

TITLE 2

COUNTY GOVERNMENT; ADMINISTRATION

CHAPTER 240

ENFORCEMENT CODE

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I. ENFORCEMENT GENERALLY

240.010 Title

This Chapter, LCC 240.010 to 240.999, shall be known and may be cited as the “Linn County Enforcement Code” or simply as the “Enforcement Code.”

[Adopted 2007-755 §1 eff 12/12/2007]

240.020 Definitions

For purposes of this Chapter, and in addition to the meaning given in ORS Chapter 153.

(A) “**Citation**” means a pleading subject to ORS Chapter 153 alleging a violation of the Linn County Code and filed in the Justice Court or the Circuit Court.

(B) “**Complaint**,” unless the context requires otherwise, means a pleading alleging a violation of the Linn County Code filed in a circuit court seeking a mandamus, restraining order, order of abatement, or other legal and equitable relief.

(C) “**Defendant**” means a person who has been served a citation or complaint.

(D) “**Enforcement Officer**” includes any peace officer, the Linn County Code Enforcement Technician, any ex officio enforcement officer, or any appointed enforcement officer.

(E) “**Judge**” means any judge of the circuit court, or any justice of the peace.

(F) “**Offense**” means “violation” as defined in subsection (J) of this section.

(G) “**Peace Officer**” means a sheriff, constable, marshal, municipal policeman, or member of the Oregon State Police.

(H) “**Person in charge of property**” means an agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or supervision of any construction project.

(I) “**Person responsible**” means the person responsible for abating a violation who shall include:

- (1) the owner;
- (2) the person in charge of the property; or
- (3) the person who caused a violation to come into or continue in existence.

(4) “**Property**” means any real property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, room, house, building or structure or any separate part or portion thereof, whether permanent or not.

(5) “**Person**” means any natural person, association, partnership, or corporation capable of owning or using property in Linn County.

(J) “**Violation**” means conduct prohibited by a County ordinance or Code, or by an Oregon administrative rule cited in LCC 240.050 or 240.060, and for which a fine is provided by such ordinance, Code, or rule, and which is not a crime. The term includes offenses described elsewhere as infractions, and for purposes of the Linn County

Code conduct described as an infraction shall be regarded as a violation.

(K) “**Violator**” means a person who is alleged or who has in fact committed a violation prohibited by Linn County Code.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.030 Purpose

This Chapter is enacted pursuant to the authority granted to general law counties by ORS Chapter 203 for the purpose of providing procedures to be used in enforcing the Linn County Code.

[Adopted 2007-755 §1 eff 12/12/2007]

240.040 Nature of an enforcement prosecution under this Chapter

(A) Prosecution and enforcement actions of any violation of the Linn County Code shall be brought as violation proceedings under this Chapter.

(B) A violation of any provision in any chapter of the Linn County Code that does not have an enforcement procedure in that chapter to dispose of that violation is subject to this Chapter.

(C) A judgment issued by a court pursuant to this Chapter may involve, in addition to a fine, an order of abatement and any costs related thereto. The Code Enforcement Technician may, with the approval of the Board, file a lien for its abatement expenses based on any money judgment awarded by the court.

(D) A person against whom a judgment is issued pursuant to this Chapter does not suffer any disability or legal disadvantage, based upon said judgment, other than the enforcement of the judgment by Linn County.

(E) The parties in an enforcement action on a citation or other complaint are:

- (1) the plaintiff, Linn County; and
- (2) the defendant, the person prosecuted.

[Adopted 2007-755 §1 eff 12/12/2007]

240.050 Application

(A) Prosecution and enforcement of any violations of the Linn County Code under this Chapter shall be conducted as violation proceedings under ORS Chapter 153 (“Violations and

Fines”) as supplemented by the provisions of this Chapter.

(B) In addition to violations of County Code, this Chapter applies to the prosecution of the conduct that is prohibited by the administrative rules described in this subsection, for which County officials have enforcement authority.

(1) *Onsite Sewage Disposal Regulations.* The administrative rules adopted by the Environmental Quality Commission to carry out the onsite sewage disposal statutes, ORS 454.605 to 454.745. Authority for counties to enforce standards for subsurface sewage systems, alternative sewage disposal systems and nonwater-carried sewage disposal systems is provided by ORS 454.640.

(2) *Tourist Facilities.* The Administrative Rules adopted by the Health Division of the Department of Human Resources to carry out the tourist facilities statutes, ORS 446.310 to 446.350 and 446.990.

(3) *Swimming Facilities.* The Administrative Rules adopted by the Health Division of the Department of Human Resources to carry out the swimming facilities statutes, ORS 448.005 to 448.100.

(4) *Food Service Facilities.* The Administrative Rules adopted by the Health Division of the Department of Human Resources to carry out the food service facilities statutes, ORS 624.010 to 624.990.

(5) *Oregon Indoor Clean Air Act.* The Administrative Rules adopted by the Health Division of the Department of Human Resources to carry out the Oregon Clean Air Act, ORS 433.835 to 433.875 and 433.990(5).

(6) *Water Systems.* The Administrative Rules adopted by the Health Division of the Department of Human Resources to carry out the water system statutes, ORS 448.115 to 448.990.

(C) Whenever a provision of this Chapter refers to a Linn County Code violation, such provision shall be interpreted to include violations of the administrative rules described in subsection (B) of this section.

(D) For purposes of this Chapter, violations of the administrative rules described in subsection (B) of this section are classified as Class A violations.

(E) Except as provided in subsection (F) of this section, this Chapter shall apply in the enforcement of violations committed within a municipality of Linn County only if the County and city have entered into an intergovernmental agreement wherein the city has consented, pursuant to ORS 203.040, to the application of this Chapter and the ordinance or LCC provision to be enforced pursuant to this Chapter.

(F) This Chapter shall apply in the enforcement of violations of LCC Chapter 810 (Building Code) within municipalities of Linn County unless the municipality has State law authority to enforce the State Building Code in its jurisdiction.

(G) In all cases where the same violation is made punishable by different clauses or sections of any provision of this Code, or if the same violation is made punishable by more than one provision, the enforcement officer may elect a provision under which to proceed. Not more than one recovery shall be had against the same person for the same violation, provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.060 Other authority for enforcement of statutes and rules

(A) A violation of a statute or administrative rule that is not adopted by this Code may be enforced in the manner provided in that statute or rule by a person having lawful authority to enforce such statute or rule.

(B) Notwithstanding any other provision in this Chapter, a violation of a statute or administrative rule that is defined by that statute or rule as a felony or misdemeanor may be enforced in the manner provided in that statute or rule by a person having lawful authority to enforce such statute or rule.

[Adopted 2007-755 §1 eff 12/12/2007]

240.100 Enforcement officers

(A) Enforcement officers have all authority to carry out the purposes of this Chapter and the provisions of the Code under their authority.

(B) The following persons are authorized to enforce the provisions of Linn County Code:

- (1) any peace officer;
- (2) the Linn County Code Enforcement Technician;
- (3) any ex officio enforcement officer; or
- (4) any appointed enforcement officer.

(C) *Linn County Code Enforcement Officer.* The Board may establish a job position entitled "Linn County Code Enforcement Technician," having as its principle function the authority to enforce the Linn County Code pursuant to this Chapter. As used throughout this Chapter, the term Code Enforcement Technician includes both the Linn County positions of the Code Enforcement Technician and the Building Inspector/Code Enforcement Officer.

(D) *Ex officio enforcement officers.* The following County officials are ex officio enforcement officers and are so without a resolution of appointment:

- (1) Planning Director;
- (2) Dog Control Supervisor;
- (3) Environmental Health Program Manager;
- (4) Roadmaster;
- (5) Parks Director; and
- (6) Fair Expo Manager.

(E) *Appointed enforcement officers*

(1) The Board may from time to time appoint by resolution one or more other appropriate persons to perform the roles required of an enforcement officer for the purpose of implementing this Chapter.

(2) Appointed enforcement officers serve at the pleasure of the Board. The Board may by resolution revoke the appointment of any enforcement officer without showing cause therefor.

(3) The authority of any appointed enforcement officer may, by resolution of the Board, be limited to enforcement of specific violations and may be amended at any time.

(4) A copy of each resolution appointing, amending the authority, or revoking the appointment of any enforcement officer shall be entered in the Journal of the Board of County Commissioners.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.150 Role of county attorney

To the extent consistent with ORS 153.076, the district attorney, county attorney, or other attorney at law employed for the purpose of prosecuting violations of County Code, upon information or complaint of any person having authority to enforce violations subject to this Chapter, may prosecute a case in which it appears there has been a violation of the Linn County Code.

[Adopted 2007-755 §1 eff 12/12/2007]

240.160 Jurisdiction of courts

The circuit court and justice court have concurrent jurisdiction of all violations under this Chapter.

[Adopted 2007-755 §1 eff 12/12/2007]

240.170 Prosecution of subsequent violations

(A) The prosecution of one violation on a citation or complaint shall not bar the subsequent prosecution of additional County Code 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 Code violations.

(B) Evidence of prior Code violations shall be admissible, subject to ORS 40.170, in any subsequent prosecution of any Code violation.

[Adopted 2007-755 §1 eff 12/12/2007]

240.190 Enforcement options

(A) Abatement of a violation of Linn County Code may be sought in any one or a combination of the following methods:

- (1) warning notice process seeking voluntary compliance (LCC 240.300 to 240.320);
- (2) a citation process seeking compliance by consent agreement (LCC 240.410); stipulated judgment and order of abatement (LCC 240.420);

or order of abatement following a finding of guilty at trial (LCC 240.430); and.

(3) other civil actions, seeking a judgment and order for compliance, including but not limited to mandamus, restraining orders, and causes of action in nuisance (LCC 240.700).

(B) The election of the method used is solely at the discretion of the County.

(C) Remedies sought by the County are cumulative, not exclusive; election by the County to pursue one remedy is not a condition precedent to pursuing any other remedy; and, remedies listed in this chapter do not preclude resort to any other remedy that may be available or allowed at law or equity.

[Adopted 2007-755 §1 eff 12/12/2007]

240.195 Method of Enforcement Discretionary

(A) The decision by the County to seek enforcement of a particular violation is discretionary.

(B) Nothing in the Linn County Code shall be construed to create a duty, enforceable in mandamus or other similar proceeding, on the part of the County or any of its officers or agents to enforce any particular violation of the Code.

[Adopted 2013-085 §1 eff 3/13/2013]

II. ADMINISTRATIVE SEARCH WARRANT PROCEDURES

240.200 Definitions for search warrant procedures

As used in LCC 240.200 to 240.260, “**place**,” means any building, premises, or other location subject to the Linn County Code.

[Adopted 2007-755 §1 eff 12/12/2007]

240.210 Enforcement authority

(A) *Generally*. Any enforcement officer designated by the Board or by this Chapter acting in the course of official duties is hereby authorized to make such inspections and take such actions as may be required to enforce the Linn County Code or other applicable statute or regulation applicable under this Chapter.

(B) *Inspections*. Whenever necessary to make an inspection to enforce any of the provisions of the Linn County Code or other applicable statute or regulation or whenever an enforcement officer has cause to believe that there exists in any place any condition or violation which makes such place a safety or health hazard or danger, the enforcement officer may enter a place at all reasonable times to inspect the same or to perform any duty imposed upon the enforcement officer by any State statute or regulation, or any County ordinance or Code or regulation, relating to safety or health. However, if such place is occupied, the enforcement officer shall first present proper credentials and request entry. If such entry is refused, the enforcement officer may apply for an inspection warrant under this Chapter to obtain entry.

[Adopted 2007-755 §1 eff 12/12/2007]

240.220 Issuance of inspection warrants for safety and health inspections

A judge may, upon application of any enforcement officer designated by the Board or by this Chapter acting in the course of official duties, issue an inspection warrant whenever an inspection or investigation of any place is required or authorized by any State statute or regulation, or any County ordinance or Code or regulation, relating to safety or health, or as authorized under LCC 240.210. The inspection warrant is an order authorizing the safety or health inspection or investigation to be conducted at a designated place.

[Adopted 2007-755 §1 eff 12/12/2007]

240.230 Grounds for issuance of inspection warrants; requirements of affidavit

(A) An inspection warrant shall be issued only upon cause. The inspection warrant shall be supported by affidavit. The affidavit shall particularly describe the following:

- (1) the applicant's status in applying for the warrant;
- (2) the statute or regulation, or the County ordinance or Code or regulation requiring or authorizing the inspection or investigation;

(3) the place to be inspected or investigated;

(4) the purpose for which the inspection or investigation is to be made;

(5) the basis upon which cause exists to inspect; and

(6) that entry has been sought but not granted, despite reasonable efforts to obtain entry for voluntary inspection. This statement shall recite those efforts undertaken by the code enforcement officer in seeking entry. For purposes of this subsection, reasonable efforts include but are not limited to, attempts to contact the owner or occupant of the place for which the warrant is sought to obtain entry either personally, by phone, or by letter sent certified mail return receipt requested which is returned or otherwise not accepted for delivery.

(B) Cause for an inspection warrant shall be deemed to exist:

(1) if there is probable cause to believe that a condition of nonconformity with a safety or health statute or regulation, or County ordinance or Code or regulation exists with respect to the particular place;

(2) an investigation is reasonably believed to be necessary in order to determine or verify whether there exists a condition of nonconformity with a safety or health statute or regulation, or County ordinance or Code or regulation with respect to the particular place, or

(3) for the purpose of carrying out a routine periodic inspection, if the place is other than a private residence.

(C) For the purpose of subsections (B) (2) and (B) (3) of this section, in determining whether an investigation is reasonably believed to be necessary an enforcement officer may look to the following factors:

(1) the history of violations at the particular place if any;

(2) the willingness to cure such violations if any;

(3) whether or not a complaint by a citizen regarding the particular place has been filed with the code enforcement officer; or

(4) the willingness to accept voluntary inspections of the particular place.

The list of factors herein does not limit consideration of other factors by the enforcement officer, so long as the factors are of a type regularly relied upon by code enforcement officers in determining whether an investigation is reasonably believed to be necessary, and so long as these factors are articulated in the affidavit required in subsection (A) of this section.

[Adopted 2007-755 §1 eff 12/12/2007]

240.240 Procedure for issuance of inspection warrant by Judge.

(A) Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness to be satisfied of the existence of grounds for granting such application.

(B) If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing the name and title of the person or persons authorized to execute the warrant, the place to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that the inspection warrant cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

[Adopted 2007-755 §1 eff 12/12/2007]

240.250 Execution of inspection warrants

(A) Except as provided in subsection (B) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the place designated in the warrant and show the occupant or person in possession of the place the warrant or a copy thereof upon request.

(B) In executing an inspection warrant, the person authorized to execute the warrant need not

inform anyone of the person's authority and purpose, as prescribed in subsection (A) of this section, but may promptly enter the designated place if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition.

(C) A peace officer may be requested to assist in the execution of the inspection warrant.

(D) An inspection warrant must be executed and returned to the judge by whom it was issued within 10 days from the date of issue, unless such judge before the expiration of such time, by endorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant is void unless executed.

[Adopted 2007-755 §1 eff 12/12/2007]

240.260 Refusal of entry when inspection warrant obtained

(A) When an enforcement officer has obtained an inspection warrant to secure entry to a place, no owner or occupant or any other persons having charge, care, or control of any place shall fail or neglect, after proper request is made as provided in this Chapter, to promptly permit entry therein by the enforcement officer for the purpose of the inspection or investigation.

(B) Any failure or neglect to promptly permit entry under this section shall be punishable under this Chapter as a Class A violation.

[Adopted 2007-755 §1 eff 12/12/2007]

III. ENFORCEMENT PROCESS BY WARNING NOTICES AND VOLUNTARY COMPLIANCE

240.300 Enforcement by voluntary compliance; notice

(A) The process authorized in this section is primarily for the purpose of seeking voluntary compliance by the alleged violator. At the discretion of the enforcement officer this process is to be considered in those cases where voluntary compliance is likely and it is in the interests of the County, taking into consideration the nature and

severity of the violation and the history of the property and the person responsible.

(B) *Voluntary compliance procedure.* Except as otherwise provided in subsection (G) of this section, the enforcement officer shall solicit the voluntary compliance of the person in violation of this Chapter by the procedure set forth in this subsection.

(C) In cases where the corrective action indicated in a notice requires both applying for and receiving a permit or approval, the violation shall continue until all necessary permits or approvals are granted or until they are denied and code compliance is obtained through other means.

(D) If the person responsible is not the property owner, the county shall endeavor to give initial and final notice to abate a violation to the property owner; however, a notice of violation published at least once in a newspaper of general circulation in Linn County is sufficient notice to a property owner to satisfy the notice requirements of this Chapter and any other due process required by law. The notice to the property owner and the publication shall additionally state that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.

(E) On completion of the personal giving of notice, posting, and mailing, the person or person giving such notice shall execute and maintain affidavits stating the date, time, place and manner of giving notice.

(F) An error in the name or address of the person responsible or property owner shall not make the notice void, and in such case the posted or published notice, as the case may be, shall be sufficient.

(G) Notwithstanding the process authorized in LCC 240.300 to 240.320, the County may at any time immediately begin prosecution of any violation on a citation or file any other action to abate the violation. This determination is at the discretion of the enforcement officer. The determination is not appealable or reviewable.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.310 Initial notice to abate

(A) *Step 1 — Initial notice to abate.* Subject to subsection (B) of this section, if an enforcement officer is satisfied that a violation exists, the enforcement officer shall:

(1) give personal notice; or

(2) cause an initial notice to abate to be posted on the premises or at the site of the violation, directing the person responsible to abate the violation; and

(3) at the time of posting, cause a copy of the initial notice to abate to be forwarded by registered or certified mail, postage prepaid, to the person responsible at the last known address of such person.

(4) *Content of initial notice to abate.* The initial notice to abate shall contain the following contents:

(a) a statement that the notice is an “initial notice” to abate a violation;

(b) the name of the person issuing the notice along with the name of the County Department to contact regarding the violation;

(c) the date the notice was issued;

(d) a brief description of the violation alleged to exist;

(e) a description of the real property, by street address or otherwise, on which the violation exists;

(f) a statement describing the corrective action that needs to take place to correct the alleged violation(s);

(g) an order to voluntarily abate the violation within 10 days from the date of the notice;

(h) a statement that failure to correct the alleged violation(s) within 10 days may result in further enforcement procedures including any combination of the following:

(i) another notice to abate;

(ii) an enforcement citation and prosecution including, but not limited to: payment of a fine and court costs and court orders to comply;

(iii) other civil actions in court; or

(iv) abatement by the County.

(i) a statement that if the violation is not voluntarily abated, the County may seek from the court a judgment to abate the violation, which if not obeyed, could result in the County itself abating the violation and being awarded a lien by the court on the specified property for the expenses of abating the violation and administrative costs.

(B) A sample initial notice is provided in Appendix 1. Any initial notice given shall comply substantially with that sample.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.320 Final notice to abate

(A) *Step 2 — Final notice to abate.* Subject to subsection (B) of this section, if the person responsible fails to voluntarily abate the violation within the time required by the notice, the enforcement officer shall:

(1) give personal notice; or

(2) cause a final notice to abate to be posted on the premises or at the site of the violation, directing the person responsible to abate the violation; and

(3) at the time of posting, cause a copy of the initial notice to abate to be forwarded by registered or certified mail, postage prepaid, to the person responsible at the last known address of such person.

(4) *Content of the final notice to abate.* A final notice to abate shall contain the following information:

(a) a clear indication that the notice is a “final notice” to abate a violation;

(b) the name of the person issuing the notice along with the name of the County Department to contact regarding the violation;

(c) the date the notice was issued;

(d) a brief description of the violation alleged to exist;

(e) a description of the real property, by street address or otherwise, on which the violation exists;

(f) a statement describing the corrective action that needs to take place to correct the alleged violation(s);

(g) an order to voluntarily abate the violation within 10 days from the date of the notice;

(h) a statement that failure to correct the alleged violation(s) within 10 days may result in further enforcement procedures any combination of the following:

- (i) an enforcement citation and prosecution including, but not limited to: payment of a fine and court costs and court orders to comply;
- (ii) other civil actions in court; or
- (iii) abatement by the County.

(i) a statement that if the violation is not voluntarily abated, the County may seek from the court a judgment to abate the violation, which if not obeyed, could result in the County itself abating the violation and being awarded a lien by the court on the specified property for the expenses of abating the violation and administrative costs.

(B) A sample final notice is provided in Appendix 2. Any final notice given shall comply substantially with that sample.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

IV. ENFORCEMENT PROCESS BY CITATION

240.400 Enforcement by citation; objectives

(A) The primary objective of enforcement by citation is to obtain, where appropriate under the particular circumstances, compliance by one of the following methods:

- (1) compliance pursuant to a consent decree (LCC 240.410);
- (2) compliance pursuant to a stipulated judgment subject to a plea of guilty (LCC 240.420); or
- (3) compliance pursuant to a court order of abatement following a plea of no contest or a finding of guilty (LCC 240.430).

(B) The secondary objective of enforcement by citation is to punish violation of the Linn County Code, including but not limited to violation not capable of abatement due to the transitory nature of the violation.

240.405 Enforcement by citation; issuance and contents

(A) If the violation has not been satisfactorily abated by the date and time specified in the warning notice or notices given pursuant to LCC 240.300 to 240.320, or the enforcement official makes the determination set forth in subsection (B) of this section, the enforcement officer may issue a citation pursuant to this Chapter.

(B) If the enforcement officer determines that enforcement of a violation defined by the Linn County Code by means of a citation filed in Circuit or Justice Court is warranted, the enforcement officer may issue a citation under this Chapter.

(C) Any enforcement officer may issue and serve a citation for violation of the Linn County Code.

(D) Pursuant to ORS 153.030(8), any enforcement officer may serve a person with a citation on which another enforcement officer made a certification pursuant to ORS 153.045.

(E) Any enforcement officer issuing a citation pursuant to this chapter shall, in addition to the date and time, indicate that the defendant must appear before the court and the name of the court before which the defendant is required to personally appear. If the enforcement officer indicates on the citation that the defendant “must appear”, the defendant must appear before the court as indicated pursuant to LCC 240.407(B).

(F) Pursuant to ORS 153.030(8), the person making the certification required by ORS 153.045 is not required to be the person who serves the citation on the person believed to be in violation of the Code.

(G) Pursuant to ORS 153.042 and 153.030(8), an enforcement officer may issue a violation citation pursuant to this Chapter even if the conduct alleged to constitute a violation does not take place in the presence of the officer, if the officer has reasonable grounds to believe that the conduct alleged constitutes a violation.

(H) Violation proceedings for the purpose of enforcing the Linn County Code and this Chapter may be commenced only by enforcement officers. No private party may initiate a violation proceeding pursuant to ORS 153.058 or other law.

[Adopted 2007-755 §1 eff 12/12/2007]

240.407 Hearing on a citation; discretionary with court; exception

(A) Provisions in this Chapter are supplemental to the statutory procedures of ORS Chapter 153 and not, unless authorized by ORS Chapter 153 or other law, limitations upon ORS Chapter 153.

(B) If the citation requires the defendant to personally appear before a court, the defendant must personally appear before the court on a citation and, if the defendant pleads guilty or no contest or is found guilty, the defendant must describe to the court defendant's plan on how and when the defendant will abate the violation, if it is a violation capable of abatement. The plan must be satisfactory to the County.

(C) During the pendency of an action on a violation, the defendant has the option of:

- (1) paying the presumptive fine, subject to any terms and conditions imposed by the court;
- (2) entering a plea of not guilty;
- (3) entering a plea of guilty or no contest to the citation.

(D) The parties may:

- (1) enter into a consent decree, as set forth in LCC 240.410 and submit it to the court; or
- (2) agree to a stipulated judgment as set forth in LCC 240.420 and submit it to the court.

(E) Prosecution and enforcement of any violations of the Linn County Code under this Chapter shall be conducted as violation proceedings under ORS Chapter 153 ("Violations and Fines") as supplemented by the provisions of this Chapter.

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

(G) Notwithstanding ORS 9.160 and 9.320, in any trial on a citation under this Chapter, in which

the District Attorney or other attorney does not appear on behalf of the County, the enforcement officer who issued the citation for the violation may present evidence, examine and cross examine witnesses and make arguments relating to:

- (1) the application of statutes and rules to the facts in the case;
- (2) the literal meaning of the statutes or rules at issue in the case;
- (3) the admissibility of evidence; and
- (4) proper procedures to be used in the trial.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.410 Enforcement by consent decree

(A) During the pendency of an action on a violation, but prior to entry of a judgment, the County and the defendant may enter into an agreement designed to abate the violation and petition the court to include it as a part of a consent decree as described in this section.

(B) The consent decree may provide that the defendant does not admit violation of a County Code but will make necessary corrections, as set forth in the agreement, to bring the defendant's actions, conduct, omissions or property into conformance with the Code.

(C) The defendant, the defendant's attorney, if any, and a County representative shall sign the consent decree.

(D) The consent decree shall be filed with the Circuit or Justice Court as a final adjudication of the proceedings and shall constitute a dismissal of the action when the defendant performs as agreed. The violator or Linn County may seek a court order dismissing the case upon completion of the conditions of the consent decree. The court retains jurisdiction of the matter until the order dismissing the case is issued.

(E) The defendant's failure to comply with the consent decree allows the County to seek any additional remedies provided by law or this Chapter, including proceeding on the violation to judgment.

[Adopted 2007-755 §1 eff 12/12/2007]

240.420 Enforcement by stipulated judgment

(A) During the pendency of an action on a violation, if the defendant enters a plea of guilty, the defendant and the County may agree to and submit to the court a stipulated agreement and judgment to abate a violation.

(B) As part of a stipulated agreement and judgment under this section:

(1) the defendant must plead guilty to the violation;

(2) the defendant shall abate the violation as provided by the agreement;

(3) the defendant shall cooperate with Linn County Enforcement Officers;

(4) the County may, but is not required to, bear some or all of the costs of abatement, if funds are available from the Code Enforcement Cleanup Fund;

(5) any of the costs of abatement which the County bears must be repaid by the defendant to the County as provided by the agreement; and

(6) any costs paid by the County to abate the violation shall become a money judgment in favor of the County against the defendant. The County may record such judgment as a lien in accordance with applicable law.

(C) At the election of the County, funds may be utilized from the Code Enforcement Cleanup Fund to initially cover the costs, entirely or in part, of the abatement.

(D) If the defendant fails to comply with the terms and conditions of the stipulated judgment, the County may request an order under LCC 240.500(A)(2) authorizing the County to enter the property and abate the violation.

[Adopted 2007-755 §1 eff 12/12/2007]

240.430 Enforcement by court-ordered abatement

If the parties do not enter into a consent decree or a stipulated judgment, and notwithstanding the willingness of the defendant to pay the presumptive fine, the court shall, if the defendant pleads guilty or no contest or is found guilty, issue an order to the defendant to abate the violation, if it is a violation capable of abatement, in a manner

and time acceptable to the County and require the defendant to provide proof of abatement to the County and to the Court.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.500 Order of Abatement

(A) In addition to, and not in lieu of, any remedy allowed by this Chapter, and pursuant to ORS 153.090 (1) (e), as part of a judgment entered under this Chapter, a court:

(1) may on its own motion, and shall on request of the enforcement officer, order a defendant to abate any violation of which the defendant is found guilty or enters a plea of guilty or no contest. The court shall set a time by which the defendant must abate the violation and may set other conditions on the order of abatement. Any abatement order shall include authorization for an enforcement officer to enter the property to determine compliance with the code and compliance with an order to abate. Any failure to abate the violation as ordered by the court shall be contempt of court; or

(2) shall on request of the enforcement officer, authorize the County to enter the property for the purposes of abating the violation.

(B) The defendant shall cooperate with Linn County Enforcement Officers including not preventing the officer and any other persons employed or contracted by the County to enter the property to determine compliance with the code and any orders to abate.

[Adopted 2007-755 §1 eff 12/12/2007]

240.510 Money judgments

(A) All fines, abatement costs and other court costs and disbursements not paid at the time of the entry of the judgment shall be made a money judgment in favor of the County.

(B) The County shall be entitled to recover all costs of abatement and all costs and disbursements that are reasonable and necessary expenses incurred in the successful prosecution of a violation, other than for legal services, but including the costs, expenses, salaries and overhead costs of officers, employees and witnesses, the necessary

expenses of taking depositions, the expense of publication of summons or notices, postage, compensation of expert witnesses, and the expense of copying any public or private record, book or document used as evidence in the trial.

(C) The County shall petition for costs and disbursements only when the affected department heads determine, upon approval by the Board, that a petition for costs and disbursements should be made in the particular case.

(D) If the County seeks to recover its expenses described in subsection (B) of this section, the enforcement officers shall keep accurate records of the expenses including staff time incurred in abating the violation.

(E) The Code Enforcement Technician may, before entry of a final judgment, file with the court a signed and detailed statement identifying the amount of the costs and disbursements and shall provide a copy of the statement to the defendant. The court shall award the costs and disbursements unless the court finds the costs or disbursements unreasonable. If the court so finds, the court shall award an amount for the costs and disbursements that the court deems reasonable.

[Adopted 2007-755 §1 eff 12/12/2007]

240.520 Recovery on a money judgment

(A) Every money judgment shall name Linn County as the judgment creditor.

(B) A money judgment, including but not limited to funds described in LCC 240.620, must be repaid by the defendant to the court.

(C) *Code Enforcement Cleanup Fund.* Monies expended from the Code Enforcement Cleanup Fund and repaid by the defendant to the Court shall be applied to the fund established in LCC 240.620.

(D) *Fines and other court costs*

(1) All fines paid to the county shall be credited to the general fund to be used for general county purposes. Ten percent (10%) of the amount of any fine imposed in subsection (D)(1) of this section shall be transferred to the fund established by LCC 240.620.

(2) The court shall charge any court costs required by law to the defendant where:

(a) The defendant admits a violation of a provision of the County Code;

(b) The defendant fails to appear for the hearing or, following a hearing, is found to have violated a provision of the County Code; or

(c) The defendant enters into a stipulated judgment with the County wherein the defendant pleads guilty on the citation but agrees to make necessary corrections, as set forth in the agreement, in order to bring the defendant's conduct, actions, omissions, or property into compliance with the County Code.

(3) If the defendant fails to pay the costs, the costs shall be entered as a judgment against the defendant in the same manner and with like effect as a judgment for a fine.

(E) *Recording and releasing liens*

(1) If the County intends to pursue recovery of costs incurred by the court and the county, it shall be the responsibility of the Code Enforcement Technician to create and maintain a record of payments made by the defendant, collected by the court, and distributed by the court to the County, on a form identifying the case, the defendant, the amount and date payment was made.

(2) The recording of a lien for a money judgment and all costs associated with recording and collection is the responsibility of the Code Enforcement Technician.

(3) The Code Enforcement Technician may record a money judgment as a lien in accordance with applicable law, and may pursue recovery of any money judgment.

(4) For purposes of a lien that has been filed, an error in the name of the owner or person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void but it shall remain a valid lien against the property.

(5) The Code Enforcement Technician is responsible, in consultation with the Office of the County Attorney, to ensure that a satisfaction of judgment and release of lien is executed and filed

as appropriate, once any money judgment is paid in full

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

240.600 Joint abatement

If more than one person is a person responsible, they shall be jointly and severally liable for abating the violation, or for the costs incurred by the County in abating the violation.

[Adopted 2007-755 §1 eff 12/12/2007]

240.610 Summary abatement

The procedure provided by this Chapter does not limit an official's ability to summarily abate a violation as described in this section. The health officer, the chief of the Fire Department, the fire marshal, the Sheriff, the police chief or the Board may proceed summarily to abate a health or other violation which unmistakably exists, and which imminently endangers health or property; however, such summary abatement shall be limited to only those actions necessary to reduce the threat to a level that eliminates the imminent danger to health or property.

[Adopted 2007-755 §1 eff 12/12/2007]

240.620 Code Enforcement Cleanup Fund

(A) The Code Enforcement Cleanup Fund is hereby established. The Board shall recommend an amount to be approved annually by the Budget Committee, and all amounts so approved are appropriated for the purposes set forth in this section.

(B) Monies in the fund created by this section may be used, at the sole discretion of the County, in any abatement ordered under LCC 240.420, 240.430, or 240.500.

[Adopted 2007-755 §1 eff 12/12/2007]

V. ENFORCEMENT PROCESS BY OTHER CIVIL COMPLAINT

240.700 Enforcement by complaint for injunction or other relief

(A) An enforcement officer may request the Board to commence civil proceedings other than

or in addition to any other enforcement process described in this Chapter. Such legal action shall be commenced in a court in Linn County having jurisdiction including but not limited to actions to prevent, temporarily or permanently enjoin, or abate the violation as provided in this Chapter.

(B) If the Board determines that enforcement by means of a complaint for injunction, mandamus, abatement, or other appropriate proceeding, would be the most effective manner to proceed, the Board shall request the District Attorney, or other attorney at law employed for the purpose of prosecuting violations of County Code, to institute civil action to require compliance with the Code or penalize the defendant or both.

(C) The attorney may then prosecute such action, without further action from the Board, to judgment and may seek to enforce that judgment by appropriate legal means.

(D) The attorney may, but shall not be required to, direct a demand letter to the defendant, or person responsible of the premises alleged to be in violation of the Code. Such demand letter shall at least include a reasonable description of the premises, the alleged violation and the Code, statute, or administrative rule which establishes the violation, and may request the person responsible of the premises to contact the appropriate enforcement officer and take action to remedy the alleged violation.

[Adopted 2007-755 §1 eff 12/12/2007]

VI. PENALTIES

240.900 Classification of offenses; enforcement; penalties

(A) Violations are designated by the County Code provision defining the violation, or by provisions incorporated by LCC 240.050, as being in one of the following classifications.

(B) Violations are classified as a "Class A violation," "Class B violation," "Class C violation," or a "Class D violation." If the Code is silent regarding its classification, the offense is a Class A violation.

(C) The penalty for committing:

(1) A Class A violation is a fine in an amount set forth in ORS Chapter 153 for a class A violation;

(2) A Class B violation is a fine in an amount set forth in ORS Chapter 153 for a class B violation;

(3) A Class C violation is a fine in an amount set forth in ORS Chapter 153 for a class C violation;

(4) A Class D violation is a fine in an amount set forth in ORS Chapter 153 for a class D violation.

(D) The maximum fine, presumptive fine, and minimum fine for any violation shall be the amount established in ORS Chapter 153 for that class of violation.

(E) Any individual, firm or corporation, whether as principal, agent, or employee violating any provision of a Linn County Code for which a penalty is provided shall, upon conviction thereof, be fined as set forth in this section.

(F) For purposes of this Chapter a failure to comply with any provision of a Linn County Code from day to day shall be a separate offense for each such day. In lieu of issuing a citation for each day of offense, an enforcement officer may indicate "continuing offense," or words to that affect, on a citation and the court may levy a separate fine for each offense.

(G) If there is a violation of any provision identical to a statute of the State of Oregon with a lesser penalty attaching, punishment shall be limited to the lesser penalty prescribed in Oregon State law.

(H) A reference in the Linn County Code to a Class A infraction or a Class B infraction means a Class A violation or a Class B violation respectively. A reference in the Linn County Code to an unspecified infraction means a Class A violation.

[Adopted 2007-755 §1 eff 12/12/2007; amd 2013-085 §1 eff 3/13/2013]

Statutory References and Other Authorities:

ORS 1.525; 8.665; 8.690; 19; 46; 53; 153 ; 203; 431.110 to 431.170; 433.835 to 433.875; 433.855 (1) (a); 433.990; 446.310 to 446.350; 446.990; 448.005 to 448.100; 448.115 to 448.990; 454.605 to 454.745; 624.010 to 990; Linn County Order 88-664 (establishing the Ordinance Enforcement Committee, dated November 30, 1988 rescinded 03-nnn, dated April __, 2003)

Legislative History of Chapter 240 (formerly codified at Chapter 2.40):

Adopted 79-148 eff 10/10/79

Repealed by 80-404 §16 eff 10/22/84

Adopted 80-404 eff 10/22/84

Amendments to 80-404:

#1 84-067 eff 11/28/84

#2 85-140 eff 4/24/85 (codifying)

#3 88-536 eff 10/12/88

#4 91-034 eff 2/20/94

#5 95-177 eff 5/10/95 (renumbering)

#6 99-058 §1 eff 3/3/99

Adopted 2002-041 §2 eff 2/13/02

Repealing 80-404 as amended

Amendments to 2002-041:

#1 2003-135 §1 eff 7/30/03

Adopted 2007-755 §1 eff 12/12/07

Repealing 2002-041 as amended

Amendments to 2007-755:

#1 2013-085 §1 eff 3/13/13

Appendix 1 – Initial Notice to Abate

**INITIAL NOTICE
TO ABATE A VIOLATION OF LINN COUNTY CODE CHAPTER 240**

This INITIAL notice to abate a County Code violation is issued by: _____

The date of this notice is: _____

The code provision that is alleged to be violated is LCC ____.

The description of how you are violating the code is: _____

The location of the real property on which the violation occurs is:

[e.g., street address or TL and TR]

You may correct the violation by taking the following action: _____

You may contact _____ regarding the violation
[County Department]

You are ordered to voluntarily abate the violation within 10 days from the date of the notice.

Failure to correct the alleged violation(s) within 10 days may result in further enforcement procedures including any one or a combination of the following:

- only one additional notice to abate (a FINAL notice to abate);
- an enforcement citation and prosecution including, but not limited to: payment of a fine and court costs and court orders to comply;
- other civil actions in court; or
- abatement by the County.

If the violation is not voluntarily abated, the County may seek from the court a judgment to abate the violation, which if not obeyed, could result in the County itself abating the violation and being awarded a money judgment by the court on the specified property for the expenses of abating the violation and administrative costs on the basis of which the County could file liens against all property owned.

[Issuing Enforcement Official]
[Title of Enforcement Official]

Appendix 2 – Final Notice to Abate

**FINAL NOTICE
TO ABATE A VIOLATION OF LINN COUNTY CODE CHAPTER 240**

This FINAL notice to abate a County Code violation is issued by: _____

The date of this notice is: _____

The code provision that is alleged to be violated is LCC ____.

The description of how you are violating the code is: _____

The location of the real property on which the violation occurs is:

[e.g., street address or TL and TR]

You may correct the violation by taking the following action: _____

You may contact _____ regarding the violation
[County Department]

You are ordered to voluntarily abate the violation within 10 days from the date of the notice.

Failure to correct the alleged violation(s) within 10 days may result in further enforcement procedures including any one or a combination of the following:

- an enforcement citation and prosecution including, but not limited to: payment of a fine and court costs and court orders to comply;
- other civil actions in court; or
- abatement by the County.

If the violation is not voluntarily abated, the County may seek from the court a judgment to abate the violation, which if not obeyed, could result in the County itself abating the violation and being awarded a money judgment by the court on the specified property for the expenses of abating the violation and administrative costs on the basis of which the County could file liens against all property owned.

[Issuing Enforcement Official]
[Title of Enforcement Official]