

3-02.02 [Abatement Procedure]

3-02.02-10 [Voluntary Correction]

- A.** Applicability- This section applies whenever the applicable department director determines that a nuisance has occurred or is occurring.
- B.** General- The applicable department director shall attempt to secure voluntary correction by contacting the person responsible for the nuisance and, where possible, explaining the violation and requesting correction.
- C.** Issuance of Voluntary Correction Agreement- A voluntary correction agreement may be entered into between the person responsible for the violation and the City, acting through the applicable department director.
- 1.** Content- The voluntary correction agreement is a contract between the City and the person responsible for the violation under which such person agrees to abate the violation within 30 days of the specified time according to specified conditions. The voluntary correction agreement shall include the following:
 - a.** The name and address of the person responsible for the violation;
 - b.** The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
 - c.** A description of the violation and a reference to the regulation which has been violated; and
 - d.** The necessary corrective action to be taken, and a date or time by which correction must be completed;
 - e.** An agreement by the person responsible for the violation that the City may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;
 - f.** An agreement by the person responsible for the violation that the City may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied;
 - g.** An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.
 - 2.** Right to a Hearing Waived- Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.
 - 3.** Extension and Modification- An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.
 - 4.** Abatement by the City- The City may abate the violation in accordance with [3-02.02-40](#) if the terms of the voluntary correction agreement are not met.

5. Collection of Costs- If the terms of the voluntary correction agreement are not met, the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with [3-02.02-20.E](#), plus all costs and expenses of abatement, as set forth in [3-02.02-40.D](#).

3-02.02-20 [Notice of Civil Violation]

A. Issuance-

1. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to [3-02.02-10](#) the applicable department director may issue a notice of civil violation to the person responsible for the violation.

2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in [3-02.02-10](#) under the following circumstances:

a. When an emergency exists;

b. When a repeat violation occurs;

c. When the violation creates a situation or condition which cannot be corrected;

d. When the person knows or reasonably should have known that the action is in violation of a City regulation; or

e. The person cannot be contacted or refuses to communicate or cooperate with the City in correcting the violation.

B. Content- The notice of civil violation shall include the following:

1. The name and address of the person responsible for that violation;

2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

3. A description of the violation and a reference to the provision(s) of the City regulation(s) which has been violated;

4. The required corrective action and a date and time by which the correction must be completed after which the City may abate the unlawful condition in accordance with [3-02.02-40](#);

5. The date, time and location of a hearing before a judge or judge pro tem;

6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the Applicable Department Director approves the completed, required corrective action prior to the hearing; and

7. A statement that the costs and expenses of abatement incurred by the City pursuant to [3-02.02-40.D](#), and a monetary penalty in an amount per day for each violation as specified in [3-02.02-20.E](#), may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the court.

C. Service of Notice- The applicable department director shall serve the notice of civil violation upon the person responsible for the violation, either personally or by mailing a copy of the notice of civil violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within Columbia County and if an address for mailed service cannot be

ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written statement, signed by the person affecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.

D. Extension- Extensions of the time specified in the notice of civil violation for correction of the violation may be granted at the discretion of the Applicable Department Director or by order of the court.

E. Monetary Penalty- The monetary penalty for each violation per day or portion thereof shall be five hundred dollars (\$500.00). A mandatory City administrative fee of twenty-five dollars (\$25) shall be added to the total penalty amount.

F. Continued Duty to Correct- Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

G. Collection of Monetary Penalty-

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the City within ten (10) calendar days from the date of mailing of the court's decision or a notice from the City that penalties are due. Any such monetary penalty shall further constitute a lien against the affected real property, in the manner as set forth in [3-02.02-40.E](#).

2. The City Attorney is authorized to take appropriate action to collect the monetary penalty.

3-02.02-30 [Hearing before the Court]

A. Notice- A person to whom a notice of civil violation is issued will be scheduled to appear before the court. Continuances may be granted at the discretion of the Applicable Department Director, or by the court for good cause shown.

B. Prior Correction of Violation- The hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the Applicable Department Director approves the completed required corrective action prior to the scheduled hearing.

C. Procedure- The court shall conduct a hearing on the civil violation pursuant to the current applicable Oregon Rules of Civil Procedure. The Applicable Department Director and the person to whom the notice of civil violation was directed may participate as parties in the hearing preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable under the circumstances. The determination of the Applicable Department Director as to the need for the required corrective action shall be accorded substantial weight by the court in determining the reasonableness of the required corrective action.

D. Decision of the Court-

1. The court shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable under the circumstances, and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. The court shall issue an order to the person responsible for the violation which contains the following information:

- a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
- b. The required corrective action;
- c. The date and time by which the correction must be completed;
- d. The monetary penalties assessed based on the criteria in [3-02.02-30.D.3](#); and
- e. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

3. Assessment of Monetary Penalty- Monetary penalties assessed by the court shall be in accordance with the monetary penalty in [3-02.02-20.E](#).

- a. The court shall have the following options in assessing monetary penalties:
 - 1. Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or
 - 2. Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the court and thereafter; or
 - 3. Assess less than the established monetary penalty set forth in [3-02.02-20.E](#), based on the criteria of [3-02.02-30.D.3.b](#); or
 - 4. Assess no monetary penalties.
- b. In determining the monetary penalty assessment, the court may consider the following factors:
 - 1. Whether the person responded to staff attempts to contact the person, and cooperated to correct the violation;
 - 2. Whether the person failed to appear at the hearing;
 - 3. Whether the violation was a repeat violation;
 - 4. Whether the person showed due diligence and/or substantial progress in correcting the violation;
 - 5. Whether a genuine, “close call” code interpretation issue exists; and
 - 6. Any other relevant factors.
- c. The court may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations the court may consider the factors set forth in [3-02.02-30.D.3.b](#).

E. Failure to Appear- If the person to whom the notice of civil violation was issued fails to appear without lawful excuse at the scheduled hearing, the court will enter an order with findings pursuant to [3-02.02-30.D.2](#) and assess the appropriate monetary penalty pursuant to [3-02.02-30.D.3](#). The City may enforce the court’s order and recover all related expenses, including attorney fees, plus the costs of the hearing and any monetary penalty from that person.

3-02.02-40 [Abatement by the City]

A. The City may abate a condition which was caused by or continues to be a civil violation when:

1. The terms of voluntary correction agreement pursuant to [3-02.02-10](#) have not been met;
2. A notice of civil violation has been issued pursuant to [3-02.02-20](#) and a hearing has been held pursuant to [3-02.02-30](#) and the required correction has not been completed by the date specified in the court's order; or
3. The condition is subject to summary abatement as provided for in [3-02.02-40.B.](#)

B. Summary Abatement- Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the City or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the City be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation.

C. Authorized Action by the City- Using any lawful means, the City may enter upon the subject property and may remove or correct the condition that is subject to abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

D. Recovery of Costs and Expenses- The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or control of the property and shall become due and payable to the City within ten (10) calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing. All such costs and expenses shall constitute a lien against the affected property, as set forth in [3-02.02-40.E.](#)

E. Lien-Authorized- The City of Vernonia shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings under this chapter, and all other related costs including attorney and expert witness fees, against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for State and County taxes, with which it shall be on a parity.

1. The Applicable Department Director shall cause a claim for lien to be filed for record within ninety (90) days from the later of the date that the monetary penalty is due, the date the work is completed or the nuisance abated.

2. The claim of lien shall contain sufficient information regarding the notice of civil violation, as determined by the Applicable Department Director, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.

3. Any such claim of lien shall be verified by the Applicable Department Director, and may be mended from time to time to reflect changed conditions.