

IN THE CITY COUNCIL
FOR THE CITY OF HOOD RIVER, OREGON

ORDINANCE NO. 1998

An Ordinance Repealing in its Entirety Hood River Municipal Code Title 1 (General Provisions), Chapter 12 (General Penalty) and Adopting in its Place a Comprehensive Civil Enforcement Process as Hood River Municipal Code Title 1 (General Provisions), Chapter 10 (Civil Enforcement) and declaring an Emergency

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CODG/10
Date 8/11

The Hood River City Council finds as follows:

WHEREAS, the City Council determined that this ordinance is necessary in order to have a single, consistent process for enforcing the requirements of the Hood River Zoning Ordinance, Land Division Ordinance, Nuisance Ordinance, Dangerous Buildings Ordinance and all other ordinances, regulations, permits, licenses or approvals issued by the city pursuant to the city's permitting or regulatory authority; and.

WHEREAS, any city ordinance that provides its own or a different enforcement procedure or remedy, such as the process for enforcing the building code in HRMC chapter 15.4, shall be enforceable according to its terms in addition to those provided in this chapter; and

WHEREAS, The civil process set forth in this chapter is designed to provide prompt notice to property owners and other interested parties that appear to be in violation of the city's legal requirements and regulations and to guarantee those accused of an infraction the right to an evidentiary hearing on the alleged infraction; and

WHEREAS, the process is designed to provide a measure of certainty to the citizens of Hood River that violations will be addressed promptly and decisively and to ensure that the due process rights of those accused of infractions are protected; and

WHEREAS, this chapter shall not apply to criminal matters and shall not result in the imposition of criminal sanctions. Unless indicated otherwise the Oregon Rules of Civil Procedure shall be applicable and may be used in any civil enforcement action under this chapter; and

WHEREAS, this chapter provides a judicial remedy and the opportunity for the City to recover its costs, in addition to any fines and penalties, which may then be recorded as a municipal assessment lien against real property and foreclosed in the same manner as other municipal assessments.

NOW THEREFORE, based on the foregoing Findings, the City Council for the City of Hood River Ordains as follows:

Section 1: Repeal: Hood River Municipal Code Title 1 (General Provisions), Chapter 12 (General Penalty) is hereby repealed in its entirety.

Section 2: Adoption: Hood River Municipal Code Title 1 (General Provisions), Chapter 10 (Civil Enforcement), as set forth in Exhibit A, which is attached hereto and by this reference made a part hereof, is hereby adopted.

Section 3: Emergency Clause: Because the adoption, administration and enforcement of all non-criminal aspects of the City's Municipal Code and all of its other regulations, ordinances and resolutions are matters critical to the protection of the public health, safety and welfare and the regulations adopted herein have been fully reviewed, vetted and approved by City Council in a public hearing, the City Council declares an emergency to exist and that this ordinance shall take effect immediately upon passage and final reading.

Read for the First Time this 27th day of June 2011

Read for the Second Time, approved and effective this 11th day of July 2011.

AYES: _____
NAYS: _____
ABSTAIN: _____
ABSENT: _____

Arthur Babitz, Mayor

ATTEST:

Approved as to form:

Jennifer Gray, City Recorder

Daniel Kearns, City Attorney

Exhibit A to Ordinance No. 1998

CHAPTER 1.10 – CIVIL ENFORCEMENT

SECTIONS:

1.10.010	Purpose and Applicability
1.10.020	Definitions
1.10.030	Compliance Required and Civil Infractions
1.10.040	Citation for Civil Infractions
1.10.050	Contents of the Civil Infraction Citation
1.10.060	Judicial Proceeding and Procedures
1.10.070	Nuisance Abatement by the City and Cost Recovery
1.10.080	Civil Penalties
1.10.090	Recordation of Assessment Lien and Foreclosure

1.10.010 Purpose and Applicability. This Ordinance provides a process for enforcing all non-criminal requirements of the Hood River Municipal Code, including the City's land use regulations in HRMC Titles 16 and 17, nuisance requirements in HRMC Titles 8 and 9 and all other ordinances, regulations, permits, licenses or approvals issued by the city pursuant to the city's permitting or regulatory authority. Where any city ordinance provides its own or a different enforcement procedure, those procedures shall be in addition to those provided in this chapter. The civil process set forth in this chapter is designed to provide prompt notice to property owners and other interested parties that appear to be in violation of the city's requirements and to guarantee those accused of an infraction the right to an evidentiary hearing on the alleged infraction. The process is designed to provide a measure of certainty to the citizens of Hood River that violations will be addressed promptly and decisively and to ensure that the due process rights of those accused of infractions are protected. This chapter shall apply to all infractions of any provision of the Hood River Municipal Code and any other regulatory ordinance adopted by the City and also provides a mechanism for enforcing the requirements of any permit, license or other approval granted by the city. This chapter shall not apply to criminal matters and does not provide for criminal sanctions.

1.10.020 Definitions. For the purposes of this chapter the following definitions shall apply:

- A. **"Civil infraction"** means the violation or failure to comply with any provision of the Hood River Municipal Code and any other city ordinance that imposes legal obligations or regulations on people, corporate entities, property or activities. Civil infraction also includes any violation or failure to comply with any provision or requirement of a permit, order, license or approval granted by an authorized city official, the city council or other decision maker.

- B. “Code” means, collectively, the Hood River Municipal Code and any other uncodified city ordinance or resolution that imposes legal obligations, regulations or prohibitions on people, property or activities plus any other regulation adopted or administered by the City of Hood River.
- C. “Officer” means a sworn peace officer or any person appointed by the City Manager and authorized to administer and enforce the city’s code, including, but not limited to, the city planner and the director of public works.
- D. “Permit” means permit, order, license or conditional approval granted by an authorized city official, the city council or other governmental decision maker plus any other permit or approval administered or enforced by the City of Hood River.
- E. “Person” means any individual, corporation, limited liability corporation, partnership, unincorporated association, government, agency or other legal entity.
- F. “Respondent” means any person alleged to have committed a civil infraction and any owner of the property on which a civil infraction is alleged to have occurred. Reference in this chapter to a singular respondent shall include the plural and vice versa.

Comment [bf1]: Why put this highlighted phrase in? If I appoint someone, then I appoint someone.

1.10.030 Compliance Required and Civil Infractions.

- A. No person or other entity shall engage in, or cause to occur, any use, development, construction, reconstruction, alteration, or maintenance of any property, building, structure or vehicle, or alter or use any land in violation of the Code or in violation of any permit or city approval. No person or other entity shall engage in any use of property, or allow a use of property under their ownership or control, that is prohibited by the Code. No person shall fail to pay any charge or fee due the city when such failure to pay is made a civil infraction.
- B. No permit for the construction, occupation or use of a property, building, structure or business shall issue when that property, building, structure or business is in violation of any requirement of the code or state law. No permit for the construction, occupation or use of a property, building, structure or business shall issue when the subject property is the product of a subdivision or partition that failed to comply with the applicable subdivision or partition requirements.
- C. Failure to obtain a permit or other approval when required to do so by the Code shall constitute a nuisance and a civil infraction. Violation of any provision of the Code enforced under this chapter may constitute grounds for revocation, nonrenewal or denial of a permit issued by the city.

D. Violation of any requirement of this section is a civil infraction and a nuisance. Each day a violation exists or is allowed to exist shall constitute a separate civil infraction that can give rise to a separate citation, conviction and fine.

1.10.040 Citation for Civil Infractions.

A. Basis for the Citation: Upon a determination by an Officer that one or more civil infractions have occurred, the Officer shall issue a citation to the person or other entity whom the Officer has probable cause to believe is responsible for the activity or failure to act that is deemed to be the civil infraction. The person or entity that committed the alleged violation shall be responsible for the civil infraction. In addition, if the person who committed the alleged violation is on property owned by another, with the property owner's permission, the property owner shall be jointly and severally responsible for the alleged violation.

B. Service of the Citation: The Officer shall serve the citation on the respondent(s) by personal service; certified first class mail, return receipt requested; or by any alternative means provided in Rule 7(D) of the Oregon Rules of Civil Procedure reasonably calculated to apprise the respondent of the existence and pendency of the case.

1.10.050 Contents of the Civil Infraction Citation.

A. The citation for a civil infraction shall include at least the following information:

1. Location (address and/or map and tax lot) of infraction.
2. The name and address of all respondents;
3. The time, date and place the civil infraction was alleged to have occurred;
4. A statement describing the civil infraction(s) alleged to have occurred with a reference to the pertinent Code references or other commonly understood reference to the law, ordinance or permit alleged to have been violated.
5. A summons indicating the time, date and place for arraignment in municipal court, at which time the respondents shall appear and enter a plea responding to the charge(s) alleged in the citation.
6. A certification that the Officer issuing the citation has reasonable grounds to believe, and does believe, that the respondents committed the civil

infraction contrary to law. This certificate shall be deemed equivalent to a sworn complaint.

B. A uniform traffic citation and complaint shall be an acceptable form for any civil infraction citation issued under this chapter.

1.10.060 Judicial Proceeding and Procedures.

A. Jurisdiction for civil infractions filed and processed under this chapter shall be in any of the following venues: Hood River Municipal Court, Hood River County Circuit Court, or the City Council sitting in a judicial capacity. The municipal court and city council may adopt, and amend from time to time, procedural rules governing their proceedings. The city recorder shall serve as the Clerk to Municipal Court or the City Council in proceedings under this chapter.

B. Unless an applicable provision of Oregon Rules of Civil Procedure provides otherwise, the following procedures shall be followed in proceedings initiated under this chapter:

1. The respondent(s) shall appear in Court at the time and date indicated in the citation for entering a plea, at which time the respondent(s) shall state whether the respondent(s) committed or did not commit the infraction(s) alleged. The respondent(s) may enter a plea by mail prior to the arraignment date indicated in the citation so long as the written plea is actually received by the court before the stated time of the arraignment.
2. If a respondent enters a plea of having committed the infraction, no contest, fails to appear or otherwise timely enter a plea, the court shall find that the respondent committed the infraction as alleged and shall enter an order directing the respondent to abate, correct or otherwise remedy the violation, and the court shall impose a civil penalty in accordance with this chapter.
3. If a respondent timely enters a plea of having not committed the infraction, the court shall schedule the matter for hearing.
4. At the hearing, the citing Officer shall present the case and evidence in support of the citation. The respondent shall be afforded an opportunity to review and rebut the Officer's evidence, cross-examine the Officer's witnesses, and present testimony, evidence and witnesses in support of respondent's case. Any party may be represented by an attorney, but the city shall not be responsible for providing any respondent with legal representation.
5. If the City proves by a preponderance of the evidence that the respondent committed the infraction, the Court shall enter an order in favor of the city. The

Court may enter an order directing the respondent to abate, correct or otherwise remedy the violation by a time certain, and the court may impose a civil penalty in accordance with this Chapter.

6. The Court shall retain jurisdiction over the matter until the violation is fully remedied, abated or otherwise corrected in compliance with the Court's order and the applicable requirements of the Code, state law or city-issued permit.
7. Civil Inspection Warrants. At any time the City may seek, and the Court shall grant, a civil inspection warrant allowing entry onto private property for purposes of inspecting the property to determine compliance with the Code, state law or a city-issued permit. The warrant shall be issued upon oath or affirmation of a responsible city Officer seeking access to private property, including the interior of enclosed spaces and buildings, and shall allow inspection of the private property between 8:00 a.m. and 7:00 p.m., with reasonable advance notice to the owner or occupant. Any such warrant shall allow access and the ability to inspect by any responsible and suitably qualified officer, inspector, state or local official. The results of any such inspection shall be submitted as a written report to the Court.
8. Civil Contempt Proceedings. In the event that a respondent fails or refuses to comply with any order issued by the Court in a civil enforcement proceeding under this chapter, the City may seek a contempt citation that the respondent be held in contempt of court and shall be subject to any sanction imposed by the Court including monetary fine and/or incarceration.

1.10.070 Nuisance Abatement by the City and Cost Recovery.

A. Nuisance and abatement order. Upon a finding that a respondent committed a civil infraction, the Court shall declare the civil infraction to be a nuisance, and if the violation still exists, the court shall order the respondent to abate, correct or otherwise remedy the nuisance. In the event the respondent fails to so abate or remedy the nuisance within the time provided for in the Court's order, the Officer, without further proceedings, may take any action the Officer deems to be reasonably necessary to abate or remedy the nuisance in compliance with the Court's order, or the Officer may seek a contempt order from Court against respondent for failing to comply with the Court's order.

B. Summary abatement by the City in emergency situations. With or without the respondent first having appeared, the Officer may seek, and the court may order, the summary abatement of the activity alleged in the civil infraction citation upon a finding that:

1. An imminent and substantial threat to the public health, safety or welfare exists by virtue of the alleged action or inaction; and
2. Immediate abatement of the activity or nuisance is necessary to prevent a threatened harm to the public health, safety or welfare.

C. Upon the issuance of a summary abatement order under this section, the Officer may, without further notice or proceedings, take whatever steps are necessary to abate, correct or remedy the nuisance that is the basis for the citation. The City may seek cost recovery against the respondent(s) for all of the Officer's expenses incurred in undertaking a summary abatement action.

D. Recovery of the City's Enforcement Prosecution and Abatement Costs:
Following entry of an order against a respondent under this chapter, the City may petition the Court to recover from respondent(s) all of its reasonable costs associated with bringing and prosecuting a civil enforcement action under this chapter and for any abatement action that may be necessary if the respondent(s) fail to abate the violation. Reasonable costs include the City's attorney, administrative and staff time, inspection costs, contractor costs, materials and equipment, service and administrative expenses, the cost of work to demolish, remove, correct or otherwise abate the nuisance, and any associated disposal costs. The City shall file with the court and serve on respondent(s) a sworn statement of its costs incurred in the action. The Court shall review the sworn statement and any objections thereto, and shall issue an order awarding the City its reasonable costs incurred in the enforcement and abatement action, payable by the respondent(s). Any such award of costs pursuant to this chapter shall accrue interest at the rate of 9% per year until paid and may be recorded as a municipal assessment lien and foreclosed as provided in Section 1.10.090

1.10.080 Civil Penalties.

- A. Upon determination by the Court that one or more respondents committed a civil infraction under this chapter, the Court shall impose a civil penalty up to \$500 per violation.
- B. Each day that a violation is found to exist shall constitute a separate citable and sanctionable civil infraction.
- C. Any civil penalties awarded by the Court pursuant to this chapter shall accrue interest at the rate of 9% per year until paid and may be recorded as a municipal assessment lien and foreclosed as provided in Section 1.10.090.
- D. The remedies and penalties provided in this chapter are in addition to, and not in lieu of, any other remedy or penalties provided by law, including, but not limited to revocation or nonrenewal of a permit or license, injunction, a city-initiated land use

proceeding, abatement or civil damages as provided by the Code or state law in any court or agency of competent jurisdiction.

1.10.090 Recordation of Assessment Lien and Foreclosure. Any judgment awarding the city its abatement costs, fines and/or penalties against a respondent pursuant this chapter may be recorded at any time after issuance without further notice or proceedings, in the city's lien docket and/or the Hood River County real property deed records as a municipal assessment lien against the respondent(s) real property. The City's lien shall have priority ahead of all other liens except as prohibited by any applicable law. The City's lien may be foreclosed as a municipal assessment lien pursuant to ORS 223.505 to 223.595 or through any other legal process. This section shall apply to any judgment, award of costs, fines or penalties or associated lien that exists on the day of adoption of this 2011 ordinance.

Read for the first time: June 27, 2011

Read for the second time and passed: July 11, 2011 to become effective thirty (30) days hence.

Signed July 11, 2011


Arthur Babitz, Mayor

ATTEST:


Jennifer Gray, City Recorder