

Date 08-31-89
Original Spec Act
Copy Clerk - Ordinance
Proceed

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF KLAMATH

IN THE MATTER OF ADOPTING A UNIFORM)
CIVIL INFRACTION PROCEDURE,) ORDINANCE NO. 57
ESTABLISHING PENALTIES AND DECLARING)
AN EMERGENCY)

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WHEREAS, the current Klamath County Code does not have a uniform procedure to deal with violations of the Code; and

WHEREAS, the use of the injunction process to enforce violations of the Code is time consuming and adds substantial expense to the County while not alleviating the problems; and

WHEREAS, a procedure whereby the Code can be enforced by citations to court will promote the effective enforcement of the Code;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS FOR KLAMATH COUNTY HEREBY ORDAINS:

1. Chapter 500 is hereby added to the Klamath County Code and is set forth below:

DIVISION 5
ENFORCEMENT

CHAPTER 500
UNIFORM CIVIL INFRACTION PROCEDURE

500.001 Purpose. A civil infraction procedure has been established for the purpose of decriminalizing penalties for infractions 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.

500.005 Definitions. For the purpose of this ordinance the following mean:

(1) Civil infraction - Commission of an act or omission to act in a manner prescribed by this ordinance or other County ordinance constituting breach or infringement of a section of a County ordinance or of this ordinance constitutes a civil infraction and shall be handled in accordance with the procedures established by this ordinance. When

an infraction is of a continuing nature, except where specifically provided otherwise, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist, and a separate citation may be filed for each such infraction.

(2) Enforcement officer - The County Commissioners or any designee or designees whom the County Commissioners appoints by Resolution or Order to enforce the Code.

(3) Penalty; penalty schedule - The only penalty to be imposed for an infraction is a monetary penalty.. The penalty to be assessed for a specific infraction will be determined pursuant to specific provisions within the ordinance defining the infraction or the penalty schedule found in Section _____ of this ordinance. The procedure prescribed by this ordinance shall be exclusive procedure for imposing a penalty; however, this section shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statute or state law which are intended to abate or alleviate ordinance violations, nor shall the County be prohibited from recovering, in a manner prescribed by law, any expense incurred by it in abating or removing ordinance violations pursuant to any ordinance.

(4) Person - Any natural person or person, firm, partnership, association or corporation.

(5) Prior contact -

(a) Any prior contact between the enforcement officer and the responsible party regarding the alleged infraction, including, but not limited to phone calls, personal oral communication at any location, letters or other forms of written communication, or a prior citation issued for the same or similar infraction.

(b) Prior contact shall be deemed to occur without actual contact between the enforcement officer and a responsible party if the alleged infraction is related to regulated activity for which the County has issued any permit, license, agreement, or written directive required by law or policy of the County in conjunction with the regulated activity. No time limit shall restrict prior contact which is deemed to have occurred under the terms of this section.

(6) Responsible party - The person responsible for curing or remedying an infraction and includes:

(a) The owner of the property or the owner's manager or agent or other person in

control of the property on behalf of the owner;

- (b) The person occupying the property including bailee, lessee, tenant or other person having possession;
- (c) The person who is alleged to have committed or authorized the commission of the infraction.

500.100 Infraction Procedure.

(1) Reporting. All reports or complaints of infractions covered by this ordinance shall be made to the enforcement officer.

(2) Review of Facts By Enforcement officer. When an infraction covered by this procedure is reported to the enforcement officer, the enforcement officer may refuse to proceed further with the matter after a review of the facts and circumstances surrounding the alleged infraction, and upon making a determination that sufficient evidence does not exist to support the allegation that an infraction has occurred or if the enforcement officer deems it in the best interest of the County.

(3) Prior Contact. Before a uniform infraction citation and complaint is issued for a civil infraction the enforcement officer may make a prior contact with the responsible party. Whether a prior contact is made, prior to issuance of a uniform infraction citation and complaint for a civil infraction, is solely within the sound discretion of the enforcement officer while enforcing the best interests of the County.

In making the prior contact, the following information shall be communicated to the responsible party:

- (a) a description or identification of the activity constituting the alleged infraction and identification of the recipient as being the responsible party for the infraction;
- (b) a statement that the enforcement officer has determined the activity to be an infraction;
- (c) a statement of the action required to remedy or cure the infraction and the time and/or date by which the remedy must be completed or begun;
- (d) a statement advising that, if the required abatement is not completed or commenced within the time specified a uniform infraction citation and complaint will issue and that a penalty in the maximum amount provided by Section 7 of this ordinance for that particular infraction

could be imposed.

(4) When the enforcement officer considers it advisable, the enforcement officer may enter into a written agreement resolving the problems which gave rise to the complaint. The agreement shall be known as a voluntary compliance agreement and shall be binding on the responsible party. The fact that a person alleged to have committed a civil infraction enters into such an agreement shall not be considered an admission of having committed an infraction for any purpose.

(5) During the time allowed in the voluntary compliance agreement for the completion of necessary correction action, the County shall hold in abeyance further processing of the alleged violation. If all terms of the voluntary compliance agreement are satisfied, the County shall take no further action concerning the alleged violation other than those steps necessary to terminate the matter.

(6) The failure to comply with any term of the voluntary compliance agreement constitutes a separate Class I Civil Infraction and shall be handled in accordance with the procedures established in this Chapter. The County may also proceed with processing the alleged infraction giving rise to the voluntary compliance agreement.

500.110 Issuance of Uniform Infraction Citation and Complaint.

(1) If the responsible party with whom prior contact was made fails to cure or remedy the alleged infraction or if the enforcement officer does ~~not~~ make a prior contact, a uniform infraction citation and complaint signed by the enforcement officer or any citizen may be filed with the District Court charging the responsible party with the civil infraction and setting a date for the responsible party to appear before the court to answer said complaint.

(2) The enforcement officer shall prescribe the form of the uniform infraction citation and complaint, but it shall consist of at least three pages. Additional pages may be inserted for administrative purposes by those charged with the enforcement of the ordinance. The required pages are:

- (a) the complaint;
- (b) the County department record; and
- (c) the summons.

(3) Each of the three pages shall contain the following information:

- (a) the name of the court and the court's file number, if available;
- (b) the name of the person cited;
- (c) the infraction with which the person is charged;
- (d) 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 enforcement officer, or the citizen signing the complaint;

- (e) the date on which the citation was issued;
- (f) the scheduled penalty for the alleged infraction;
- (g) the time and place at which the person cited is to appear in court to answer the complaint.

(4) The complaint shall contain a form of verification that the person signing the complaint swears that the person has reasonable grounds to believe, and does so believe, that the person cited committed the infraction.

500.120 Summons. Service of the uniform infraction citation and complaint shall be made by personal service upon the responsible party. If personal service cannot be made then service of the uniform infraction citation and complaint shall be in accordance with the Oregon Rules of Civil Procedure.

500.130 Answer.

(1) A person who receives a summons and complaint alleging an infraction shall answer such complaint by personally appearing to answer at the time and place specified therein; except an answer may be made by mail or personal delivery if received by the County within ten days of the date of the receipt of the summons as provided in subsection 2 and 3 below.

(2) If the person alleged to have committed an infraction admits the infraction, the person may complete the appropriate answer on the back of each summons and forward the summons to the District Court. Cash, check or money order in the amount of the penalty for the infraction alleged as shown on the face of the summons shall be submitted with the answer. Upon receipt of the penalty, an appropriate order shall be entered in the District Court records.

(3) If the person alleged to have committed the infraction denies part or all of the infraction, the person may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for court fees. Upon receipt, the answer shall be entered and a hearing date established by the District Court. The District 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 by the person alleged to have committed the infraction for the hearing, except as otherwise provided in this Chapter. The security deposit may be

waived in whole or in part at the discretion of the 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.

500.140 Hearing.

(1) Every hearing to determine whether an infraction has been committed shall be held before the District Court without a jury.

(2) The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense. If legal counsel is to appear, written notice shall be provided to the court at least ten days prior to the hearing date.

(3) The defendant shall have the right to present evidence and witnesses in the defendant's favor, to cross-examine witnesses who testify against the defendant and to submit rebuttal evidence.

(4) The hearing shall be limited to production of evidence only on the infraction alleged in the complaint.

(5) The complainant or, if the County is the complainant, the enforcement officer shall have the burden of proving the alleged ordinance infraction by a preponderance of the evidence.

(6) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the infraction as alleged in the complaint was committed. When the infraction has not been proven, an order dismissing the complaint shall be entered in the district court records. A copy of the order shall be delivered to the person named in the order personally or by mail. When the court finds that the infraction was committed, and upon written request by a party to the hearing, the order shall include a brief statement of the necessary findings of fact to establish the infraction alleged.

(7) Upon a finding that an infraction has occurred, the court shall assess a penalty pursuant to the schedule established in accordance with this Chapter, plus court costs and witness fees. The district court judge is authorized to set reasonable court costs including security for court fees by court order.

500.200 Enforcement.

(1) If a cited person fails to answer the summons or appear at a scheduled hearing as provided herein, a default judgment shall be noted for the scheduled penalty applicable to the charged infraction. In addition, when a person fails to appear for a hearing, the security posted, or an amount equal to the security waived, shall be ordered forfeited. Nothing in this subsection shall be construed to limit in any way the contempt powers of

the district judge granted by State law, and the judge may exercise those powers as the judge considers necessary and advisable in conjunction with any matter arising under the procedures set forth in this Chapter.

(2) Any penalty assessed is to be paid no later than ten days after the receipt of the final order declaring that penalty. Such period may be extended upon order of the district judge.

(3) Delinquent penalties and those brought to default judgment which were assessed for infractions may in addition to any other method be collected or enforced pursuant to ORS 30.310 or 30.315.

500.210 Lien Filing and Docketing.

(1) When a judgment is given in district court in favor of the County for the sum of \$10.00 or more, exclusive of costs or disbursements, the enforcement officer may, at any time thereafter while the judgment is enforceable, file with the Circuit Court clerk a certified transcript of the District Court judgment as set out in ORS 46.274.

500.300 Effect of citation on nuisance. The requirement to abate a nuisance is not a penalty for violating nuisance ordinances, but is an additional remedy. The imposition of a civil infraction penalty does not relieve a person of the duty to abate a nuisance.

500.400 No Mental State Required. Acts or omissions to act which are processed pursuant to the provisions of this ordinance or are designated an infraction by and County ordinance, do not require a culpable mental state as an element of the infraction.

500.450 Non-Exclusive Remedy. The procedures and remedies contained in this ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes or state law which are intended to alleviate ordinance violations or abate nuisances and the procedures set forth in this Chapter shall not be prerequisites for utilizing any of said alternative remedies.

500.900 Schedule of Penalties.

(1) Infractions are classified for the purpose of determining penalties in the following categories:

- (a) Class 1 civil infractions.
- (b) Class 2 civil infractions.
- (c) Class 3 civil infractions.

(2) An assessment of a penalty for an infraction shall be an assessment to pay an amount not exceeding:

- (a) \$500.00 for Class 1 civil infraction;
- (b) \$250.00 for Class 2 civil infraction;

(c) \$100.00 for Class 3 civil infraction;
(3) Infractions of specific Klamath County ordinances are classified as follows:

CODE PROVISION	CLASS
KCC Chapter 100	1
KCC Chapter 110	1
KCC Chapter 120	1
KCC Chapter 160	2
KCC Chapter 250	2
KCC Chapter 400	1
KCC Chapter 401	2
KCC Chapter 402	2
KCC Chapter 403	1
Land Development Code	1

Ordinances enacted after the effective date of this ordinance which provide a penalty provision for their enforcement shall expressly incorporate the infraction procedure set out herein and classify violations thereof in accordance with Section 7 of this ordinance.


500.920 Severability. The provisions of this Chapter are severable. If a portion of this Chapter is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter.


2. The uniform civil infraction procedure prescribed by this ordinance applies to an hereby amends the all cited portions of the Klamath County Code as if fully set forth therein.

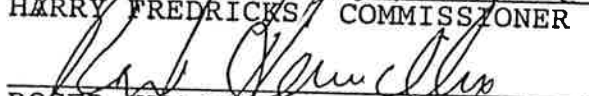
3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance takes effect upon its passage.

Passed and adopted by the Board of County Commissioners this 30th day of August, 1989.

BOARD OF COUNTY COMMISSIONERS


TED LINDOW, CHAIRMAN


HARRY FREDRICKS, COMMISSIONER


ROGER HAMILTON, COMMISSIONER

APPROVED AS TO FORM:


MICHAEL L. SPENCER,
COUNTY COUNSEL