



# Oregon

John A. Kitzhaber, M.D., Governor

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August 2, 2000



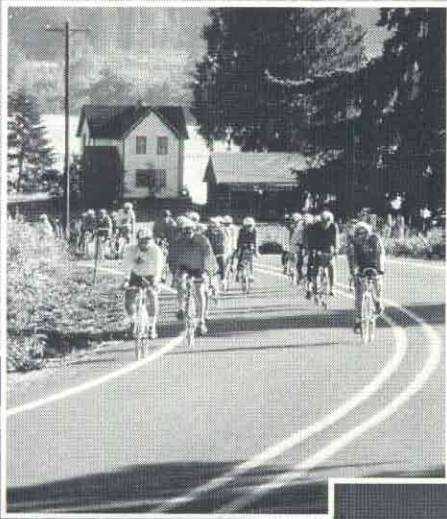
To the reader:

*How to Put the People in Planning* has been provided as a valuable public service by the Department of Land Conservation and Development pursuant to Planning Goal One—Citizen Involvement. This update of it should prove equally valuable to citizens who have a stake in the statewide land use planning program in Oregon. "Citizen Initiated Enforcement Orders" represents a single chapter in a full volume still under development. I hope you will find it informative and useful.

Sincerely,

Kathleen Van Velsor, Communications Manager and Editor





# How to Put the People in Planning



**Citizen Initiated Enforcement Orders**



# Oregon

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**September 23, 1998**

**TO: Interested Persons**  
**FROM: Mitch Rohse, Policy Development Specialist**  
**SUBJECT: Administrative Rules on Citizen-Initiated Enforcement Orders**

On September 17, 1998, the Land Conservation and Development Commission unanimously adopted new administrative rules on citizen-initiated enforcement orders. These rules are being filed with the Secretary of State today (September 23) and take effect at that time. The rules will be codified as Oregon Administrative Rules Chapter 660, Division 045.

A copy of the newly adopted rules is attached to this memo. In addition, the new rules soon will be posted on the Department of Land Conservation and Development's web site, at [www.lcd.state.or.us](http://www.lcd.state.or.us).

These rules implement longstanding statutory provisions on enforcement orders, found at ORS 197.319 to 197.335. The rules do not create a new process or establish a new type of enforcement order. Rather, they define procedures for carrying out the enforcement process outlined by ORS 197.319 to 197.335.

If you have any questions about these rules, please contact the Department of Land Conservation and Development at 503 373-0050.

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***Attachment***

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<b>THE MAIN PHASES IN THE ENFORCEMENT ORDER PETITION PROCESS</b>			
<b>PHASE</b>	<b>STARTING AND ENDING POINTS OF PHASE</b>	<b>DAYS IN PHASE</b>	<b>KEY RULE; KEY STATUTE</b>
<b>1. REQUEST</b> Requester sends request to the affected local government or special district	A requester starts the process at a time of his or her choosing by mailing the request	0	0040 (1); 197.319 (1)
<b>2. RESPONSE</b> Affected local government or special district considers request and sends response to requester	Starts on day requester mails request; ends on day response is issued, or on day 60	60*	0050 (1); 197.319 (2) (a)
<b>3. PETITION</b> Requester evaluates response, then submits petition to LCDC	Starts on day response to requester is issued or on day 61; ends on day petition is mailed to DLCD	180	0050 (4) & (6); 197.319 (2) (c)
<i>NOTE: The 120-day limit set by ORS 197.328(5) starts here, when the petition is mailed.</i>			
<b>4. INITIAL REVIEW</b> DLCD reviews petition for procedural compliance	Starts on day petition is mailed; ends on day DLCD sends notice of rejection or acceptance	Not specified	0070; no related statute
<b>5. GOOD CAUSE DETERMINATION</b> LCDC determines whether there is good cause to proceed to contested-case hearing and sets hearing date	Starts on day DLCD receives petition; ends on day agency sets date of contested-case hearing	45*	0090; 197.328 (2)
<b>6. HEARING</b> Neither ORS 197 nor this division says how long a record may be kept open, whether more than one hearing may be held, or whether a hearing may be continued. The length of the hearing phase thus is limited only by the statutory requirement to finish the petition process in 120 days.		Not specified	0130; 183.413-470
<b>7. PROPOSED ORDER</b> Hearings officer writes proposed order and then serves it on DLCD and on all parties	Starts on day the record closes; ends on day hearings officer serves proposed order on DLCD and parties	30*	0140; 197.328 (3)
<b>8. EXCEPTIONS</b> Parties to case may submit exceptions to proposed order	Starts on day hearings officer issues proposed order; ends on day exception is filed	15*	0140 (2) (c) (D); 197.328 (4)
<b>9. FINAL ORDER</b> LCDC adopts final order and mails it to parties; it must be adopted no later than 120 days after petition was filed	Starts after proposed order and exceptions have been filed; ends on day LCDC adopts final order	Not specified	0140 (6), 0150 (3); 197.328 (5)
The table above describes the schedule if a hearings officer conducts the contested-case hearing. But the applicable statutes and rules also allow LCDC to conduct the hearing. If the commission chooses to do that, phases 7 and 8 are eliminated. The commission holds the hearing and then must adopt an order within 30 days of the date when the record closes. See OAR 660-045-0150.			
<b>* Set by statute</b>			

**CHRONOLOGY OF ENFORCEMENT ORDERS -- August 1998**

#	CITY/COUNTY	YEAR CONSIDERED	YEAR ADOPTED	YEAR TERMINATED	INITIATED BY CITIZEN?
1	Hood River (County & City)		1978	1978	
2	Deschutes County		1978	1979	
3	Jackson County		1979	1979	
4	Salem Urban Area		1979	1979	
5	Columbia County		1979	1980	
6	Polk County		1980	1980	
7	Jefferson County		1980	1980	
8	Curry County		1980	1982	
9	Lane County	1981			
10	Klamath County	1982			
11	Happy Valley		1982	1985	
12	Baker County		1982	1983	
13	Columbia County		1982	1985	
14	Umatilla County		1983	1983	
15	Hermiston	1983			
16	Malheur County		1983	1984	
17	Josephine County		1984	1985	
18	Happy Valley		1985	1985	
19	Baker county		1985	1986	
20	Grant County		1985	1986	
21	Benton County		1985	1991	
22	Washington County		1989	1990	
23	Klamath County		1989	1994	
24	Klamath County		1989	1991	
25	Crook County		1989	1991	
26	Crook County		1990	1993	
27	Happy Valley	1991			
28	Crook County	1992			
29	Jacksonville		1991	1996	
30	Klamath County	1992			Yes
31	Yamhill County	1992			
32	Deschutes County	1992			Yes
33	Jackson County		1992	1997	Yes
34	Clatsop County	1995			Yes
35	Warrenton	1995			Yes
36	Washington County		1995	Still in effect	
37	Clatsop County	1996			Yes
38	Lincoln County	1996			Yes
39	Josephine County	1997			Yes



# Oregon

John A. Kitzhaber, M.D., Governor

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July 24, 1998

## DLCD Seeks Comments on Proposed Rules for Citizen-Initiated Enforcement Orders

Oregon's Department of Land Conservation and Development (DLCD) has begun to develop some new administrative rules on citizen-initiated enforcement orders. A draft of those proposed rules is attached. We invite you to read the draft and let us know what you think of it. Use any of these methods to get your comments to us:

- **Mail** written comments to the lead staff person for these rules, Mitch Rohse, at DLCD, 1175 Court Street NE, Salem OR 97310.
- **E-mail** comments to [mitch.rohse@state.or.us](mailto:mitch.rohse@state.or.us).
- **Fax** comments to 503 362-6705.
- **Testify** at a public hearing before the Land Conservation and Development Commission (LCDC). The first hearing will occur during the LCDC meeting of September 17-18, 1998. That meeting will be held in Hearing Room A of the Capitol building in Salem. The hearing on these rules is tentatively scheduled to take place Thursday, September 17, at 9:00 a.m.

If the September hearing reveals few problems in the draft rules, LCDC could adopt the rules as early as September 17. But if another hearing is needed, it will occur at LCDC's meeting of December 10-11, 1998, at the Capitol in Salem.

Comments on these proposed rules will be accepted any time from now through September 17, 1998. However, if you want your written comments to be in the packet of material that will be mailed to LCDC members for the September 17 hearing, you must get those comments to DLCD's Salem office by 5:00 p.m. on Friday, August 28, 1998.

### What These Rules Are About

Since 1977, Oregon's laws on planning have authorized the Land Conservation and Development Commission (LCDC) to adopt "enforcement orders." Such orders direct cities, counties, special districts, or state agencies to take specified actions to comply with certain land use plans, goals, laws, rules, or regulations. The statutes governing enforcement orders are found in ORS 197.319 to 197.335.

In 1989, the statutes on enforcement orders were amended to say that a person or organization could petition LCDC for such an order against a local government or special district. The statutes outline a basic process to be followed in submitting such a petition. These new rules would provide more details about that process. The attached table

("Main Phases in the Proposed Enforcement Order Process") summarizes the process that would emerge from the combination of current statutes and proposed new rules.

## **Why Rules on This Topic Are Needed**

In the decade since statutes on citizen-initiated enforcement orders were adopted, only a few citizens have petitioned LCDC for enforcement. When they did, three main problems arose:

- Citizens petitioning for enforcement were frustrated by a lack of information on how they should proceed. The statutes did not provide enough detail to answer petitioners' questions about notices, scheduling, hearings, and other procedural matters.
- Citizens expected to bring their petitions to DLCD and have the department take the petitions through the contested-case hearing. But DLCD is not authorized to do that. The department must serve as LCDC's staff in an enforcement proceeding, not as the petitioner's attorney.
- DLCD and LCDC encountered many questions about enforcement proceedings that were not answered by the statutes. They often were left to guess what the legislature had intended, a frustrating experience for all parties.

These rules are a response to those three problems. The purpose of the rules is to establish a uniform procedure for submitting and reviewing citizen-initiated petitions for enforcement orders. The idea is to spell out the rules of the enforcement process so that all parties to an enforcement order understand and use the same procedures.

Note that the rules are not intended to change the enforcement process or to increase or decrease the use of citizen-initiated enforcement orders. These rules are to clarify procedures, not alter the process.

## **Who These Rules Would Affect**

Given the small number of citizen-initiated enforcement orders that have occurred over the years, these rules probably will not affect many people. They are most likely to affect the following groups:

- Any citizen or organization with a concern about land use who might petition LCDC for enforcement;
- Any city, county, or special district that might become the subject of a citizen-initiated enforcement order;
- Lawyers, planners, and agencies who deal with enforcement of land use laws.

## **Key Issues and Problems**

Perhaps the biggest issue in these rules lies in the definitions. The way in which a few key terms are defined can broaden or narrow the potential for enforcement. For example, if "practice of decision making" is defined broadly, to be two or more decisions in a ten-

year period, the potential for enforcement increases. If the same term is defined narrowly (as, say, ten or more decisions in a month), then the potential for enforcement decreases. The current draft has fairly broad definitions, for three reasons.

First, after a decade with no definitions at all, there still have been few citizen-initiated enforcement orders. It therefore seems unlikely that broad definitions in these rules will prompt a rush to seek enforcement orders.

Second, administrative rules must be consistent with the statutes that authorize them. If these rules were to contain highly restrictive definitions, they might be seen as exceeding the broadly written statutes on which they are based.

Third, Oregon's land use planning program generally encourages citizen involvement and in large part depends on citizen action for enforcement. Writing the rules on citizen-initiated enforcement orders very narrowly would run counter to that overall theme.

Perhaps the biggest problem with these proposed rules is their length. In trying to describe each step in petitioning for an enforcement order, DLCD has traded brevity for precision. The new rules thus are long, but they provide key details on procedure. In contrast, the statutes on enforcement orders are brief, but they omit many crucial details.

But detailed as they are, these rules alone still would not get a petitioner through the enforcement process. Many aspects of contested-case hearings, appeals, and other procedural matters are governed by the state's Administrative Procedures Act (APA) and the Attorney General's Uniform and Model Rules. As a result, any person petitioning LCDC for enforcement would need to consult not only the new rules being proposed here but also ORS Chapter 197, the APA, and several divisions of rules from OAR Chapter 137. After these rules are adopted, the department will prepare a checklist or a flow-chart to guide petitioners through the process and direct them toward all applicable laws.

## **What the Rules Would Cost**

These rules are likely to bring about a small net saving of both private and public funds. They will save a few citizens and groups some money by better enabling them to represent themselves in an enforcement proceeding rather than hiring an attorney. The law already allows that, but the new rules would make it easier for lay persons to go through the enforcement process.

These rules do not impose any new mandates on cities, counties, or special districts, and they do not require local governments to amend current plans or regulations. As a result, these rules should impose no cost on local governments. The rules are likely to save DLCD (and hence Oregon's taxpayers) some money by standardizing procedures, thus



reducing the need to consult legal counsel at every step in the enforcement process.

## When the Rules Would Go Into Effect

The basic schedule proposed for these rules is this:

**July 1998** -- First draft of rules distributed to public for review

**September 17, 1998** -- LCDC holds first public hearing on draft rules and adopts rules if no further review is needed

**September 24, 1998** -- Earliest day on which new rules could take effect

**December 10, 1998** -- LCDC holds second public hearing (if needed) and adopts rules

**December 17, 1998** -- Earliest date on which new rules would take effect if second hearing is needed.

Administrative rules take effect on the day when they are filed with Oregon's Secretary of State. That usually happens about a week after LCDC adopts a set of rules. The earliest day on which LCDC could adopt this set of rules is September 17, so September 24, 1998, is likely to be the earliest day on which these rules could take effect.

## The Advisory Committee

Oregon law encourages a rule-making agency to use a committee of persons from outside the agency to advise it in writing new rules. With this draft, DLCD is using the state's Citizen Involvement Advisory Committee (CIAC) to advise it. CIAC reviewed an early draft in May 1998 and will review a revised draft on August 21, at DLCD's office in Salem. CIAC meetings begin at 9:00 a.m. They are open to the public and to media.

## For More Information . . .

If you would like more information on these proposed rules, contact

**DLCD**

**1175 Court Street NE**

**Salem OR 97310**

**Telephone: 503 373-0050**

If you have questions or comments about the draft, please direct them to DLCD's lead staff person for these rules, Mitch Rohse. Telephone 503 373-0064. E-mail [mitch.rohse@state.or.us](mailto:mitch.rohse@state.or.us).

## Attachments

1. Draft of Proposed Rules on Citizen-Initiated Enforcement Orders
  2. Notice of Proposed Rulemaking Hearing
  3. Statement of Need and Fiscal Impact
  4. Statutory Provisions on Enforcement Orders
  5. Table: Main Phases of the Enforcement Order Process
-

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on September 17, 1998 by the  
Date prior to or same as filing date.

Department of Land Conservation and Development

660

Agency and Division

Administrative Rules Chapter Number

Victoria Schiller

(503) 373-0071

Rules Coordinator

Telephone

1175 Court St NE, Salem, OR 97310-0590

Address

to become effective September 23, 1998 Rulemaking Notice was published in the August 1998 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

### RULEMAKING ACTION

List each rule number separately, 000-000-0000.

**ADOPT:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

660-045-0000	Purpose
660-045-0010	Applicability
660-045-0020	Definitions
660-045-0030	Petitioning for Enforcement
660-045-0040	The Citizen's Request to the Affected Local Government or District
660-045-0050	The Local Government or Special District's Response to a Citizen's Request
660-045-0060	Petitioning the Commission to Initiate Enforcement Proceedings
660-045-0070	The Department's Receipt and Initial Review of a Petition
660-045-0080	The Department's Actions After Accepting a Petition
660-045-0090	The Commission's Determination of Good Cause to Proceed
660-045-0100	Arranging the Contested-Case Hearing
660-045-0110	Notice of the Contested-Case Hearing
660-045-0120	Participation of Parties or Limited Parties in the Contested-Case Hearing
660-045-0130	The Contested-Case Hearing
660-045-0140	Procedures After a Hearing Conducted by a Hearings Officer
660-045-0150	Procedures After a Hearing Conducted by the Commission
660-045-0160	Mediation and Settlement
660-045-0170	Terminating and Enforcement Order
660-045-0180	Requests for Terminating an Enforcement Order

**AMEND:**

**REPEAL:**

**Renumber:** Secure approval of the rule numbers with the Administrative Rules Unit prior to filing.

**Am. & Renumber:** Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS Chapters 183 and 197

Stat. Auth.: ORS

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Other Authority

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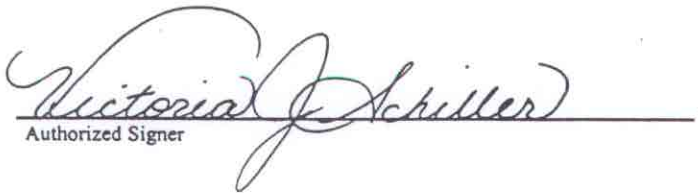
ORS 183.415, 197.319 through 197.335, and 197.646

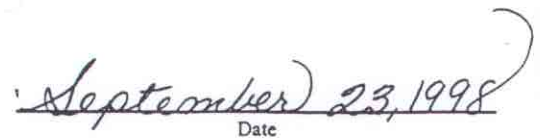
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Stats. Implemented: ORS

#### RULE SUMMARY

Oregon's laws on land use planning say that citizens may petition the Land Conservation and Development Commission (LCDC) for an "enforcement order" against a city, county, or special district. Such orders are intended to ensure compliance with state and local land use laws. The statutes offer few details about how petitions for enforcement are to be submitted and reviewed. This new division will provide these details. It will establish uniform procedures under which a person or group may petition LCDC for an enforcement order.

  
Authorized Signer

  
Date

\* Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

\*\* The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 930-1997

**DIVISION 45**  
**CITIZEN-INITIATED ENFORCEMENT ORDERS**

1 **660-045-0000**

2 **Purpose**

3 The purpose of this division is to establish uniform procedures for citizen-initiated  
4 enforcement orders, as provided in ORS 197.319 to 197.335 and 197.646.

5 Stat. Auth.: ORS Ch.183 & 197

6 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

7 **660-045-0010**

8 **Applicability**

9 OAR 660-045-0000, -0030 to -0090, and -0160 apply only to enforcement orders  
10 requested by a citizen petition in accordance with ORS 197.319; they do not apply to  
11 enforcement orders initiated by the Land Conservation and Development Commission in  
12 accordance with ORS 197.324(1). OAR 660-045-0020 (definitions), 660-045-0100 to -0150 (on  
13 contested-case hearings), and 660-045-0170 to -0180 (on terminating enforcement orders) apply  
14 to all types of enforcement orders.

15 Stat. Auth.: ORS Ch.183 & 197

16 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

17 **660-045-0020**

18 **Definitions**

19 (1) **Affected local government or district** means a local government, as defined in ORS  
20 197.015(13), or a special district, as defined in ORS 197.015(19), against which a requester seeks  
21 an enforcement order.

22 (2) **Commission** means the Land Conservation and Development Commission.

23 (3) **Corrective action** means an action sought by a requester or required of an affected  
24 local government or district by an enforcement order under ORS 197.335(1)(c). The term  
25 includes revisions to an affected local government or district's comprehensive plan, land use  
26 regulations, special district cooperative agreement, urban service agreement, or decision-making  
27 process. A corrective action is the remedy for the noncompliance specified by an enforcement  
28 order.

29 (4) **Department** means the Department of Land Conservation and Development.

30 (5) **Enforcement order** means a final order adopted by the commission in accordance  
31 with the provisions of ORS 197.319 to 197.335 and 197.646.

32 (6) **Interim measure** means a temporary measure required of an affected local  
33 government or district by an enforcement order in accordance with ORS 197.335(3) to  
34 197.335(5). An interim measure is one in effect only while an affected local government or  
35 district is bringing itself into compliance with an enforcement order. Interim measures include  
36 (but are not limited to) limitations on land use permits, withholding of state-shared revenues, and  
37 review of local land use decisions by a hearings officer or by the department.

38 (7) **Mail** means to convey a document by any of the following means: first-class mail via  
39 the United States Postal Service, if verified with a certificate of mailing; certified or registered

1 mail via the United States Postal Service; delivery by commercial carrier, if the carrier  
2 guarantees delivery within three days and issues a receipt of transmittal. As used in this division,  
3 the word *mail* does not include the transmitting of documents by facsimile (fax), electronic mail  
4 (e-mail), or telephone.

5 (8) **Mediation** means a process in which a collaborative dispute resolution provider, as  
6 defined in OAR 137-001-0005(4), assists the requester and the affected local government or  
7 district in reaching a mutually acceptable resolution of issues raised in a petition for enforcement.  
8 Mediation is a voluntary process available to parties at any stage of an enforcement proceeding.

9 (9) **Noncompliance** means a state of not being in compliance with a currently applicable  
10 comprehensive plan, land use regulation, special district cooperative agreement, urban growth  
11 management agreement, goal, rule, or other regulation or agreement, as described in ORS  
12 197.320(1) to 197.320(10) or in ORS 197.646. The term includes a failure to comply with  
13 applicable case law in making a land use decision. The term includes a pattern or practice of  
14 decision making that violates an acknowledged comprehensive plan or land use regulation.  
15 Noncompliance is the problem that an enforcement order seeks to eliminate through corrective  
16 action.

17 (10) **Pattern of decision making** means a mode, method, or instance of decision making  
18 representative of a group of decisions with these characteristics:

19 (a) the decisions involve the same or related provisions of an acknowledged  
20 comprehensive plan, land use regulation, or special district cooperative agreement;

21 (b) the decisions involve the same or similar geographic areas, plan designations, zones,  
22 or types of land use; and

23 (c) the decisions occurred within the three years preceding the date on which the  
24 requester sent the affected local government or district the request described in OAR 660-045-  
25 0040, or the decisions are likely to occur after that date.

26 (11) **Practice of decision making** means a series or succession of decisions with these  
27 characteristics:

28 (a) the decisions involved the same or similar provisions of an acknowledged  
29 comprehensive plan, land use regulation, or special district cooperative agreement;

30 (b) the decisions involved the same or similar geographic areas, plan designations, zones,  
31 or types of land use; and

32 (c) the decisions occurred within the three years preceding the date on which the  
33 requester sent the affected local government or district the request described in OAR 660-045-  
34 0040.

35 (12) **Requester** means a person as defined in ORS 197.015(18) who seeks an enforcement  
36 order under ORS 197.319 to 197.335.

37 (13) **Year** means any period of 365 consecutive days.

38 Stat. Auth.: ORS Ch.183 & 197

39 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

#### 40 660-045-0030

#### 41 **Petitioning for Enforcement**

42 (1) A person may petition the commission for an enforcement order against a local  
43 government or special district in accordance with ORS 197.319 to 197.335 and 197.646.

1 (2) A person petitioning for enforcement shall do so in accordance with the requirements  
2 of ORS 197.319 to 197.335 and this division.

3 (3) The commission may dismiss any petition for enforcement not conducted in  
4 accordance with ORS 197.319 to 197.335 and this division.

5 Stat. Auth.: ORS Ch.183 & 197

6 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

7 **660-045-0040**

8 **The Citizen's Request to the Affected Local Government or District**

9 (1) When a requester seeks to initiate enforcement proceedings against an affected local  
10 government or district, the requester first must notify that government or district by mailing a  
11 copy of the request to it. If the request for enforcement is directed toward a local government, the  
12 requester must notify both the governing body and the legal counsel of that local government.

13 (2) The citizen's request shall be in the form of a letter containing the following  
14 information:

15 (a) the name, address, and telephone number of the requester;

16 (b) the name, address, and telephone number of the attorney, if any, who will represent  
17 the requester;

18 (c) the name and address of the affected local government or district;

19 (d) a clear statement of the requester's intent to "*petition the Land Conservation and  
20 Development Commission for an enforcement order pursuant to ORS 197.319 to 197.335*";

21 (e) the subsection of the statute on which the petition will be based (ORS 197.320(1) to  
22 ORS 197.320(10) or ORS 197.646(3)); and

23 (f) a statement of facts that establish a basis for seeking enforcement and for invoking the  
24 subsection of ORS 197.320 or ORS 197.646 cited by the requester.

25 (3) The statement of facts required in subsection (2)(f) shall describe five matters:

26 (a) the specific provisions of the comprehensive plan, land use regulation, special district  
27 cooperative agreement, urban growth management agreement, goal, rule, or other regulation or  
28 agreement, as described in ORS 197.320(1) to 197.320(10) or ORS 197.646, with which the  
29 affected local government or district is alleged not to comply;

30 (b) any case law or appellate rulings with which the affected local government or district  
31 is alleged not to comply;

32 (c) the nature of the noncompliance alleged in subsection (3)(a);

33 (d) the lands affected by the noncompliance alleged in subsection (3)(a); and

34 (e) the corrective action the requester seeks from the affected local government or district.

35 (4) If the requester alleges that a pattern of noncompliant decisions by the affected local  
36 government or district is the reason for seeking enforcement, the requester's statement of facts  
37 also shall describe the following:

38 (a) the mode, method, or instance of decision making that constitutes the pattern;

39 (b) an estimate of the total number of decisions that make up the pattern; and

40 (c) the period within which the decisions constituting the pattern were made.

41 (5) If the requester alleges that a practice of noncompliant decisions by the affected local  
42 government or district is the reason for seeking enforcement, the requester's statement of facts  
43 also shall contain the following:

- 1 (a) a detailed description of two or more decisions that are part of the practice;  
2 (b) copies of the findings (if any) adopted by the affected local government or district in  
3 support of the decisions specified in subsection (a);  
4 (c) an estimate of the total number of decisions that make up the practice; and  
5 (d) a description of the period within which the decisions constituting the practice were  
6 made.

7 Stat. Auth.: ORS Ch.183 & 197

8 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

9 **660-045-0050**

10 **The Local Government or Special District's Response to a Citizen's Request**

11 (1) An affected local government or district that receives a citizen's request for  
12 enforcement shall mail the requester a response within 60 days of the date on which the request  
13 was mailed.

14 (2) The response shall contain either of the following:

15 (a) a statement that the affected local government or district will take corrective action in  
16 response to the request and a description of what that action will be; or

17 (b) a statement that the affected local government or district will not take corrective  
18 action and an explanation of its reasons for taking no action.

19 (3) If the affected local government or district will take corrective action, its statement of  
20 the intended action must specify the following:

21 (a) how the provisions of any relevant plan, regulation, agreement, or process will be  
22 amended;

23 (b) how the provisions of any relevant plan, regulation, agreement, or process will be  
24 applied or interpreted differently;

25 (c) precise citations to the provisions of any plan, regulation, agreement, or process to be  
26 amended or applied differently; and

27 (d) the schedule for the action to be taken.

28 (4) If the affected local government or district fails to mail a response within 60 days, that  
29 failure shall be construed as a refusal to take corrective action. The requester then may petition  
30 the commission for enforcement. The requester shall mail such a petition within 240 days after  
31 the original request was mailed to the affected local government or district.

32 (5) If the affected local government or district mails a response to the requester within 60  
33 days, the requester shall evaluate it.

34 (a) If the requester finds the corrective action proposed by the local government or district  
35 to be adequate, the requester shall notify the affected local government or district and the  
36 department and take no further action toward enforcement.

37 (b) If the requester finds the corrective action proposed by the local government or  
38 district to be inadequate, the requester may:

39 (A) take no further action toward enforcement;

40 (B) enter into mediation with the affected local government or district; or

41 (C) petition the commission for enforcement.

42 (6) If the requester receives a response, finds it to be inadequate, and decides to petition  
43 for enforcement, the requester must mail the petition to the department within 180 days of the

1 date when the affected local government or district mailed its response to the requester.

2 Stat. Auth.: ORS Ch.183 & 197

3 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

4 **660-045-0060**

5 **Petitioning the Commission to Initiate Enforcement Proceedings**

6 (1) A petition for enforcement shall be in the form of a letter to the commission and shall  
7 contain these three items:

8 (a) a request for the commission to adopt an enforcement order to secure the corrective  
9 action sought in the citizen's initial request to the affected local government or district;

10 (b) an explanation of why the affected local government or district's response to the  
11 request is not adequate, or a statement that the affected local government or district failed to  
12 respond; and

13 (c) a statement of consequences likely to result from the affected local government or  
14 district's refusal to take adequate corrective action.

15 (2) The petition shall be accompanied by copies of the following documents:

16 (a) the request mailed to the affected local government or district;

17 (b) a receipt or certificate showing how and when that request was mailed to the affected  
18 local government or district;

19 (c) the affected local government or district's response (if any) to the request;

20 (d) any maps or photographs that illustrate the type, extent, or location of the alleged  
21 noncompliance;

22 (e) documentation of the noncompliance alleged in the request, including but not limited  
23 to the following:

24 (A) records of noncompliant actions taken by the affected local government or district,  
25 such as approvals, permits, rezonings, plan amendments, and amendments of land use  
26 regulations;

27 (B) requirements from the comprehensive plan, land use regulation, special district  
28 cooperative agreement, urban growth management agreement, goal, rule, or other regulation or  
29 agreement, as described in ORS 197.320(1) to 197.320(10) and ORS 197.646, with which the  
30 affected local government or district has not complied.

31 (3) For each record and requirement cited in accordance with paragraphs (2)(e)(A) and  
32 (2)(e)(B), the documentation must include copies of the following:

33 (a) the document's cover or title page (if any);

34 (b) the document's table of contents (if any);

35 (c) precise citations to the relevant provisions; and

36 (d) the relevant provisions.

37 (4) The requester must mail an identical copy of the petition, including all documentation,  
38 to the affected local government or district. The requester must mail that copy on the same day it  
39 mails its petition to the commission.

40 Stat. Auth.: ORS Ch.183 & 197

41 Stats. Implemented: ORS 197.319 to 197.335 and 197.646



1 **660-045-0070**

2 **The Department's Receipt and Initial Review of a Petition**

3 (1) The department shall record the petition's arrival and review it for completeness and  
4 compliance with ORS 197.319 and OAR 660-045-0040 to -0060.

5 (2) If the petition is incomplete, the department may, at its discretion, request additional  
6 information from the requester, add such information to the petition, and then accept the petition.

7 (3) If the petition (including any information added under the provisions of Section 2)  
8 fails to meet the requirements of ORS 197.319 to ORS 197.924 and this division in a way that  
9 substantially prejudices the affected local government or district or is materially deficient, the  
10 department shall reject the petition.

11 (4) If the department rejects the petition, the commission shall not consider the petition.

12 (5) If the department rejects the petition, the department shall notify the requester and the  
13 affected local government or district of the rejection. The notice of rejection must describe the  
14 reasons for the petition's being rejected.

15 (6) If the petition fully meets the requirements of ORS 197.319 to ORS 197.924 and this  
16 division, or if it does not fail to meet them in a way that substantially prejudices the affected  
17 local government or district or is materially deficient, the department shall accept the petition.

18 (7) If the department accepts the petition, the department shall notify the requester and  
19 the affected local government or district of the acceptance.

20 Stat. Auth.: ORS Ch.183 & 197

21 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

22 **660-045-0080**

23 **The Department's Actions After Accepting a Petition**

24 (1) If the department accepts a petition, the department shall evaluate the alleged  
25 noncompliance and prepare recommendations to the commission.

26 (2) In evaluating the alleged noncompliance, the department shall consider these three  
27 matters and any others it deems relevant:

28 (a) the noncompliance specified in the citizen's request to the affected local government  
29 or district;

30 (b) the affected local government or district's response to the request;

31 (c) facts known to the department or ascertained by its investigation.

32 (3) The department shall prepare recommendations to the commission that include  
33 findings on the following three matters and any others the department deems relevant:

34 (a) whether there is good cause to proceed to a contested-case hearing of the petition;

35 (b) whether the commission or a hearings officer should conduct the contested-case  
36 hearing, if one is to be held;

37 (c) a date for the contested-case hearing, if one is to be held.

38 Stat. Auth.: ORS Ch.183 & 197

39 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

40 **660-045-0090**

41 **The Commission's Determination of Good Cause to Proceed**

42 (1) The commission shall conduct a public hearing to determine whether there is good

1 cause to proceed to a contested-case hearing.

2 (2) Only the department and parties to the proceeding may present testimony during the  
3 good-cause hearing described in Section 1.

4 (3) The commission may set limits on the time allowed for testimony at the good-cause  
5 hearing.

6 (4) A requester who alleges a pattern or practice of noncompliant decision making may  
7 present as evidence of good cause to proceed recent examples of noncompliant decisions made  
8 after the requester notified the affected local government or district of the requester's intent to  
9 petition for enforcement.

10 (5) In deciding whether there is good cause to proceed, the commission shall consider the  
11 following:

12 (a) the department's recommendation;

13 (b) the requester's petition;

14 (c) the citizen's request notice to the affected local government or district;

15 (d) the affected local government or district's response to the citizen's request;

16 (e) related facts known to or ascertained by the commission; and

17 (f) any testimony from parties to the enforcement proceeding.

18 (6) The commission shall find that there is good cause to proceed to a contested-case  
19 hearing if the information described in Section 5 contains substantial evidence of  
20 noncompliance.

21 (7) If the commission finds there is not good cause to proceed, it shall issue an order  
22 dismissing the petition and stating its reasons for doing so. A commission order dismissing a  
23 petition on grounds that there is not good cause to proceed shall be a final order. If the  
24 commission finds there is not good cause to proceed, no contested-case hearing of the petition  
25 shall be conducted.

26 (8) If the commission finds there is good cause to proceed, it shall issue a written decision  
27 describing the reasons for its decision.

28 (a) The commission may find good cause to proceed on some assertions of  
29 noncompliance in a petition, but not on others.

30 (b) The commission may, under its own motion pursuant to ORS 197.324, proceed on  
31 related assertions of noncompliance not contained in the petition.

32 (9) If the commission finds there is good cause to proceed, it shall initiate proceedings  
33 toward a contested-case hearing, as described in OAR 660-045-0100 to -0120.

34 Stat. Auth.: ORS Ch.183 & 197

35 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

## 36 **660-045-0100**

### 37 **Arranging the Contested-Case Hearing**

38 (1) A contested-case hearing on a petition for enforcement shall be conducted before a  
39 hearings officer appointed by the commission, unless the commission decides to conduct the  
40 hearing itself.

41 (2) When a hearings officer conducts a hearing, the commission shall delegate all its  
42 authority regarding the contested case to the hearings officer, except for its authority to act on the  
43 hearing officer's proposed order.

1 (3) If the commission decides to have a hearings officer conduct the hearing, the hearings  
2 officer shall set a date for that hearing. The act of setting such a date must be done within 45  
3 days of the date when the petition was received by the department.

4 (4) If the commission decides that it will conduct the hearing itself, the department shall  
5 set a date for that hearing. The act of setting such a date must be done within 45 days of the date  
6 when the petition was received by the department.

7 (5) The commission may delegate to the department the responsibility for appointing a  
8 hearings officer.

9 (6) The department shall appoint a hearings officer to preside over pre-hearing matters,  
10 including, but not limited to, notice, party and limited party status, discovery, and pre-hearing  
11 conferences.

12 Stat. Auth.: ORS Ch.183 & 197

13 Stats. Implemented: ORS 197.319, 197.320, 197.324, and 197.646

14 **660-045-0110**

15 **Notice of the Contested-Case Hearing**

16 (1) The department or hearings officer must mail notice of the contested-case hearing to  
17 the requester, affected local government or district, mediator (if any), and any other person who  
18 has requested notice.

19 (2) The notice required in Section 1 shall contain the following:

20 (a) the date, time, and place of the hearing;

21 (b) a statement of the authority under which the hearing is to be held;

22 (c) a reference to the specific provisions of the statutes and rules involved;

23 (d) a short, plain statement of the matters asserted or charged;

24 (e) a statement that, pursuant to ORS 183.457, parties and limited parties to the  
25 proceedings may be represented by an attorney or an authorized representative, subject to the  
26 other requirements of ORS 183.457 and OAR 137-003-0008;

27 (f) a statement that the record of the proceeding to date, including information in the  
28 agency file or files on the subject of the contested case, will automatically become part of the  
29 contested-case record upon default for the purpose of proving a prima facie case (per OAR  
30 137-003-0001(1)(a));

31 (g) a statement containing the following information about mediation:

32 (A) that mediation is available as an alternative to a contested-case hearing, if requested  
33 by both the requester and the affected local government or district;

34 (B) that DLCD will provide mediation services;

35 (C) that choosing to enter into mediation will not affect one's right to a contested-case  
36 hearing if the matter is not resolved through mediation;

37 (D) the date by which both parties must request mediation.

38 Stat. Auth.: ORS Ch.183 & 197

39 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

40 **660-045-0120**

41 **Participation of Parties or Limited Parties in the Contested-Case Hearing**

42 (1) Persons interested in the enforcement proceeding may request status as a party or

1 limited party in accordance with OAR 137-003-0005 (“Participation as a Party or Limited  
2 Party”). Any such request must be filed with the department at least 21 days before the date of  
3 the contested case hearing. The department shall respond to such requests as is specified in OAR  
4 137-003-0005.

5 (2) In accordance with OAR 137-003-0007 (“Agency Participation as Interested Agency  
6 or Party”), the department may designate another agency as an interested agency or party.

7 Stat. Auth.: ORS Ch.183 & 197

8 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

## 9 **660-045-0130**

### 10 **The Contested-Case Hearing**

11 (1) The contested-case hearing shall be conducted in accordance with ORS 183.413 to  
12 183.470 (“Contested Cases”). The hearing also shall be conducted in accordance with the  
13 provisions of OAR Chapter 137, Division 3, *Contested Case Proceedings*. However, some  
14 provisions of OAR Chapter 137, Division 3, have been modified by commission rules pursuant  
15 to OAR Chapter 660, Division 3, or by this division. In such cases, the commission rules and this  
16 division shall apply.

17 (2) Before the hearing begins, the commission or hearings officer shall inform all parties  
18 of certain rights, issues, and procedures as required by subsections (2) to (4) of ORS 183.413 and  
19 ORS 183.415(7).

20 (3) The commission or hearings officer may conduct a prehearing conference, in  
21 conformance with OAR 137-003-0035 (“Prehearing Conferences”).

22 (4) As specified in OAR 660-001-0005(2), parties to the contested-case hearing may be  
23 represented in three ways:

24 (a) A party may represent itself.

25 (b) A party may be represented by an attorney.

26 (c) Certain parties may be represented by an authorized representative who is not an  
27 attorney.

28 (5) Pursuant to ORS 183.440, parties to the contested case may subpoena witnesses. A  
29 party that subpoenas a witness shall pay the fees and mileage of the witness in accordance with  
30 ORS 183.440(1) and ORS 44.415(2). Payment shall be made directly to the witness.

31 (6) All discovery through means other than subpoena shall be done in accordance with  
32 OAR 137-003-0025 (“Discovery in Contested Cases”).

33 (7) At the hearing, the requester shall recommend whether the enforcement order should  
34 include interim measures as specified in ORS 197.335(3)(a) (on interim requirements pending  
35 compliance with an order) and ORS 197.335(4) (on withholding grants or state-shared revenues).  
36 If the requester recommends that such measures be adopted, the requester must specify precisely  
37 what measures it recommends.

38 (8) At the hearing, the affected local government or district shall respond to the  
39 requester’s recommendation on interim measures, and shall specify what measures, if any, the  
40 affected local government or district recommends.

41 (9) After the hearing and the record have been closed, the commission or hearings officer  
42 shall determine whether there is good cause to believe that grounds for enforcement pursuant to  
43 ORS 197.320(1) to ORS 197.320(10) or ORS 197.646(3) exist.

1 (10) If it is determined that there is good cause to believe that grounds for enforcement  
2 exist, the commission must specify, or the hearings officer must recommend, appropriate  
3 corrective action.

4 (11) If it is determined that there is good cause to believe that grounds for enforcement  
5 exist, the commission may specify, or the hearings officer may recommend, one or more interim  
6 measures, in accordance with the provisions of ORS 197.335(3) and (4).

7 Stat. Auth.: ORS Ch.183 & 197

8 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

9 **660-045-0140**

10 **Procedures After a Hearing Conducted by a Hearings Officer**

11 (1) If a hearings officer conducts the contested-case hearing, the hearings officer shall  
12 complete the following actions within 30 days of the date when the record closed:

13 (a) write a proposed order pursuant to ORS 197.328(3) and complying with ORS  
14 197.335;

15 (b) send the proposed order to the commission.

16 (2) After the commission receives the proposed order from the hearings officer, the  
17 commission must do the following:

18 (a) establish a date on which the commission will consider the proposed order;

19 (b) mail the proposed order to all parties; and

20 (c) mail to all parties the following information:

21 (A) the date on which the commission will consider the proposed order;

22 (B) a statement that the commission will limit its review as specified in Section (4) of this  
23 rule;

24 (C) a statement that exceptions to the proposed order may be filed by parties to the case;  
25 and

26 (D) a statement that exceptions to the proposed order must be received by the commission  
27 no later than 15 days after the order was mailed to the parties.

28 (3) At least 16 days after the proposed order is mailed to the parties, the commission shall  
29 consider the proposed order and adopt a final order. The commission may adopt the proposed  
30 order as the final order, modify parts of the proposed order, or not use any part of the proposed  
31 order.

32 (4) In reviewing the proposed order and adopting the final order, the commission shall  
33 not consider new evidence. The commission shall consider only the following:

34 (a) the record of proceedings before the hearings officer;

35 (b) timely exceptions to the proposed order;

36 (c) arguments concerning the proposed order and exceptions;

37 (d) recommendations and information from the department.

38 (5) The final order shall include findings of fact and conclusions of law as specified in  
39 ORS 197.335. The final order shall meet the requirements of OAR 137-003-0070, "Final Orders  
40 in Contested Cases."

41 (6) The commission shall adopt its final order within 120 days of the date on which the  
42 requester filed its petition for enforcement with the commission.

43 (7) Within five days of the commission's adoption of the final order, the department shall

1 mail to all parties a copy of that order and its findings and conclusions.

2 Stat. Auth.: ORS Ch.183 & 197

3 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

4 **660-045-0150**

5 **Procedures After a Hearing Conducted by the Commission**

6 (1) If the commission conducts the contested-case hearing, the commission shall adopt a  
7 final order within 30 days of the date when the record closed. The commission may adopt a final  
8 order on the same day that it conducts the contested-case hearing, or it may adopt a final order at  
9 a subsequent meeting within 30 days of the hearing.

10 (2) The final order shall include findings of fact and conclusions of law as specified in  
11 ORS 197.335. The final order shall meet the requirements of OAR 137-003-0070, "Final Orders  
12 in Contested Cases."

13 (3) The commission shall adopt its final order within 120 days of the date on which the  
14 requester filed its petition for enforcement with the commission.

15 (4) Within five days of the commission's adoption of the final order, the department shall  
16 mail to all parties a copy of that order and its findings and conclusions.

17 Stat. Auth.: ORS Ch.183 & 197

18 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

19 **660-045-0160**

20 **Mediation and Settlement**

21 (1) During the 60-day period specified in OAR 660-045-0050(1), the requester or the  
22 affected local government or district may request mediation services from the department. The  
23 department may provide such services. If the requester and the affected local government or  
24 district jointly request such services, the department must provide them, pursuant to ORS  
25 197.319(2)(b).

26 (2) A proceeding under this division may be delayed at any time to allow for mediation if  
27 both the requester and the affected local government or district agree to enter into such  
28 mediation. If either party withdraws from such mediation, the proceeding toward enforcement  
29 shall be resumed.

30 (3) A proceeding under this division may be stopped at any time and disposed of through  
31 stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, or  
32 consent order must be in writing and must be signed by both the requester and the affected local  
33 government or district.

34 (4) A deadline set forth in this division may be altered or waived under these two  
35 conditions:

36 (a) the requester and the affected local government or district both agree to such a change  
37 before the deadline is reached; and

38 (b) the commission or hearings officer approves of such a change before the deadline is  
39 reached.

40 Stat. Auth.: ORS Ch.183 & 197

41 Stats. Implemented: ORS 183.415, 197.319, 197.320, and 197.646

1 **660-045-0170**

2 **Terminating an Enforcement Order**

3 (1) The commission shall terminate an enforcement order if the commission finds that  
4 any one of these conditions exists:

5 (a) the affected local government or district has complied with the requirements of the  
6 order;

7 (b) a substantial change in circumstances has eliminated the need for corrective action of  
8 the type required by the order; or

9 (c) a change in the applicable laws has rendered the enforcement order moot or has  
10 eliminated the need for corrective action of the type required by the order.

11 (2) The commission may initiate proceedings to terminate an enforcement order without  
12 having received a request to terminate the order. If the commission decides to initiate such  
13 proceedings, it shall notify all parties and provide for their participation under the provisions of  
14 OAR 660-045-0110 to -0130.

15 (3) An affected local government or district, a requester, or the department may request  
16 that an enforcement order be terminated. If the commission receives such a request, it shall  
17 notify all parties and provide for their participation under the provisions of OAR 660-045-0110  
18 to -0130.

19 (4) The commission may write an enforcement order so that it terminates automatically  
20 when a specified date is reached or when an action specified in the order has been completed by  
21 the affected local government or district. If an order specifies such a termination date or action,  
22 the order shall terminate without notice to the parties and without further action by the  
23 department or commission when the termination date passes or when the termination action is  
24 completed. If an enforcement order contains no provision for automatic termination, then it shall  
25 remain in effect until the commission terminates the order in accordance with this rule.

26 Stat. Auth.: ORS Ch.183 & 197

27 Stats. Implemented: ORS 197.319 to 197.335 and 197.646

28 **660-045-0180**

29 **Requests for Terminating an Enforcement Order**

30 (1) A party requesting termination of an enforcement order shall mail its request to the  
31 commission. On the same day that it mails its request to the commission, the party shall mail  
32 copies of the request to all other persons who were parties to the enforcement proceeding.

33 (2) A request to terminate an enforcement order shall be in the form of a letter containing  
34 the following items:

35 (a) a statement asking that the commission terminate the enforcement order;

36 (b) citation to the subsection of OAR 660-045-0170(1) on which the request for  
37 termination is based;

38 (c) a description of how the affected local government or district's corrective action, a  
39 substantial change of circumstances, or a change in the applicable laws justifies termination of  
40 the order;

41 (d) documentation of the corrective action, substantial change of circumstances, or  
42 change in the applicable laws that justifies termination of the order.

43 (3) Within 30 days of the date on which the request for termination was mailed, the

1 department shall review the request to determine whether it is complete and complies with this  
2 rule. On or before the thirtieth day, the department shall convey the results of its review to the  
3 commission and to all parties to the order.

4 (a) If the department finds that the request for termination is incomplete or fails to  
5 comply with this rule, the commission shall not consider the request.

6 (b) If the department finds that the request for termination is complete and that it does  
7 comply with this rule, the department shall evaluate the request and recommend to the  
8 commission whether the enforcement order should be terminated. The department must mail its  
9 recommendation to the commission and to all parties within 90 days of the date the request for  
10 termination was mailed to the commission.

11 (4) Any party to an enforcement order may comment on a request for termination of that  
12 order. Such a comment shall be mailed to the commission within 30 days of the date on which  
13 the request for termination was mailed. On the same day that it mails its comment to the  
14 commission, the responding party shall mail a copy of the comment to all other parties to the  
15 order.

16 (5) Only those persons who were parties to an enforcement order may participate in  
17 proceedings to terminate that order.

18 (6) A party's comment on a request for termination shall be in the form of a letter to the  
19 commission containing the following items:

20 (a) a statement indicating whether the party supports or opposes termination of the  
21 enforcement order;

22 (b) a description of how the affected local government or district's corrective action, a  
23 substantial change of circumstances, or change in the applicable laws justifies or fails to justify  
24 termination of the enforcement order;

25 (c) documentation of the corrective actions, substantial change of circumstances, or  
26 change in the applicable laws referred to in the description required by subsection 6(b).

27 (7) Within 60 days of the date when the department mails its recommendation to the  
28 commission, the commission shall decide whether to terminate the enforcement order. The  
29 commission shall issue a written decision stating reasons for its decision.

30 (8) Within five days of the commission's decision, the department shall mail copies of  
31 that decision to all parties to the enforcement order.

32 Stat. Auth.: ORS Ch.183 & 197

33 Stats. Implemented: ORS 197.319 to 197.335 and 197.646