

CHAPTER 2.03

CIVIL PENALTIES

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2.03.010 Purpose

The purpose of this chapter is to proscribe the procedures and requirements to notice, assess, collect, and enforce civil penalties.

2.03.020 Definitions

Unless otherwise required by context, as used in this chapter:

Civil Penalty means a non-criminal remedy for any violation of a Metro regulation, order, code section, law, administrative rule, permit, franchise, license or any other similar regulatory requirement.

Director means “Department Director” as defined in Metro Code Chapter 2.17.

Hearings Officer means a person appointed by the Chief Operating Officer to hear and determine a contested case.

Respondent means the person against whom Metro has assessed a civil penalty.

2.03.030 Each Violation Separate and Distinct

Each violation is a separate and distinct offense. In cases of continuing violation, each days' continuance is a separate and distinct violation.

2.03.040 Consolidation of Proceedings

Notwithstanding subsection 2.03.030, proceedings to assess multiple civil penalties for multiple violations may be consolidated into a single proceeding.

2.03.050 Notice of Civil Penalty Assessment; Service of Notice

- (a) Metro must give notice in writing to a respondent when Metro assesses a civil penalty. The notice must include:
 - (1) A reference to the particular Metro Code section, ordinance, order, permit, regulation, or rule involved;
 - (2) A short and plain statement of the matters asserted or charged;
 - (3) A statement of the amount of the penalty or penalties imposed; and
 - (4) A statement of the respondent's right to request a contested case hearing.
- (b) Metro may give the notice required under subsection (a) by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the respondent of the civil penalty assessment. When Metro provides notice by United States Postal Service mail, then three days are added to the 30-day deadline set forth in subsection (a). The following notice methods satisfy the notice requirements of this section:
 - (1) Personal delivery;

- (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
- (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or
- (4) Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.

2.03.060 Mitigating and Aggravating Factors for Civil Penalties

- (a) In establishing the amount of a civil penalty to be assessed, Metro may consider the following factors:
 - (1) Whether the respondent has committed any prior violation, regardless of whether any administrative, civil, or criminal proceeding was commenced as a result;
 - (2) The history of the respondent in taking all feasible actions necessary or appropriate to correct any violation; or
 - (3) The respondent's economic and financial condition.
- (b) In establishing whether Metro should mitigate a civil penalty, Metro may consider the following factors:
 - (1) The gravity and magnitude of the violation;
 - (2) Whether the violation was repeated or continuous;
 - (3) Whether a cause of the violation was a negligent or an intentional act of the respondent;
 - (4) The opportunity and degree of difficulty to correct the violation;
 - (5) The respondent's cooperativeness and efforts to correct the violation for which Metro may assess the penalty;
 - (6) The cost to Metro to investigate or correct the cited violation; or
 - (7) Any other relevant factor.

2.03.070 Amount of Financial Civil Penalties

Unless specified otherwise in Metro Code, no financial civil penalty may exceed \$500 per day per violation.

2.03.080 When Civil Penalty is Due

Unless otherwise stated in the written notice of civil penalty assessment, a civil penalty is due and payable when Metro serves the respondent with the written notice of civil penalty assessment.

2.03.090 Appeals

- (a) The respondent has 30 calendar days from Metro's notice of civil penalty assessment to request a contested case hearing regarding the validity or amount of the civil penalty.
- (b) All hearings will be conducted as set forth in Metro Code Chapter 2.05 ("Contested Case Procedures").

2.03.100 Compromise or Settlement of Civil Penalty

At any time after Metro serves the written notice of assessment of civil penalty, the appropriate Director is authorized to compromise or settle any unpaid civil penalty that the Director deems appropriate.

2.03.110 Judgment

Unless the respondent pays the amount of the penalty within 10 days after a contested case order becomes final, the order constitutes a judgment and Metro may file it in accordance with the provisions of Oregon Law. Metro may execute upon the order in the same manner as execution upon a judgment of a court of record.

2.03.120 Authority to Adopt Administrative Rules

- (a) The Chief Operating Officer may adopt or amend administrative rules to implement any provision of this chapter, including adopting procedures and forms. Any rule adopted or amended under this subsection has the same legal force and effect as any other chapter provision.
- (b) In adopting administrative rules, the Chief Operating Officer will follow the administrative rule adoption procedures set forth in Metro Code Chapter 5.08, unless Metro Council adopts an agency-wide administrative rulemaking process, in which case the agency-wide process applies. [Ord. 23-1500.]