

CHAPTER 1.20: CODE HEARINGS OFFICER**1.20.010 Established.**

The position of “code hearings officer” is hereby created. The code hearings officer shall be appointed by the city manager or designee. The appointment of a code hearings officer may be for a specific term, for a particular proceeding, or for a group of proceedings. If the city elects not to fill the code hearings officer position, the city council shall serve as the decision-making authority. The city council retains the right to designate a proceeding, or types of proceedings, to be heard by the city council in lieu of the code hearings officer.

1.20.020 Jurisdiction.

The code hearings officer shall have jurisdiction over decisions and appeals as provided in this chapter, including, but not limited to, complaints for code violations as defined hereunder. Notwithstanding the foregoing, prior to issuance of the decision of the code hearings officer, the city manager or designee retains jurisdiction to informally resolve or settle any citation, enforcement matter, or city appeal pending before the code hearings officer, or to settle or resolve an appeal with the consent of the party who filed the appeal, in which case the matter shall be dismissed.

1.20.030 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates otherwise:

“City” means the City of Boardman.

“Code violation” means commission of an act or omission to act that constitutes a violation of a provision of the code and which is required to be enforced in accordance with the procedures established under this chapter.

“Code” means the Boardman Municipal Code and the Boardman Development Code, including as amended.

“Code compliance officer” means a designated employee or contractor of the city who enforces code violations of the code under this chapter.

“Code hearings officer” means the appointee designated to hear appeals of violations as set forth under this chapter.

“Complaint” means the document initiating an action to enforce a provision of the code under this chapter, as further described in 1.20.040.

“Penalty” means a monetary penalty as set forth in 1.20.130.

“Person” means any natural person or persons, firm, partnership, association or corporation.

“Responsible party” means the person(s) responsible for curing or remedying a code violation and may include:

- A. The owner(s) of the property or the owner's manager or agent or other person in control of the property on behalf of the owner;
- B. The person(s) occupying the property including bailee, lessee, tenant or other person having possession; and/or
- C. The person(s) alleged to have committed or authorized the commission of the code violation

1.20.040 Initiation of Proceeding.

In lieu of citing into municipal or circuit court, a proceeding before the code hearings officer may be initiated as provided in this section.

A. Complaint Issuance. Any action to enforce the code before the code hearings officer may be initiated by the filing of a complaint with the code hearings officer on forms proscribed by the city. At minimum, the complaint shall consist of the following:

- 1. The name of the city;
- 2. The name of the responsible party;
- 3. A short and plain statement of the alleged code violation, including a reference to the specific code provision(s) being violated, that can be readily understood by a person making a reasonable effort to do so;
- 4. The nature of the relief sought by the city; and
- 5. A form of verification that the code compliance officer swears that they have reasonable grounds to believe, and does so believe, that the responsible party committed the code violation.

B. Setting of Hearings.

- 1. Upon filing of a complaint, the code hearings officer shall specify a time, date, and place for a hearing on the complaint and the matters alleged therein.
- 2. The date set for hearing shall be not less than 14 days nor more than 30 days after the date the complaint is filed, except that the code hearings officer may specify a date for hearing less than 14 days after the complaint is filed where it appears that the alleged code violation poses an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person.
- 3. The code hearings officer may postpone, continue, set over, or reschedule any hearing on their authority, with the consent of all parties, or on the motion of any party for good cause shown.

C. Notice of Hearing.

- 1. The city shall give notice of the hearing, together with a copy of the complaint, to the named responsible party not less than 14 calendar days prior to the date set for hearing, except that the code hearings officer may set a shorter period when it appears that the alleged code violation poses an immediate and serious hazard to

- the public health, safety, or welfare or the life, health, safety, welfare, or property of any person.
2. The notice of the hearing shall specify the time, date, and place set for the hearing.
 3. Notice may be served by:
 - a. Personally delivering the notice to the party;
 - b. Any class of mail or commercial delivery service, with service deemed complete upon deposit in the mail or dispatch to the commercial delivery service provider; or
 - c. Any method otherwise authorized by the Oregon Rules of Civil Procedure for the service of summons.
 4. If the property is alleged to constitute a nuisance, or may be subject to an order to abate, close, demolish or vacate the property, notice of the hearing shall also be posted on the property.
 5. The code hearings officer may require that notice of the hearing shall also be given to any other person who reasonably appears to have an interest in the property or who otherwise is reasonably determined to may be adversely affected by any determination, decision, or order of the code hearings officer.
 6. Except as otherwise provided by law, the failure of any person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision, or order of the code hearings officer.

1.20.050 Notice; Rights; Procedure.

- A. Prior to the commencement of a hearing, the code hearings officer shall provide written confirmation to each party of the following matters:
 1. A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens going forward with the evidence. In the case of a citation, that the person is not required to be a witness.
 2. That a record will be made of the proceedings and the manner of making the record and its availability to the parties.
 3. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the code hearings officer.
 4. Whether an attorney will represent the city in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.
 5. The title and function of the code hearings officer, including the effect and authority of the code hearings officer's determination.
 6. In the event a party is not represented by an attorney, whether the party may, during the course of proceedings, request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.
 7. Whether there exists an opportunity for an adjournment at the end of the case and the party then determines that additional evidence should be brought to the attention of the code hearings officer and the hearing is reopened.

8. Whether there exists an opportunity after the hearing and prior to the final determination or order of the code hearings officer to review and object to any proposed findings of fact, conclusions of law, summary of evidence, or order of the code hearings officer.
 9. A description of the appeal or judicial review process from the determination or order of the code hearings officer.
- B. The information required to be given to a party to a hearing under subsection (A) of this section may be given in writing or orally before commencement of the hearing.
- C. The failure to give notice of any item specified in subsection (A) of this section or other procedural irregularity shall not invalidate any determination or order of the code hearings officer unless on appeal from or review of the determination or order a court finds that the failure substantially prejudices the rights of the complaining party. In the event of such a finding, a reviewing court shall, at the request of the city or the court, may on its own authority, remand the matter to the code hearings officer for a reopening of the hearing and shall direct the code hearings officer as to what steps shall be taken to remedy the prejudice to the rights of the complaining party.

1.20.060 Hearing.

- A. Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing by stipulation, consent order, agreed settlement, or default.
- B. Every hearing that is held before the code hearings officer to determine whether a code violation has been committed shall be held solely before the code hearings officer; no jury will be present.
- C. The city shall have the burden of proving the alleged code violation by a preponderance of the evidence.
- D. Parties may elect to be represented by counsel and to respond to and present evidence and argument on all issues involved.
- E. Testimony shall be taken upon oath or affirmation of the witness from whom received. The code hearings officer may administer oaths or affirmations to witnesses.
- F. The record in a hearing proceeding before the code hearings officer shall be maintained by the city and shall include, at minimum:
1. All pleadings, motions, and intermediate rulings;
 2. A verbatim, written, mechanical, or electronic record for all verbal motions, rulings, and testimony;
 3. Evidence received or considered;
 4. Stipulations and matters officially noticed;
 5. Questions and offers of proof, objections, and rulings thereon;
 6. Proposed findings and exceptions; and
 7. Any proposed, intermediate, or final order prepared by the code hearings officer.

- G. After due consideration of the evidence and arguments presented at the hearing, the code hearings officer shall determine whether the code violation as alleged in the complaint was committed.
1. When the code violation has not been proven, an order dismissing the complaint shall be entered in the record, and a copy of the order shall be delivered to the person named in the order personally or by mail.
 2. When the code hearings officer finds that the violation was committed, the order shall include a brief statement of the necessary findings of fact to establish the code violation alleged. Upon a finding that a code violation has occurred, the code hearings officer shall assess a penalty pursuant to this chapter, plus hearing costs, costs for the city's attorney, and witness fees, if any. The code hearings officer is further authorized to set by order reasonable hearing costs, including hearing fees incurred by the code hearings officer.
- H. A party may request transcription of the record for the purposes of court review upon payment of the reasonable costs of preparing the transcript. If the party prevails on such review, the reasonable costs of preparing the transcript shall be allowed as a part of that party's costs in such action.
- I. Judicial review of an order issued pursuant to this section may be sought through filing a writ of review pursuant to ORS 34 in Morrow County Circuit Court.

1.20.070 Subpoenas; Discovery; Evidence.

- A. Subpoenas.
1. The code hearings officer may, in their discretion, issue subpoenas upon a showing that issuance is necessary to obtain relevant testimony not otherwise available. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the city, shall receive fees and mileage as prescribed by law for witnesses in civil actions.
 2. If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which they may be lawfully interrogated, the judge of the Circuit Court of any county, on the application of the city, or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.
- B. Discovery.
1. In a prosecution of a code violation, the city shall provide discovery as required by law.
 2. On petition of any party and a showing of the general relevance of the documents or things sought, the code hearings officer may enter an order directing any party to produce and make available to the petitioning party to inspect and copy any documents or to inspect and copy, test, or sample any things which are in the possession of a party.
 3. The order directing a party to produce and make available documents or things may require the petitioning party to pay the party producing documents and things that party's reasonable costs associated with such production.

4. The code hearings officer shall not enter an order requiring a party to produce any document or thing which is privileged under the rules of privilege recognized by law or which is subject to an exemption from disclosure under the Oregon Public Records Law.

C. Evidence.

1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Erroneous rulings on evidence shall not preclude action by the code hearings officer on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
2. The code hearings officer shall give effect to the rules of privilege recognized by law. Objections to evidence may be received in written form.
3. All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies of excerpts, or by incorporation by reference.
4. The code hearings officer may take notice of judicially recognizable facts, and the code hearings officer may take official notice of general, technical, or scientific facts within the specialized knowledge of city employees. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.
5. No sanction shall be imposed or order be issued except upon consideration of the whole record as supported by, and in accordance with reliable, probative, and substantial evidence.

1.20.080 Code Hearings Officer Authority

- A. In addition to any authority otherwise granted in the code, the code hearings officer may order a responsible party found to not be in compliance with the code, or any applicable rule, regulation, or agreement issued thereunder, to comply with the provisions of the code, or any applicable rule, regulation, or agreement issued thereunder, within such time as the code hearings officer may by order allow. The order may include, but is not limited to, requiring the responsible party to do any and all of the following:
 1. Make any and all necessary repairs, modifications, or improvements to the structure, real property, or equipment involved.
 2. Abate or remove any nuisance.
 3. Change the use of the building, structure, or real property involved.
 4. Install any equipment necessary to achieve compliance.
 5. Pay a civil penalty in the amount of the presumptive fine or fine provided for in the applicable chapter of the code.
 6. Pay costs and attorney fees if otherwise authorized by this code.
 7. Take any other action reasonably necessary to correct the violation or mitigate the effects thereof.
- B. The responsible party shall cooperate with city officials, including not preventing the code compliance officer, and any other persons employed or contracted by the city, from entering the property to determine compliance with the code and any orders to abate.

- C. If the code hearings officer determines that the responsible party is unwilling, unable, refuses, or fails to comply with an order to abate or mitigate a nuisance, including, but not limited to, vacating or demolishing a building or structure, the code hearings officer may authorize the city to take such actions as the code hearings officer determines are reasonably necessary, including abatement by the city, and that the person found in violation pay the city's reasonable costs thereof.

1.20.090 Proposed and Final Orders; Petition for Reconsideration

- A. The code hearings officer shall prepare and mail to all parties a final order as provided herein. The code hearings officer may issue a proposed order and provide the parties not less than ten days to review and comment before issuance of a final order.
- B. A final order shall become effective on the date mailed unless specified otherwise in the order.
- C. Every order shall be in writing or stated in the record and may be accompanied by an opinion.
- D. Unless otherwise stipulated, a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the code hearings officer's order.
- E. Every final order shall include a citation of the code provision(s) under which the order may be judicially reviewed.
- F. Upon receipt of a final order, a party may file a petition for reconsideration or rehearing with the code hearings officer within ten days after the date the order was mailed. The party filing the petition shall serve the petition on all parties.
 - 1. The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by written argument.
 - 2. The code hearings officer may grant a request for reconsideration if good and sufficient reason therefore appears. If the petition is granted, an amended order shall be issued.
 - 3. The code hearings officer may order a rehearing if good and sufficient reason therefor appears. The rehearing may be limited by the code hearings officer to specific matters. If a rehearing is held, an amended order may be issued.
 - 4. The filing of a petition for reconsideration or rehearing shall not stay the effectiveness of the order unless the code hearings officer orders otherwise.
 - 5. Denial of a petition for reconsideration or rehearing is not separately appealable.
 - 6. The code hearings officer, at any time prior to judicial review under section 1.20.110, may set aside, modify, vacate, or stay any final order, or reopen any proceeding for additional hearing when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by such order.

1.20.100 Enforcement of an Order

- A. If a party fails to appear at a scheduled hearing as provided herein, a default judgment shall be noted for the penalty applicable to the charged violation.

- B. Any penalty assessed is to be paid no later than thirty (30) calendar days after the receipt of the final order declaring that penalty. Such period may be extended upon order of the code hearings officer.
- C. Delinquent penalties and those brought to default judgment which were assessed for code violations may in addition to any other method be collected or enforced pursuant to ORS 30.310 or 30.315.

1.20.110 Judicial Review

Unless expressly provided otherwise in this code, review of the final order of a code hearings officer under this chapter by any aggrieved party, including the city, shall be by writ of review to the Circuit Court of Morrow County, Oregon, as provided in ORS 34.010 through 34.100.

1.20.120 Non-Exclusive Remedy

The procedures and remedies contained in this chapter shall not be read to prohibit in any way any alternative remedies set out in local ordinances or state law which are intended to alleviate code violations or abate nuisances, and the procedures set forth in this chapter shall not be prerequisites for utilizing any of said alternative remedies. The powers conferred by this chapter shall be in addition to and supplemental to the powers conferred by any other law. If the city determines immediate action is necessary to protect the public health and safety or the environment, such action may be taken or be ordered to be taken and any person to whom such an order is directed shall comply immediately.

1.20.130 Penalties; Liens.

- A. An assessment of a penalty for a code violation shall not exceed the maximum extent permitted by applicable law. An unclassified violation is a Class B violation as described in ORS 153.015 and ORS 153.018.
- B. In determining the amount of the civil penalty to be assessed against the responsible party, the code hearings officer may consider some or all of the following factors:
 - 1. The duration of the code violation;
 - 2. The frequency or recurrence of the code violation;
 - 3. The seriousness of the code violation;
 - 4. The history of the code violation;
 - 5. The responsible party's conduct after issuance of the notice and order;
 - 6. The good faith effort by the responsible party to comply;
 - 7. The impact of the code violation upon the community; and
 - 8. Whether the code violation is the result of a commercial gain on behalf of the responsible party.
- C. Any unpaid monetary obligation or civil penalty imposed by the code hearings officer, including, but not limited to: reimbursement of city costs of abatement, demolishing a building or structure or relocating occupants, is debt due and owing to the city and shall,

upon filing or recording as provided by law, be an judgement lien upon the property subject to the order as set forth in ORS 18.162.

- D. It shall be the responsibility of the code compliance officer to create and maintain a lien record abstract as prescribed under ORS 18.170 that otherwise identifies: 1) the responsible party, 2) the amount and date of any expenses incurred by the city to correct or abate the violation, including any administrative overhead fees, 3) the amount of any civil penalty issued by the code hearings officer, and 4) the amount and date of any payments made by the responsible party in response to a final order issued hereunder. The code compliance officer shall thereafter record the lien record abstract, along with a copy of the final order, with the Morrow County Clerk under the official county lien record.