

# **CHAPTER 10**

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## **NUISANCE AND VIOLATION**

**10.005 through 10.105** [1983 o.190 §1; repealed 1994 o.332 § 20]

### **10.200 Violation of Lincoln County Code a Nuisance and a Violation**

Every act or thing done, or anything existing within the limits of Lincoln County, that is in violation of any provision of the Lincoln County Code is declared to be:

(1) A nuisance, shall constitute a nuisance and may be regarded as a nuisance in all actions, suits and proceedings, unless the provision of the Lincoln County Code is declared void by a court of competent jurisdiction; and

(2) A violation. [1994 o.332 § 2]

### **10.210 Enforcement of Lincoln County Code**

(1) The provisions of the Lincoln County Code may be enforced by:

(a) Issuance of a warning notice;

(b) A code violation action as provided in LCC 10.300 to 10.355;

(c) A civil action as provided in LCC 10.400 to 10.415;

(d) Any other action authorized by statute, common law, rule, ordinance, franchise agreement or contract; or

(e) Any combination of the enforcement mechanisms described in this section.

(2) The Office of Lincoln County Legal Counsel shall prosecute all actions to enforce any provision of the Lincoln County Code instituted on behalf of Lincoln County. [1994 o.332 § 3]

## **CODE VIOLATION ACTION**

### **10.300 Institution of Code Violation Action**

(1) All peace officers as defined in ORS 161.015, and all employees of Lincoln County, have jurisdiction of and may institute a code violation action charging a person with a violation of the Lincoln County Code in accordance with the provisions of LCC 10.300 to 10.355.

(2) A code violation action shall be instituted by issuing a citation to the person charged with the code violation. If the person to be issued a citation is a firm, corporation or other organization, issuance of a citation to any employee, agent or representative thereof shall be sufficient to confer jurisdiction.

(3) Any person issued a citation for a code violation shall not be arrested. However, if there is reasonable suspicion to believe that a person has committed a code violation, the person may be detained, but only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state. [1994 o.332 § 3a]

### **10.305 Citation Requirements and Delivery of Citation Parts**

(1) A citation issued pursuant to LCC 10.300 shall be in the form of an Oregon Uniform Citation and Complaint, as adopted by the Oregon Supreme Court pursuant to ORS 1.525, must contain the parts and certificate provided by ORS 153.130, and must meet the minimum requirements for summons and complaint as provided by ORS 153.140 and 153.150.

(2) The peace officer or county employee issuing the citation shall cause:

(a) The "COMPLAINT" and "ABSTRACT" copies to be delivered to the court;

(b) The "POLICE RECORDS" copy to be delivered to the Office of Lincoln County Legal Counsel;

(c) The "OFFICER'S NOTES" copy to be retained by the agency or department employing the peace officer or county employee issuing the citation; and

(d) The "SUMMONS" copy to be delivered to the person cited. [1994 o.332 § 4]

### **10.310 Defendant's Appearance; Bail; Request for Hearing; Statement; Guilty Plea**

(1) For all citations issued pursuant to LCC 10.300 to 10.355, the defendant shall either appear in court at the time indicated in the summons, or prior to such time shall deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, and enclosing therewith:

(a) A request for a hearing;

(b) A statement of matters in explanation or mitigation of the violation charged; or

(c) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. A statement in explanation or mitigation also may be enclosed with the guilty plea.

(2) In a case in which the defendant personally appears in court at the time indicated in the summons, if the defendant desires to plead guilty and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make. [1994 o.332 § 5]

### **10.315 Fixing Hearing Date; Notice to Defendant; Waiver**

If the defendant requests a hearing under LCC 10.310, or if pursuant to LCC 10.320, the court directs that a hearing be had, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of the date and time so fixed. [1994 o.332 § 7]

### **10.320 Hearing Discretionary; Powers of Court on Hearing and Without Hearing; Judgment**

(1) For all citations issued pursuant to LCC 10.300 to 10.355, the court may direct that a hearing be held.

(2) The court may proceed to make a determination on the violation under any of the following circumstances:

(a) If a hearing is held, either at the request of the cited person or at the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by law, directed by the court or requested by the cited person and the cited person has complied with LCC 10.310, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by law and the person has not complied with LCC 10.310 or made appearance, when the time indicated in the citation passes and the court makes a finding on the citation and any other evidence the judge determines appropriate.

(3) On completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine.

(b) Direct that the fine be paid out of the bail deposit.

(c) Unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(4) If the person complies with LCC 10.310 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by law, no fine may be imposed in excess of the bail deposited. If the person has not deposited bail under LCC 10.310 or has requested a hearing under LCC 10.310 without depositing bail and does not appear at the hearing, the court may impose any fine within the limits of LCC 10.350.

(5) If a court sentences a person to pay a fine under this section when the person has not complied with LCC 10.310, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law or ordinance after the person is brought to hearing.

(b) Following any procedures established by law or ordinance when the person fails to appear.

(6) If a judgment is entered under this section after a person has failed to comply with LCC 10.310 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the cited person to comply with LCC 10.310 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion

must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

(7) No judgment may be entered under this section by reason of a person failing to comply with LCC 10.310 or make appearance unless the citation issued to the person contains a statement notifying the cited person that a monetary judgment may be entered against the person up to the maximum limit established for the offense if the cited person fails to comply with LCC 10.310 or appear at the time, date and court specified in the citation. [1994 o.332 § 8]

### **10.325 Failure to Appear or Comply**

(1) If a person cited under LCC 10.305 fails to comply with LCC 10.310, but has not previously appeared before the court on the code violation action, the Office of Lincoln County Legal Counsel shall:

(a) Submit an affidavit of probable cause to the court. If, after reviewing the affidavit, the court is satisfied that the cited person has committed the violation alleged, the court shall enter an order authorizing a peace officer to issue and serve a citation in lieu of custody pursuant to ORS 133.110 and 133.055. If, after being served with the citation in lieu of custody, the cited person fails to appear in court as directed in the citation in lieu of custody, the matter shall be referred to the Lincoln County District Attorney's Office for prosecution for the crime of Failure to Appear on a citation, as provided in ORS 133.075; or

(b) Institute contempt proceedings against the cited person seeking remedial sanctions, including an award of reasonable attorney fees, in accordance with the provisions of ORS 33.015 to 33.155 and UTCR 19.010 to 19.050.

(2) If a person cited under LCC 10.305 has previously appeared before the court on the code violation action, and was, at the time of the previous appearance, directed by the court to appear in court at a certain date and time, and the person cited fails to so appear, the court may:

(a) Issue a bench warrant, as defined in ORS 131.005, for the arrest of the person cited;

(b) Direct the Office of Lincoln County Legal Counsel to submit an affidavit of probable cause to the court. If, after reviewing the affidavit, the court is satisfied that the cited person has committed the violation alleged, the court shall enter an order authorizing a peace officer to issue and serve a citation in lieu of custody pursuant to ORS 133.110 and 133.055. If, after being served with the citation in lieu of custody, the cited person fails to appear in court as directed in the citation in lieu of custody, the matter shall be referred to the Lincoln County District Attorney's Office for prosecution for the crime of Failure to Appear on a citation, as provided in ORS 133.075; or

(c) Direct the Office of Lincoln County Legal Counsel to institute contempt proceedings against the cited person seeking remedial sanctions, including an award of reasonable attorney fees, in accordance with the provisions of ORS 33.015 to 33.155 and UTCR 19.010 to 19.050. [1994 o.332 § 9]

### **10.330 Jurisdiction and Venue**

The Lincoln County District Court shall have jurisdiction and venue over all code violation actions conducted pursuant to the provisions of LCC 10.300 to 10.355. [1994 o.332 § 10]

### **10.335 Trial Without Jury; Discovery; Burden of Proof; No Culpable Mental State Required; No Defense Counsel Provided at Public Expense**

For all code violation actions conducted pursuant to LCC 10.300 to 10.355:

- (1) Trial shall be by the court without a jury.
- (2) Trial shall not commence until the expiration of seven days from the date the citation for the violation unless the defendant waives the seven-day period.
- (3) The burden of proof shall be upon the county by a preponderance of the evidence.
- (4) The pretrial discovery rules in ORS 135.805 to 135.873 shall apply.
- (5) The defendant may not be required to be a witness in the trial.
- (6) Proof of a culpable mental state is not required.
- (7) Defense counsel shall not be provided at public expense. [1994 o.332 § 11]

#### **10.340 Appeal**

Appeal from a judgment involving a violation commenced under LCC 10.300 to 10.355 shall be as provided in ORS chapter 46. [1994 o.332 § 12]

#### **10.345 Bail**

Bail for each alleged violation of any provision of the Lincoln County Code shall be \$300 for a noncontinuing offense and \$600 for a continuing offense. [1994 o.332 § 13]

#### **10.350 Penalties**

Pursuant to ORS 203.065(1), violation of any provision of the Lincoln County Code shall be punishable, upon conviction, by a fine of not more than \$500 for a noncontinuing offense and \$1000 for a continuing offense. [1994 o.332 § 14]

#### **10.355 Collection and Disposition of Fines**

Pursuant to ORS 203.065(4), fines recovered as the result of a conviction for a violation of any provision of the Lincoln County Code shall be paid to the clerk of the Lincoln County District Court. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the Lincoln County Treasurer for deposit into the Lincoln County General Fund. [1994 o.332 § 15]

## **NUISANCE ABATEMENT ACTION**

### **10.400 Civil Action to Redress Violation of Lincoln County Code**

Pursuant to ORS 203.065(2), 30.310 and 30.315, upon referral from any agency, office or department of Lincoln County, the Office of Lincoln County Legal Counsel may commence and maintain a civil proceeding by, and on behalf of, Lincoln County, seeking redress of any violation of the Lincoln County Code. In such proceedings, the Office of Lincoln County Legal Counsel may seek an order:

- (1) Temporarily restraining a nuisance;
- (2) Preliminarily enjoining a nuisance;
- (3) Permanently enjoining a nuisance;
- (4) Directing abatement of a nuisance;
- (5) Awarding economic damages;
- (6) Awarding non-economic damages;
- (7) Awarding punitive damages;
- (8) Awarding reasonable attorney fees;
- (9) Awarding costs and disbursements;
- (10) Imposing fines in an amount not to exceed the maximum fines under LCC 10.350; and
- (11) Holding a person in contempt of court and imposing remedial sanctions pursuant to ORS 33.015 to 33.155 and UTCR 19.010 to 19.050 against the person if the person has violated any provision court order providing for relief in any manner described in this section. [1994 o.332 § 16]

### **10.405 Jurisdiction and Venue**

The Lincoln County Circuit Court shall have jurisdiction and venue over all civil actions brought under LCC 10.400. [1994 o.332 § 17]

### **10.410 ORCP Apply to Civil Action; Burden of Proof; No Culpable Mental State Required; No Defense Counsel Provided at Public Expense**

- (1) The Oregon Rules of Civil Procedure govern the procedural conduct of all civil actions brought under LCC 10.400.
- (2) The burden of proof in a civil action brought under LCC 10.400 shall be upon the county by a preponderance of the evidence.
- (3) Proof of a culpable mental state is not required to prove a violation of any provision of the Lincoln County Code.
- (4) Defense counsel shall not be provided at public expense. [1994 o.332 § 18]

### **10.415 Appeal**

Appeal from a judgment involving a civil action brought under LCC 10.400 shall be as provided in ORS chapter 19. [1994 o.332 § 19]

## **CERTAIN SOLID WASTE OFFENSES**

### **10.500 Presumption of Violation of LCC 2.1505**

Notwithstanding LCC 10.335(3) and 10.410(2), pursuant to ORS 459.108, in any action commenced under LCC chapter 10 that results from any alleged violation of subsections (1) through (6) of LCC 2.1505 relating to littering and dumping, a name found on various items in a deposit of rubbish or other solid waste placed on land or in water in violation of LCC 2.1505 constitutes rebuttable evidence that the person whose name appears on the items has violated LCC 2.1505. However, the rebuttable presumption created by this section exists only when a name on items denotes ownership of the items, such as the name of an addressee on an envelope. [1994 o.333 § 6]

### **10.505 No Action for Violation of LCC 2.1505 if District Attorney is Prosecuting Criminal Action for Same Conduct**

Notwithstanding LCC 10.210, 10.300 and 10.400, pursuant to ORS 459.108, no action against any person to enforce a violation of LCC 2.1505 shall be commenced or maintained pursuant to this chapter if the Lincoln County District Attorney's Office has commenced or maintained a criminal action against the person under ORS 164.775, 164.785 or 164.805 for the same conduct that forms the basis for the violation of LCC 2.1505. [1994 o.333 § 7]