

ORDINANCE NO. 637

Ord. No
637
Rep 1506

An Ordinance defining and declaring certain places, rooms, houses, intoxicating liquors and other property within the corporate limits of the City of Albany nuisances, and providing for the suppression thereof, to prevent intoxication therein; and providing for taking possession of and destroying certain intoxicating liquors within the limits of said City of Albany, and providing penalties and punishment for certain violations of this ordinance; and also prescribing certain rules of evidence in trials in the Recorder's Court of said City for certain violations of this Ordinance.

The People of The City of Albany Do Ordain As Follows:

Section 1. Every place, room or house within the corporate limits of the City of Albany kept for the unlawful sale of intoxicating liquors or where such liquors are sold unlawfully, and every place, room or house where such liquors are unlawfully kept for sale within such limits, and every place, room or house within said city of Albany where persons are permitted to resort or assemble for the purpose of drinking such liquors, and all places, rooms or houses within the limits of said city where intoxicating liquors are sold, bartered, disposed of or given away in violation of any law or of this ordinance, or where persons are permitted to resort for the purpose of drinking intoxicating liquors as a beverage, or where intoxicating liquors are kept for sale, barter or delivery in violation of any law or of this ordinance, and all intoxicating liquors, bottles, glasses, kegs, puns, bars, tables and all other property of any kind kept in or used in maintaining any such place, room or house within said city are hereby defined and declared to be nuisances. And every person who maintains or assists in maintaining any such nuisance within said city, shall upon conviction thereof in the Recorder's court of said city, be punished therefor by a fine of not less than \$10⁰⁰ nor more than \$200⁰⁰, and the costs of the action, or by imprisonment in the city jail not less than 5 days nor more than 100 days and shall stand committed until such fine and costs be paid. If any person shall be convicted a second time for violating any of the provisions of this section, such person shall be punished for such record and each subsequent violation of this section by both such fine and imprisonment.

Section 2. Upon the filing of a complaint in the Recorder's court of said city alleging that any place, room or house within the corporate limits of the city of Albany is kept or maintained as a nuisance by one person or persons, and that intoxicating liquors, bottles, glasses, kegs, puns, bars, tables or other

property of any kind, are kept or used therein in keeping and maintaining such place, room or house as a nuisance, a warrant shall be forthwith issued by the Recorder of said city directed to the Marshal of said city or any policeman thereof, commanding such Marshal or Policeman to arrest the person or persons charged, or described as the keeper or keepers thereof, and to immediately and thoroughly search such place, room or house described in such complaint, and to seize and take into his custody and possession all intoxicating liquors, glasses, bottles, kegs, pumps, bars, tables and other property described in such complaint which such officer may find at such place, room or house, and to safely keep the same subject at all times to the order of the Recorder's court. It shall be the immediate duty of the officer receiving such warrant to immediately go to such place, room or house and demand admittance into such place, room or house, and upon admittance thereto being refused him, such officer is hereby authorized and required by law to immediately force open the place, room or house described in such complaint and execute such warrant. Such complaint shall describe the place, room or house to be searched with sufficient particularity as to enable the officer to identify the same, and shall describe the intoxicating liquors or other property alleged to be used in maintaining such nuisance as particularly as is practicable; but any description however general, that will enable the officer executing such warrant to identify the property described by such complaint to be seized shall be deemed sufficient. Upon the return of such warrant into the Recorder's court, said court shall proceed, as in other cases, against the person or persons arrested. Such officer without a warrant, may seize intoxicating liquors whenever found within said city by him under such circumstances as would have justified his search for and seizure thereof if armed with a warrant, and he may arrest any person found in the act of unlawfully selling intoxicating liquors, but he shall within a reasonable time thereafter procure a warrant and make a return thereof to said court of what he has already done.

Section 3. Whenever any intoxicating liquors or other property shall be seized, whether under a warrant or not, and whether an arrest has been made or not, a notice signed by the Recorder shall issue within forty-eight hours after the return of the warrant, in the same manner as a summons, directed to the defendant in such action and to all persons claiming any interest in such intoxicating liquors or other property, and fixing a time and place at which all persons

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claiming any interest therein may appear and answer the complaint made against such intoxicating liquors or other property, and show cause, if any they have, why the same should not be adjudged forfeited and ordered destroyed. Such notice shall be served upon the defendant or defendants in the action in the same manner as a summons, if they be found within said city of Albany, and a copy thereof shall also be posted in a conspicuous place on the place, room or house wherein such intoxicating liquors, was seized. If at the time for filing answer said notice has not been duly served, or other sufficient cause appears, the time for answering may be by the court extended or enlarged, and such other notice issued as will supply any defect in the previous notice, and give reasonable time and opportunity for all persons interested to appear and answer. At or before the time fixed by the notice, any person claiming any interest in such intoxicating liquors or other property seized may file his answer in writing, setting up his claim thereto, and shall thereupon be admitted as a party defendant to the proceedings against such liquors or other property. The complaint and answer or answers that may be filed shall be the only pleadings required; and at the time fixed for answering, or at any other time then to be fixed by the court, a trial shall be had in a summary manner in said court of the allegations of the complaint and answer, if any answer there be, against such liquors or other property seized; and whether any answer be filed or not, it shall be the duty of the city attorney, if there be one, to appear and adduce evidence in support of the allegations of the complaint.

Section 4. If it shall be found in said court that such intoxicating liquors or other property, or any part thereof, were at the time the complaint was filed being used in maintaining a nuisance, the Recorder shall adjudge forfeited so much thereof as found as being so used, and shall order the officer in whose custody it is to publicly destroy the same; so much of such intoxicating liquors or other property as the court shall not find to have been used in maintaining a nuisance, he shall order returned by the officer in whose possession it is, to the place as nearly as may be, whence it was taken, and deliver it to the person establishing his claim to the same. If the court shall find that any of said liquors or other property was at the time the complaint was filed used in maintaining a nuisance and shall also find that it was being so used by any person served with the notice hereinbefore provided, or any person filing an answer, or that it was then used by any such person and by him knowingly allowed to be so used, the court shall render judgment against such person

for the costs and disbursements of the proceedings against the intoxicating liquors or other property so used or owned by him. If the court shall not find any of said intoxicating liquors or other property seized was at the time the complaint was filed being used in maintaining a nuisance, or shall not find that any of it was being so used or so owned and allowed to be so used by any person served with the notice aforesaid or voluntarily becoming a party as aforesaid, the costs and disbursements of the proceedings against such property shall be paid as in other offenses against the city ordinances.

Section 5. If any tenant of any place, room or house within the corporate limits of the city of Albany uses such premises or any part thereof in maintaining a nuisance, as hereinbefore defined and declared, or knowingly permits such use by any other, such use shall render void the lease under which he holds, and shall cause the right of possession of such premises to immediately revert to the owner or lessor, who may without process of law, make immediate entry upon such premises or may avail himself of the remedy provided by law for the forcible detention thereof. Any one who knowingly permits any building or tenement within said city of Albany owned or held by him or under his control, or any part thereof, to be used in maintaining a nuisance, or, after being notified in writing of such use, omits or fails or refuses to take all reasonable measures to eject therefrom the person or persons using the same, shall be deemed guilty of assisting in maintaining such nuisance.

Section 6. Every person who shall directly or indirectly, keep or maintain, by himself or by associating or combining with others or with another, or who, shall in any manner aid, assist or abet in keeping or maintaining any club-room or other place within said city of Albany in which any intoxicating liquors is received or kept for the purpose of use, gift, barter or sale as a beverage, or for distribution among the members of any such club or association by any means whatever, and every person who shall use, barter, sell or give away, or assist or abet another in bartering, selling or giving away any intoxicating liquor so received or kept, shall upon conviction thereof in the Recorder's court be punished by a fine of less than \$10.⁰⁰ nor more than \$200.⁰⁰, and the costs and disbursements of the action, or by imprisonment in the city jail not less than 5 days nor more than 100 days.

Section 7. In a prosecution under this ordinance, it shall not be necessary to state in the complaint the kind of intoxicating liquor sold or used; nor in prosecutions for maintaining or assisting in maintaining any place as a nuisance, the name of the person to whom sold; nor to show or knowledge of the principal, to convict for the act of the agent or servant; nor shall it be necessary in the first instance for the city to prove that the party charged is not a practicing physician or licensed pharmacist or assistant pharmacist acting under the laws of this state, nor is it the party charged but not have a permit to sell intoxicating liquors, and the members, shareholders or associates in any club or association mentioned in section 6 of this ordinance shall be competent witnesses to prove any violation of the provisions of said section 6, or of this ordinance or any fact tending thereto. No person shall be excused from testifying touching any offence committed by another against any of the provisions of this ordinance by reason of his testimony tending to criminate himself (the witness) but the testimony given by such person shall in no case be used against him; and in all cases the persons to whom intoxicating liquors shall be sold, bartered or given to in violation of this ordinance shall be competent witnesses. The issue of a license or internal revenue license or tax stamp by the Federal Government to any person for the sale of intoxicating liquors shall be prima facie evidence that such person is selling, exchanging, bartering or giving away intoxicating liquors. The giving away of intoxicating liquors or any shifts or device to evade the provisions of this ordinance shall be deemed and held an unlawful act within the provisions of this ordinance. A delivery of intoxicating liquor in or from any building or place other than a dwelling house, shall be deemed prima facie evidence of a sale. The words "give away" wherever they occur in this ordinance shall not apply to the giving away of intoxicating liquor to a person at his home in his private dwelling, unless such to a minor or common drunkard, or unless private dwelling be a nuisance as set forth, defined and declared by this ordinance. To convict for maintaining or assisting in maintaining any place as a nuisance, it shall not be necessary to prove an actual sale of intoxicating liquor. If fluids are poured out or otherwise destroyed by the tenant, assistant or other persons, whose premises are about to be searched, or manifestly for the purpose of preventing their seizure by officers authorized to make such search and seizure,

such liquors may be held to have been intoxicating liquors and intended for unlawful sale and the penalties shall be the same as if such liquors had been seized. In all prosecutions for maintaining or assisting in maintaining a nuisance as defined and declared by this ordinance, common fame shall be competent evidence in support of the complaint, and general reputation shall be received in evidence to establish the character of any bar, room or house as a nuisance; and the finding of intoxicating liquors in the possession of one not legally authorized by this ordinance to sell the same, except in a private dwelling house not used in connection with a place of business, shall be prima facie evidence that such liquor is kept or sold in violation of law and of this ordinance.

Section 8. Whenever it shall be adjudged by the Recorder's court in any proceeding therein for that purpose that any place, room or house is being kept as a nuisance or maintained as such within the corporate limits of said city as defined and declared by this ordinance, the same shall be at once ordered by said court to be suppressed and abated, and the Marshal of said city shall immediately execute such order of said court by publicly destroying all the intoxicating liquors and other property used in maintaining said nuisance, except that no house or other building shall be destroyed or injured in abating or suppressing any nuisance.

Passed by the Council, August 9/13

Attest:

Approved by the Mayor, August 2nd 1913

F. P. Van Tassel
Recorder of the City of Albany

J. J. Giesse
Mayor

Ordinance Albany, Oregon

CITY RECORDER'S CERTIFICATE

STATE OF OREGON.
COUNTY OF LINN.

I, F. B. Van Tassel, Recorder of the City of Albany, in Linn County, and State of Oregon, do hereby certify that the foregoing and annexed copy of

Ordinance No. 637

has been by me carefully compared with the original *Ordinance Bill No. 703* now on file in my office, and that it is a true and correct copy of all and the whole of said

Ordinance Bill No. 703, as passed by the Council of the City of Albany, Oregon, May 1st 1913

Witness, my hand and official signature and the seal of the City of Albany, this

2nd day of *May* 1913

F. B. Van Tassel

Recorder of the City of Albany.