

ORDINANCE NO. 4812

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTER 1.04, GENERAL PENALTIES, CREATING CHAPTER 1.05, INFRACTION PROCEDURES, CLASSIFYING CERTAIN OFFENSES AS CIVIL INFRACTIONS, ESTABLISHING A PROCEDURE FOR ADJUDICATING INFRACTIONS, AND THE PENALTY THEREFORE.

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

Section 1: Albany Municipal Code Section 1.04.010, General Penalty, is amended to read as follows:

1.04.010 Penalty for violation. ~~Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ordinances of the City of Albany shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the ordinances of the City of Albany shall be punished by a fine of not more than twenty-five hundred dollars (\$2,500.00), or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the city of Albany is committed, continued, or permitted by any such person, and he shall be punished accordingly.~~

(a) Whenever in this code or in any ordinance of the City of Albany, an act is prohibited or is made or declared to be unlawful or an offense, or the doing of an act is required or the failure to do an act is declared to be unlawful or an offense, the violation of any such provision of the Albany Municipal Code or any other ordinance of the City of Albany shall be either a misdemeanor or an infraction, and shall be punished as provided in this section.

(b) Maximum penalties for offenses shall be as follows:

(1) Infraction - a civil penalty of \$500, or such lesser sum as may be provided in the ordinance defining the offense.

(2) Misdemeanor - a fine of not more than \$2,500 or imprisonment not to exceed one (1) year, or both such fine or imprisonment.

(c) Where an offense is defined in the Albany Municipal Code or any other ordinance of the City of Albany, and no penalty is provided, the offense shall be deemed a misdemeanor.

(d) Every day, or portion thereof, during which any violation of any provision of the Albany Municipal Code or any ordinance of the City of Albany is committed, continued or permitted, shall be a separate offense.

(e) An infraction, as classified in the Albany Municipal Code, is declared to be an offense, but not a crime. It is intended to be an offense which can be disposed of in all respects as a civil proceeding and not governed by procedural, evidentiary, substantive and constitutional rules applicable to criminal charges and proceedings. A person adjudged responsible for an infraction shall not be deemed "guilty" of the infraction and a judgment of responsibility shall not be deemed a "conviction" for any purpose.

(f) Notwithstanding anything in this section or any other ordinance to the contrary, no greater penalty shall be imposed for any violation of the Albany Municipal Code or any ordinance of the City of Albany than the maximum penalty prescribed under Oregon Statute for the same act or omission.

(g) For the purpose of facilitating disposition of infractions, the Municipal Judge may promulgate a schedule of forfeitures for particular

infractions, and the person charged with such an infraction may deposit with the court the amount so scheduled, waive further appearance, and have the sum so deposited forfeited as a plea of "no contest." The court shall not, however, be bound by the schedule on appearance and admission by the person charged, or on trial and judgment against the person charged; the court in such a case may impose any forfeiture allowed by subsection (a) of this section."

Section 2: The Albany Municipal Code is amended by the addition of Chapter 1.05, Infractions Procedures, as follows:

Chapter 1.05

INFRACTIONS PROCEDURES

Sections:

- 1.05.010 Summons and complaint for infractions.
- 1.05.020 Minimum requirements for summons and complaint.
- 1.05.030 Willful failure to appear.
- 1.05.040 Procedure of adjudication of civil penalty.
- 1.05.050 Failure to pay civil penalty.
- 1.05.060 List of infractions.

1.05.010 Summons and complaint for infractions. (a) Except for parking violations under AMC 13.21, a summons and complaint conforming to the requirements of this section shall be used for all infractions under this code.

(b) The summons and complaint shall consist of at least four parts. Additional parts may be inserted for administrative use. The required parts are:

- (1) The complaint.
- (2) The police record.
- (3) The department record (when police department is not citing department).
- (4) The summons.

(c) Each of the parts shall contain the following information or blanks in which such information shall be entered:

(1) The designation "In the Municipal Court of the City of Albany, Oregon," a blank for the court's docket or file numbers, and a blank for the Albany Police Department docket number which number may be entered after the complaint is filed.

(2) The name by which the person charged is known to the complainant.

(3) The infraction with which the person is charged; the date, time, and place, at which the infraction occurred; the date on which the summons was served; and the name of the complainant.

(4) The time and place at which the person charged is to appear in court.

(5) The scheduled forfeiture, if any.

(d) Each of the parts may also contain such additional information as may be required by the court, the City Attorney, or the Chief of Police.

(e) The complaint shall contain a form of certificate by the complainant to the effect that he or she certifies that he or she has reasonable grounds to believe, and does believe, that the person charged committed the infraction contrary to law. The certification, if made by a person charged with the

enforcement of municipal ordinances, a police officer, the City Attorney, or his or 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. A certificate conforming to this subsection shall be deemed equivalent of a sworn complaint.

(f) 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 time set in the Summons and may find out when you can appear by calling the Municipal Court Clerk at 967-4316.

(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

(g) The complaint shall be set aside by the court on motion of the respondent whenever it does not conform to the requirements of this section. Such a motion shall not be a bar to the refileing of an amended complaint. If an amended complaint is filed the summons copy thereof shall be sent by regular mail to the respondent or his/her attorney.

(h) The court may, upon motion, amend the complaint if, in its discretion, it determines that the amendment will not substantially prejudice the rights of the respondent.

1.05.020 Minimum requirements for summons and complaint. A summons and complaint in an infraction proceeding is sufficient if it contains the following:

(a) The name by which the respondent is known to the complainant and the time and place at which the person summoned is to appear in court.

(b) A statement or designation of the infraction in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time, and place at which the infraction is alleged to have occurred.

(c) The amount of forfeiture, if any, fixed for the offense.

(d) A certificate, as provided in AMC 1.05.010 signed by the complainant.

1.05.030 Willful failure to appear. It shall be unlawful for any person who has been served with a summons conforming to AMC 1.05.020 or a citation, order or notice directing an appearance before the Municipal Court in a misdemeanor proceeding, to willfully, or without prior excuse upon good cause shown to the municipal court, fail to appear as required in such summons or citation or notice. Violation of this section is a misdemeanor.

1.05.040 Procedure and adjudication of civil penalty. The procedure to be used for the adjudication of an infraction shall be the same as that prescribed by the Oregon Revised Statutes for the prosecution of traffic infractions before municipal courts.

1.05.050 Failure to pay civil penalty. Any civil penalty referred to in this chapter shall be imposed by order of the Municipal Court and any failure to pay said penalty shall be enforceable through contempt proceedings.

1.05.060 List of Infractions. Violation of the following sections of the Albany Municipal Code shall be infractions:

(a) Title 6, Animals.

(b) Chapter 7.28, Park Regulations.

(c) Section 7.36.020, Lodging Accommodations.

- (d) Chapter 7.52, Littering.
- (e) Chapter 7.68, Obstruction of Passageways.
- (f) Section 7.80.080, Unlawfully Using Slugs.
- (g) Chapter 7.84, Public Nuisances
- (h) Title 20.18, The Albany Sign Code.
- (i) Section 17.28.150, Fireworks.
- (j) Title 20, Section 1.060, Development permits required.
- (k) Title 20, Article 6, Development Siting Requirements - Lot Size, Density, Setbacks, Coverage and Height Limitations.
- (l) Title 20, Article 7, Site Improvements - Landscaping, Buffering, Fences, Parking, Driveways.
- (m) Title 20, Article 16, Home Occupations.
- (n) Section 13.36.180, Motor vehicle use for sleeping or housekeeping purposes.

Section 3: Effective Date

The effective date of this ordinance shall be July 1, 1988.

Passed by Council: April 27, 1988

Approved by Mayor: April 28, 1988

Effective Date: July 1, 1988



 Mayor

ATTEST:



 Deputy City Recorder