

ARTICLE 43

ENFORCEMENT

(Wallowa County Land Use Enforcement Article)

SECTION 43.010, PURPOSE:

The purpose of this Ordinance Article is to authorize certain designated officers of Wallowa County to enforce any of the provisions of the Wallowa County Land Development Ordinance, the Wallowa County Comprehensive Land Use Plan, to provide procedural guidelines for enforcement of those ordinances, rules, and regulations and to adopt sanctions for violations. This Article is intended to provide an efficient and fair method of enforcing the ordinance, rules, and regulations governing land use planning.

SECTION 43.015, AUTHORITY:

The enforcement of County ordinances is authorized by ORS 203.065.

SECTION 43.020, DEFINITIONS:

- (1) "County Ordinance" or "ordinance" means any ordinance adopted by Wallowa County, dealing with land use zoning and planning.
- (2) "Person " includes the United States or agencies thereof, any state, public or private corporation, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity, contractor, subcontractor- or combination thereof. For the purposes of this chapter, "person" also includes those residing or conducting business or activities in Wallowa County.
- (3) "Violator" means a person who has been accused of a violation of a this ordinance or a person who has admitted or been adjudicated to have violated a this ordinance.
- (4) "Enforcement Officer" means a person authorized to represent the County in the investigation and resolution of alleged and actual violations of this ordinance, in the preparation of letters of notification and warning, in the preparation of citations, complaints, consent or stop work orders, and to carry out other provisions of this article.

SECTION 43.026, VIOLATION CLASSIFIED:

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All offenses subject to this enforcement article are punishable as Class A Violations under Oregon law.

SECTION 43.027, COORDINATION OF PERMITS REQUIRED:

- (1) No permits shall be issued by a building official for the construction, reconstruction, alteration, or change the use of a structure or lot that does not conform to the requirements of this ordinance.
- (2) No person, firm, or corporation shall connect electrical service to any construction site, structure, or mobile home erected, installed, or altered within Wallowa County for which a zone or conditional use permit or building permit or mobile home installation permit has not been obtained.
- (3) Nothing in this ordinance shall prevent the reconnection of existing electrical services which have been temporarily disrupted.

SECTION 43.030, CITATIONS AUTHORIZED AND ENFORCEMENT OFFICERS APPOINTED:

- (1) The following persons are authorized to issue citations:
 - (A) The Wallowa County Sheriff and all deputies in the Sheriff's Office;
 - (B) Any other person specifically authorized by order of the Wallowa Board of Commissioners.
- (2) The following persons are authorized to act as enforcement officers pursuant to this article:
 - (A) The Wallowa County Planning Director or acting Planning Director and others authorized by the Director, and:
 - (B) Any other person specifically authorized by order of the Wallowa Board of Commissioners.

SECTION 43.031, ADMINISTRATIVE RESOLUTION PROCEDURES:

The Enforcement Officer (hereinafter "EO") shall follow the sequential steps and time lines set forth herein in processing all enforcement complaints and actions:

A. INTAKE AND PRELIMINARY INVESTIGATION:

1. Complaint is received or discovered by EO.
2. EO opens Enforcement file.
3. Preliminary EO investigation.

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4. Referral to other agency where appropriate.
5. Letter of Notification to alleged violator shall:
 - (a) state complaint received;
 - (b) describe nature of alleged violation;
 - (c) state any applicable ordinance requirements;
 - (d) request violator to contact EO within 10 days of receipt; and
 - (e) provide address and phone number at which EO can be contacted;
 - (f) be sent by certified or registered mail, return receipt requested.
6. If problem/violation is resolved, referred or determined not to be a violation, EO notifies complainant, if any. If resolution of the violation involves the filing of a permit application, further enforcement action shall be suspended pending completion of the permit process.

B. ENFORCEMENT ACTION: If preliminary investigation and inquiry reveals evidence of a violation that is not resolved through initial contact with violator(s):

1. EO conducts site visit (collect evidence, photos, etc.)
2. EO develops plan of correction.
3. EO sends a Letter of Warning (optional—see Section 43.033) to violator(s) which shall:
 - (a) reference letter of inquiry and attach copy;
 - (b) restate complaint received;
 - (c) restate nature of alleged violation;
 - (d) cite applicable ordinance requirements;
 - (e) cite ordinance section(s) violated;
 - (f) describe corrective measures which must be taken;
 - (g) state that violator(s) has 20 days from receipt to either contact EO or take corrective measures within a time specified by the EO;
 - (h) state that if correction or contact is not made within the time specified, a citation may be issued and describe the potential penalties for the alleged violations;
 - (i) restate address and phone number to contact EO; and
 - (j) be sent by certified or registered mail, return receipt requested.
4. If contact is made by the violator, EO has the authority to work with the violator without formal time limitations so long as progress continues on correcting the violation, including but not limited to development of a consent agreement. If in the discretion of the EO sufficient progress is not made to correct the violation, EO shall proceed to the next step.
5. If there is still no response or correction within the time specified, or if the violator(s) has failed to cooperate with the EO, or if correction of the violation has failed to progress within a reasonable time, the EO shall proceed to request that a citation be issued.

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6. If a citation is issued, the EO shall prepare the complaint for the court and appear at the hearing.
7. The EO shall provide copies of all Stop Work/Use Orders, Citations, and complaints to
County Counsel.
8. If a violator(s) is cited, or if a stop work/use order is issued, the EO shall notify complainant, if any, of the hearing date.

SECTION 43.033, WARNING OPTIONAL:

(A) Warning of a violation made prior to citation, may be omitted, at the sole discretion of the enforcement officer, based on one or more of the following circumstances:

- (1) The gravity of the violation(s);
- (2) The degree to which the violation(s) affects others;
- (3) Whether the person in violation knew or reasonably should have known that a condition or action is in violation of a Wallowa County ordinance;
- (4) Whether there is a history of previous violations or enforcement actions concerning the violator or the property in violation;
- (5) The presence or absence of other mitigating factors.

(B) Warnings as described in Section 43.032 may be given in person or by mail to the owner and/or occupant of property in violation of this chapter and the warning may include such additional information as the enforcement officer deems appropriate.

SECTION 43.034 , CONSENT AGREEMENTS:

(A) Contents. The County and the violator(s) may enter into a consent agreement at any time. The consent agreement shall specify a time limit and the corrections necessary to cure the violation(s). As long as the violator complies with the consent agreement, the enforcement action will be suspended. If the violator fails in any manner to comply with the consent agreement, the enforcement action may be resumed at the point at which it was suspended.

(B) Signers. The violator(s) and legal representative, if any, will sign the consent agreement. The County Counsel will approve and sign the consent agreement on behalf of the County.

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(C) Violation of the Consent Agreement. Failure to comply with the consent agreement is a separate violation for which the County may issue a separate citation and seek additional penalties. In addition, the County may seek additional remedies and penalties provided for by this or any other ordinance or law.

SECTION 43.035, RIGHT OF ENTRY:

When it may be necessary to inspect to enforce the provisions of this Ordinance or the authorized enforcement officer has reasonable cause to believe there exists in a building or upon a premises a condition which is contrary to, in violation of this ordinance, or which otherwise makes the building or premises unsafe, dangerous or hazardous, the authorized enforcement officer may enter said building or premises at reasonable times to inspect or to perform the duties imposed by that ordinance provided that if such building or premises be occupied, that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the authorized enforcement officer shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the authorized enforcement officer shall have recourse to the remedies provided by ORS to secure entry.

SECTION 43.040, STOP USE ORDER:

A Stop Use Order may be issued whenever any building or structure or equipment or use regulated by is used contrary to the provisions of this Ordinance, and the authorized enforcement officer may order such use discontinued and the structure vacated. All persons using the structure shall discontinue the use within the time prescribed by the enforcement officer in his/her notice. Such person(s) shall stop such use until specifically authorized by the enforcement officer.

SECTION 43.045, STOP WORK ORDER:

A Stop Work Order may be issued whenever the follow-up of permits and approvals reveals construction, installation and/or land use activity not permitted under the permit or approval; and whenever the enforcement officer discovers or receives a verified complaint for unpermitted construction, installation or land use being done contrary to the provisions of this Ordinance (or other pertinent laws or ordinances implemented through its enforcement).

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SECTION 43.050, VIOLATION OF STOP WORK/USE ORDER:

If construction, installation or land use activity continues after the issuance of a stop work order, appropriate follow-up enforcement action shall be taken. Such action may include, but is not limited to, the issuance of a citation.

SECTION 43.055, WORK WITHOUT A PERMIT:

Whenever any work for which a permit is required by this Ordinance has been commenced without first obtaining said permit, the applicant may be assessed an additional fee of up to \$500 before a permit may be issued for such work. The payment of a fee and any penalty prescribed by law shall not exempt any person from compliance with all other provisions of County Ordinances or from any penalty prescribed by law.

SECTION 43.060, AUTHORITY TO DISCONNECT UTILITIES IN EMERGENCIES:

The authorized enforcement officer shall have the authority to disconnect fuel-gas utility service, and other energy supplies to a building, structure, premises or equipment regulated by County Ordinance when necessary to eliminate an immediate hazard to life or property. The authorized enforcement officer shall, whenever possible, notify the serving utility, the owner, and the occupant of the building, structure or premises of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner and occupant of the building, structure or premises in writing of such disconnection within three business days thereafter.

SECTION 43.065, CITATION:

A citation conforming to the requirements of this section may be requested by the authorized enforcement officer to prosecute any violation of this ordinance.

The Citation to appear shall consist of at least four parts. Additional parts may be inserted for administrative purposes by departments charged with the enforcement of the ordinance. The required parts are:

- 153.048. (1) A complaint in the form prescribed by ORS
- (2) The abstract of court record.
- (3) The Police record.
- 153.01. (4) A summons in the form prescribed by ORS

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The citation shall also contain the following information, or shall have blank spaces in which such information shall be entered:

- number, (1) The name of the court and the court's docket or file
- (2) The name of the entity who has brought the action;
- (3) The name of the defendant cited for the violation;
- (4) The offense charged, with the ordinance provision violated, the time and place of the violation; the date on which the citation was issued; the name of the enforcement officer; and the zone in which the violation occurred;
- appear in court; and (5) The hour and date when the person cited is to
- (6) The bail, if any, fixed for the offense by schedule.

Each of the parts may also contain such identifying and additional information as may be necessary or appropriate for administrative departments of the County. This may include an indication of whether a written warning was previously issued to defendant for the same violation. A written warning is not a prerequisite to the issuing of a citation under this Article.

The complaint shall contain a form of verification by the enforcement officer to the effect that he or she swears that he or she has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to a Wallowa County ordinance or a State regulation enforced by this Article.

Nothing in this section shall be construed to prevent the use of a complaint charging a violation of an ordinance in the form and manner otherwise prescribed by law for criminal complaints, and a person or persons may be charged jointly on such a complaint where otherwise permitted by law.

SECTION 43.070, SERVICE FOR THE SUMMONS AND COMPLAINT:

- (1) The enforcement officer requesting the citation shall cause the summons to be served to the person cited or to an office of the corporation, if a corporation

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is cited, and shall cause the complaint to be delivered to the Court.

(2) Service shall be made in accordance with Rule 7, Oregon Rules of Civil Procedure. Such service includes, but is not limited to, personal delivery or service by mail. Service by mail shall be made by mailing a true copy of the summons and complaint to the person cited by certified or registered mail, return receipt requested.

SECTION 43.075, APPEARANCE; HEARING; DEFAULT:

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

(a) Request a hearing before the Circuit Court.

(b) Admit violation of the Wallowa County ordinance and give a statement to the Circuit Court of matters in explanation or mitigation of the violation.

(c) Submit to the Circuit Court an executed appearance, waiver of hearing, and admission of violation as set forth on the summons, together with cash, check or money order in the amount of bail set forth on the summons. A statement in explanation or mitigation may also be submitted with the admission of violation of a Wallowa 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 Wallowa County ordinance and the 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

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appearance and waiver hearing to the court, together with cash, check or money order in the amount of the bail 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 bail set forth on the face of the summons, together with court costs and any special costs.

SECTION 43.080, EFFECT OF ADMISSION AND STATEMENT OF VIOLATOR:

If a violator has not requested a hearing but has submitted to the court a written statement in explanation or mitigation of the ordinance violation, the statement constitutes a waiver of hearing and consent to the entry of a judgment against the violator. The court may declare a forfeiture of the bail or portion thereof on the basis of the statement and any testimony or written statement of the enforcement officer or other person, if any, which may be presented to the court.

If the defendant requests a hearing or if, pursuant to Section 43.080, the court directs that a hearing be held, the court shall fix the date and time for hearing and unless notice is waived, shall, at least five (5) days in advance of the hearing, mail to the defendant notice of the date and time so fixed. The notice shall set forth a warning that, in the event that the defendant fails to appear, the court may issue a warrant of arrest.

Notice to the defendant required pursuant to Section 43.080 shall be made in the form of a court "Notice to Appear" and be placed in the United States Mail addressed to the defendant at his last known address with postage pre-paid thereon.

SECTION 43.085, JUDGMENT:

If the defendant admits guilt or if the court finds him/her guilty, the court may direct that a hearing be held. Otherwise, the court may enter the appropriate judgment, impose a fine, direct that the fine be paid out of the bail deposited by the defendant, and remit to the defendant any amount by which the bail exceeds the fine. No fine may be imposed in excess of the bail deposited by the defendant, unless a hearing is held.

SECTION 43.090, SHOW CAUSE ORDER:

If a person fails to make a first appearance on a citation for a violation, or fails to appear at any other subsequent time set for trial or other appearance, the court may issue an order that requires the defendant to appear and show cause why the defendant should not be held in

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contempt. The show cause order may be mailed to the defendant by certified mail return receipt requested. If service cannot be accomplished by mail, the defendant must be personally served. If the defendant is served and fails to appear at the time specified in the show cause order, the court may issue an arrest warrant for the defendant for the purpose of bringing the defendant before the court.

SECTION 43.095, BAIL:

The Board of Commissioners shall set the appropriate amount of bail to be scheduled for ordinance violations.

Such bail schedules may be changed from time to time by Board order. Until such change by Board order, the bail shall be set at:

- (a) For a single offense/occurrence, an amount not to exceed \$500.
- (b) For a continuing or subsequent offense/occurrence, an amount not to exceed \$500 per day.

SECTION 43.100, FINES AND DISPOSITION OF FINE AND BAIL MONEY RECEIVED:

The court may assess a fine, upon a finding that an ordinance violation has occurred, of not to exceed \$500 for a single, non-continuing offense. The fine for an offense which continues for more than one day shall not exceed \$500 per day.

In accordance with ORS 203.065(4), fines recovered and bail amounts forfeited shall be paid to the Clerk of the presiding Court. After first deducting court costs in the proceedings, the Clerk shall pay the remainder to the Wallowa County Treasurer for the General Fund of Wallowa County.

SECTION 43.105, COUNTY COUNSEL:

The Wallowa County Counsel or counsel appointed by the Wallowa County Board of Commissioners shall act as legal counsel for any enforcement proceeding conducted pursuant to this Article. The County Counsel or appointed counsel may prosecute the violator of the Land Development Ordinance in the name of the County.

SECTION 43.110, OTHER REMEDIES PRESERVED:

Notwithstanding this Article, Wallowa County may elect to enforce the provisions of this ordinance by any other available legal method, including those specifically mentioned in ORS 203.065 and ORS 215.185, which include, but are not limited to, an action to abate a nuisance, injunction, abatement or mandamus.

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