

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTERS 1.04 AND 1.05, GENERAL PENALTY AND INFRACTIONS PROCEDURES.

WHEREAS, from time to time it is appropriate to amend the Albany Municipal Code based upon changing conditions; and

WHEREAS, the City Council believes that it is timely to update, revise, and clarify Section 1.04.010 of the Municipal Code (“Penalty for Violation”); and

WHEREAS, the City of Albany recognizes that additional penalties are necessary to address violations of the Albany Municipal Code; and

WHEREAS, “infraction” is more customarily referred to as “violation.”

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Albany Municipal Code Chapter 1.04, is hereby amended to read as follows:

“1.04.010 Penalty for violation.

(1) Except as provided in subsection (2) of this section:

(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 **violation** ~~an infraction~~, and shall be punished as provided in this section.

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

(i) **Violation** ~~Infraction~~ – a civil penalty of **not more than \$1,000** ~~\$500.00~~, or such lesser sum as may be provided in the ordinance defining the offense.

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

(iii) Violations of AMC Title 18 shall have the penalties prescribed therein.

(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~~ **violation**, 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~~ **violation** shall not be deemed “guilty” of the ~~infraction~~ **violation** 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 ~~violations~~ **infractions**, the Municipal Judge may promulgate a schedule of forfeitures for particular ~~violations~~ **infractions**, and the person charged with such an ~~infraction~~ **violation** 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 subdivision (a) of this subsection.

(2) Violation of Chapters 10.06 shall be adjudicated and punished as provided in AMC 10.02.080, Enforcement, and 10.06.090, Penalties.

1.04.020 Procedure for the prosecution of certain misdemeanors as violations ~~infractions~~.

(1) Upon or before the appearance of the defendant upon any Albany Municipal Code charge 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 ~~violations~~ **infraction** penalty and procedures set forth in this code. The case shall proceed as a violation, subject to the ~~violation~~ **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 ~~violation~~ **infraction** and the offense, for purposes of the case, shall thereafter be treated as an ~~violation~~ **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 ~~violation~~ **infraction** pursuant to this subsection, the court shall, when it enters judgment in the case, clearly denominate the offense as an ~~violation~~ **infraction** in the judgment order.

(2) Conviction of an ~~violation~~ **infraction** does not give rise to any disability or legal disadvantage based upon conviction of a crime.”

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

~~Repealed by Ord. 5141.”~~

Section 2: Albany Municipal Code Chapter 1.05, is hereby amended to read as follows:

**“Chapter 1.05
VIOLATIONS INFRACTIONS PROCEDURES**

Sections:

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

1.05.010 Summons and complaint for violations ~~infractions~~.

- (1) Except for parking violations under AMC Chapter 13.21, a summons and complaint conforming to the requirements of this section shall be used for all **violations** ~~infractions~~ under this code.
- (2) The summons and complaint shall consist of at least four parts. Additional parts may be inserted for administrative use. The required parts are:
 - (a) The complaint.
 - (b) The police record.
 - (c) The department record (when police department is not citing department).
 - (d) The summons.
- (3) Each of the parts shall contain the following information or blanks in which such information shall be entered:
 - (a) 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.
 - (b) The name by which the person charged is known to the complainant.
 - (c) The **violation** ~~infraction~~ with which the person is charged; the date, time, and place, at which the **violation** ~~infraction~~ occurred; the date on which the summons was served; and the name of the complainant.
 - (d) The time and place at which the person charged is to appear in court.
 - (e) The scheduled forfeiture, if any.
- (4) 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.
- (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 **violation** ~~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.
- (6) The summons shall contain a statement in form approved by the Municipal Judge, which may be substantially as follows:

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 A VIOLATION 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 ~~VIOLATION INFRACTION~~

I, the undersigned, do hereby enter my appearance on the complaint of the ~~violation 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

(7) 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 re-filing 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.

(8) 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.

(9) The Oregon Uniform Traffic Citation and complaint, used for all violations or crimes where a separate complaint will not be filed, satisfies the requirements of AMC 1.05.010 and 1.05.020.

1.05.020 Minimum requirements for summons and complaint.

A summons and complaint in ~~an violation infraction~~ proceeding is sufficient if ~~contains the following~~ it **uses the Oregon Uniform Traffic Citation and complaint or contains the following:**

- (1) 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.
- (2) A statement or designation of the **violation 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 **violation infraction** is alleged to have occurred.
- (3) The amount of forfeiture, if any, fixed for the offense.
- (4) 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 **violation infraction** shall be the same as that prescribed by the Oregon Revised Statutes for the prosecution of traffic **violations 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 violations infractions.** Repealed by Ord. 5141.~~

Passed by the Council: March 11, 2009

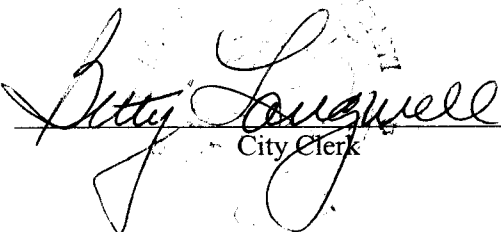
Approved by the Mayor: March 11, 2009

Effective Date: April 10, 2009



Mayor

ATTEST:



City Clerk