

BOARD OF COUNTY COMMISSIONERS  
OF BAKER COUNTY

IN THE MATTER OF )  
)  
AN ORDINANCE ESTABLISHING )  
ADMINISTRATIVE HEARINGS ) **Ordinance 2025-04**  
PROCEDURES FOR ASSESSING )  
CIVIL PENALTIES FOR VIOLATIONS )  
OF COUNTY ORDINANCES )  
)

WHEREAS, Baker County Board of Commissioners recognizes that citizens, property owners and other interested parties benefit from having information about legal requirements and expectations set out in County Ordinances; and

WHEREAS, Baker County Board of Commissioners further recognizes that some County ordinances may lack thorough enforcement procedures within the substantive text of the ordinance; and

WHEREAS, Baker County Board of Commissioners recognizes the need to set consistent procedures for administering and enforcing County Ordinances.

NOW, THEREFORE, THE BAKER COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

**Section 010. Purpose, Applicability and Authority.** This ordinance shall be called and cited as, the “Baker County Civil Enforcement Ordinance.”

This ordinance provides a process for enforcing the requirements of all civil (non-criminal) regulations, requirements, and ordinances adopted or incorporated by reference by Baker County and any requirements of permits issued by Baker County.

It is the County's priority to achieve voluntary compliance with the County’s civil ordinances and permit requirements by providing property owners, Baker County citizens and other interested parties with information about the legal requirements

and an opportunity to comply with all such requirements with little or no penalty. In cases of reported and verifiable violations, however, enforcement procedures are designed and shall be administered to best fit the type and circumstance of the violation(s), governed by the process set forth herein and consistent with the stated purpose and policy of this ordinance and the underlying substantive civil ordinance or permit.

Where a substantive County ordinance provides its own or a different enforcement procedure or remedy, those procedures and remedies shall be in addition to those provided in this ordinance. The civil process set forth herein is designed to provide prompt notice to property owners, Baker County citizens, and other interested parties that appear to be in violation of the County's legal requirements and to guarantee those accused of an infraction the right to an evidentiary hearing on the alleged infraction before an impartial decision maker. The process is designed to provide a measure of certainty to the citizens of Baker County that violations will be addressed promptly and fairly and to ensure that the due process rights of those accused of infractions are protected. This ordinance shall not apply to criminal matters and shall not result in the imposition of criminal sanctions.

This Ordinance is intended to implement the enforcement authority in ORS 203.065 and ORS 215.185.

**Section 020. Definitions.** For the purposes of this chapter the following definitions shall apply:

A. “Civil infraction” means the violation or failure to comply with any provision, requirement or prohibition of the County's Civil Ordinances or any provision, requirement or prohibition of any Permit issued by, through or on behalf of the County, as defined herein.

B. “Civil Ordinances” means all non-criminal ordinances and regulations adopted or incorporated by reference by Baker County, including, but not limited to, the following ordinances, as they may from time to time be amended: Baker County Zoning Ordinance, as amended by Ordinance 2021-01; building codes and structural specialty codes adopted, administered or enforced by or on behalf of Baker County, any Baker County nuisance ordinance, and the Onsite Wastewater Treatment Systems Ordinance. This also includes the following statutes and

regulations of the Oregon Department of Environmental Quality adopted by Baker County: ORS 454.605 through ORS 454.755, OAR Div 340 Chapters 071 and 073.

C. “County” means Baker County, Oregon.

D. “Decision Maker” means the impartial judicial decision maker appointed or hired by the Board of County Commissioners to hear and decide alleged civil infractions under this ordinance and to render the County’s final decision in any civil enforcement matter. The Decision Maker under this ordinance may be a Decision Maker appointed by the Board of County Commissioners, a Justice of the Peace in Justice Court, a circuit court judge in State Circuit Court for Baker County, or the Board of County Commissioners as the County may, within its sole discretion, designate for any particular case under this ordinance.

E. “Enforcement Officer” means a sworn peace officer, or any person authorized or hired by the Board of Commissioners to administer and enforce any of the County’s substantive civil ordinances and permits, including, but not limited to, the Building Official, Planning Director, the Baker County Sheriff, and deputies, agents and authorized representatives of these officials. The role of Enforcement Officer may also be delegated to an official of another jurisdiction.

F. “Permit” means any permit, order, license or quasi-judicial approval granted by an authorized County official, the Board of Commissioners or other authorized County decision maker, including but not limited to land use approvals and permits, plus any other permit or approval administered, enforced or recognized by Baker County.

G. “Person” means any natural person, individual, corporation, property owner, limited liability corporation, partnership, unincorporated association, local government, government agency or other legal entity.

H. “Respondent” means any person alleged to have committed a civil infraction and any owner of a property on which a civil infraction is alleged to have occurred.

**Section 030. Enforcement Requirements, Civil Infractions, Strict Liability.**

A. No person shall engage in, or cause to occur, any use, development, construction, reconstruction, alteration, or maintenance of any property, building, structure or vehicle, or alter or use any land in violation of the County's civil ordinances or a permit. No person shall engage in any use of property or allow a use of property under their ownership or control, that is prohibited by the County's civil ordinances, state law administered by the County or is otherwise not allowed by a county-issued permit. No person shall fail to pay any charge due the County when such failure to pay is made a permit requirement or civil infraction.

B. No permit for the construction, occupation or use of a property, building, structure or business shall be issued if such property, building, structure or business or proposed use, and the land upon which it is proposed to be located, is in violation with any applicable provisions of the County's Civil Ordinances, a permit or state law.

C. Failure to obtain a permit or other approval, where one is required by the County's Civil Ordinances, shall constitute a nuisance and a civil infraction. Violation of any provision of the County's Civil Ordinances or a County-issued permit enforced under this ordinance may constitute grounds for revocation, nonrenewal or denial of a permit issued by the County.

D. Any violation of the County's Civil Ordinances, state law or a County-issued permit that is actionable under this ordinance shall constitute a civil infraction and a nuisance. Each day of violation shall constitute a separate civil infraction that can give rise to a separate citation, conviction and fine.

E. Violation of the requirement of any Civil Ordinance adopted by the County, a permit issued by the County, or a state law administered by the County is declared to be a civil infraction, public nuisance and a strict liability offense, which does not require proof of any culpable mental state.

#### **Section 040. Citation for Civil Infractions.**

A. Basis for the Citation: Upon a determination by an enforcement officer that one or more civil infractions have occurred, the enforcement officer shall issue a citation to the person or other entity who the enforcement officer has probable cause to believe is responsible for the activity or failure to act that is deemed to be the civil infraction. The person or entity that committed the alleged violation shall

be responsible for the civil infraction and a named respondent. In addition, if the person who committed the alleged violation is on property owned by someone else with the property owner's permission, the property owner shall be jointly and severally responsible for the violation and may be cited as a co-respondent on any civil citation issued. Multiple civil violations may be alleged on a single citation, as well as multiple incidents or days of violation, each one of which may be the basis for a separate civil penalty.

B. Service of the Citation: The enforcement officer shall serve the Notice of Civil Infraction on the respondent(s) by any of the following methods reasonably calculated to actually reach the respondent:

1. Personal service, or
2. Certified first class mail, return receipt requested, to the respondent's last known mailing address or
3. Any means provided in Rule 7 of the Oregon Rules of Civil Procedure reasonably calculated to apprise the respondent(s) of the violation, or
4. Where a respondent avoids or eludes service or is otherwise not locatable for service, the County is entitled to use alternative service in the form of any of the following: posting the property, publication in a local newspaper, first class mail to the property.

C. Errors in notice or service of civil infraction

1. Any non-prejudicial error in the notice of civil infraction, including errors transcribing information into the civil infraction form, may be corrected at or before the hearing with notice of the correction given to the respondent(s). A non-prejudicial error in the notice of civil infraction shall not be a basis for the civil infraction to be dismissed.
2. Any errors in the service of the notice of civil infraction are not a basis for the civil infraction to be dismissed as long as the respondent(s) were given reasonable and timely notice of the allegations against the respondent(s) so that respondent(s) were not prejudiced in defending the civil infraction.

**Section 050. Notice Civil Infraction.**

A. Contents of the Notice. An enforcement officer shall issue the notice of civil infraction, or alternatively, facilitate issuance of the notice by the Decision Maker that includes:

1. A civil citation; and
2. A summons to the respondent(s).

B. Civil Citation The Civil Citation shall contain the following information:

1. The name or names of the respondent(s) responsible for the alleged infraction, which can include any person responsible for the action, inaction or property condition alleged to be the basis for the infraction and the property owner(s);
2. A short statement of the facts constituting the alleged infraction;
3. The date, time, and place of the alleged civil infraction;
4. The civil ordinance or permit provision(s) the respondent(s) have allegedly violated;
5. The relief requested which may include a monetary civil penalty, curative action, or abatement, including injunctive relief;
6. A signed certification that the enforcement officer has probable cause to believe that the respondent(s) committed the civil infraction as alleged; and
7. Any additional information as necessary and appropriate for the purposes of giving notice or administering civil infractions.

C. The Summons. The summons is intended to inform the respondent(s) that the notice of civil infraction will be filed with the Decision Maker and that the respondent(s) have the following options:

1. Request a hearing before the Decision Maker. The summons will provide the time, place and manner by which the respondent(s) shall appear to contest the charge in the Civil Citation and request a hearing.
2. Admit to having committed the civil infraction and waive a hearing. Under this option, the respondent(s) must submit a check or money order for the monetary penalty, if any, listed on the civil citation and may include a written statement of mitigating circumstances and any proposed alternative civil penalty. The Decision Maker, after considering the written statement and any other evidence presented, shall order the respondent(s) to comply with the requirements of the County's Civil Ordinances or permit, and may

grant all or part of the relief requested, along with a financial penalty if warranted.

3. Admit or plead no contest to the alleged civil infraction, waive a hearing, comply with the relief requested by the County and pay the specified monetary penalty.
4. No action taken by the respondent will constitute an admission that the allegations in the civil infraction are true or imply consent to any civil penalty or curative action imposed by the Decision Maker.

D. An Oregon Uniform Traffic Citation and Complaint shall be deemed an acceptable form for any civil infraction citation under this Ordinance. ORS 153.045

**Section 060. Decision Maker's Jurisdiction and Procedures.**

A. The County Decision Maker has jurisdiction to adjudicate all civil infractions filed and processed under this Ordinance. The Decision Maker may adopt, and amend from time to time, procedural rules governing proceedings.

B. The following procedures shall be followed in proceedings initiated under this chapter and executed before the Decision Maker:

1. The Decision Maker shall hold a hearing on any timely challenge to a notice of civil infraction.
2. The hearing date and time shall be sent to the defendant by first-class mail.
3. For good cause, the Decision Maker may postpone the hearing upon request by either party or on the Decision Maker's own motion. The Decision Maker may deny a request for postponement if a postponement will prejudice the interests of either party, if good cause is not shown, or if the request for postponement was not timely.
4. The defendant may be represented by counsel, but counsel shall not be provided at public expense. If legal counsel is to appear, Baker County must be provided notice of representation at least ten days prior to the hearing date. If notice of representation is not provided to Baker County at least 10 days prior to a hearing, this is good cause for a postponement.

**Section 070. Evidence.** The hearing is not subject to Oregon Evidence Code however the following rules apply:

1. Evidence must be relevant to the alleged civil infraction.
2. All witness testimony shall be under oath and subject to cross examination.
3. Affidavits and declarations are admissible subject to the Decision Maker's discretion.
4. Evidence that is cumulative, unfairly prejudicial, not credible, unreliable, or irrelevant may be excluded.
5. The Decision Maker will make determinations of the admissibility of evidence.

**Section 080. The Hearing.** The hearing is not subject to Oregon Rules of Civil Procedure; however, the following procedures shall apply:

1. The County has the burden of proving that the respondent(s) committed the civil infraction. The County's burden of proof is by a preponderance of the evidence, taking into account all reasonable inferences and an assessment of evidence relevance, probative value and credibility.
2. Because Baker County has the burden of proof, it shall proceed first.
3. Respondent(s) shall proceed second and shall be allowed to call witnesses, present evidence and present argument.
4. Both parties shall have the right of final argument, with the County going last, since it bears the burden of proof. No new evidence is allowed in final argument.
5. The Decision Maker shall consider requests to keep-open the record for the submission of evidence following the hearing.
6. After consideration of all the evidence and arguments presented at the hearing, the Decision Maker shall determine whether the civil infraction alleged in the notice of civil infraction was committed. When the Decision Maker finds that a civil infraction was not committed, the Decision Maker



shall issue an order dismissing the civil infraction, which shall be entered into Baker County records.

7. Upon a finding that the respondent(s) committed the alleged civil infraction, a guilty finding shall be entered into Baker County records, and the Decision Maker shall also enter a penalty assessed, including an order of abatement.
8. The Decision Maker shall maintain a record of the proceedings. The Decision Maker shall issue a written order, consisting of findings of fact and conclusions of law that explain the Order and any civil penalty imposed.
9. The Decision Maker's final order is the County's final decision in the matter and may be appealed only through a writ of review under ORS 34.010, *et seq*, except that when a final order is made in Baker County Justice Court or Circuit Court, appeal may be made as provided in ORS 138.057.

**Section 090. Civil Search Warrants and Pre-hearing Discovery.** The following shall control pre-hearing discovery matters:

A. Pre-hearing Discovery. Upon a written request for discovery by the respondent(s), the Enforcement Officer (or county attorney if the respondent(s) are represented) shall provide any books, papers, documents, photographs, or tangible objects that the enforcement officer or county attorney intends to offer in evidence at the hearing and any material or information in the possession of the enforcement officer or county attorney which tends to exculpate the defendant or negate or mitigate the defendant's guilt, or impeach a person whom the enforcement officer or county attorney intends to call as a witness. The Decision Maker shall not order the disclosure of any additional information or material.

B. Entry onto the Property. Whenever the enforcement officer has probable cause to believe there has been an infraction of a Baker County Civil Ordinance, the enforcement officer may enter upon a site or structure for the purpose of investigation subject to the following requirements:

1. The enforcement officer will first obtain consent of the owner or person with actual authority and ability to consent to entry of the premises. A person with actual authority must be a person age 18 years or older and capable of consenting to the enforcement officer's entry on the premises.

2. If consent cannot be obtained, the enforcement officer shall obtain a civil search warrant prior to entry onto premises.

C. Civil Search Warrants. If an enforcement officer is denied access to a property for the purpose of an investigation or inspection on the premises, such investigation shall not be conducted without an administrative search warrant or without such other authority as a court may grant in an appropriate civil proceeding. An enforcement officer who has probable cause to believe that a person has committed a civil infraction may seek an administrative warrant authorizing search of any property that is the subject of a civil infraction to obtain any evidence related to the civil infraction.

D. Procedure for Obtaining a Civil Search Warrant. If an enforcement officer is denied access to a property, he or she shall notify county counsel, who may then obtain an administrative search warrant or other appropriate legal order from a court of competent jurisdiction.

1. The enforcement officer shall apply to Circuit Court for the issuance of an administrative search warrant.
2. The administrative search warrant is an order authorizing the enforcement officer to enter onto private property, inspect, or seize property.
3. The administrative search warrant shall be issued only upon cause supported by affidavit. Cause shall be deemed to exist if there is probable cause to believe that a civil infraction has occurred or if a statute, regulation, or ordinance authorizes the entry, inspection, search, or seizure.
- 4 Applications for Issuance of Administrative Search Warrants;  
Requirements of Affidavit:
  - a. An application for an administrative search warrant shall be accompanied by a supporting affidavit particularly describing the following minimum elements:
  - b. The affiant's employment background and experience;
  - c. The statute or ordinance requiring or authorizing the inspection or abatement;
  - d. The address or other description of the property or structure to be inspected, searched, or seized, which is sufficient to identify the property;

- e. The purpose for which the inspection is to be made;
  - f. Either a statement that entry has been sought and refused, or facts or circumstances reasonably showing that the purposes of the inspection or abatement might be frustrated if entry were sought without an administrative search warrant;
  - g. A description, with reasonable particularity, of the violations of statute or ordinance existing, or believed to exist, with respect to the particular property or structure, or that an inspection is reasonably believed to be necessary in order to determine or verify whether any such violations exist at the property or structure.
  - h. Identification of proposed restrictions upon the service of the warrant, including a request that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or if there are special circumstances preventing the effective execution between those hours, that it be executed at any other time of the day or night; and
  - i. Any information known to the affiant which could indicate that probable cause may not exist, or which is relevant to the judge's decision to decline to issue the administrative warrant.
5. Applications for administrative search warrants not involving abatements will request the warrant allow 10 days from its date for execution and return to the Circuit Court Judge by whom it was issued. Applications for administrative search warrants involving abatements will request the warrant allow 15 days from its date for execution and return to the Circuit Court Judge who issued it.
6. Execution of Administrative Search Warrants:
- a. Except as provided in subsection (b) of this section, in executing an administrative search warrant, the person authorized by the judge to execute the warrant shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request.
  - b. In executing an administrative search warrant, the person authorized to execute the warrant may promptly enter the designated property if it is, or is reasonably believed to be, vacant or unoccupied. Such person need

not inform anyone of the person's authority and purpose, as prescribed in subsection (a) of this section.

- c. A peace officer may be requested to assist in the execution of the administrative search warrant. Such peace officer may assist the person authorized to execute the warrant, including using any reasonable force necessary, to enter the property if the administrative warrant specifically allows the use of reasonable force to execute the warrant.
- d. After serving the warrant, the inspector may make the authorized inspection and/or seizure of evidence.
- e. If at any time during the inspection the inspector believes their health or safety is threatened, they will end the inspection, leave the premises by the most direct route, and contact the inspection supervisor, police, or other appropriate party for assistance.

**Section 100. Nuisance Abatement by the County, Contempt and Cost Recovery.**

A. Nuisance and abatement order. Upon a finding that a respondent committed a civil infraction, the Decision Maker shall declare the civil infraction to be a nuisance, and shall order the respondent to cease the violation, abate, correct or otherwise remedy the civil infraction. In the event the respondent fails to cease the violation, or otherwise abate or remedy the nuisance within the time provided for in the Decision Maker order, the enforcement officer, without further proceedings, may take any action the enforcement officer deems to be reasonably necessary to abate or remedy the nuisance in compliance with the Decision Maker's order, or the enforcement officer may seek a contempt order from Court against respondent for failing to comply with the Decision Maker's order.

B. Civil Contempt Proceedings. In the event that a respondent fails or refuses to comply with any order issued by the Decision Maker or a Civil Search Warrant in a civil enforcement proceeding under this ordinance, the County may proceed to Circuit Court to seek a contempt citation that the respondent be held in contempt and shall be subject to any sanction imposed by the Court including monetary fine and/or incarceration.

C. Summary abatement by the County in emergency situations. With or without the respondent first having appeared, the enforcement officer may seek,

and Justice Court or Circuit Court may order, the summary abatement of the activity alleged in the civil infraction citation upon a finding that:

1. An imminent and substantial threat to the public health, safety or welfare exists by virtue of the alleged action or inaction; and
2. Immediate abatement of the activity or nuisance is necessary to prevent a threatened harm to the public health, safety or welfare.

D. Upon the issuance of a summary abatement order under this section, the enforcement officer may, without further notice or proceedings, take whatever steps are necessary to abate, correct or remedy the nuisance that is the basis for the citation. The county may seek cost recovery against the respondent(s) for all of the county's expenses incurred in undertaking a summary abatement action, including administrative and staff costs, expert witness and attorney fees.

E. Recovery of the County's Enforcement Prosecution and Abatement Costs: Following entry of an order against a respondent under this chapter, the County may petition the Circuit Court or Decision Maker to recover from respondent(s) all of the County's reasonable costs associated with bringing and prosecuting a civil enforcement action under this chapter and for any abatement action that may be necessary if the respondent(s) fail to abate the violation. Reasonable costs include the County's attorney, administrative and staff time, inspection costs, contractor costs, materials and equipment, service and administrative expenses, the cost of work to demolish, remove, correct or otherwise abate the nuisance, and any associated disposal costs. The County shall file with the court and serve on respondent(s) a sworn statement of its costs incurred in the action. The Decision Maker shall review the sworn statement and any objections thereto and shall issue an order awarding the County its reasonable costs incurred in the enforcement and abatement action, payable by the respondent(s). Any such award of costs pursuant to this chapter shall accrue interest at the rate of 9% per year until paid and may be recorded as a municipal assessment lien and foreclosed as provided in Section 120.

### **Section 110. Civil Penalties.**

A. Upon determination by the Decision Maker that one or more respondents committed a civil infraction under this chapter, the Court shall impose a civil penalty up to \$500 per violation.

B. Each day that a violation is found to exist shall constitute a separate citable and sanctionable civil infraction.

C. Any civil penalties awarded by the Decision Maker pursuant to this chapter shall accrue interest at the rate of 9% per year until paid and may be recorded as a municipal assessment lien and foreclosed as provided in Section 120.

D. The remedies and penalties provided in this chapter are in addition to, and not in lieu of, any other remedy or penalties provided by law, including, but not limited to revocation or nonrenewal of a permit or license, injunction, a county-initiated land use proceeding, abatement or civil damages as provided by ~~the Code~~ County Civil Ordinance or state law in any court or agency of competent jurisdiction.

**Section 120. Recordation of Assessment Lien and Foreclosure.** Any judgment awarding the county its abatement costs, fines and/or penalties against a respondent pursuant this chapter may be recorded at any time after issuance without further notice or proceedings, in the county's lien docket and/or the Baker County real property deed records as a municipal assessment lien against the respondent(s) real property. The County's lien shall have priority ahead of all other liens except as prohibited by any applicable law. The County's lien may be foreclosed as a municipal assessment lien pursuant to ORS 223.505 to 223.595 or through any other legal process. This section shall apply to any judgment, award of costs, fines or penalties or associated lien that exists on the day of adoption of this 2025 ordinance.

**Section 130. Emergency.** This ordinance being necessary for the immediate preservation of the peace, health and safety of the citizens of Baker County, shall take effect immediately upon its adoption.

ADOPTED BY THE BAKER COUNTY BOARD OF COMMISSIONERS  
on this 4<sup>th</sup> day of June, 2025.

**Baker County Board of Commissioners**

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Shane M. Alderson, Chairman

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Christina Witham, Commissioner

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Michelle Kaseberg, Commissioner