

ORDINANCE NO. 4688

**AN ORDINANCE AMENDING BEAVERTON CODE CHAPTER
2.10 RELATING TO CIVIL INFRACTIONS**

Whereas, the City would like to increase the penalty amounts for each class of infraction; and

Whereas, the City would like to remove the requirement that staff make prior contact before issuing a Class 2 or Class 3 Civil Infraction; and

Whereas, the City would like to modernize the language in the ordinance relating to complaints and summons.

Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS

Section 1. Beaverton Code Chapter 2.10 is amended to read as follows:

2.10.005 Short Title.

BC 2.10.005 through 2.10.050 shall be known and referred to as the "Civil Infractions Ordinance" and may also be referred to herein as "this ordinance".

2.10.010 Purpose.

A. This ordinance establishes a civil infraction procedure to decriminalize penalties for infractions of certain city ordinances, including ordinances in the Beaverton City Code and Development Code, and to provide a convenient and practical forum for the civil hearing and determination of cases arising out of violations of City ordinances.

B. Acts or omissions to act which are processed under this ordinance or are designated a civil infraction by any city ordinance, do not require a culpable mental state as an element of the infraction.

2.10.015 Definitions.

For the purpose of BC 2.10.005 through 2.10.050 the following mean:

Civil infraction – Commission of an act or omission to act in a manner prescribed by this Code or other city ordinance that breaches or infringes on a section of a city ordinance or of this Code.

Complaint – Uniform infraction citation and complaint or uniform citation and complaint.

Code enforcement officer – An employee of the City who enforces this ordinance and any civil infraction established in the Beaverton Code or Development Code.

Forfeiture – A monetary penalty.

Person – See BC 1.01.020 (“Person”).

Responsible party – The person responsible for curing or remedying a civil infraction of City code. It 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.

2.10.020 Investigation; Voluntary Compliance Agreements.

A. Investigation. A code enforcement officer shall review all reports or complaints of infractions covered by this ordinance and may investigate whether a violation of City ordinance has occurred.

B. Voluntary compliance agreement. The code enforcement officer may enter into a written agreement with the responsible party to resolve the problems which gave rise to the complaint. The agreement shall be known as a voluntary compliance agreement. A voluntary compliance agreement shall be binding on the responsible party.

1. If the responsible party enters into a voluntary compliance agreement, the responsible party's signing of such agreement shall not be considered an admission of having committed an infraction for any purpose.
2. The city shall hold further processing of the alleged violation in abeyance for the responsible party to complete the necessary correction action during the time specified in the voluntary compliance agreement. If all terms of the voluntary compliance agreement are satisfied during the time specified, the city shall take no further action concerning the alleged violation other than the steps necessary to terminate the case.

2.10.021 Pre-Trial Procedures.

A. Issuance of Complaint. A code enforcement officer may sign a complaint against a responsible party once he or she determines that the responsible party committed a civil infraction. The code enforcement officer shall prescribe the form of the complaint.

1. **Filing.** A code enforcement officer or any individual, with the consent of the code enforcement officer, may file a signed complaint with the municipal court charging the responsible party with a civil infraction. The complaint shall set a date for the responsible party to appear before the municipal court to answer the complaint.

2. **Contents of Complaint; Requirements.** The complaint shall contain at least the following information:

- a. The name of the court; the City's name; and the name of the person cited;
- b. The civil infraction with which the person is charged; and 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 code enforcement officer, or observed by the individual signing the complaint;
- c. A certificate in which the person signing the complaint certifies that the person has sufficient grounds to believe, and does believe, that the person cited in the complaint committed the civil infraction specified in the complaint.

3. **Summons; Requirements.** The summons in the complaint is sufficient if it contains the following:

- a. The name of the court; the name of the person cited; the date on which the complaint was issued; the name of the code enforcement officer issuing the citation, and the time and place the person cited is to appear in court.
- b. The infraction with which the person is charged; and 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 code enforcement officer, or observed by the individual signing the complaint;

- c. A notice to the person cited that a complaint will be filed with the court based on the infraction;
- d. The amount of the scheduled forfeiture for the alleged infraction;
- e. A statement notifying the person that a monetary judgment may be entered against the person for up to the maximum amount of fines, restitution and other costs allowed by law for the infraction if the person fails to make all required appearances at the proceedings;
- f. A statement notifying the person that, if the person pleads no contest and delivers to the court the amount of the scheduled forfeiture indicated on the complaint, and the court accepts the plea, the amount of the fine imposed against the defendant may not exceed the amount of the scheduled forfeiture indicated on the complaint.
- g. A statement notifying the person that, if the person pleads no contest and delivers to the court the amount of the scheduled forfeiture indicated on the complaint:
 - i. The person may submit an explanation of the circumstances of the infraction; and
 - ii. The court may consider the explanation in establishing the amount of the forfeiture.

B. Service. Service to the responsible party may occur as follows:

- 1. The code enforcement officer or any authorized agent of the city may serve a responsible party, who is an individual, by any of the following means:
 - a. Mailing the summons and complaint by restricted or unrestricted certified or registered mail, return receipt requested.
 - i. For purposes of computing any time period prescribed by this ordinance, service by mail shall be complete three days after such mailing if the address to which it was mailed is within the State, and seven days after mailing if the address to which it is mailed is outside the State.

ii. No default shall be entered against any responsible party served by mail under this subsection who has not either received or rejected the registered or certified letter containing a copy of the summons and complaint, unless otherwise authorized by the municipal judge based upon service procedures of the Oregon Rules of Civil Procedure.

b. Delivering the summons and complaint directly to the person to be served.

c. Delivering a copy of the summons and complaint at the dwelling house or usual place of abode of the person to be served, to any person over 14 years of age residing in the dwelling house or usual place of abode of the person to be served. If this substituted service option is used, the code enforcement officer, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the responsible party at the responsible party's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by this ordinance, substituted service shall be complete upon mailing.

d. If the person to be served maintains an office for the conduct of business, office service may be made by leaving a true copy of the summons and complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the code enforcement officer, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the responsible party at the responsible party's dwelling house or usual place of abode or the responsible party's place of business or such other place under the circumstances that is most reasonably calculated to apprise the responsible party of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by this ordinance, office service shall be complete upon such mailing.

2. Service on particular responsible parties; minors, incapacitated persons, corporations, limited partnerships, the State, other public bodies, general partnerships and other entities, shall be on the persons named in the Oregon Rules of Civil Procedure.

C. Answer.

1. Except as provided in BC 2.10.021(C)(2) or (3), 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.

2. If the person alleged to have committed a civil infraction admits the infraction, the person may complete the appropriate answer on the back of each summons and forward the summons to the municipal court. The person shall send it by mail or personal delivery and the municipal court shall receive it within ten days of the date of the receipt of the summons. Cash, check or money order in the amount of the forfeiture for the infraction alleged as shown on the face of the summons shall be submitted with the answer. Upon receipt of the forfeiture, the municipal court shall enter an appropriate order in its records.

3. If the person alleged to have committed the civil infraction denies part of all of the infraction, the person may request a trial by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for court fees. The person shall send it by mail or personal delivery and the municipal court shall receive it within ten days of the date of the receipt of the summons. Upon receipt, the municipal court shall enter the answer and establish a trial date. The municipal court shall notify the person by return mail of the date of the trial. The security received shall be returned once the person appears for the trial, except as otherwise provided by this ordinance. The municipal court may waive the security deposit, in whole or in part, if the person shows good cause and provides a written reason explaining his or her reason for requesting the waiver and certifying that the person alleged to have committed the civil infraction will attend the trial when scheduled.

2.10.022 Trial Procedures.

A. The municipal court shall conduct a trial without a jury to determine whether the person cited in the complaint committed a civil infraction.

B. The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense. If legal counsel is to appear, the defendant shall provide written notice to the municipal court five days prior to the trial date.

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, the defendant must make that request in writing from the court at the time the answer is returned, or subsequently by mail at any time at least five days prior to the scheduled trial. A deposit for each witness shall accompany the request, such deposit to be refunded if no forfeiture is assessed by the final order. The deposit shall be in the amount equal to the witness fee allowed by statute for witnesses in circuit court. Subject to the same five day limitation, the code enforcement officer, the individual who signed the complaint or the city attorney, as appropriate, may also request in writing that the court order certain witnesses to appear by subpoena. If a forfeiture is declared in the final order, the order shall also provide that the defendant shall pay any witness fees payable in connection with the trial.

E. The trial shall be limited to production of evidence only on the civil infraction alleged in the complaint.

a. Oral Evidence. Oral evidence shall be taken only on oath or affirmation.

b. Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing, or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this State.

c. Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.

d. Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

F. The code enforcement officer or city attorney, if the defendant is represented by counsel, shall have the burden of proving the alleged civil infraction by a preponderance of the evidence.

G. After due consideration of the evidence and arguments presented at the trial, the municipal court shall determine whether the civil infraction as alleged in the complaint was committed.

1. If the municipal court determines that the civil infraction has not been proven, it shall enter an order dismissing the complaint. A copy of the order shall be delivered to the person named in the order personally or by mail.

2. If the municipal court determines that the responsible party committed the civil infraction:

a. the municipal court shall assess a forfeiture pursuant to the schedule established in accordance with this ordinance, plus court costs and witness fees. A municipal court judge is authorized to set reasonable court costs including security for court fees by court order.

b. If a party to the trial provides a written request, the municipal court shall include a brief statement of the necessary findings of fact to establish the civil infraction alleged in its order.

H. The court shall maintain a record of its proceedings. An audio recording of the trial accompanied by any written documents, correspondence or physical evidence associated with the matter shall be sufficient to meet the requirement of this subsection.

I. The determination of the municipal court shall be final. Review of the court's determination shall be to the circuit court by writ of review pursuant to ORS Chapter 34.

2.10.023 Code Services Personnel to Prosecute Violations.

Notwithstanding ORS 9.160 and 9.320, in any trial of a violation, and in any administrative enforcement proceeding in which a city attorney or district attorney is barred from appearing by statute or ordinance, the code enforcement officer who issued the citation for the offense may present evidence, examine and cross-examine witnesses and make arguments relating to:

- A. The application of statutes and rules to the facts in the case;
- B. The literal meaning of the statutes or rules at issue in the case;
- C. The admissibility of evidence; and
- D. Proper procedures to be used in the trial.

2.10.024 Attorney Barred from Appearing; Exception.

A district attorney or city attorney may aid in preparing evidence and obtaining witnesses but, except for good cause shown to the appropriate tribunal, shall not appear in a violation proceeding or administrative enforcement proceeding brought under this ordinance unless legal counsel for the defendant appears. The tribunal with jurisdiction over the proceeding shall ensure that the district attorney or city attorney is given timely notice if legal counsel for the defendant is to appear.

2.10.025 Enforcement and Penalties.

A. If a cited person fails to answer the summons or appear at a scheduled trial as provided in this ordinance, the municipal court shall enter a default judgment for the scheduled forfeiture applicable to the charged civil infraction. In addition, when a person fails to appear for a trial, the municipal judge shall order the security posted, or an amount equal to the security waived, to be forfeited. Nothing in this subsection shall be construed to limit in any way the contempt powers of the municipal judge granted by the Charter or 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 ordinance.

B. The forfeiture to be assessed for a specific infraction will be determined pursuant to specific provisions within the ordinance defining the civil infraction or the forfeiture schedule found in BC 2.10.045. The procedure prescribed by this ordinance shall be the exclusive procedure for imposing a forfeiture; however, this section shall not be read to prohibit in any way any alternative remedies set out in ordinances 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 civil violations pursuant to any ordinance.

C. Any forfeiture assessed is to be paid no later than ten days after the receipt of the final order declaring that forfeiture. Such period may be extended upon order of the municipal judge.

D. Delinquent forfeitures 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.

E. 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 by this ordinance. In addition to issuing a separate Class I Civil Infraction, the city may proceed with processing the alleged infraction giving rise to the voluntary compliance agreement.

F. 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 finding that a person has committed a violation of this ordinance shall not act to relieve the person from the provisions of this ordinance.

2.10.030 Lien Filing and Docketing.

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

B. Thereupon, the finance director shall enter the judgment of the municipal court on the city lien docket.

C. 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 D, entry of the municipal court judgment in the city lien docket shall not thereby extend the lien of the judgment more than ten years from the original entry of the judgment in the municipal court.

D. 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 C of this section is automatically extended ten years from the date of the renewal order.

E. The finance director may file the transcript of the judgment with the county clerk for entry in the judgment docket of the circuit court.

2.10.040 Code Enforcement Officer Authorized to Promulgate Rules.

The code enforcement officer is authorized to promulgate any rules, procedures or guidelines the code enforcement officer considers advisable to enforce this ordinance; however, final approval of any rules, procedures or guidelines must be by the mayor.

2.10.045 Schedule of Forfeitures; Enhancement.

A. Infractions are classified for the purpose of determining forfeitures in the following categories:

1. Class 1 Civil Infractions.
2. Class 2 Civil Infractions.
3. Class 3 Civil Infractions.

B. An assessment of a forfeiture for an infraction shall be an assessment to pay an amount not exceeding:

1. \$500.00 for a Class 1 Civil Infraction;
2. \$250.00 for a Class 2 Civil Infraction; and
3. \$100.00 for a Class 3 Civil Infraction.

C. The municipal court may impose a fine of not more than one thousand dollars if it determines that (1) the defendant committed a civil infraction, and (2) the defendant had committed another civil infraction in the preceding twelve months.

2.10.050 Effect of New Ordinance.

The amendments to BC Chapter 2.10 apply to conduct occurring on or after the effective date specified in this ordinance.

First reading this 14th day of June, 2016.

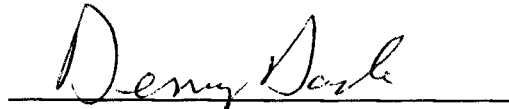
Second reading and passage by this Council this 21st day of June 2016.

Approved by the Mayor this 22nd day of June 2016.

ATTEST:


CATHERINE L. JANSEN, City Recorder

APPROVED:


DENNY DOYLE, Mayor