

TITLE: AN ORDINANCE ESTABLISHING A CIVIL INFRACTION PROCEDURE FOR VIOLATION OF CERTAIN PROVISIONS OF THE ALBANY MUNICIPAL CODE; AMENDING SAID CODE; PROVIDING A SCHEDULE FOR FORFEITURES FOR VIOLATION OF CERTAIN PROVISIONS OF THE ALBANY MUNICIPAL CODE; REPEALING THE PENALTY SECTIONS OF CERTAIN PORTIONS OF THE ALBANY MUNICIPAL CODE.

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

Section 1: Establishment and Purpose

a. A procedure to handle certain violations of the Albany Municipal Code as civil infractions, subject to the provisions set forth below, is hereby established, pursuant to the Home Rule Powers of the City of Albany, granted under Article IV Section 1 and Article IX Section 2 of the Oregon Constitution and Sections 4 and 5 of the Albany City Charter.

b. A civil infraction procedure is established for the purpose of decriminalizing penalties for violations of certain civil ordinances and for the purpose of providing a convenient and practical forum for the civil hearing and determination of cases arising out of said violations.

Section 2: Definitions. For the purpose of this ordinance the following definitions apply:

a. Infraction: An offense against the City in a form of a violation of one of the City ordinances or sections of the Albany Municipal Code designated in Section 3, constitutes a City infraction and shall be handled in accordance with the procedures established by this ordinance. When an infraction is of a continuing nature, a separate infraction shall be deemed to occur on each calendar day the infraction continues to exist and a separate citation may be filed for each such infraction.

b. Forfeiture; Forfeiture Schedule. The only penalty to be imposed for an infraction is a monetary penalty called a forfeiture. The appropriate forfeiture to be assessed for a specific infraction shall be determined from the forfeiture schedule in Section 6. The procedure prescribed in this ordinance shall be the exclusive procedure for imposing forfeitures; however, this Section shall not be read to prohibit in any way any other alternative remedy set out in any ordinance or section of the Albany Municipal Code covered by this infraction procedure, which is intended to abate or alleviate code or ordinance violations, nor shall the City be prohibited from recovering, in a manner prescribed by law, any expense incurred by it in abating or removing ordinance or code violations pursuant to said code or ordinances.

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c. Person. The term "person" as used in this ordinance shall be construed to include any person, firm, partnership, corporation, or association of persons.

Section 3: Application and Amendment. The civil infraction procedure prescribed by this ordinance applies to and hereby amends the Albany Municipal Code as it pertains to the following matters: Section 5.04 Business licenses; 5.12 Taxi-cabs; 5.16 Ambulances; 5.24 Junk dealers, pawnbrokers and second-hand dealers; 5.40 Septic Tank cleaning service; 5.44 Funeral escort service; 5.48 Fire and going-out-of-business sales; 6.08 Keeping of bees; 9.04 Maintenance of property; 9.12 Construction site toilet facilities; Zoning and Land Use Regulations; 14.04 Encroachment permit; 14.16 Sidewalk repairs; 14.20 Overhanging vegetation; 14.22 Tree maintenance; 17.04 Fire code; 17.16 Flammable liquids; 18.04 Building codes; 18.08 Electrical codes; 18.12 Plumbing codes; 18.16 dangerous buildings; 18.20 Mobile Home Parks; 18.24 Coin-operated dry cleaners; 18.28 Swimming pools; 18.32 Sign code; 19.04 Housing Code. Ordinances or Amendments to the Albany Municipal Code enacted after the effective date of this ordinance which requires a forfeiture provision for their enforcement, shall expressly incorporate the infraction procedure set out herein.

Section 4: Infraction Procedure.

a. Reporting. All reports of infractions covered by this ordinance will be made to the City Manager or his designated representative.

b. Prior Written Notice. When an infraction of a City ordinance or the code covered by this procedure is brought to the attention of the City Manager or his designated representative, he may determine that the responsible party be given written notice of the infraction and allow a specified length of time in which the infraction may be remedied before further action is taken. The notice, signed by the City Manager or his designated representative, shall be sent by certified or registered mail, return receipt requested. Refusal to accept the notice as mailed shall be deemed receipt thereof. The notice shall contain the following information:

1. Sufficient description of the activity in violation to identify the infraction with the recipient of the notice.
2. A statement that the activity in question has been found to be an infraction with a brief and concise description of the nature of the infraction.
3. A statement of the action required to remedy the infraction and a date by which remedy must be completed or begun.
4. A statement advising that if the required abatement is not completed or commenced within the time specified, a civil complaint will be filed in the Albany City Municipal Court,

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a summons will be issued for the person to appear to answer the complaint, and that a forfeiture in the maximum amount scheduled could be imposed.

c. Uniform Infraction Citation and Complaint.

1. If the recipient of a prior written notice fails to comply with the provisions set out therein, a Uniform Infraction Citation and Complaint signed by the City Manager or his designated representative, shall be filed with the Municipal Court, charging the recipient of the prior written notice with a civil infraction and setting a date for said person to appear before the Municipal Court to answer said complaint.

2. The City Manager or his designated representative shall prescribe the form of Uniform Infraction Citation and Complaint but it shall consist of at least three parts. Additional parts may be inserted for administrative purposes by those charged with the enforcement of the ordinances. The required parts are:

- a) The Complaint
- b) The City Department Record
- c) The Summons

3. Each of the three parts shall contain the following information:

- a) The name of the Court and the Court's file number.
- b) The name of the person or persons cited.
- c) The infraction with which the person is charged, the date, time and place the infraction occurred, or if the infraction is of a continuing nature, the date, time and place the infraction was observed by the City Manager or his designated representative, the date on which the Citation was issued, and the name of the complainant.
- d) The scheduled forfeiture for the alleged infraction.
- e) The time and place at which the person cited is to appear in Court.
- f) Whether a prior written notice was previously issued to the cited person for the same infraction.

4. The complaint shall contain a form of verification by the City Manager or his designated representative that he swears that he has reasonable grounds to believe, and does believe, that the person cited committed the infraction.

5. The summons shall also contain notice to the person cited that a civil complaint will be filed in the Municipal Court of the City of Albany.

d. Summons. If the cited person resides within the territorial jurisdiction of the City of Albany, service shall be personal; otherwise, service shall be by certified or registered mail, return receipt requested.

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e. Answer.

1. A person who receives a summons for an infraction shall answer such summons by personally appearing to answer at the time and place specified therein, except an answer may be made by mail or personal delivery to the Municipal Court Clerk within ten (10) days of the date of the receipt of the summons as provided in subsections (2) and (3) of this section.
2. If a person alleged to have committed an infraction admits the infraction, he may complete the appropriate answer on the back of each summons and forward the summons to the Municipal Court. A check or money order in the amount of the forfeiture for the infraction alleged as shown on the face of the summons shall also be submitted with the answer.
3. If the person alleged to have committed the infraction denies part or all of the infraction, he may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security in the amount of fifteen dollars (\$15.00) for Court fees to the Municipal Court Clerk. Upon receipt, the answer shall be entered and a hearing date established by the Municipal Court. The Municipal Court shall notify the person alleged to have committed the infraction by return mail, of the date of the hearing. The security received shall be returned upon appearance of the person alleged to have committed the infraction for the hearing, except as otherwise provided in this ordinance. The security deposit may be waived in whole or in part at the discretion of the Municipal Court for good cause shown and upon written application of the person alleged to have committed the infraction setting forth the reason for requesting the waiver and certifying that the person alleged to have committed the infraction will attend the hearing when scheduled.
4. The Court may, in any case, after notice, require the cited person to appear for a hearing.

f. Hearing.

1. Every hearing to determine whether an infraction has occurred shall be held before the Municipal Court without a jury.
2. The hearing shall be limited to production of evidence only on the infraction alleged in the complaint.
 - a) Oral Evidence. Oral evidence shall be taken only on oath or affirmation.
 - b) Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in Courts of competent jurisdiction in this State.

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- c) Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in Courts of competent jurisdiction in this State.
 - d) Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.
3. The defendant shall have the right to present evidence and witnesses in his favor, to cross-examine witnesses who testify against him and to submit rebuttal evidence.
4. If the person alleged to have committed the infraction desires that witnesses be ordered to appear by subpoena, he must so request in writing from the Court at the time the answer is returned, or subsequently by mail at any time five (5) days prior to the scheduled hearing. A ten dollar (\$10.00) deposit for each witness shall accompany the request, such deposit to be refunded, as appropriate, if no forfeiture is assessed by the final order. The City and the defendant may also request the Court that certain witnesses be ordered to appear by subpoena. If a forfeiture is declared in the final order, the order shall also provide that the person ordered to forfeit shall pay any witness fees payable in connection with the hearing.
5. The defendant may be represented by counsel, but counsel shall not be provided at public expense. If defense counsel is to appear, written notice shall be provided to the Municipal Court five (5) days prior to the hearing date, excluding weekends and holidays.
6. The City shall have the burden of proving the alleged ordinance infraction by a preponderance of the evidence.
7. After due consideration of the evidence and arguments presented at the hearing, the Court shall determine whether the infraction as alleged in the complaint has been established. When the infraction has not been established, an order dismissing the complaint shall be entered in the Municipal Court records. When a determination is made that an infraction has been established, or if an answer admitting the infraction has been received, an appropriate order shall be entered in the Municipal Court records. A copy of the order shall be delivered to the person named in the order personally or by mail. When an infraction has been determined established, the order shall include a brief statement of the necessary findings of fact to establish the infraction alleged.
8. Unless otherwise provided by ordinance, upon a finding that an infraction has occurred, the Court shall assess the forfeiture shown on the schedule established in accordance with this ordinance plus Court costs.
9. There shall be no administrative appeal or legal review from a determination by the Municipal Court of an infraction violation. However, each person assessed a forfeiture under this section shall be advised in writing (to be delivered with the final order

disposing of the matter) that, even though no direct right of appeal exists, it is possible that a Writ of Review or other appropriate legal relief might be obtained.

Section 5: Enforcement.

- a. If a cited person fails to answer the summons or appear at a scheduled hearing as provided herein, a default judgment shall be entered for the scheduled forfeiture applicable to the charged infraction. In addition, when a person fails to appear for a requested hearing an additional fifteen dollars (\$15.00) shall be ordered forfeited, with any security posted to be credited to this amount.
- b. After a hearing and determination by the Municipal Court that an infraction has occurred, the Court shall assess the scheduled forfeiture applicable to the determined infraction. Such forfeitures are payable upon receipt of the final order declaring the forfeiture.
- c. Delinquent forfeitures and those brought to default judgment which were assessed for infractions occurring on real property or for improper use of real property may be held as City liens against said real property and collected in the same manner as other such debts owing to the City.
- d. Nothing in this section shall limit the City from revoking or denying any City license or permit held or desired by a person owing a forfeiture to the City.

Section 6: Schedule of Forfeitures.

- a. Infractions are classified for the purpose of determining forfeitures into the following categories:
 1. Class A infractions
 2. Class B infractions
 3. Class C infractions
 4. Class D infractions
- b. An assessment of a forfeiture for an infraction shall be an assessment to pay an amount not exceeding:
 1. \$500.00 for a Class A infraction
 2. \$250.00 for a Class B infraction
 3. \$100.00 for a Class C infraction
 4. \$ 50.00 for a Class D infraction
- c. Infractions of specific City Code provisions are classified as follows:

<u>ALBANY MUNICIPAL CODE SECTION NO.</u>	<u>CLASS</u>
5.04	B
5.12	B
5.16	B
5.24	A

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5.40	A
5.44	B
5.48	A
6.08	C
9.04	B
9.12	A
14.04	C
14.16	C
14.20	C
14.22	C
17.04	A
17.16	A
18.04	A
18.08	A
18.12	A
18.16	A
18.20	B
18.24	A
18.28	B
18.32	A
19.04	B
Zoning and Land Use Regulations	C

Section 7: Repealer. The penalty provisions as provided under Albany Municipal Code as they relate to the above cited sections, or any penalty section as provided for in any uniform code adopted by the City of Albany, are hereby repealed.

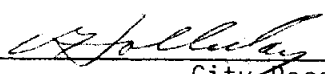
Section 8: Severability Clause. If any section, subsection, provisions, clauses, or paragraph of this ordinance shall be adjudged or declared by any Court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of this ordinance; and it hereby is expressly declared that every other section, subdivision, paragraph, provision, or clause of this ordinance would have been enacted, irrespective of the enactment of validity of the portion hereof declared or adjudged to be unconstitutional or invalid.

This ordinance proposed by the City Attorney's office.

Passed by the Council: September 27, 1978
 Approved by the Mayor: September 27, 1978
 Effective Date : October 27, 1978



 Mayor

ATTEST:


 City Recorder