may enter into a consent decree. The consent decree shall provide that the violator does not admit a violation of County ordinance but will make necessary corrections, as set forth in the agreement, to bring the violator's actions, conduct, omissions or property into conformance with appropriate County ordinances.

The violator, the violator's attorney, if any, and the County Legal Counsel shall sign all consent decrees.

The consent decree shall be filed with the court as a final adjudication of the proceedings and shall constitute a dismissal of the action when violator performs as agreed. The violator or Benton County may seek a court order dismissing the case upon completion of the conditions of the consent decree.

The violator's failure to comply with the consent decree allows Benton County to seek any additional remedies provided by law or this ordinance. [Ord. 99-0147]

APPEAL

31.305 Appeal from Judgment. An appeal from a judgment may be taken by either party as follows:

- (1) From a proceeding in Justice Court, as provided in ORS Chapter 53; or
- (2) From a proceeding in Circuit Court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200. [Ord. 99-0147]

COSTS AND FINES

31.405 Court Costs.

- (1) The court, in addition to the fine, shall charge court costs to the violator where:
 - (a) The violator admits violation of the County ordinance and the minimum fine is imposed;
 - (b) The violator admits violation of the County ordinance and a fine other than the minimum fine is imposed;
 - (c) The violator fails to appear for the hearing or is found to have violated a County ordinance following a hearing; or
 - (d) The violator enters into an agreement with the County for a consent decree whereby the violator does not admit violation of the County ordinance but agrees to make necessary corrections, as set forth in the agreement, in order to bring the violator's conduct, actions or property into compliance with County ordinances.
- (2) Court costs shall be \$25. Said costs cannot be waived by the County, the violator or the court in any proceeding. If the violator fails to pay the costs, the costs shall be entered as a judgment against the violator in the same manner and with like effect as a judgment for a fine. [Ord. 99-0147]

31.410 Fines. All fines collected shall be distributed as follows:

- (1) One-half (½) of the fine shall be credited to the account of the Department or Division employing the enforcement officer to offset the cost of enforcement.
- (2) One-half (½) of the fine shall be credited to the account of Benton County Legal Counsel to offset the cost of enforcement. [Ord. 99-0147]

31.415 Special Costs.

- (1) The County shall be entitled to recover all special costs and disbursements that are reasonable and necessary expenses incurred in the successful prosecution of an infraction complaint other than for legal services, but including the costs/expenses/salaries of officers, employees and witnesses, the necessary expenses of taking depositions, the expense of publication of summons or notices, postage, compensation of expert witnesses, the expense of copying any public record, book or document used as evidence in the trial.
- (2) The special costs shall be allowed to the County in the same manner as a judgment for fines. [Ord. 99-0147]

ADDITIONAL PROVISIONS

31.500 Voluntary Compliance Agreement.

- (1) The County may enter into a written voluntary compliance agreement with the property owner or the property owner's agent or contractor at any point in the Escalating Enforcement Response Procedure described in Section 31.020. The agreement shall include the applicable code provision(s), required corrective action, time limits for compliance, fines if applicable 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.
- (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.
- (4) 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 these provisions, 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.

[Ord 2021-0307]

31.505 Private Right of Action

- (1) Any person, whether acting as principal, agent or employee, whose interest is or may be affected by any violation of a Benton County ordinance may, in addition to the other remedies provided by law, file an infraction complaint in the following manner:
 - (a) The private citizen shall prepare and present the infraction complaint to the appropriate enforcement officer. If the enforcement officer fails to act upon the infraction complaint within ten (10) days, the citizen may submit the infraction complaint to Legal Counsel. Legal Counsel may investigate the alleged violation of a County ordinance and, after consultation with the appropriate department or division head, shall either (A) serve

the infraction complaint and prosecute; or (B) decline to serve the infraction complaint or to prosecute. Legal Counsel shall notify the private citizen of said action within ten (10) days from the date the infraction complaint is presented to Legal Counsel.

(b) The private citizen, following notice by Legal Counsel of Legal Counsel's refusal to prosecute, may, within sixty (60) days of such notice, bring an action pursuant to this ordinance, in the citizen's name against the alleged violator in the same manner and form as provided by this ordinance. Should the private citizen prevail against the violator, any fine imposed, and special costs shall be awarded to the plaintiff private citizen. [Ord. 99-0147]

31.510 Severability Clause. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground but valid on another, it shall be construed that the valid ground is the one upon which the ordinance or such portion thereof was enacted. [Ord. 99-0147]