

ORDINANCE NO. 351-2016

AN ORDINANCE AMENDING CHAPTER 1.20, CIVIL INFRACTION PROCEDURES, OF THE HUBBARD MUNICIPAL CODE AND ADDING SUBCHAPTERS 1.20.025, CEASE AND DESIST ORDER AND 1.20.035 CUMULATIVE REMEDIES

Findings

- A. The City Council finds it necessary to amend chapter 1.20, Civil Infraction Procedure, of the Hubbard Municipal Code (HMC) and add subchapters 1.20.025, Cease and Desist Order, and 1.20.035 Cumulative Remedies, to provide a procedure for the City Council to issue cease and desist orders to persons who repeatedly violate the HMC and to clarify that the Hubbard Municipal Court may issue equitable relief.

Based on the findings, the City of Hubbard ordains as follows:

Section 1. The Hubbard Municipal Code chapter 1.20 is amended as set forth in the attached Exhibit A.

Section 2. This Ordinance shall be effective thirty days from its adoption.

WHEREUPON, the Mayor declared the motion to be carried and the ordinance adopted. The foregoing ordinance was passed by the Hubbard City Council this 11th day of October 2016, by the following vote:

Ayes	_____
Nays	_____
Absent	_____

CITY OF HUBBARD, OREGON

By: _____
Jim Yonally, Mayor

ATTEST:

Vickie L. Nogle, MMC
Director of Administration/City Recorder

APPROVED BY THE CITY ATTORNEY:

Beery Elsner and Hammond LLP

Exhibit A

1.20.010 Definitions.

For the purpose of this chapter, the following mean:

(1) Civil Infraction. Commission of an act or omission to act in a manner prescribed by this chapter or by any other city ordinance, constituting breach or infringement of a section of a city ordinance or of this chapter, constitutes a civil infraction. A "civil infraction" shall be handled in accordance with the procedures established by this chapter. A "civil infraction" does not include violations of other city ordinances, where a criminal penalty is provided. 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. A separate citation may be filed for each such infraction.

(2) "Enforcement officer" means the chief of police or any designee appointed in writing by the chief of police to enforce this chapter.

(3) ~~Forfeiture Penalty– Forfeiture Penalty Schedule. The only penalty to be imposed for an infraction is A monetary penalty, called a "forfeiture."~~ The forfeiture penalty to be assessed for a specific infraction will be determined pursuant to specific provisions within the ordinance defining the infraction, or the ~~forfeiture penalty~~ penalty schedule found in HMC 1.20.050. The procedure prescribed by this chapter shall be the exclusive procedure for imposing a penalty ~~forfeiture~~; however, this chapter shall not be read to prohibit in any way alternative remedies set out in ordinances or ~~state statute or~~ state law, which are intended to abate or alleviate 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 violations, pursuant to any ordinance.

(4) "Person" means any natural person or persons, firm, partnership, association or corporation.

(5) "Responsible party" means 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; or

(c) The person who is alleged to have committed or authorized the commission of the infraction.

1.20.020 Infraction procedure.

(1) Issuance of Uniform Citation and Complaint.

(a) When a violation of a city ordinance occurs, a uniform infraction citation and complaint, signed by the enforcement officer may be filed with the municipal court charging the responsible party with the civil infraction and setting a date for the responsible party to appear before the municipal court to answer said complaint.

(b) 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 ordinances. The required pages are:

- (i) The complaint;
- (ii) The city department record; and
- (iii) The summons.

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

- (i) The name of the court and the court's file number;
- (ii) The name of the person cited;
- (iii) The infraction with which the person is charged;
- (iv) 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;
- (v) The date on which the citation was issued;
- (vi) The scheduled ~~forfeiture~~ penalty for the alleged infraction; and
- (vii) The time and place at which the person cited is to appear in court to answer the complaint.

(d) The complaint shall contain a ~~form of~~ certification in which the person signing the complaint states ~~that~~ the person has reasonable grounds to believe, and does believe, that the person cited committed or permitted to be committed the infraction.

(e) The summons shall also contain notice to the person cited that a civil complaint will be filed in the municipal court of the city.

(2) 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.

(3) Answer.

(a) The person receiving a summons and complaint alleging an infraction shall answer such complaint by personally appearing to answer at the time and place specified therein. If received by

the city within ten (10) days of the service of the summons, an answer may be made by mail or personal delivery, as provided in subsections (3)(b) and (c) of this section.

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

(c) 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 municipal court. The municipal court shall send notice of the hearing date to the person alleged to have committed the infraction, by return mail. At the discretion of the municipal court, the security deposit may be waived in whole or in part. Waiver of the security deposit may only be accomplished 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 will attend the hearing when scheduled.

(4) Hearing.

(a) Every hearing to determine whether an infraction has been committed shall be held before the municipal court, without a jury.

(b) The defendant may be represented by legal counsel. However, legal counsel for the defendant shall not be provided at public expense.

(c) 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.

(d) If the defendant desires that witnesses be ordered to appear by subpoena, then the defendant must submit a written request to the court for the subpoena.

(e) The complainant shall have the burden of proving the alleged ordinance infraction by a preponderance of the evidence.

(f) If, after due consideration of the evidence and arguments presented at the hearing, the municipal court determines that the infraction has not been proven, an order dismissing the complaint shall be entered in the court records. A copy of the order shall be delivered to the person named in the order, personally or by mail. If, after due consideration of the evidence and arguments presented at the hearing, the municipal court determines that the infraction has been proven, an order to that effect shall be entered in the court records. A copy of the order shall be delivered to

the person named in the order, in person or by mail. Upon the written request by a party to the hearing in which the court finds that the infraction was committed, the order shall include a brief statement of the necessary findings of the fact to establish the infraction alleged.

(g) Upon a finding that an infraction has occurred, and pursuant to the schedule established in accordance with this chapter, the court shall assess a forfeiture penalty, plus court costs and witness fees. The municipal court judge is authorized to set reasonable court costs, including security for court fees. The order shall recite the amount of the forfeiture penalty, court costs and witness fees. The municipal court may order a party found in violation to undertake action(s) necessary to correct the violation or mitigate the effects within a specified time period.

(h) Any written documents, correspondence or physical evidence associated with the matter shall be retained by the municipal court until disposed of by order of the municipal court.

(i) The determination of the municipal court shall be final. Review of the court's determination shall be ~~to the circuit court by way of~~ writ of review (ORS 34.010 to 34.110) and not otherwise.

1.20.025 Cease and Desist Order

- (1) For a responsible party with more than one sustained infractions, the enforcement officer may request the City Council issue a cease and desist order.
- (2) Once the Council issues a cease and desist order, the order shall be mailed to the person or responsible party.
- (3) The order shall contain the following details:
 - a. Name and address the responsible party or parties;
 - b. Copies of the sustained infractions;
 - c. Order to cease and desist code violations within 10 (ten) days;
 - d. Notice that failure to comply with the order is a separate civil infraction;
 - e. Notice of the responsible parties' right to file objection within ten (10) days;
- (4) A person or responsible party may within ten (10) days after the cease and desist notice is mailed, file written objections to the City Council. The hearing will be held at a time and place determined by the council but in no event more than 30 days from Council's receipt of the written objections."
- (5) A failure to file objections within the allotted time is a waiver of the person's right to object to the order;
- (6) At a hearing before the council, the objecting party may present testimony and oral argument, and any additional evidence. The City Council's decision is final;
- (7) Non-compliance with a cease and desist order shall be deemed an additional civil infraction.

1.20.030 Enforcement.

(1) If a cited person fails to answer the summons or appear at a scheduled hearing as provided herein, a default judgement shall be entered for the scheduled forfeiture 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 municipal judge granted by the city Charter or by state law. In conjunction with any matter arising under the procedures set forth in this chapter, the judge may exercise those powers in any matter the judge considers necessary and advisable.

(2) Any ~~forfeiture~~ penalty assessed is to be paid no later than ten (10) days after the receipt of the final order declaring the ~~forfeiture~~ penalty. Such period may be extended upon order of the municipal judge.

(3) ~~Delinquent forfeitures and those brought to default judgement may, in addition to any other method, be collected or~~ Review of the City's action shall be by way of writ of review (ORS 34.010 to 34.110) and not otherwise. enforced pursuant to ORS 30.310 or 30.315.

(4) In addition to the enforcement protocols established above, the City shall have the right to enforce the terms of its code as may be otherwise provided by state law including enforcement of any order of the municipal court or City Council.

1.20.035 Cumulative remedies

(1) A civil infraction may be enforced by:

- (a) Prosecution for penalty as provided in this chapter;
- (b) Abatement, as provided by HMC chapter 8.15;
- (c) An action for damages for any individual damaged by the infraction;
- (d) A cease and desist order from the City Council against continuation or repetition of the violation;
- (e) Any other action reasonably necessary to correct the violation or mitigate the effects.

(2) These remedies are cumulative and not exclusive.

1.20.040 Lien filing and docketing.

(1) When a judgement is given in municipal court in favor of the city for the sum of \$10.00 or more, exclusive of costs or disbursements, the enforcement officer may, at any time thereafter while the judgement is enforceable, file with the city recorder a certified transcript of all those entries made in the docket of the municipal court, with respect to the action on which the judgment was entered.

(2) Thereupon, the city recorder shall enter the judgment of the municipal court in the city lien docket.

(3) From the time of the entry of the municipal court judgment in the city lien docket, the judgment shall be a lien upon the real property of the person against whom judgment was entered in the municipal court. Except as provided in subsection (4) of this section, entry of the municipal court judgment in the city lien docket shall not thereby extend the lien of the judgment more than 10 years from the original entry of the judgment in the municipal court.

(4) Whenever a judgment of the municipal court, which has been entered pursuant to this section, is renewed by the municipal court, the lien established by subsection (3) of this section is automatically extended 10 years from the date of the renewal order. (Ord. 153-90 § 4, 1990)

1.20.050 Schedule for forfeiture penalty.

(1) For the purpose of determining ~~forfeitures~~ penalty, civil infractions are classified into the following categories:

- (a) Class I civil infractions;
- (b) Class II civil infractions;
- (c) Class III civil infractions;
- (d) Class IV civil infractions;
- (e) Class V civil infractions.

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

- (a) \$500.00 for a Class I civil infraction;
- (b) \$250.00 for a Class II civil infraction;
- (c) \$100.00 for a Class III civil infraction;
- (d) \$50.00 for a Class IV civil infraction;
- (e) \$25.00 for a Class V civil infraction.

(3) Infractions of specific Hubbard ordinances are classified as follows:

Ordinance No.	Class
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145-90	III
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Ordinances enacted after the effective date of the ordinance codified in this chapter, which require a forfeiture provision for their enforcement, shall expressly incorporate the infraction procedure set out herein and classify violations thereof in accordance with this section.