

CHAPTER 294
County Hearings Officer

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294.01 DEFINITIONS.

- (a) County violation(s) - means any offense designated as a violation in the Jackson County Code.

- (b) Department - is any entity defined within the jurisdiction of Jackson County and designated a department by the County Administrator.

- (c) Hearings Officer - means the person established in this Chapter with the authority to hear county violation cases and impose penalties for county violations. This definition includes a Chief Hearings Officer if one is established, who, if appointed, will have authority to manage the Hearings Officer Panel, if one is established.

(Ord. 2003-5; Passed 2-19-03, Ord. 2014-12; Passed 12-24-14.)

294.02 JURISDICTION OF HEARINGS OFFICER; APPOINTMENT; AUTHORITY.

(a) The Hearings Officer shall be appointed by the Board of Commissioners to serve at the pleasure of the Board of Commissioners.

(b) The Hearings Officer shall have jurisdiction over all matters of County concern arising from violation of Jackson County ordinances, or administrative rules. The Hearings Officer shall have authority to adjudicate all county violations with the power to impose civil and criminal remedies for such violations as permitted under Oregon State law and Jackson County Charter and Ordinances. In cases submitted and adjudicated in compliance with the procedures set forth in this chapter, the Hearings Officer's decision shall be the County's final determination of the issues decided.

(c) The Hearings Officer shall have authority to administer oaths, certify to all official acts; subpoena and require attendance of witnesses at public hearings before the Hearings Officer; require production of relevant documents at public hearings; swear witnesses; take testimony of any person by deposition; and, if deemed necessary or appropriate, enter or authorize County personnel or their designees to enter upon any premises of any person or business found to be out of compliance or in violation of any provision of the County Code.

(Ord. 2003-5; Passed 2-19-03.)

294.03 HEARINGS OFFICER PANEL ESTABLISHED.

A Hearings Officer Panel, if one is established, may be established within the County Administrator's Office. The Panel shall be managed by the Chief Hearings Officer, if one is established. The Chief Hearings Officer shall have a Hearings Officer available to all County departments to resolve County violation cases. If a Chief Hearings Officer is not appointed, all administrative duties assigned to the Chief Hearings Officer in managing the Hearings Officer Panel and in hiring and assigning Hearings Officers shall be completed by the County Administrator or his/her designee.

(Ord. 2003-5; Passed 2-19-03, Ord. 2014-12; Passed 12-24-14.)

294.04 HIRING AND REVIEW OF HEARINGS OFFICERS.

(a) A Hearings Officer employed by or contracting with the county shall conduct hearings on behalf of departments as assigned by the Chief Hearings Officer. A Hearings Officer shall be impartial in the performance of the Hearings Officer's duties and shall remain fair in all hearings conducted by the Hearings Officer.

(b) Only persons who demonstrate thorough knowledge of administrative law and procedure may be employed as a Hearings Officer by the Chief Hearings Officer.

(Ord. 2003-5; Passed 2-19-03.)

294.05 ASSIGNMENT OF HEARINGS OFFICERS; REQUEST FOR CHANGE OF HEARINGS OFFICER.

After assignment of a Hearings Officer from the Hearings Officer Panel to conduct a hearing on behalf of a County department, the chief Hearings Officer may assign a different Hearings Officer for the hearing upon receiving a written request submitted with a showing of good cause by any actual party in the County violation case. Such request must be made at or before the commencement of the hearing and before introduction of evidence in the hearing before the Hearings Officer. Only one request for a change of assignment of Hearings Officer may be granted.

(Ord. 2003-5; Passed 2-19-03.)

294.06 HEARINGS PROCEDURE ESTABLISHED; SUBJECT MATTER; STANDARD OF PROOF.

(a) Unless otherwise provided for by State law or by this Jackson County Ordinance, the sections that follow will provide the procedure to be followed in County violation cases.

(b) Hearings to determine whether a County violation has occurred shall be held before the Hearings Officer. The County must prove the violation alleged by a preponderance of the admissible evidence.

(Ord. 2003-5; Passed 2-19-03.)

294.07 NOTICE TO PARTY; REQUEST FOR HEARING; INFORMAL DISPOSITION.

(a) In a County violations case, all parties shall be afforded an opportunity for hearing after reasonable notice, and served, as provided in JCC Section 203.03, 203.05 and 203.06.

(b) Notice shall include:

- (1) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

- (2) A statement of the authority and jurisdiction under which the hearing is to be held;
 - (3) A reference to the particular sections of the statutes and rules involved;
 - (4) A short and plain statement of the matters asserted or charged; and
 - (5) A statement of the potential consequences as set forth under JCC Section 203.11 should the defendant fail to appear at the scheduled hearing.
- (c) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.
- (d) If the defendant requests a hearing by means of a written appearance, notice of the hearing must be mailed to the defendant not less than 10 days from the date set for the hearing unless otherwise waived by the defendant or the County demonstrates emergency conditions that require a prompt remedy.
- (e) Informal Disposition.
- (1) Unless precluded by law, informal disposition may be made of any County violation case by stipulation, agreed settlement, consent order or default.
 - (2) Any informal disposition of a County violation case, other than an informal disposition by default, must be in writing and signed by the party or parties to the case. The Hearings Officer shall incorporate that disposition into a final order. An order under this paragraph is not subject to JCC Section 294.19. The Hearings Officer shall deliver or mail a copy of the order to each party, or, if applicable, to the party's attorney of record. An order that incorporates the informal disposition is a final order in a County violation case, but is not subject to judicial review. A party may petition the Hearings Officer to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.
- (f) An order adverse to a party may be issued upon default only upon a prima facie case made on the record to the Hearings Officer. When an order is effective as a result of a party not requesting a hearing, the record may be made at the time of issuance of the order. If the order is based only on material included with a citation, in the application, or other submissions of a party, the Hearings Officer may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding in which a hearing was not requested.

(Ord. 2003-5; Passed 2-19-03.)

294.08 NOTICE TO PARTY BEFORE HEARING; RIGHTS AND PROCEDURE; FAILURE TO PROVIDE NOTICE.

(a) Prior to the commencement of a hearing for county violations before the Hearings Officer, the Hearings Officer shall inform each party to the hearing of the following matters:

- (1) If a party is not represented by an attorney, a general description of the hearing procedure including the standard of proof, 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 of going forward with the evidence.
- (2) Whether 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 Hearings Officer.
- (4) Whether an attorney will represent the County 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 Hearings Officer, including the effect and authority of the Compliance 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 hearing if the party then determines that additional evidence should be brought to the attention of the Hearings Officer and the hearing reopened.
- (8) Whether there exists an opportunity after the hearing and prior to the final determination or order of the Hearings Officer to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the Hearings Officer presiding at the hearing.
- (9) That the decision of the Hearings Officer may be appealed as provided in JCC Section 294.21, and that the appellant shall pay all costs of the appeal including costs for preparation of a transcript.

(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 of a Hearings Officer to give notice of any item specified in subsection (a) of this section shall not invalidate any determination or order of the Hearings Officer, unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the Hearings Officer for a reopening of the hearing and shall direct the Hearings Officer as to what steps it shall take to remedy the prejudice to the rights of the complaining party.

(Ord. 2003-5; Passed 2-19-03.)

294.09 HEARING; RECORD.

(a) At the commencement of the hearing, the Hearings Officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove. The Hearings Officer shall further advise the parties that any issue which may be the basis for an appeal to the Circuit Court shall be raised not later than the close of the record.

(b) Testimony shall be taken upon oath or affirmation of the witness from whom received. The Hearings Officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(c) The Hearings Officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the Hearings Officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.

(d) The Hearings Officer presiding at the hearing shall advise all parties at the close of the hearing that any issue which may be the basis for an appeal to the Circuit Court must be submitted before the close of the record in order to be considered in appeal.

(e) The Hearings Officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding Hearings Officer in the case.

(f) The record in a County Violation case shall include:

- (1) All pleadings, motions and intermediate rulings.
- (2) Evidence received or considered.
- (3) Stipulations.

- (4) A statement of matters officially noticed.
- (5) Questions and offers of proof, objections and rulings thereon.
- (6) A statement of any ex parte communications on a fact in issue made to the Hearings Officer presiding at the hearing.
- (7) Proposed findings and exceptions.
- (8) Any proposed, intermediate or final order prepared by the Hearings Officer or a Hearings Officer.

(g) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The County will charge the party requesting transcription the cost of a copy of transcription according to the fee schedule set by the Board of Commissioners.

(Ord. 2003-5; Passed 2-19-03.)

294.10 DISCOVERY.

(a) Except as otherwise provided by Oregon Public Records law, the parties will, as soon as practicable, disclose and make available to the party requesting discovery all materials, evidence, reports, and names of witnesses within the party's possession which the party in possession intends to offer in evidence at the hearing.

(Ord. 2003-5; Passed 2-19-03.)

294.11 SUBPOENAS IN COUNTY VIOLATION CASES.

(a) The County may issue subpoenas on its own motion in a County violation case. In addition, the County or Hearings Officer in a County violation case may issue subpoenas upon the request of a party to a County violation case upon a showing of general relevance and reasonable scope of the evidence sought. A party entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the county, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

(b) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the Hearings Officer, the county or the party requesting the issuance of or issuing the subpoena, may apply to the judge of the Circuit Court to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(Ord. 2003-5; Passed 2-19-03.)

294.12 EVIDENCE IN COUNTY VIOLATION CASES.

In County violation cases:

(a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but erroneous rulings on evidence shall not preclude County action 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 conduct of their serious affairs shall be admissible. Agencies and Hearings Officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(b) 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 ((d)) 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 or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a County violation case rests on the proponent of the fact or position.

(c) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the County.

(d) The Hearings Officer and County may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the Hearings Officer or county. 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. The Hearings Officer and county may utilize the Hearings Officer's or county's experience, technical competence and specialized knowledge in the evaluation of the evidence presented.

(e) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(Ord. 2003-5; Passed 2-19-03.)

294.13 REPRESENTATION OF DEPARTMENT EMPLOYEES AT COUNTY VIOLATION CASE HEARINGS.

(a) Departments may, at their discretion, be represented at county violation case hearings by the County Counsel.

(b) A Department may be represented at county violation case hearings by an enforcement officer or employee of the Department enforcing the ordinance in question.

(c) The Hearings Officer presiding at a county violation case hearing in which a county representative appears under the provisions of this section may allow the county representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

- (1) Application of statutes and rules to the facts in the county violation case;
- (2) Actions taken by the county in the past in similar situations;
- (3) Literal meaning of the statutes or rules at issue in the county violation case;
- (4) Admissibility of evidence; and
- (5) Proper procedures to be used in the County violation case hearing.

(d) Upon judicial review, no limitation imposed under this section on the county representative is the basis for reversal or remand of a county action unless the limitation resulted in substantial prejudice to a party.

(Ord. 2003-5; Passed 2-19-03.)

294.14 REPRESENTATION OF PERSONS OTHER THAN COUNTY PARTICIPATING IN COUNTY VIOLATION CASE HEARING.

(a) A person participating in a county violation case hearing conducted by the county as described in this subsection may be represented by an attorney, or by a representative as provided in subsection (b) in this section.

(b) A person participating in a county violation case hearing as provided in subsection (a) of this section may appear by an authorized representative if:

- (1) The Hearings Officer conducting the county violation case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of county violation case hearing being conducted;
- (2) The Hearings Officer conducting the county violation case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of county violation case hearing being conducted; and
- (3) The Hearings Officer presiding at the county violation case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (c) of this section.

(c) The Hearings Officer presiding at a county Violation case hearing in which an authorized representative appears under the provisions of this section may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

- (1) Application of statutes and rules to the facts in the County violation case;
- (2) Actions taken by the County in the past in similar situations;
- (3) Literal meaning of the statutes or rules at issue in the County violation case;
- (4) Admissibility of evidence; and
- (5) Proper procedures to be used in the county violation case hearing.

(d) Upon judicial review, no limitation imposed by a Hearings Officer on the participation of an authorized representative shall be the basis for reversal or remand of County action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the County action.

(e) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employee of a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than the County.

(Ord. 2003-5; Passed 2-19-03.)

294.15 HEARINGS OFFICER STATEMENT OF EX PARTE COMMUNICATIONS.

The Hearings Officer shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the Hearings Officer during its review of a County violation case. The Hearings Officer shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record.

(Ord. 2003-5; Passed 2-19-03.)

294.16 ENTRY; NON-DEFAULT CASES.

(a) If a hearing is held in a County violation proceeding, the Hearings Officer shall enter a judgment based on the evidence presented at the hearing.

(b) If the defendant appears and enters a plea of no contest, and a hearing is not otherwise required by the Hearings Officer or by law, the Hearings Officer shall make a decision based on the citation, the statement filed by the defendant and any other information or materials submitted to the Hearings Officer.

(c) If the defendant enters a plea of guilty, and a hearing is not otherwise required by the Hearings Officer or by law and the Hearings Officer accepts the plea of guilty, judgment shall be entered against the defendant based on the violation citation.

(Ord. 2003-5; Passed 2-19-03.)

294.17 ENTRY; DEFAULT CASES.

(a) If the defendant in a County violation case does not make a first appearance in the manner required by JCC Section 203.07 within the time allowed, and a hearing is not otherwise required by the Hearings Officer or by law, the Hearings Officer may enter a default judgment based on the complaint and any other evidence the judge determines appropriate.

(b) If the defendant makes a first appearance in the manner required by JCC Section 203.07 within the time allowed and requests a hearing, and the defendant subsequently fails to appear at the date, time and place set for any hearing or other appearance in the matter, and if a hearing is not otherwise required by the Hearings Officer or by law, the Hearings Officer shall enter a judgment based on the complaint and any other evidence the judge determines appropriate.

(Ord. 2003-5; Passed 2-19-03.)

294.18 ORDER BY HEARINGS OFFICER.

(a) The Hearings Officer shall prepare and serve on the County and all parties to a County violation case hearing an order, including findings of fact and conclusions of law. The order shall become final upon the signing of the order, unless the Hearings Officer within that period issues an amended order. The order shall have the full effect and powers provided by law

(b) In imposing any monetary obligation authorized by these ordinances, factors that the Hearings Officer may consider but not limited to include:

- (1) Whether the defendant has demonstrated a past history of taking all feasible steps or procedures necessary or appropriate to address the violation prior to official enforcement action;
- (2) Any prior violations of statutes, rules, orders, and permits by the defendant;
- (3) The gravity and magnitude of the violation;
- (4) Whether the violation was a repeated or continuing violation;
- (5) The defendant's culpability in causing the action including whether the violation was an unavoidable accident, the result of negligence, or an intentional act;
- (6) The defendant's cooperation with the County and any efforts made to correct the violation;
- (7) Whether the defendant is indigent; and
- (8) Any other statutes, rules, orders, or code relevant to the violation.

(Ord. 2003-5; Passed 2-19-03, Ord. 2014-12; Passed 12-24-14.)

294.19 ORDERS IN COUNTY VIOLATION CASES.

In a County violation case:

(a) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(b) 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 Hearings Officer's order. Such order shall be mailed not more than 72 hours from the close of the hearing for all matters except hearings related to a Development Services' Code Enforcement division violation in which case such order shall be mailed not more than five business days from the close of the hearing.

(c) The failure of a Hearings Officer to complete and send the order specified in subsection (b) of this section, shall not invalidate any determination or order of the Hearings Officer.

(d) The Hearings Officer shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(e) Every final order shall include a citation of the statutes under which the order may be appealed.

(Ord. 2003-5; Passed 2-19-03, Ord. 2014-12; Passed 12-24-14.)

294.20 ENFORCEMENT OF HEARINGS OFFICER ORDERS; CONTEMPT.

(a) The Hearings Officer has the power to impose fines, fees, and remedial sanctions for such violations adjudged to have been committed by a defendant. Such violations include willful misconduct, disobedience of, or resistance to or obstruction of the Hearings Officer's authority, process, orders or judgment.

(b) Fines and costs are payable ten days after the mailing of the final order. Fines and costs owing to the County may be collected in the same manner as any other debt allowed by law and as specifically provided under ORS 30.460 and related statutes.

(c) Unless otherwise provided, abatement of nuisance, forfeiture of property, or other specified performance of the defendant ordered by the Hearings Officer is to be performed by the date so ordered which will not be less than ten (10) days from the date of judgment. However, if the Hearings Officer determines that violation of these ordinances constitutes an emergency threat to public health or safety, then the Hearings Officer may order the defendant to take action in a time period less than ten (10) days. If defendant fails to comply with the judgment order within the time specified, the Hearings Officer or County may compel compliance by application for a writ of the Circuit Court or any other lawful method to enforce such order. Subject to conditions, if any, imposed by the Court, said order is deemed to authorize Jackson County to enter upon such property to perform the act specified or seize the property to be forfeited in the Hearings Officer order without penalty of trespass or conversion of real or personal property. Without further Hearings Officer action the county is permitted to assess and to charge actual costs incurred by the county enforcing such orders by means otherwise provided for under ORS Chapter 310, by Jackson County Ordinance, or by any other lawful means under Oregon law.

(d) If any person fails to comply with any order so issued or any party interferes with the execution of such order, the Hearings Officer or County may apply to the Circuit Court to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a writ issued from such court or a refusal to obey a court order. Such application shall include:

- (1) The Complaint, and
- (2) The Order with Findings of Fact and Conclusions.

(e) Nothing in this Chapter affects the ability of the County to institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction.

(Ord. 2003-5; Passed 2-19-03, Ord. 2014-12; Passed 12-24-12.)

294.21 JUDICIAL REVIEW; APPEAL.

(a) A determination issued under JCC Sections 294.16 and 294.17 of this Chapter is subject to judicial review by the Circuit Court for Jackson County as provided under ORS 34.010 to 34.100. Unless otherwise provided by ordinance, filing a petition for review shall automatically stay execution of the determination made by the Hearings Officer.

(b) The filing of a request for re-examination under this Chapter does not act to toll the time for filing a petition for judicial review.

(c) In all judicial reviews under this Chapter, the Hearings Officer shall retain discretion to order conditions, restrictions and penalties in addition to the fines set out in JCC 203.99.

(d) Failure of a party to file a petition for review as provided in this section, or the non-excused failure of a party to appear at a duly scheduled hearing, shall constitute a waiver by the party of any further hearing under this Chapter, and the last decision issued by the Hearings Officer shall become final.

(Ord. 2003-5; Passed 2-19-03.)

THIS PAGE RESERVED FOR EXPANSION