

ORDINANCE NO. 5141

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTERS 7.32, 7.08, 1.04, 1.05, AND 13.36, AND DECLARING AN EMERGENCY.

WHEREAS, recent amendments to State law have reclassified the criminal classifications for theft and other criminal offenses; and

WHEREAS, it is in the interests of the City of Albany to conform its criminal code with applicable provisions of State law; now, therefore,

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Albany Municipal Code Chapter 7.32, Section 7.32.030 is hereby amended to read as follows:

7.32.030 Theft.

A person commits the crime of theft if by other than extortion, the person:

(1) Commits theft as defined in Section 7.32.020 of this chapter; and

~~(2) The total value of the property in a single or aggregate transaction is under \$750, or
(2) The total value of the property in a single or aggregate transaction is under \$500.00~~

~~(3) The total value of the property in a single or aggregate transaction is under \$200 in a case of theft by receiving.~~

Section 2. Albany Municipal Code Chapter 7.08 is hereby amended to establish Section 7.08.070 to read as follows:

7.08.070 Assault.

A person commits the crime of assault if the person:

(1) Intentionally, knowingly, or recklessly causes physical injury to another; or

(2) With criminal negligence causes physical injury to another by means of a deadly weapon.

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Section 3. Albany Municipal Code Chapter 7.08 is hereby amended to establish Section 7.08.080 to read as follows:

7.08.080 Menacing.

A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

Section 4. Albany Municipal Code Chapter 7.08 is hereby amended to establish Section 7.08.090 to read as follows:

7.08.090 Recklessly endangering another person.

A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of physical injury to another person.

Section 5. Albany Municipal Code Chapter 7.32 is hereby amended to establish Section 7.32.040 to read as follows:

7.32.040 Theft by receiving

(1) A person commits the crime of theft by receiving if the person receives, retains, conceals or disposes of property of another knowing or having good reason to know the property was the subject of theft.

(2) "Receiving" means acquiring possession, control or title, or lending on security of the property.

Section 6. Albany Municipal Code Chapter 1.05, Sections 1.05.010 (5) and (6) are amended to read as follows:

(5) The complaint shall contain a form of certificate by the complainant to the effect that he/she certifies that he/she has reasonable grounds to believe, and does believe, that the person charged committed the infraction or misdemeanor contrary to law. The certification, shall also set forth that the person understands that they make the certificate under the penalties provided by law. ~~if made by a person charged with the enforcement of municipal ordinances, a police officer, the City Attorney, or his/her assistant, need not be made under oath, before a magistrate or any other person. A private person shall certify under oath before an officer authorized to administer oaths, and this action shall appear on the summons and complaint copies.~~

(6) The summons shall contain a statement in form approved by the Municipal Judge, which may be substantially as follows:

READ CAREFULLY

~~This document is a Summons requiring you to "appear" in the Albany Municipal Court on or before the appearance date on the face of this Summons. Another copy of this document called a "Complaint" will be filed with the court before that time. You must do one of the following things:~~

~~(1) You may personally appear in court at the time set in this Summons and either file what is called a "motion" or "demurrer" to the Complaint or enter an "Answer". Your Answer may be either an admission that you are responsible or a denial of responsibility for the infraction charged, or that you do not contest the charge. You may appear in court at certain other times before the times set in the Summons and may find out when you can appear by calling the Municipal Court Clerk.~~

~~(2) You may mail this Summons to the court, together with a check or money order in the amount of forfeiture indicated on the Summons, and tell the court you request a hearing. The Summons and the forfeiture deposit must reach the court before the time set for your appearance. A time will be set for your hearing and you will be notified of the time at your address as it appears on the face of the Summons, unless you give the court a different address when you send in the Summons. If you fail to appear at the hearing, unless excused in advance by the court, your deposit will be forfeited and judgment will be entered for the City.~~

~~(3) You may sign the Answer of No Contest below and send this Summons to the court along with a check or money order in the amount of forfeiture indicated on the Summons. If you wish to explain your side of the incident, you may send a written explanation with the Summons and forfeiture. The court will then consider your explanation and may remit (refund) your forfeiture or any part of it, on the basis of your explanation and any other information the court wishes to consider. The Summons and the forfeiture must reach the court before the time set for your appearance.~~

~~**IF YOU FAIL TO MAKE AN "APPEARANCE", EITHER IN PERSON OR IN WRITING ACCORDING TO ONE OF THESE THREE OPTIONS, ON OR BEFORE THE TIME SET FOR YOUR APPEARANCE, YOU MAY BE GUILTY OF "WILLFUL FAILURE TO APPEAR". WILLFUL FAILURE TO APPEAR IS A MISDEMEANOR, PUNISHABLE BY FINE AND IMPRISONMENT. IF YOU ARE CHARGED WITH THIS CRIME, THE COURT WILL ISSUE A WARRANT FOR YOUR ARREST.**~~

~~If you wish to enter an Answer of "No Contest", sign below and send this Summons, the forfeiture and any written explanation you want to give to:~~

~~ALBANY MUNICIPAL COURT
P.O. Box 490
Albany, Oregon 97321~~

~~I WISH TO ENTER AN ANSWER OF NO CONTEST:~~

~~Respondent's Signature~~

READ CAREFULLY

YOU MUST DO ONE OF THE FOLLOWING:

1. Appear in Court at the time mentioned in this summons and request a hearing. The Court will then set a time for a hearing. **IF YOU HAVE BEEN CHARGED WITH A MISDEMEANOR CRIME AS SET FORTH ON THE FRONT OF THIS FORM (SEE BOX ON FRONT SIDE, TOP OF PAGE) YOU MUST APPEAR IN PERSON AT THE TIME MENTIONED IN THIS SUMMONS. IF YOU FAIL TO MAKE AN APPEARANCE IN PERSON YOU MAY BE GUILTY OF THE MISDEMEANOR CRIME OF WILLFUL FAILURE TO APPEAR PUNISHABLE BY FINE AND IMPRISONMENT.**

2. **IF YOU ARE CHARGED WITH AN INFRACTION, YOU MAY:** Mail to the Court this summons, together with a check or money order in the amount of bail indicated on the other side of the summons and tell the Court you request a hearing. This summons and the bail must reach the Court before the time when this summons requires you to appear in Court. If you don't want a hearing, but wish to explain your side, send your explanation with the summons and bail. The Court will then consider your explanation and may forfeit your bail, or part of it, on the basis of your explanation and what the complainant tells the Court.

3. Sign the plea of guilty below and send this summons to the Court, together with check or money order in the amount of bail indicated on the other side of this summons. If you wish to explain your side, you may send your explanation with the guilty plea, summons and bail. This summons and bail must reach the Court before the time when this summons requires you to appear in Court.

4. If you have already given bail or other security for your appearance, proceed as mentioned above, but do not send in any additional sum as bail.

APPEARANCE PLEA OF GUILTY AND WAIVER FOR INFRACTION

I, the undersigned, do hereby enter my appearance on the complaint of the infraction charged on the other side of this summons. I have been informed of my right to a trial, that my signature to this plea of guilty will have the same force and effect as a judgment of Court. I do hereby PLEAD GUILTY to said offense as charged, WAIVE my right to a HEARING by the Court, and agree to pay the penalty prescribed for my offense.

(Defendant's Name)

(Address)

Mail your Remittance to: Municipal Court
P.O. Box 490
Albany, Oregon, 97321

Section 7. Albany Municipal Code Chapter 1.04, Section 1.04.020 is hereby amended to read as follows:

1.04.020 Procedure for the prosecution of certain misdemeanors as infractions.

(1) Upon or before the appearance of the defendant upon any Albany Municipal Code charge of ~~the misdemeanor charges enumerated in AMC 1.04.030~~, before the court receives the defendant's plea, the City Attorney, or his/her designee, shall declare, in open court or in writing, the intention whether or not to treat the offense in the case as a violation subject to the infraction penalty and procedures set forth in this code. The case shall proceed as violation, subject to the infraction penalty and procedures, unless the City Attorney affirmatively states, in open court or in writing, that the case shall proceed as a misdemeanor. If the case proceeds as a violation, the accusatory instrument shall be deemed amended to denominate the offense as an infraction and the offense, for purposes of the case, shall thereafter be treated as an infraction, subject to the penalty provided in AMC 1.04.010. If the City Attorney, or his/her designee, declares an intention to treat the offense as a misdemeanor, the offense in the case shall thereafter continue to be treated as a crime. If the offense is denominated an infraction pursuant to this subsection, the court shall, when it enters judgment in the case, clearly denominate the offense as an infraction in the judgment order.

(2) Conviction of an infraction does not give rise to any disability or legal disadvantage based upon conviction of a crime.(Ord. 4907 § 1, 1990).

Section 8. Albany Municipal Code Chapter 1.04 is hereby amended to repeal Section 1.04.030 which read as follows:

~~**1.04.030 Misdemeanors which may be prosecuted and punished as infractions.**~~

~~Violation of the following sections of the Albany Municipal Code shall be misdemeanors which may be prosecuted and punished as infractions, pursuant to AMC 1.04.020, above.~~

~~(1) Title 6, Animals.~~

~~(2) Chapter 7.28, Park Regulations.~~

~~(3) Chapter 7.52, Littering.~~

~~(4) Chapter 76.84, Public Nuisance.~~

~~(5) Title 20, Section 1.060, Development Permits Required.~~

~~(6) Title 20.18, The Albany Sign Code.~~

~~(7) Title 20, Article 16, Home Occupations.~~

~~(8) Title 20, Article 21.110, Violation of a Development Permit.~~

~~(9) Title 20, Article 8, Environmental Performance Standards.~~

~~———— (10) Chapter 7.74, Burglary and Robbery Alarms.~~

~~———— (11) Section 7.08.052, Sound Amplifying Paging Systems. (Ord. 4998 § 2, 1992; Ord. 4923 §1, 1990; Ord. 4907 § 2, 1990).~~

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Section 9. Albany Municipal Code Chapter 1.05 is hereby amended to repeal Section 1.05.060 which read as follows:

~~1.05.060 — List of infractions.~~

~~Violation of the following sections of Albany Municipal Code shall be infractions:~~

- ~~(1) Section 7.36.020, Lodging Accommodations.~~
- ~~(2) Chapter 7.68, Obstruction of Passageways.~~
- ~~(3) Section 7.80.080, Unlawfully Using Slugs.~~
- ~~(4) Section 17.28.150, Fireworks.~~
- ~~(5) Title 20, Article 6, Development Siting Requirements — Lot Size, Density, Setbacks, Coverage and Height Limitations.~~
- ~~(6) Title 20, Article 7, Site Improvements — Landscaping, Buffering, Fences, Parking, Driveways.~~
- ~~(7) Section 13.36.180, Motor vehicle use for sleeping or housekeeping purposes.~~
- ~~(8) Chapter 13.22, Traffic Congested Thoroughfares. (Ord. 4907 § 3, 1990; Ord. 4838 § 2, 1988; Ord. 4827 § 1, 1988; Ord. 4812 § 2, 1988).~~

Section 10. Albany Municipal Code Chapter 13.36 is hereby amended to repeal Section 13.36.040 which read as follows:

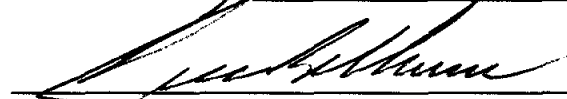
~~13.36.040 — Drunk in motor vehicle.~~

~~It is unlawful for any person to be intoxicated while an occupant of a motor vehicle on any street in this City.~~

Section 11. Emergency Declared:

It is hereby adjudged and declared that this ordinance is necessary for the immediate preservation of the public peace, health and safety of the City of Albany, and an emergency is hereby declared to exist, and this ordinance shall take effect and be in full force and effect when passed by the Council and signed by the Mayor.

PASSED BY THE COUNCIL: August 10, 1994
 APPROVED BY THE MAYOR: August 10, 1994
 EFFECTIVE DATE: August 10, 1994



 Mayor

ATTEST:


 City Recorder (Deputy)