



## COMMUNITY DEVELOPMENT

# Code Enforcement Program Policy and Procedures Manual

January 25, 2024

*To request this information in an alternate format, please call (541) 385-1707 or send an email to [CodeEnforcement@deschutes.org](mailto:CodeEnforcement@deschutes.org)*

# TABLE OF CONTENTS

Preface.....	3
<b>I. Mission.....</b>	<b>4</b>
<b>II. Purpose.....</b>	<b>4</b>
<b>III. Interpretation.....</b>	<b>4</b>
<b>IV. Code Enforcement Philosophy.....</b>	<b>4</b>
A. Enforcement Levels.....	4
B. Sequence of Enforcement.....	5
C. Criteria for Choosing Level of Enforcement.....	5
<b>V. Priorities for Code Enforcement.....</b>	<b>5</b>
A. Priority Cases.....	5
B. Lower Priority Cases.....	5
C. Solid Waste.....	6
<b>VI. Applicability.....</b>	<b>6</b>
<b>VII. Initiation of Code Enforcement.....</b>	<b>6</b>
A. Resident Complaints.....	6
B. Observation by Code Enforcement Staff.....	7
C. Proactive Code Enforcement.....	7
D. Permit/Approval Condition Monitoring by CDD Staff.....	7
E. Report by County Staff.....	8
F. Report by County Commissioner.....	8
G. Information from Official County Records.....	8
<b>VIII. Recording Complaints.....</b>	<b>8</b>
<b>IX. Notice of Investigation.....</b>	<b>8</b>
<b>X. Investigation.....</b>	<b>9</b>
A. Preliminary Matters.....	9
B. Establishing the Elements of a Violation.....	9
C. Assignment of Investigation and Enforcement Responsibility.....	9
D. Field Investigation.....	10
E. Report of Field Investigation.....	11
<b>XI. Enforcement Procedures.....</b>	<b>11</b>
A. Voluntary Compliance.....	11
B. Pre-Enforcement Notice.....	12
C. Citation and Complaint.....	13
D. Injunctions.....	14
E. Permit Revocation.....	15
F. Nuisance Abatement.....	15
G. Dangerous Building Abatement.....	15
H. Investigative Fees.....	15
I. Assisting Enforcement by Other Regulatory/Licensing Agencies.....	16
J. County Cost Recovery.....	16
K. Liens.....	16
<b>XII. Resolution of Code Complaints.....</b>	<b>17</b>
<b>XIII. Amendments.....</b>	<b>18</b>

## PREFACE

Code enforcement in Deschutes County is a priority of the Board of County Commissioners (“Board”). The Board believes the policies and procedures in this manual will enhance code compliance and thereby the quality of life in Deschutes County.

In August 1994, the Board established the Deschutes County Code Enforcement Task Force to study County Code Enforcement, to recommend improvements to the program and to identify statutory or County Code changes that could increase the effectiveness of County Code enforcement. The task force included residents, representatives of the construction and real estate industries, representatives of the state court system and law enforcement, County Legal Counsel, managers of the County's Community Development Department (“CDD”) and the County's Code Enforcement staff.

The task force met three times during 1994. In January of 1995, they presented a report to the Board containing their recommendations. The Board accepted those recommendations, and directed County staff to begin to implement them. Among the recommendations was the development of a County Code Enforcement policy and procedures manual.

The key task force recommendation in 1995 was the implementation of a more “proactive”, or County-initiated, Code Enforcement program. Such a program would begin simultaneously with adoption of the manual and would apply to County Code violations occurring on or after the effective date of the manual. This recommendation effectively created a two-pronged approach to code enforcement— somewhat different policies and procedures for violations occurring before, and after, the effective date of the manual. The intent of this approach was both to increase code enforcement after giving the community ample notice of the County's new, “tougher” enforcement policy, as well as to set enforcement priorities and manage the County's Code Enforcement workload in a manner that is realistic, clear and credible to the community. The original policies and procedures manual reflected this new approach.

The County amended the manual in 1997 to reprioritize the criteria in Section IV and to reclassify and add enforcement staff. Since then, the County added Deschutes County Code (“DCC”) Chapter 1.17 to adopt the required administrative hearings process required by ORS 455.157 adopted by the State Legislature in 2009 for building and specialty code violations. The County also amended Chapter 1.16 to add an additional injunctive remedy once a violation is cited into Circuit Court.

In 2014, CDD staff reviewed the manual and suggested changes to the Board, which reviewed the staff-proposed changes and made additional revisions.

In 2021, Community Development Department (CDD) staff reviewed the manual and offered recommendations to the Board of County Commissioners (Board). A noteworthy revision adopted by the Board changed the emphasis from “Code Enforcement” to “Code Compliance” because it aligned the program title with its objective.

In 2024, CDD staff updated the manual with Director approval to reflect operational changes that streamline code enforcement operations. It also thoroughly described lien and abatement procedures. Lastly, for consistency with the Oregon Code Enforcement Association and the Cities of Bend, Redmond, and Sisters, CDD reverted the program to “Code Enforcement.”

This manual’s guidance coupled with the County's “Every Time Standards” enables CDD to protect and enhance the quality of life in Deschutes County.

## I. MISSION

The mission of Deschutes County's Code Enforcement Program is to protect the health and safety of the County's residents and visitors, and the livability of the community, by assuring compliance with the County's land use, environmental and construction codes. The County will assure County Code compliance both by encouraging voluntary compliance and by sanctioning code violators who do not comply.

## II. PURPOSE

The purpose of the Deschutes County Code Enforcement Program Policy and Procedures Manual (hereafter "manual") is to provide written guidelines for:

- A. The prioritization of code enforcement cases;
- B. Initiation and investigation of code violation complaints;
- C. Enforcement of the County Code through voluntary compliance;
- D. Prosecution of code violators who do not comply;
- E. Sanctioning of code violators and the assessment of fines and penalties; and
- F. Recovery of the County's investigation and enforcement costs.

These written guidelines are intended to increase consistency and predictability within the County's Code Enforcement Program, and to educate the County's residents and property owners about code compliance and the consequences of violating the County Code.

## III. INTERPRETATION

This manual describes the standard policies and procedures for code enforcement, and should be interpreted so as to maximize both the efficiency of the program and operations as well as compliance with County Code. This manual should be followed unless otherwise directed by the CDD Director or designee, the County Administrator or designee, or the Board of County Commissioners ("Board").

## IV. CODE ENFORCEMENT PHILOSOPHY

**Policy:** The County's policy is to achieve compliance with County Code in all cases of reported and verifiable code violations. However, the County may not always have sufficient resources to expeditiously address all cases. Consequently, the County has established, through this manual, both a priority ranking for code enforcement and procedures designed to maximize available code enforcement resources. The Code Enforcement Program should follow the priority ranking set forth in Section V of this manual. It also should be flexible enough to allow the level of enforcement that best fits the type and circumstances of the code violation(s), within clear and objective criteria set forth in this manual and consistent with the priorities.

**A. Enforcement Levels.** The levels of enforcement available to the County are:

1. Mediated settlement of code violation complaints;
2. Pre-Enforcement Notice (hereafter "PEN");
3. Investigative fees on permits required for compliance with County code;
4. Obtaining voluntary compliance;
5. Warning letters;
6. Citation and prosecution of violation in state court or Notice of Violation and Proposed Civil Penalty (hereafter "NOV") through County administrative hearings;
7. Petition for injunction in circuit court;
8. Nuisance or dangerous building abatement;
9. Permit revocation

- B. Sequence of Enforcement.** The levels of enforcement are not mutually exclusive, and may be used alone or in sequence or combination with other levels. However, in most code violation cases, the County will use the code enforcement levels in the sequence they appear in Paragraph A.
- C. Criteria for Choosing Level of Enforcement.** Some code violation cases may have aggravating circumstances requiring a different sequence for enforcement activity than that set forth in Paragraph A. The County may choose a different sequence if one or more of the following circumstances is present:
1. The code violation is severe (e.g., deviates greatly from the Code);
  2. The violation poses a significant threat to public health and safety, or to the environment as determined by the Community Development Director or designee;
  3. The violation may cause economic harm to residents or to the County as a whole;
  4. The physical size or extent of the violation is significant as determined by the Community Development Director or designee;
  5. The violation has existed uncorrected for a significant period as determined by the Community Development Director or designee;
  6. There is a previous history of complaints and code enforcement on the subject property and/or with the alleged code violator;
  7. There is good potential for combining enforcement action on the violation with other violations;
  8. There is little likelihood of obtaining voluntary compliance.

## V. PRIORITIES FOR CODE ENFORCEMENT

**Policy:** County staff shall attempt to investigate and resolve all code violations within budget and staffing resources. However, because of limited code enforcement resources, there may be times when all code violations cannot be given the same level of attention and some code violations may receive no attention at all for a period of time as determined by the Community Development Director or designee.

In circumstances where not all code violations can be investigated, the most serious violations, as determined under the priorities set forth in this section and the criteria for enforcement in Section IV(C) of this manual, shall be addressed before the less serious violations are addressed, regardless of the order in which the complaints are received. However, complaints alleging both priority and non-priority violations should be processed together to maximize efficiency.

- A. Priority Cases.** The Board has established the following priorities for CDD code violations:
1. Violations that present an imminent threat to public life, health and safety;
  2. Violations which impact rivers, streams, floodplains, and wetlands,
  3. Solid Waste Code violations, Environmental Soils violations, and Building Code violations consisting of ongoing non-permitted construction or failure to obtain permits;
  4. Land use violations.

### **B. Lower Priority Cases**

**Policy:** Complaints alleging code violations that do not fall within the priority ranking above should be processed in the order in which the complaints are received, and as code enforcement resources allow.

**Exception.** At the discretion of Code Enforcement Specialists and in consultation with the Community Development Director or designee staff, complaints may be processed in any order that maximizes the efficiency of enforcement.

**Procedure:** All complaints concerning a particular type of code violation (e.g., non-permitted manufactured homes in manufactured home parks), or all complaints of violations occurring in a particular geographic area, may be processed together, regardless of the order in which the complaints are received.

- C. **Solid Waste.** The County Solid Waste Department may engage any other County Department/ Office to administer its code enforcement program for County solid waste code violations.

## VI. APPLICABILITY

**Policy:** This manual applies to all code enforcement administered by CDD, its employees and agents. Except as otherwise provided, the policies and procedures in this manual apply to all alleged code violations whether or not they existed or were known by the County on the effective date of this manual. The policies and procedures in this manual supersede any conflicting County policies and procedures.

**Non-Applicability to Covenants, Conditions and Restrictions.** Many subdivisions and planned communities are subject to private, recorded covenants, conditions and restrictions (CC & Rs). The County's policy is not to enforce private CC & Rs.

**Non-Applicability to Private Legal Action.** Residents may undertake private legal action to enforce County Code, including civil litigation against the alleged code violator, as well as personally filing citations and prosecuting County Code violations in court. The policies and procedures in this manual do not apply to private legal action to abate violations. Neither should they be interpreted to suggest that the County will participate in such private legal action.

## VII. INITIATION OF CODE ENFORCEMENT

Code enforcement may be initiated by any of the following methods:

- A. **Resident Complaints.** Any person may make a complaint to the County alleging one or more code violations.

1. **Form.** A resident may initiate a complaint by submitting a letter or email, or an official complaint form. If the County receives a written complaint other than the County-approved complaint form, the written complaint shall be attached to a complaint form completed by County staff. To be investigated, a resident complaint must contain all information required on the complaint form.

2. **Anonymous Complaints**

**Policy:** The County's policy is to not accept anonymous County Code violation complaints.

The County believes that anonymous complaints are not as reliable as those made by complainants who are willing to identify themselves. In addition, in many cases, the complainant's identification and testimony in court may be necessary for successful prosecution of Code violators and code enforcement.

**Exceptions.** The County recognizes there may be cases justifying an exception to this policy. These are cases where the nature of an anonymous complaint reliably suggests the existence of code violations presenting an imminent threat to public life, health and safety or to the environment, which threat easily may be verified by County staff. In such cases, as determined by the CDD Director or designee, County staff shall accept the anonymous complaint for investigation.

3. **Confidentiality**

**Policy:** The County's policy is to maintain the confidentiality of code enforcement complaint files and computer records, including the identity of the complainant, to the extent legally possible. The County believes it is important to maintain this confidentiality to assure effective investigation and prosecution of code violations. In addition, the County recognizes that some complainants do not want their names disclosed to the alleged code violator for fear of retaliation. However, in some cases it may be necessary for successful prosecution and enforcement for the complainant to be identified and to testify in court.

**Exceptions.** In cases where the County chooses to cooperate with, or defer to, federal or state agencies for code enforcement, the contents of the file may be disclosed, as necessary, to the other agency. The County is required to produce responsive public records to a person under Oregon's Public Records Law when a public records request is received. All records concerning the code enforcement file, including the complaint which includes the identity of the complainant, may be subject to production.

**Procedure:** In order to maintain the confidentiality of code enforcement complaint files and the identity of the complainants, while assuring effective prosecution and enforcement and compliance with state law, the following procedures apply:

- a. Code enforcement files will be maintained as confidential files throughout the investigation, violation prosecution and/or other types of code enforcement to the extent legally permissible.
- b. The contents of code enforcement files will not be disclosed to anyone other than County staff who have a reason to know about and who are involved in the investigation, or to similar staff of an agency with which the County is cooperating. The contents of the file will not be disclosed to any other person absent court order or an official public records request, until: 1) the investigation is complete, and a discovery request is made; or 2) the file is closed and disclosure is made pursuant to the public records law.

**B. Observation by Code Enforcement Staff.** Code enforcement staff often observe additional potential County Code violations while conducting complaint investigations. Such observations may form the basis for additional investigation and enforcement action.

**Policy:** The County's policy is that code enforcement staff document any potential code violations the staff observes on property that is the subject of their current investigation. Code enforcement staff shall investigate documented additional potential violations. If substantiated, staff may address noted additional violations. Staff may also document and address code violations observed on any property adjacent to the subject property, which violations are observable from the subject property.

**C. Proactive Code Enforcement.** Within available code enforcement resources, the County may undertake a number of County-initiated procedures for proactive code enforcement. These procedures may include:

1. Investigations and prosecutions of code violations in particular geographic areas;
2. Investigations and prosecutions of code violations of a particular type throughout the County;
3. Timely and regular follow-up by CDD staff for compliance with conditions and requirements for permits and approvals;
4. Reporting by County staff of code violations observed while conducting County business;
5. Examination and comparison of County files for evidence of code violations;
6. Revocation of permits and approvals for failure to comply with requirements or conditions;
7. Cooperation with code enforcement by other regulatory and licensing agencies; and
8. Cooperation with utility companies to terminate service, to the extent authorized by law, to non-permitted uses on property.

**D. Permit/Approval Condition Monitoring by CDD Staff.** The County routinely issues land use, environmental and construction permits with a variety of requirements and conditions, and timelines for meeting them. For example, a land use approval may require landscaping the site by a certain date, and building permits expire if construction progress and inspections are not made within periods set by state law. Code violations occur when these permit and approval conditions are not timely met.

**Policy:** The County's policy is that CDD staff may conduct timely and regular monitoring of conditions of approval and similar permit requirements for all permits and approvals.

**Procedure:**

1. All persons issued permits or approvals shall be given written notice of the consequences of failure to comply with requirements and conditions, including potential code enforcement.
  2. If any permits and approvals are found not to be in compliance with conditions of approval or other permit requirements, staff in the appropriate CDD division assigned to the permit or approval monitoring shall undertake appropriate action to obtain compliance.
  3. If the assigned CDD staff are unable to obtain compliance within a reasonable time established for that purpose, they shall report the violation and any enforcement action already taken to Code Enforcement staff for further code enforcement action.
- E. Report by County Staff.** In many cases, County staff may be in a unique position to observe potential code violations. For example, a property appraiser in the Assessor's office may be the only person able to observe new construction for which there is no permit.
- Policy:** Any County staff member may report to code enforcement staff possible Code violations observed while conducting County business.
- Procedure:** Reports by County staff under this subsection shall be made on a complaint form provided by CDD Code Enforcement Staff.
- F. Report by County Commissioner.** A County Commissioner may report a potential code violation, or request that code enforcement staff investigate a resident report of a potential code violation by submitting a complaint form or in any other written form or requesting CDD staff to submit a complaint form on behalf of the Commissioner, along with necessary information to initiate an investigation.
- G. Information from Official County Records.** Potential code violations may be discovered by examining the County's own official records. For example, cross-referencing between the Assessor's records and CDD's records may reveal construction or land use activity without necessary permits or approvals. CDD staff may also discover code violations by comparing the County's own land use, environmental health and construction permit records with each other.
- Policy:** CDD staff may regularly compare all pertinent County records to identify potential Code violations.
- Procedure:** Code violations discovered through comparison of information in County files shall be reported to Code Enforcement on a complaint form.

## VIII. RECORDING COMPLAINTS

All complaints received by the Code Enforcement Program shall be recorded in CDD's computer system. The Complaint Record is the official record of the complaint and its investigation and resolution. The Complaint Record shall include the following minimum information:

1. An assigned complaint number;
2. The tax map number and tax map for the subject property;
3. Which code enforcement staff is assigned to the case;
4. The complaint form;
5. Documentation of investigation;
6. Assessor's information on the subject property.

## IX. NOTICE OF INVESTIGATION

When Code Enforcement staff initiates an investigation, they may provide notice to any CDD division, other County department, or federal or state agency that may have an interest in the alleged code violation.



## X. INVESTIGATION

- A. Preliminary Matters.** At the beginning of each investigation, the following shall be established:
- 1. Jurisdiction.** The property upon which the alleged code violation exists must be in the County's code enforcement jurisdiction.
  - 2. Zoning.** The zoning of the subject property shall be determined.
  - 3. Permit Status.** The status of any land use, environmental soils, building, electrical, construction (including, but not limited to structural, mechanical, plumbing) or other similar permits on the subject property shall be determined.
  - 4. Property Ownership.** All persons with a recorded legal interest in the subject property should be identified. These persons should include the owners, contract purchasers, lessees and lienholders or other security interest holders.
  - 5. Other Potentially Responsible Persons.** In addition to the persons listed in subparagraph 4 of this paragraph, any other persons potentially responsible for the alleged code violation(s) should be identified. These persons could include tenants, construction and landscape contractors and excavators.
  - 6. Identification of Applicable Code Provisions.** Code Enforcement staff, with the assistance of other CDD staff and County Legal Counsel as necessary, shall identify the pertinent provisions of the County Code that may have been violated according to the complaint.
  - 7. Prior Complaint History.** Code Enforcement staff shall examine CDD records to determine the existence and status of any prior or existing code violation complaints on the subject property or concerning the alleged violator.
- B. Establishing the Elements of a Violation.** Before a Pre-Enforcement Notice ("PEN") is sent, it must be determined whether the complaint establishes a code violation. If it does not, the case will be resolved by file closure as provided in Section XII of this manual. Code Enforcement staff may, in some instances, make mediation referrals where such referral is anticipated to protect safety or livability.

Code Enforcement staff, with the assistance of other CDD staff and County Legal Counsel as necessary, and after any necessary field investigation, shall determine if the following elements have been established.

- 1. Responsible Person.** The person or persons who are reasonably believed to have committed the code violation, or who are or may be legally responsible for the alleged code violation, have been identified.
- 2. Alleged Violation Occurred or is Occurring.** A complaint may allege a code violation that occurred in the past (e.g., construction without a permit) or that occurs only intermittently (e.g., surfacing sewage from a drain field, or periodic non-permitted commercial activity in a residential zone). Code Enforcement staff shall determine whether there are reasonable grounds to find the alleged violation occurred or is occurring. Such grounds may be established either by personal observation by Code Enforcement staff or by reliable evidence from a complainant.  
If Code Enforcement staff determines that reasonable grounds do not exist, no enforcement action will be taken until the complainant or the Code Enforcement staff has had a reasonable opportunity to develop such grounds. If no reasonable grounds are developed within a reasonable period, the case will be resolved by file closure as provided in Section XII of this manual.
- 3. Relevance of Statute.** In some instances, a complaint may allege a code violation on property subject to other protections. A common example is the State's prohibition on local laws governing forest and farm practices (ORS 30.934 and 30.935). Code Enforcement staff shall, with the assistance of other CDD staff and County Legal Counsel as necessary, consider the relevance of statutes in substantiating a County Code violation. If Code Enforcement staff verifies conflicting relevance under the law, the case should be resolved by file closure as provided in Section XII of this manual.

### C. Assignment of Investigation and Enforcement Responsibility

**Policy:** The responsibility for field investigation and code enforcement should be assigned to the CDD staff most able and qualified to conduct the investigation and undertake appropriate enforcement action. For example, alleged violations of environmental soils/health codes may best be investigated and resolved by County Environmental Soils Specialists. However, all code enforcement activity should be coordinated with Code Enforcement staff and all PEN's and Voluntary Compliance Agreements (VCA's) will be drafted by Code Enforcement staff.

**Procedure:**

1. **Assignment.** Assignment of field investigation and code enforcement responsibility shall be made by the CDD Director or designee, on a case-by-case basis or pursuant to standing policies in this manual or elsewhere. The following criteria shall be used for assignment of responsibility:
  - a. The nature of the code violation(s) alleged in the complaint;
  - b. The knowledge and expertise needed to investigate the alleged violation;
  - c. The history of prior code enforcement on the subject property or with the alleged violator;
  - d. The status of permits and approvals on the subject property; and
  - e. The workload of the relevant CDD division staff and the projected timeline for investigation and resolution of the complaint.
2. **Coordination.** Whenever responsibility for code enforcement activity is assigned to CDD staff other than Code Enforcement staff, such staff shall consult with Code Enforcement staff and keep them advised of their activities. When CDD staff other than Code Enforcement staff is assigned to investigate a code violation complaint for which a Complaint Record has been created, such staff shall enter into the record a report of any action undertaken to investigate or to obtain compliance.

**D. Field Investigation**

1. **Purpose.** The purposes of code enforcement field investigation are to:
  - a. Verify the existence and severity of code violations;
  - b. Document code violations by means of written notes, photographs, witness interviews, etc.; and
  - c. Obtain supporting evidence such as photographs, measurements, names and statements of potential witnesses, etc.
2. **Coordination.** Whenever responsibility for field investigation is assigned to CDD staff other than Code Enforcement staff, the coordination and notification described in Paragraph C (2) of this section shall occur.
3. **Preparations and Precautions**

**Policy:** Code Enforcement staff and other assigned CDD staff, as well as members of the public, should not be exposed to unreasonable risks of violent confrontation or injury during the course of field investigations. Code Enforcement staff and other assigned CDD staff shall take whatever actions are reasonable and necessary to minimize the known risk of violent confrontation or injury to themselves or others in conducting their field investigations.

**Procedure:**

- a. **Law Enforcement Assistance.** When appropriate, Code Enforcement staff or other assigned CDD staff should contact the Sheriff's Office to determine if there have been previous criminal complaints or investigations concerning the subject property or alleged code violator, and whether, in the opinion of the Sheriff's Office, a field investigation would present any threat to the safety of Code Enforcement staff, other staff, the alleged code violator or other persons present during a field investigation. Code Enforcement staff or another assigned CDD staff person may request law enforcement assistance in conducting the field investigation, and may postpone such investigation until law enforcement assistance is available.
- b. **Announced/Unannounced Field Visits.** At the discretion of Code Enforcement staff or other assigned CDD staff, a field visit to the vicinity of the subject property may be conducted with or

without prior notice to the property owner, occupant or alleged code violator. The determination of whether or not to give prior notice shall be made on the basis of the following criteria:

1. The nature of the alleged violation;
2. Whether or not prior notice will make detection and documentation of the alleged violation more difficult; and
3. Whether or not prior notice will unnecessarily increase the known risk of violent confrontation or injury to Code Enforcement staff or other assigned CDD staff.

#### c. **Entering Upon Property or Premises**

**Policy:** It is the County's policy that Code Enforcement staff and other assigned CDD staff shall not enter upon private property or premises to conduct a field investigation without authority to enter.

**Procedure:** Unless permission is granted, the investigation shall be conducted from public roads or property where permission to enter has been granted. If Code Enforcement staff or other assigned CDD staff does not have permission or other authority to enter upon property or premises, and entry upon the property or premises is necessary to conduct the investigation, Code Enforcement staff or other assigned CDD staff shall consult with County Legal Counsel about obtaining a search warrant.

### E. **Report of Investigation**

**Report.** Upon completion of the initial investigation, Code Enforcement staff or other assigned CDD staff shall complete a report of investigation in the Case Record. The Field Investigation Report should be completed as soon as reasonably possible after the date and time of the field visit to ensure a complete and accurate report.

1. The report shall include at least the following information:
  - a. Name of investigator;
  - b. Date, time and place of field visit;
  - c. Code violation(s) observed;
  - d. If no code violation(s) observed, an explanation;
  - e. Witnesses, if any, interviewed and other persons present, if known, on site at the time of the investigation;
  - f. Evidence, if any, obtained (e.g., photographs);
  - g. Discussion, if any, of violation with owner, occupant or other responsible person;
  - h. Action necessary, if known, to correct violation; and
  - i. Recommended enforcement action.
2. **Complainant Notification.** Upon completion of the initial investigation, Code Enforcement staff shall notify all resident and other agency complainants of the status of complaint investigation. This notification should include information on whether a case will be opened, the reason a case will or will not be opened, and name and contact information of the staff member assigned the code enforcement case.

## XI. ENFORCEMENT PROCEDURES

### A. **Voluntary Compliance**

**Policy:** The primary objective of the CDD Code Enforcement Program is voluntary compliance. Staff encourages voluntary code compliance by providing code violators and other responsible persons with information about the County Code and an opportunity to comply with the County Code within reasonable timeframes and with little or no penalty. The County believes that voluntary compliance generally is less expensive for all parties and of a more satisfactory and lasting nature than involuntary compliance.

Notwithstanding this objective, the County believes that allowing Code violators the opportunity to voluntarily comply any time during code enforcement, or outside reasonable time limits for such compliance, may actually result in abuse of this opportunity in order to delay compliance. Therefore, it is

the County's policy to limit the time frame during which Code violators may come into voluntary compliance with little or no penalty. **Procedure:**

The following procedure shall apply whenever a Code violator brings his or her property into compliance during the code enforcement process:

**1. Compliance Timing and Staff Response**

Timing of Compliance	Disposition
After complaint/ before citation or NOV.	File closed. Application of permit investigative fees where applicable.
After citation/before trial or hearing before hearings officer	CDD recommends dismissal of citation, no cost recovery, application of permit investigative fees where applicable.
At time of trial or hearing before hearings officer	CDD recommends prosecution, conviction or guilty plea, fine or civil penalty, injunction, cost recovery, application of permit investigative fees where applicable.

2. **Limited Time Frames.** Opportunities for voluntary compliance, where provided, shall be of limited duration. The facts in each case differ. Therefore, Code Enforcement staff shall consider the appropriate time frame for compliance on a case-by-case basis.
3. **Time Extended by Voluntary Compliance Agreement.** Following the issuance of a PEN, if the alleged violator admits the violation(s) and requests extended time for voluntary compliance, the alleged violator shall sign a "Voluntary Compliance Agreement in a form acceptable to the County." County Legal Counsel will determine what is acceptable to the County. The agreement shall provide that, in exchange for the extended time for voluntary compliance, the alleged violator agrees to abate the violation(s) by a specified time, and, if voluntary compliance is not obtained during this extended time, to waive hearing in any subsequent violation proceeding and consent to entry of judgment and imposition of penalties, costs, injunction, and/or such other relief as is deemed appropriate.

**B. Pre-Enforcement Notice (PEN)**

1. **Timing.** When Code Enforcement staff or other assigned CDD staff determines there are reasonable grounds to find a violation did or is occurring, based upon the information in the complaint and any field investigation, an PEN shall be sent on a standard form approved by the CDD Director or designee in a letter or notice sent by the appropriate CDD division staff.
2. **To Whom Sent.** A PEN shall be sent to all persons liable for the violation under Deschutes County Code.
3. **How Sent.** PENs shall be sent by certified mail or by other method of delivery as approved by the CDD Director or Designee to the best available address for the persons described in Subsection 2 above. Email or hand delivery by Sheriff's Office staff may be used in addition to certified or other mail delivery options to expedite the notification process.
4. **Follow Up.** PEN's shall have a designated timeframe for resolution of the violations, with encouragement for contact if the timeframes cannot be met. If within the timeframe specified in the PEN, the liable persons have not contacted Code Enforcement Staff, or resolved their violations, staff shall determine the next steps in the code enforcement process, including warning and/or citation.
5. **Compliance.** If the Code Enforcement staff determines that the required corrections have been made or the liable persons have provided evidence that no violation exists, the date and method of compliance shall be noted in the Complaint Record and the case shall be resolved by file closure pursuant to section XII of this manual.
6. **Corrective Action.** In some cases, corrective action may consist of both applying for and obtaining necessary permits or approvals. In such cases, the permit or approval application alone will not be

sufficient to assure compliance. The liable person must complete the application process, including all appeals, within a reasonable time and not allow the application to expire. Once permit approval is obtained, the liable person must complete all permit conditions prior to the expiration of any permit approval.

**Policy:** All code violation cases shall remain open until conditions within Section XII of this manual are met.

**Procedure:**

1. Where the required corrective action consists of both applying for and obtaining permits or approvals, Code Enforcement staff, in consultation with other appropriate CDD staff, shall determine a reasonable time frame for applying for and obtaining the necessary permits or approvals.
2. If at any time during the process for obtaining necessary permits or approvals the alleged violator fails to meet the reasonable timelines established by Code Enforcement staff and such failure does not result from the actions of others, Code Enforcement staff shall cite the alleged violator pursuant to Paragraph C of this section.

**C. Citation and Complaint**

1. **Non-Compliance.** Where voluntary compliance cannot be obtained by CDD within a reasonable timeframe, Code Enforcement staff may issue a Notice of Violation and Proposed Civil Penalty (NOV) to initiate administrative enforcement hearing proceedings in accordance with County Code. If Code Enforcement staff determines that non-compliance of a violation requires injunctive relief, Code Enforcement staff may request other County staff to initiate a citation for a hearing in justice or circuit court, pursuant to Paragraph D of this section.
2. **Investigation Required.** No citation to a hearings officer, justice court, or circuit court shall be prepared unless and until an investigation has verified the existence of a Code violation.
3. **Form.** All citations to justice or circuit court shall be on a uniform citation which conforms to ORS 153.045 through ORS 153.051. NOV's for administrative enforcement hearing proceedings shall be on the form required by County Code.
4. **Issuance of Citation.** Any person authorized by County Code Section 1.08.025 may issue a citation or NOV. The person issuing the citation or NOV must verify the conduct or circumstances constituting a violation.
5. **Service.** All citations to justice or circuit court shall be served in accordance with ORS 153.154. NOV's shall be served in accordance with County Code.
6. **Setting Arraignment/Administrative Hearings.** For citations to justice or circuit court, the officer serving the citation shall set the date for arraignment. For NOV's, Code Enforcement Staff shall set the date for the hearing in accordance with the County Code.
7. **Arraignment in Circuit Court**
  - a. **Purposes:** The purposes of arraignment are to:
    1. Allow the defendant to enter a plea to the citation;
    2. Resolve any jurisdictional issues;
    3. Set a trial date if the plea is not guilty; and
    4. If the plea is guilty, allow the defendant, the Sheriff's Office Deputy and other County Code Enforcement staff the opportunity to provide information to the court regarding penalties and related matters.
  - b. **Appearance by County Legal Counsel.** County Legal Counsel may represent the County at arraignment.
8. **Failure to Appear at Arraignment in Circuit court.** If the defendant fails to appear at arraignment, Code Enforcement staff may request that the court enter a default judgment in favor of the County and impose penalties against the defendant.
9. **Trial.** If the defendant pleads not guilty to the allegations in the citation, Code Enforcement staff shall request that the court set the matter for trial at the earliest available date.
  - a. **Burden of Proof.** The County has the burden of proving at trial, by a preponderance of the evidence, the allegations in the citation.

- b. Responsibility of Code Enforcement Staff. At trial, the responsibility of Code Enforcement staff is to prosecute the case by presenting evidence, calling witnesses and offering any relevant documents and other exhibits in support of the citation.
- c. Appearance by County Legal Counsel. County Legal Counsel shall not represent the County at a hearings officer proceeding unless the defendant is represented by legal counsel at trial.

#### 10. Fines

- a. **Schedule.** The schedule of maximum fines for County Code violations is set forth in DCC 1.16.010.
- b. **Amount.** If the defendant is convicted, Code Enforcement staff shall request that the court impose a fine in an amount consistent with the County Code.

#### 11. Suspension of Fines.

The Circuit Court has authority to suspend the imposition of all or a portion of a fine. In some cases, the court may wish to suspend imposition of a fine or a part thereof on the condition that the defendant comply with County Code within a specified time period.

- a. **Policy:** It is the County's policy to increase the effectiveness of code enforcement activity and the incentives for code compliance by discouraging any suspension of fines in County Code violation cases.
- b. **Procedure:** If a defendant is convicted, Code Enforcement staff and/or County Legal Counsel shall advise the court of the County's policy against fine suspension and shall ask the court not to suspend imposition of fines.

#### 12. Collection and Distribution of Fines.

Fines imposed by the state court for County Code violations are collected by the Court Administrator and are remitted in part to the County. Fines imposed from civil penalty hearings are remitted to the County Treasurer.

- a. **Policy:** It is the County's policy that all fines imposed for County Code violations and remitted to the County should be used to pay the costs of County Code enforcement.
- b. **Procedure:** All fines imposed by the court or the Code Enforcement Hearings Officer for County Code violations and remitted to the County shall be deposited in the CDD Revenue Fund for budgeting and expenditure in the Code Enforcement program.

#### D. Injunctions

**Policy:** Code Enforcement staff shall seek injunctions from the court in cases where other methods of code enforcement may be inadequate or have been unsuccessful.

##### Procedure:

1. **When Sought.** Code Enforcement staff may request County Legal Counsel to obtain/ coordinate injunctions in any case in which:
  - a. Code violation(s) present an imminent threat to the public life, health and safety or to the environment; or
  - b. Code violations have not been corrected within a reasonable time after a defendant was found by the court or County Hearings Officer to be guilty of a code violation.
2. **By Whom.** Pursuant to DCC 1.16.040, Code Enforcement staff (or County Legal Counsel if appearing in the case) may request that the court order injunctive relief and/or abatement as part of the penalty in a code enforcement proceeding. Alternatively, County Legal Counsel may initiate a separate legal action for injunctive relief and/or abatement of a violation.
3. **How Enforced.** After issuance of an injunction, if the defendant fails to comply within the time period specified in the injunction, the Sheriff's Office or CDD staff shall request that County Legal Counsel initiate civil contempt proceedings against the defendant.

#### E. Permit Revocation.

Certain County Codes authorize the revocation of permits or approvals for failure to comply with their requirements or conditions.

**Policy:** To maximize code compliance, the County shall revoke permits and approvals to the extent authorized by law in appropriate cases. Revocation of permits are particularly appropriate in cases in which corrective action may not be effective in bringing the subject property into compliance with County

code due to the nature of the violation and the deliberateness of the code violator's actions in violating the Code.

**Procedure:**

1. **Report to Code Enforcement Staff.** If the County staff responsible for monitoring and/or reviewing a particular type of permit determines that the conditions or requirements of a permit or approval have not been met, that staff member may inform Code Enforcement staff of such violation, and Code Enforcement staff shall enter the information in the code enforcement electronic files.
2. **Revocation Procedure.** The County staff responsible for monitoring and/or reviewing a particular type of permit shall determine whether to undertake permit revocation proceedings as authorized under the applicable County Code provisions. The following factors shall be considered:
  - a. Whether the criteria for permit revocation set forth in the applicable County Code provisions exist;
  - b. The severity of the deviation from the permit or approval requirements or conditions;
  - c. The deliberateness of the deviation from the permit or approval requirements or conditions; and
  - d. Whether compliance can be achieved more effectively through other code enforcement methods.

- F. **Nuisance Abatement.** Chapter 13.36 of the Deschutes County Code (hereafter "Code") authorizes the abatement of County Code violations that are defined as "public nuisances."

**Policy:** County Code violations constituting public nuisances may be abated pursuant to Chapter 13.36 of the Code and within available resources.

**Procedure:** When County staff discovers or receives a verified complaint of a code violation that may constitute a "public nuisance," staff may provide the information to Code Enforcement staff who shall enter the information into the code enforcement file. Code Enforcement staff or other assigned CDD staff may consult County Legal Counsel to initiate nuisance abatement proceedings pursuant to Chapter 13.36 of the Code.

- G. **Dangerous Building Abatement.** Chapter 15.04 of the Code authorizes the abatement of buildings containing violations rendering them "dangerous buildings" as defined in the Code.

**Policy:** County Code violations that may render a structure a "dangerous building" shall be abated pursuant to Chapter 15.04 of the Code and within available resources.

**Procedure:** When Code Enforcement staff or other CDD staff discovers or receives a verified complaint of code violations in a structure that may render the structure a "dangerous building," the staff may provide the information to Code Enforcement staff, who may enter in the information into a Complaint Record. The Deschutes County Building Official (hereafter "building official") shall be notified and may promptly consult with County Legal Counsel to initiate abatement proceedings under chapter 15.04 of the code.

- H. **Investigative Fees.** Certain provisions of the state building code allow municipalities administering and enforcing a building inspection program to charge investigative fees for work commencing without the required permit.

**Policy:** To maximize the incentives to comply with County Code, the County shall charge investigative fees, to the extent authorized by law, for permits sought for non-permitted construction or installation.

**Procedure:** Whenever County staff discovers or receives a verified complaint of non-permitted construction or installation, the information may be submitted to Code Enforcement staff, who shall enter the information into the Code Enforcement Complaint Record.

To the extent allowed by law, the County shall charge investigative fees for the permit(s) necessary to comply with the County Code.

- I. **Assisting Enforcement by Other Regulatory/Licensing Agencies.** In some cases, County Code violations also may constitute violations of federal and/or state statutes or administrative rule. For example, surface mining without County land use approval may also violate state statutes and administrative rules governing mining, and performing building construction without necessary permits

may also constitute violations of state statutes and administrative rules governing the conduct of licensed contractors.

**Policy:** To maximize code enforcement and the incentives for compliance, County staff shall promptly advise the appropriate federal and/or state agency of County Code violations reported or discovered that may also violate the statutes or administrative rules of that agency.

The County shall also cooperate with federal or state agencies, to the extent authorized or required by law or by intergovernmental agreement, to obtain compliance. The County may defer investigation and prosecution to the appropriate federal or state agency in cases in which, as determined by the CDD Director or designee, the federal or state agency enforcement procedure will result in more effective correction of the violation(s).

**Procedure:**

1. **Reporting.** Whenever County staff discovers or receives a verified complaint regarding a County Code violation that may also constitute a violation of federal or state statute or administrative rule, the staff shall advise the appropriate federal or state agency.
  2. **Cooperation.** To the extent authorized or required by law or by intergovernmental agreement, County staff shall cooperate with the federal or state agency to obtain voluntary compliance or to prosecute and punish violations. That cooperation may include sharing information, conducting joint investigations, appearing as witnesses and/or providing evidence in enforcement proceedings, and coordinating the timing of investigations and/or enforcement proceedings to maximize their effectiveness.
  3. **Deferral to Other Agency.** The County may defer some or all code enforcement to a federal or state agency, and forego County Code enforcement, where the Board, CDD Director or the Director's designee determines that the federal or state enforcement activity will be more effective than County Code enforcement. In making the determination to defer to other agencies, the following factors shall be considered:
    - a. The nature of the violation and necessary corrective action;
    - b. The comparative severity of the penalties available to the federal or state agency and to the County; and
    - c. The comparative time frames required for enforcement by the federal or state agency and by the County.
- J. County Cost Recovery.** The County incurs costs investigating code violations and enforcing codes. They include the cost of personnel and equipment, legal advice and representation, service of citation, and administrative expenses.

**Policy:** It is the policy of the County to maximize code enforcement and to increase the incentives for complying with County code by recovering its reasonable code enforcement costs from code violators.

**Procedure:** In determining whether to cite a code violator to court or to engage in the administrative hearings process, Code Enforcement staff may consider which process will prompt code enforcement and/or result in the maximum cost recovery to the CDD.

- K. Liens.** In many cases, the most effective way for the County to recover its code enforcement costs, as well as to collect any civil penalties assessed through administrative hearings, is to file a legal claim for those costs or penalties against the property subject to code enforcement, or against other property owned by the code violator.

**Policy:** It is the County's policy to assure recovery of its costs, as well as the collection of civil penalties assessed through administrative hearings, by filing claims for those costs and penalties in the form of liens on property subject to code enforcement, or upon other property owned by the property owner subject to code enforcement, provided that the maximum amount of costs and penalties for which the County may seek to recover under this policy as against any code violator shall be capped at that value equal to Ten Percent (10%) of the Total Real Market Value (Land and Structures) ("RMV") of the real



property subject to the code enforcement proceedings, which RMV shall be that amount on which real property taxes have been assessed by the Deschutes County Assessor for the current tax year.

**Procedure:** In the appropriate cases, the County staff will explore with County Legal Counsel the means by which lien(s) may be placed against the real property of the property owner subject to code enforcement for the collection of code enforcement costs and civil penalties assessed through County administrative hearings to a capped maximum of that value equal to Ten Percent (10%) of the RMV of the real property subject to the code enforcement proceedings, as set forth in the above Policy.

## XII. RESOLUTION OF CODE COMPLAINTS

**Policy:** It is the County's policy to attempt to reach final, satisfactory resolution of all code enforcement complaints in a manner that best protects the health, safety, and welfare of County residents. The County recognizes that factors outside the County's control may affect final resolution in some instances. These factors can include the indigence of the property owner subject to code enforcement, the lack of County or other resources to assist the property owner, statutory limitations on potential fines or other penalties for code violations, the large number of complaints to be resolved and limitations on County resources which may preclude continued attempts to bring a property owner into compliance with County Code.

The County has discretion to focus its code enforcement resources on the code violations that meet the priorities set forth in Section V of this manual, and shall attempt to resolve those violations within a reasonable period. It is the County's policy to close a code enforcement complaint utilizing discretionary immunity when one of the listed occurrences takes place.

**Procedure:**

- A. File Closure.** A code violation complaint will be resolved by file closure in the following cases:
  - 1. When no code violation is found after investigation; or,
  - 2. After there is voluntary compliance; or,
  - 3. After it has been determined by a hearings officer or judge that the property owner and/or other responsible person is responsible for the violation(s) and the violation(s) have been corrected; or,
  - 4. After an injunction has been issued and the property owner or other responsible person has corrected the violation(s); or,
  - 5. After investigation and prosecution of the violation(s) have been completed by a federal or state agency to which the County deferred code enforcement; or,
  - 6. When the property on which the violation exists is sold or transferred and a new Code Enforcement case is opened in the name of the new owner.
  - 7. After lien(s) on the property subject to code enforcement, or upon other property owner by the property owner subject to code enforcement, have accrued to a total of that value equal to Ten Percent (10%) of the Total RMV of the real property subject to the code enforcement proceedings; or,
  - 8. Where multiple, prior liens exist on property subject to code enforcement, or upon other property owned by the property owner subject to code enforcement, which preclude or inhibit collection of County code enforcement lien(s).
- B. Notice of Resolution.** The County shall notify complainant when the complaint is resolved.
- C. Alternate Methods of Resolution.** The County may explore alternate methods to resolve Code violations including mediation.

### **XIII. AMENDMENTS**

This manual may be amended when deemed necessary by the CDD Director or designee, County Administrator, or the Board.

Amendments may be proposed by County staff, Board members and other interested persons.