

ORDINANCE NO. 690

AN ORDINANCE PRESCRIBING CIVIL INFRACTIONS;  
PROVIDING PENALTIES AND ENFORCEMENT;  
REPEALING CITY ORDINANCE #348

THE CITY OF BAY CITY ORDAINS AS FOLLOWS:

SECTION 1: Repeal. Bay City Ordinance #348, adopted January 22, 1976, is hereby repealed in its entirety.

SECTION 2: Purpose.

The purpose of this Ordinance is to establish a civil infraction procedure for enforcement of City Ordinances. The City may use the civil infraction procedure for any infraction. The civil infraction procedure is not a criminal procedure. The civil infraction procedure is not exclusive, and the City may use any other procedure for enforcement authorized by law. The civil infraction procedure may be used in conjunction with other enforcement actions or procedures.

SECTION 3: Definitions.

The following definitions apply in this Ordinance:

- A. **Code Enforcement Officer** means the Public Works Director, the Fire Department Chief, the Building Inspector, the City Manager, and all other persons designated by the City Manager to serve as Code Enforcement Officers.
- B. **Civil Penalty** means the monetary payment imposed for violation of a City ordinance.
- C. **Infraction** means an action or failure to act in violation of any City ordinance, or any order, permit, license, approval, or condition of any type authorized by City ordinance.
- D. **Responsible Party** means the person responsible for curing or remedying an infraction. "Responsible Party" includes:
  - 1. The person alleged to have committed or authorized the infraction; and/or
  - 2. If an infraction involves a condition of or on real property, the property owner, any agent of the property owner, and any person occupying or having possession of the property.
- E. **Respondent** means the person to whom a citation or summons is issued.
- F. **Municipal Court** means Justice of the Peace Court of Tillamook County.

SECTION 4: No Mental State Required.

A culpable mental state is not required to establish an infraction unless a culpable mental state is required under the code provision, ordinance, or other requirement alleged to have been violated.

#### **SECTION 5: Civil Infraction Pre-Citation Procedures.**

A. Reporting. All reports or complaints of infractions shall be referred to the appropriate Code Enforcement Officer.

B. Review of Facts. The appropriate Code Enforcement Officer may investigate the facts and circumstances surrounding any infraction reported or otherwise made known to the Code Enforcement Officer.

C. Prior Contact. Before a civil infraction citation is issued, the Code Enforcement Officer may contact a Responsible Party and may give the Responsible Party a reasonable opportunity to cure or remedy the alleged infraction. Contact prior to issuance of a citation is solely within the discretion of the Code Enforcement Officer. If prior contact is made, the Code Enforcement Officer shall provide the following information to the Responsible Party:

1. Description of the activity constituting the alleged infraction and identification of the recipient as the alleged Responsible Party for the infraction;
2. A statement that the Code Enforcement Officer has determined the activity to be an infraction;
3. A statement of the action required to remedy the infraction and the time and/or date by which the remedy must be completed;
4. A statement advising that if the required remedy or cure is not completed within the time specified, a citation will be issued and that a civil penalty in the maximum amount provided for the particular infraction may be imposed.

#### **SECTION 6: Voluntary Compliance Agreement.**

The City and a Responsible Party may enter into a written voluntary compliance agreement to attempt to resolve the alleged infraction. 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. The City will not serve or file a citation while a voluntary compliance agreement is in effect and is being complied with. If the terms of the voluntary compliance agreement are satisfied, the City shall take no further action concerning the alleged infraction other than those steps necessary to terminate the matter. If the voluntary compliance agreement is not complied with, the Code Enforcement Officer shall issue a citation for the infraction. Nothing in this section precludes informal resolution without a written agreement.

#### SECTION 7: Right of Entry.

When a Code Enforcement Officer has reasonable cause to believe that a condition or activity on private property constitutes an imminent danger to the public health, safety, and welfare, the Code Enforcement Officer may enter the property to abate the dangerous condition or activity. When a Code Enforcement Officer has reasonable cause to believe that a structure, activity, or condition on property is in violation of a City Ordinance, he or she may enter the property at reasonable times to inspect or to perform the duties imposed by City Ordinances, provided that if such building or premises is occupied, that credentials be presented to the occupant and entry requested. If such building or premises is unoccupied, the authorized Code Enforcement Officer shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the authorized Code Enforcement Officer shall have recourse to the remedies provided by law to secure entry.

#### SECTION 8: Stop Order.

A Code Enforcement Officer may issue a Stop Order if a Responsible Party allows real property, personal property, a building, or a structure to be used in a manner causing an infraction. A Code Enforcement Officer may also issue a Stop Order if a Responsible Party allows any work regulated by any City ordinance to be performed in a manner that causes an infraction. The Code Enforcement Officer shall post the Stop Order on the property and shall, if possible, serve a copy of the order on any Responsible Party in the manner provided in Section 14 of this Ordinance. The Stop Order shall fix a time limit within which compliance must be achieved.

#### SECTION 9: Violation of Stop Order.

If the infraction continues after the issuance of a Stop Order, a Code Enforcement Officer may issue a civil infraction citation under this Ordinance to the Responsible Party. Violations of this section constitute a Class C Civil Infraction.

#### SECTION 10: Work Without a Permit.

Whenever any work for which a permit is required by City Ordinances has commenced without proper City authorization, a Code Enforcement Officer may issue a civil infraction citation under this Ordinance to the Responsible Party. Payment of penalties resulting from the infraction shall not exempt a Responsible Party from compliance with any other provisions of City Ordinances nor from any other penalties.

#### SECTION 11: Authority to Disconnect Utilities in Emergencies.

The Enforcement Officer shall have the authority to disconnect utility services, and/or other energy supplies to a building, structure, premises or equipment regulated by City Ordinances when necessary to eliminate an immediate hazard to life or property. The Enforcement Officer shall, whenever possible, notify the serving utility, the owner and occupant of the building, structure or premises of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner and occupant of the building, structure or premises in writing of such disconnection within a reasonable time thereafter.

#### SECTION 12: Citation Issuance and Form.

A. Issuance. A civil infraction citation may be issued any time after discovery of an infraction. Only an authorized Code Enforcement Officer may issue citations for City ordinance violations.

B. Form of Citation. The City may use any form sufficient to inform the Respondent of the nature of the alleged infraction and the necessary remedy. The citation must include, at a minimum:

1. A description of the infraction;
2. Date and location of the infraction(s) and approximate time the infraction(s) was observed;
3. Code section(s), ordinance(s), order(s), permit(s), license(s), approval(s), or condition(s) violated;
4. Description of the corrective action required;
5. A statement explaining that each day the infraction continues constitutes a separate infraction;
6. The amount of the civil penalty imposed for the infraction(s), which the Code Enforcement Officer may determine and the Municipal Judge may subsequently modify within the limits prescribed by City Ordinance, with a notation that civil penalties may continue to accrue until the infraction(s) is remedied;
7. The period of time, if any, to remedy the infraction(s);
8. Remedies to cure the infraction(s);
9. That any civil penalty shall be paid to the City within thirty (30) days of its final assessment by the Municipal Judge, the procedure for payment, and the consequences of failure to pay;

10. A statement indicating that the Responsible Party is entitled to request a Municipal Court hearing and is entitled to present arguments and evidence in his or her defense at the hearing;
11. A statement indicating the time, date, and location of the hearing, if requested;
12. A statement indicating that the Responsible Party may submit a written response to the citation in lieu of appearing at a hearing;
13. A statement describing the Responsible Party's right to appeal the decision of the Municipal Court;
14. The signature of the Code Enforcement Officer who issues the citation.
15. The name of the person cited;
16. The date on which the citation was issued;

#### SECTION 13: Service of Citation.

Service of citations on individuals may be made by any of the following means:

- A. Personal Service. A Code Enforcement Officer may personally serve a Responsible Party with a citation by hand-delivering the citation to the person. However, no Code Enforcement Officer shall unlawfully trespass on private property to deliver a citation.
- B. Service by Mail. Service may be made by mailing a copy of the citation by certified mail, return receipt requested, to the Responsible Party's last known mailing address. Service by mail shall be deemed to occur three days after mailing within the State, and seven days after mailing outside the State. Default may be entered against a person served by mail on submission of evidence of receipt, non-acceptance, or rejection of the certified mail.
- C. Service by Posting. If the alleged infraction relates to real property, the citation may be served by posting the citation at the main entry to an occupied residence or office on the property if the person to whom the citation is issued is not present. A copy of the citation shall be mailed by certified mail, return receipt requested, to the responsible person at the mailing address of the property no later than the end of the business day following posting. For the purpose of this section, Saturdays, Sundays, and Federal or City holidays shall not be considered business days. If service is made in accordance with this subsection, service shall be at least ten days before the court appearance date contained in the summons. Service shall be completed upon mailing.

#### SECTION 14: Filing of Citation.

The Code Enforcement Officer shall file the original citation and a return of service showing service as authorized in Section 13 of this Ordinance with the Municipal Court.

## SECTION 15: Response, Answer and Appearance.

- A. Response Options. The Respondent shall respond to the citation either by appearing in court as specified in the citation or by submitting a written answer that must be received by the Municipal Court prior to the scheduled appearance. Answers and appearances may be through legal counsel. A Respondent who submits a written answer received by the City prior to the scheduled appearance is not required to appear at the scheduled appearance. It is the Respondent's responsibility to assure that any written answer is received by the court prior to the appearance date.
- B. Written Answer. The Respondent's written answer may take three forms:
1. A written explanation, with payment of the amount stated in the citation. The statement shall constitute a waiver of hearing and consent to judgment. The written information may contain evidence that the violation has been corrected. The court shall review the written statement, the citation and any other evidence that may be available, including any written submission of the Code Enforcement Officer. The court shall issue a judgment based on the record and may notify the Code Enforcement Officer and the Responsible Party of the decision. The court may refund some or all of the amount submitted.
  2. An admission of the infraction, accompanied by payment of the amount stated in the citation. On receipt of an answer admitting the civil infraction, the court shall enter judgment in the amount stated in the citation.
  3. A denial of the infraction and statement indicating whether the Respondent will appear at the scheduled hearing.
- C. A written explanation without payment shall be treated as a denial.
- D. Appearance. If the Respondent does not file an answer before the scheduled appearance date, the Respondent must appear in court as scheduled. At the in-court appearance, the Respondent may admit the infraction, not contest the infraction, or deny the infraction. If the Respondent admits or does not contest the infraction, the Respondent will be allowed to provide an explanation, including evidence that the violation has been cured, and may request that the penalty be reduced or waived. Appearances may be rescheduled for good cause by agreement of the court and Respondent prior to the date scheduled for the hearing. Requests for rescheduling shall be in writing and should normally be made at least seven days prior to the scheduled hearing. If the Respondent does not deny the infraction, the Municipal Judge shall determine the amount of the penalty to be imposed and shall enter a judgment.

## SECTION 16: Hearing.

- A. If the Respondent's request for a hearing is received by the court prior to the scheduled appearance, a hearing date will be set by the Municipal Court. The Municipal Court shall notify the Respondent by mail of the date and time of the hearing.

B. The Respondent may be represented by a lawyer at Respondent's expense. Respondent or Respondent's lawyer shall provide written notice to the court that Respondent will be represented. If notice of appearance by a lawyer has not been provided the Judge at the hearing shall give the Code Enforcement Officer the option of proceeding or postponing the hearing so that the City Attorney may be consulted.

C. The City Attorney may appear at any hearing and may assist the Code Enforcement Officer in all cases.

D. Each party shall have the right to present evidence and witnesses, to cross-examine the other party's witnesses, and to submit rebuttal evidence.

E. If the Respondent wishes to compel the attendance of witnesses, the Respondent must submit a written request to the court at least 10 days prior to the scheduled hearing, accompanied by a reasonable fee set by Council resolution, to cover the costs of preparing the subpoena. The Code Enforcement Officer or the City Attorney may also request that the court subpoena witnesses. Signed subpoenas shall be given to the party seeking the subpoena, who shall be responsible for serving the subpoena and for paying each subpoenaed witness a witness fee of \$35.00 per day.

#### SECTION 17: Evidence at Hearings.

A. Only evidence relevant to the infraction alleged in the citation will be considered or admitted.

B. Oral evidence shall be taken on oath or affirmation.

C. 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 decision unless it would be admissible under the Oregon Rules of Evidence.

D. 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.

E. Irrelevant and unduly repetitious evidence shall be excluded.

F. The City shall have the burden of proving the alleged infraction by a preponderance of the evidence.

G. The City shall not call the Respondent as a witness, but if the Respondent chooses to be a witness, the City may examine the Respondent and shall not be limited to cross-examination.

#### SECTION 18: Decision and Appeal.

A. The court shall determine whether the infraction alleged in the citation was committed and shall enter judgment accordingly, including the amount of any penalty imposed. A copy of the judgment shall be delivered to the Respondent personally or by mail.

The judgment may provide that payment be suspended or reduced if the violation is cured within a specified time.

B. The decision of the Municipal Court shall be final. Judicial review of the Municipal Court decision shall be by writ of review under ORS Chapter 34.

#### SECTION 19: Enforcement.

A. Failure to Appear or Answer. If a cited person fails to respond to a citation as required by this chapter, a default judgment shall be entered in the amount of the scheduled penalty.

B. Payment of Penalty and Fees. Any penalty or fee shall be paid no later than 10 days after entry of the judgment or at such later time as authorized by the Municipal Judge or by agreement with the City.

C. Enforcement Mechanisms. If a Responsible Party fails to satisfy his or her obligations pursuant to a Municipal Court judgment and the judgment meets the requirements of ORS 221.351(1), the City may levy a lien against the real property of the Responsible Party in accordance with the provisions of ORS 221.351. The City may also pursue any other enforcement options authorized by law, including, but not limited to the proceedings detailed in ORS 221.346.

D. Licenses and Permits. The City may deny or revoke any City license or permit held by or applied for by a person who has not paid a Municipal Court judgment imposing a civil penalty within the time provided in the judgment.

#### SECTION 20: Civil Penalty.

The Council may designate violations of the Bay City Code as particular classes of infractions and establish maximum penalties for each class by ordinance. The Municipal Judge may determine the amount required to be paid as a civil penalty within any maximum limits set for each class of infraction. The Municipal Judge may also determine the amount to be paid as a civil penalty for infractions that do not have not been designated as a particular class.

#### SECTION 21: Schedule of Penalties.

A. Infractions for violations of the Bay City Code are classified as follows:

1. Class A civil infractions with a maximum civil penalty of \$1,000.00.
2. Class B civil infractions with a maximum civil penalty of \$750.00.
3. Class C civil infractions with a maximum civil penalty of \$500.00.
4. Class D civil infractions with maximum civil penalty of \$250.00

PASSED FIRST READING by the Council this 11th day of February, 2020.

PASSED SECOND READING by the Council this 11<sup>th</sup> day of February, 2020.

APPROVED by the Mayor this 11<sup>th</sup> day of February, 2020.

/Christopher K. Kruebbe/

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Christopher K. Kruebbe, Mayor

ATTEST:

/Linda Downey/

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Linda Downey, City Recorder

First Reading: 2/11/2020

Second Reading: 2/11/2020

Adoption: 2/11/2020

Ayes: 4

Nays: 0

Abstentions: 0