



**THE PLANNING OFFICE**

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## **O-F-F-I-C-E P-O-L-I-C-Y**

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CATEGORY: ENFORCEMENT  
TOPIC: COMPREHENSIVE ENFORCEMENT POLICY

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This is the official code enforcement policy of the Josephine County Planning Office and amends the Ordinance Administration and Enforcement Policy dated April 16, 1998. This policy shall also apply to code enforcement issues within the urban growth boundary to the extent such policies and procedures do not specifically conflict with Section 134 of the Urban Growth Area Zoning Ordinance.

### **GENERAL POLICY**

The objective of code administration and enforcement is to provide prompt, courteous, fair and effective treatment of possible violations of land use regulations. In doing so, the Planning Director (hereafter, Director) acknowledges that uniform compliance with land use regulations is important to establish and maintain a safe, healthy and liveable community.

It is the policy of the department that all complaints, or the knowledge of possible violations from any source, merit some level of consideration, whether the source of information is from a private citizen or organization, public employee or the Board of County Commissioners. The Director, however, recognizes that fiscal resources do not permit the investigation and enforcement of all complaints. As a result, priority in the handling of complaints shall be based upon two paramount considerations:

- [1] The degree of harm the activity poses to the neighborhood or the general public; and
- [2] The availability of evidence required to support an effective enforcement action.

### **SPECIFIC POLICIES**

The ordinances shall be enforced in a manner consistent with the following policies:

- A. COMPLAINTS SHALL BE CATEGORIZED UNDER THREE HEADINGS:  
FORMAL, AGENCY AND ANONYMOUS COMPLAINTS.

1. Formal Complaint is any complaint by a private citizen or organization that provides the name, address and telephone number of the person making the complaint. The complainant shall be informed that this information will be released to anyone making a request for it in writing. A complaint is formal when the complainant provides information sufficient to identify an activity, which if found to be true, violates a code provision, locates the site of the alleged violation by legal description or address and is signed by the complainant on a form provided by the planning office.
2. Agency Complaint is any complaint reported to the planning office by employees or representatives of other county departments or other public or private agencies. Agency complaints may also include information about possible land use violations obtained by employees of the planning office.
3. Anonymous Complaint is any complaint where the complainant fails or refuses to provide the Director with his or her name, address and telephone number. The Board of County Commissioners, by Resolution #93-106, has directed that the identity of complainants shall not be held in confidence, but shall be a matter of open public record. A copy of Resolution #93-106 is attached as Exhibit "A" to this policy.

B. PRIORITY WITHIN AND BETWEEN CATEGORIES OF COMPLAINTS SHALL BE GIVEN BASED UPON CONSIDERATION OF THE FOLLOWING PRINCIPLES:

1. HIGH PRIORITY

- a. Formal Complaints which, in the judgment of the Director, may involve an immediate and serious risk on the subject property or immediate and serious impact to neighboring property owners or the general public, and evidence exists or can be reasonably obtained to support an effective enforcement action, shall be given high priority. Some examples in this category are:
  - ▶ Dwellings constructed without permits within 10 years of the date of the complaint
  - ▶ Multiple unauthorized dwellings
  - ▶ RV's used as residences
  - ▶ Wrecking yards
  - ▶ Uses not permitted in the applicable zones
  - ▶ Home occupation business without permits
  - ▶ Flood hazard area violations
  - ▶ Falsification of development permits or other documents
  - ▶ Structures capable of habitation without building permits
  - ▶ Irreparable removal of streamside vegetation
- b. Agency Complaints which, in the judgment of the Director, involve immediate and extraordinary risk on the subject property, to neighboring property owners or to the general public, and evidence exists or can be reasonably obtained to support an effective enforcement action, shall be given high priority. Some examples in this category are:

- ▶ Non-dwelling structures being used as dwellings (RV's, accessory structures, etc.)
- ▶ Structures that involve the untreated disposal of sewage
- ▶ Obstruction of road right-of-way
- ▶ Serious off-site traffic congestion
- ▶ Non-permitted use or disposal of toxic substances
- ▶ Serious risk of pollution
- ▶ Serious risk of off-site earth movement or flooding
- ▶ Serious risk of damage to natural resources (streams, lakes, groundwater, riparian vegetation)
- ▶ Other situations involving special problems or risks to property owners or the general public.

c. Agency Complaints involving the construction or placement of unauthorized dwellings where prompt and complete enforcement is required to avoid special legal and planning complications shall have high priority. Generally, this class of alleged violations will involve three situations:

- ▶ A dwelling recently constructed without planning or building permits by the current owner
- ▶ Medical hardship dwellings that have terminated but the dwelling has not been removed or converted as required by ordinance or agreement
- ▶ Expired storage permits for unoccupied manufactured dwellings

## 2. INTERMEDIATE PRIORITY

Formal and Agency Complaints which, in the judgment of the Director, involve an identifiable risk or risks on the subject property, to the neighborhood, or to the general public, and the information provides a basis for effective enforcement, shall have intermediate priority. Complaints in this category will be reviewed as administrative resources allow. Some examples in this category are:

- ▶ Dwelling constructed without permits more than 10 years before the date of the complaint
- ▶ Construction of non-habitable structures without permits
- ▶ Structure setback violations
- ▶ Violation of the requirements of Site Review or Conditional Use permits
- ▶ Additions to non-habitable structures without permits
- ▶ Deed transfers without compliance with land division or line adjustment approvals
- ▶ Operating a business in a commercial or industrial zone without permits
- ▶ Oversized accessory structures
- ▶ Temporary storage of an unoccupied mobile home
- ▶ Operation of roadside stands without permits
- ▶ Airport overlay violations
- ▶ Kennels & similar uses

### 3. LOW PRIORITY

Formal or Agency complaints which, in the judgment of the Director, do not appear to pose a risk on the subject property, to the neighborhood or to the general public and/or the available evidence and information does not provide an effective basis for enforcement. This category may also include on-going disputes between neighbors resulting in multiple cross-complaints. Some examples in this category are:

- ▶ Structure setback violations
- ▶ Lot line disputes
- ▶ Access or right-of-way encroachments
- ▶ Non-permitted signs
- ▶ Vision clearance
- ▶ Open storage of unlicensed motor vehicles
- ▶ Storage of an unoccupied mobile home

SPECIAL NOTE: The examples used in this policy to describe different levels of priority for enforcement are intended to be used as general guides only. The listing of a particular land use within a specific priority category shall not preclude the Director from assigning a different priority in the event the particular circumstances in the case, in the opinion of the Director, justify different treatment.

### C. THE FOLLOWING ADDITIONAL PROCEDURES SHALL APPLY TO THE PROCESSING OF ALLEGED CODE VIOLATIONS:

#### 1. ENFORCEMENT OF PERMIT CONDITIONS

Complaints involving compliance with conditions of approval contained in administrative, conditional use or site review decisions, the performance of which are allowed after the issuance of a development permit, will be initiated by a Formal complaint only, unless the Director concludes from an Agency Complaint that the activity involves an immediate and extraordinary risk to the public.

#### 2. COMPLAINT FORMS

All Formal and Agency complaints shall be submitted on forms provided by the Director. At a minimum all complainants shall provide the following information:

- a. The name, address and telephone number of the complainant. If the complainant is an agency employee, the information shall contain the name of the agency and the complainant's position or title within the agency;
- b. A brief description of the activity believed to constitute a code violation, together with an explanation of how this information was obtained;
- c. An explanation of the nature and extent of the risk of harm that results, or is likely to result, from continuation of the activity;

- d. A list of names and addresses of potential witnesses other than the complainant;
- e. A declaration whether the complainant is willing to testify or provide further evidence as a part of subsequent enforcement proceedings; and
- f. If the complainant is willing to provide additional evidence, a brief description of the evidence.

A copy of the complaint form is attached as Exhibit "B" to this policy.

### 3. NOTIFICATION PROCEDURES

Notification to property owners or tenants in possession regarding alleged violations shall be subject to the following rules and procedures:

- a. Contact between the planning office and the property owners, affected neighbors and agency personnel shall be guided by two fundamental purposes:
  - (1) The first and most important purpose of the notification procedures is to obtain information concerning the alleged violation to assure fairness to the property owner, neighbors, agency personnel and the general public. To this extent, all notification letters, telephone calls, conferences and other contacts shall be considered a part of the on-going investigation by the planning office and shall not be considered as a commitment to any level of enforcement action, even though language in correspondence may indicate otherwise. The Director reserves the right to re-evaluate the priority status of any complaint based upon information obtained after notification procedures have been initiated.
  - (2) The second purpose of the notification procedures is to resolve the alleged violation. To this end the Director is authorized to exercise extensive discretion in the negotiation of terms for the resolution of all complaints. This discretion may include, but is not limited to, the utilization of pre-application procedures, community mediation services, the extension of time limits, the facilitation of remedies through the use of other agency resources, the establishment of a phased program for compliance, the suspension, reduction or waiver of fines, and other similar actions. In negotiating the terms for resolution, the Directors may take into consideration weather, the policies of other involved departments, justifiable personal hardships and any other circumstances which legitimately bear on the value and fairness of the resolution.
- b. All notification letters from the Planning Department shall conform to the requirements of Sections 15.238 through 15.241 of the Josephine

County Violation Procedures Ordinance, which shall include the following notices:

- (1) The "First Notice" letter (attached as Exhibit "C"). The First Notice letter shall provide a maximum period of 30 days to resolve the alleged violation. The Director may specify a shorter period of time when, in the Director's sole judgment, the alleged activity involves an immediate and serious risk which justifies expedited action.
- (2) The "Second Notice" letter (attached as Exhibit "D"). The Second Notice letter is optional and shall be used whenever the Director believes further notification is likely to promote a response from the property owner and the circumstances of the case do not require immediate resolution. The second letter shall extend a maximum period of 30 days to resolve the alleged violation, but this time period may be reduced as the Director deems appropriate. In the event the Director determines a second letter is not justified, the Director or one of his assistants shall attempt to re-contact the property owner as required by Section 15.239.3 of the Josephine County Violation Procedure Ordinance. Attempts to re-contact may consist of one or more a telephone calls, regardless of whether actual contact occurs, a verbal or written message for the property owner left at the subject property or the owner's residence, or a written or verbal message left for the owner with a spouse, relative, friend, tenant, employee or business associate of the owner.
- (3) The "Third Certified Notice" letter (attached as Exhibit "E"). The Third Certified Notice letter shall be mailed to the property owner in the event the alleged violation remains unresolved after the first and second notification attempts are complete, and after the Director has reviewed the file with County Legal Counsel to determine whether the evidence and other circumstances in the case support a civil action.
- (4) A "Courtesy Notice" (attached as Exhibit "F"). A courtesy notice shall be mailed to the property owner whenever the Director determines the notice may be helpful in resolving a complaint, but the level of priority or other circumstances of the case do not justify further enforcement action. The purpose of the Courtesy Notice is to inform the property owner that a violation complaint is on record in the planning office and to invite voluntary resolution of the complaint.

#### 4. BASIC FILE PROCEDURES

Complaints shall be processed using the following basic procedures:

- a. Open File & Assign Priority. Whenever the planning office receives a Formal or Agency Complaint, the Ordinance Administrator shall open an enforcement file and assign a level of priority to the complaint in accordance with the requirements of this policy.
- b. Mark Zoning Map. At the time the file is opened the Ordinance Administrator shall place a symbol on the zoning map (red dot) for the subject property. The red dot shall be used to alert front counter personnel about the existence of an alleged violation regarding the property.
- c. Investigation of Land Use Requests. When a red dot appears on a zoning map, the planner considering a land use request shall immediately notify the Ordinance Administrator of the request. If the property owner or the owner's representative is at the front counter, the Ordinance Administrator shall meet with and discuss the alleged violation with the owner or the owner's representative in an effort to resolve the allegation. If the owner or the owner's representative is not at the front counter, the Ordinance Administrator shall contact the owner or the owner's representative to investigate the alleged violation. Permits and other land use actions may be withheld until such time as the Ordinance Administrator concludes the violation either does not exist or has been resolved, in which case the red dot shall be removed from the zoning map. In all cases when the Ordinance Administrator closes an enforcement file, the red dot shall be removed from the zoning map.

If property owner or owner's representative is at the front counter, and the Ordinance Administrator is unavailable, the planner shall pull the enforcement file and notify a supervisor (Senior Planner, Assistant Planning Director or Planning Director) of the request. The supervisor shall then attempt to resolve the alleged violation or postpone action until the matter can be reviewed with the Ordinance Administrator.

## 5. CONFIDENTIALITY OF ENFORCEMENT FILES

Information contained in an enforcement file shall be considered a public record available for inspection and copying subject to the terms of the public records law as set forth in Chapter 192 of the Oregon Revised Statutes. However, no information shall be released from an enforcement file until the file has been reviewed and the release approved by the Senior Planner, Assistant Planning Director or Planning Director.

## 6. LEVELS OF ACTION

The levels of enforcement action taken in individual cases shall be authorized as the Planning Director determines appropriate and effective given the circumstances of the case. In the absence of contrary instructions, the ordinance administrator shall take the following minimum steps at each level of enforcement:

a. High Priority.

- (1) Make a site visit to investigate a possible zoning violation based upon information received from any source;
- (2) Place a violation symbol on the front counter zoning maps (red dot).
- (3) Contact the property owner, tenant, neighbors or any other individuals, both in public and private positions, to obtain information;
- (4) Provide information to other public or private agencies that may be affected by the alleged violation activities, to include the initiation of enforcement procedures;
- (5) Initiate notification procedures to the property owner(s) and/or tenant in possession;
- (6) Initiate a small claims action; and
- (7) Initiate civil action through County Counsel's Office.

b. Intermediate Priority.

- (1) Make a site visit to investigate a possible zoning violation based upon information received from any source;
- (2) Place a violation symbol on the front counter zoning maps (red dot); and
- (3) Initiate notification procedures to the property owner(s) and/or tenant in possession, to include first and second notice letters only.
- (4) Send a Courtesy Notice.

c. Low Priority.

- (1) Place a violation symbol on the front counter zoning maps (red dot); and
- (2) Send a Courtesy Notice.

7. **BOARD REVIEW**

No small claims actions or civil litigation through the County Counsel shall be initiated without first conferring with the Board and obtaining its written authorization to pursue these actions. No file involving civil litigation through the County Counsel's office shall be reviewed with the Board without first reviewing the file with County Counsel or his or her assistant.



8. APPEALS

Decisions regarding the enforcement of alleged zoning violations made by the Director shall be considered administrative actions which implement policies of the Board of County Commissioners, and shall not be considered land use decision as defined in Oregon Revised Statutes, and are therefore not subject to appeal as land use decisions pursuant to the Rural Land Development Code or other state laws.

  
Michael Snider, Planning Director

