

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

MAR 17 12 39 PM '99

An ordinance providing for enforcement of County ordinances, repealing Ordinance 692 and declaring an emergency.

ALAN H. LEVINSKY MARION COUNTY CLERK BY

ORDINANCE No. 1105

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Purpose

The purpose of this ordinance is to provide for the welfare, safety and health of the citizens of Marion County by establishing a procedure whereby the ordinances of Marion County can be enforced quickly and cost-effectively. It is immediately necessary to enact this ordinance enforcement procedure, in order to ensure timely enforcement of County ordinances and maintain public confidence and certainty in said ordinances.

SECTION 2. Definitions.

For the purposes of this ordinance, the following definitions shall be used:

- (1) "County ordinance" means all ordinances duly enacted by Marion County, including but not limited to zoning, planning, nuisance abatement, health, solid waste, public works and building ordinances.
(2) "Violation citation" means that document(s) which, when properly served upon the alleged ordinance violator, brings the matter before the appropriate court for resolution. The elements of a violation citation are set forth in Section 7 of this ordinance.
(3) A "person" includes:
(a) The United States or agencies thereof, any state, public or private corporation, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity, contractor, subcontractor or combination thereof. For the purposes of this ordinance, "person" also includes those residing in or conducting business or activities in the incorporated or unincorporated areas of Marion County; and
(b) The owner, title holder, contract seller, or contract buyer of the land upon which the violation is occurring, is equally

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responsible for the violation of County ordinance, as is the possessor of the land, user of the land or the person who is taking the action, conduct or omission which constitutes a violation of any County ordinance.

(4) "Enforcement Officer" means that person(s) who is appointed to enforce Marion County Ordinances and who is authorized to issue violation citations pursuant to Section 4 of this ordinance.

(5) "Violator" means any person who has admitted violation of County ordinance or a person who has been adjudicated to have violated a County ordinance.

SECTION 3. Violation Citation; Other Remedies.

(1) Except as otherwise specifically provided in this ordinance, a violation citation may be used for violation of any County ordinance.

(2) Each day (24-hour period) that a violation exists shall constitute a separate occurrence.

(3) Violation citations may be filed against the same person for repeated violations of the same ordinance so long as the violations have occurred on separate days.

(4) The County may, at any time, whether before or after the issuance of one or more violation citations, institute a complaint in the Marion County Circuit Court for any other remedy provided by law including, but not limited to, injunction, mandamus, abatement, receivership or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate the violation.

SECTION 4. Enforcement Officers.

The Board of Commissioners shall appoint one or more persons to act as enforcement officer(s) who may issue violation citations, serve summons and prosecute violation citations in justice courts. The appointments(s) shall be made a part of the Board's records.

SECTION 5. Jurisdiction of the Courts.

Any justice court or circuit court shall have concurrent jurisdiction of all complaints for violation of a county ordinance. Violation citations may be filed in any justice court in Marion County.

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1 SECTION 6. Designation of Attorney for Marion County.

2 The Marion County Board of Commissioners hereby elects to have  
3 Marion County Legal Counsel or Assistant Marion County Legal Counsel  
4 prosecute complaints and seek other legal remedies. However,  
5 enforcement officers are authorized to appear without legal counsel when  
6 prosecuting violation citations in justice courts.

7 SECTION 7. Violation Citation.

8 (1) The violation citation shall consist of four parts.

9 The required parts are:

- 10 (a) The complaint.
- 11 (b) The abstract of record.
- 12 (c) The enforcement officer record.
- 13 (d) The summons.

14 (2) Each of the four parts shall contain the following  
15 information:

16 (a) The name of the court, the name of Marion County,  
17 in whose name the action is brought, and the name of the  
18 defendant(s).

19 (b) A statement or designation of the alleged violation(s)  
20 of County ordinance(s) in such a manner as can be readily  
21 understood by a person making a reasonable effort to do so;  
22 designation of the particular ordinance(s) violated; and the date,  
23 time and place at which the violation of County ordinance(s) is  
24 alleged to have occurred.

25 (c) A certification signed by the enforcement officer  
26 issuing the violation citation stating that the enforcement officer  
27 has reasonable grounds to believe, and does believe, that the  
28 person served with the violation citation violated a County  
29 ordinance, contrary to law.

30 (3) A uniform citation conforming to the requirements of this  
31 section may be used for violation citations.

32 (4) Motion to set aside. The complaint shall be set aside by the  
33 court upon motion of the defendant, before a plea, when the complaint  
34 does not conform to the requirements of this section. A pretrial ruling on  
35 a motion to set aside may be appealed by the County. The court may  
36 allow Marion County to amend the complaint or file an amended  
37 complaint.

1 SECTION 8. Summons.

2 (1) In addition to the requirements set forth in Section 7(2), a  
3 summons in a violation citation is sufficient if it contains following:

4 (a) The name of the court, the name of the person cited,  
5 the date on which the violation citation was issued and the date,  
6 time and place at which the person cited is to appear in court.

7 (b) A statement or designation of the violation of County  
8 ordinance in such a manner as can be readily understood by a  
9 person making a reasonable effort to do so, and the date, time and  
10 place at which the ordinance violation is alleged to have occurred.

11 (c) A notice to the person cited that a violation citation will  
12 be filed with the court, based upon the alleged violation of County  
13 ordinance.

14 (d) The amount of the fine for violation of the ordinance.

15 SECTION 9. Service

16 (1) Service of the summons in a violation citation shall be by the  
17 enforcement officer, sheriff's deputy or process server upon the person(s)  
18 whose conduct, action(s) or omission(s) constitute the ordinance  
19 violation(s).

20 (2) If personal service cannot readily be made, substitute service  
21 or office service may be made as provided in ORCP 7(D).

22 (3) The enforcement officer issuing a violation citation shall cause  
23 a copy of the abstract of record to be delivered to the office of Marion  
24 County Legal Counsel and shall deliver the complaint to the appropriate  
25 court.

26 SECTION 10. Defendant's Appearance; Payment of Fine; Request for  
Hearing; Statement; Admission of Violation.

(1) The defendant shall either appear in court at the time indicated  
in the summons, or prior to such time may:

(a) Submit a request for a hearing in writing;

(b) Personally request a hearing at the time of  
appearance; or

(c) Admit violation of the County ordinance, in person or  
in writing, and give a statement of matters in explanation or  
mitigation of the violation.

(2) In any case in which the defendant personally appears in court

1 at the time indicated in the summons, and the defendant desires to admit  
2 the violation of the County ordinance and the court accepts the  
3 admission, the court shall hear any statement in explanation or mitigation  
4 that the defendant desires to make.

5 (3) If the defendant does not appear in court at the time indicated  
6 in the summons, and has not complied with any portion of subsections (1)  
7 or (2) above, the court shall enter a judgment against the defendant in an  
8 amount equal to the fine set forth on the face of the summons, together  
9 with court costs, administrative fees and any special costs.

10 (4) In any case where a defendant has provided an explanation in  
11 mitigation, the court, at its discretion, may request a description of the  
12 violation and enforcement history from the enforcement officer or any  
13 other person. The court shall receive this information in the form of  
14 testimony or by written statement.

15 **SECTION 11. Statement as Waiver of Hearing and Consent to**  
16 **Judgment; Fine Forfeiture.**

17 If a defendant has not requested a hearing, but has submitted to  
18 the court any written statement in explanation or mitigation of the  
19 ordinance violation, the statement constitutes a waiver of hearing and  
20 consent to the entry of judgment against the defendant. The court may  
21 declare a forfeiture of the fine or portion thereof on the basis of the  
22 statement and/or any testimony or written statement of the enforcement  
23 officer or other person, if any which may be presented to the court.

24 **SECTION 12. Hearing Date; Notice to Defendant; Waiver.**

25 (1) If the defendant requests a hearing, the court shall fix a date  
26 and time for the hearing, and advise the defendant of the date.

(2) If the defendant fails to appear at the time set for the hearing  
without having previously requested in writing a continuance, the court  
shall enter a judgment against the defendant in the amount of the fine set  
forth on the summons.

(3) No warrant of arrest may be issued for failure to appear for a  
hearing under this ordinance.

**SECTION 13. Hearing; Burden of Proof; Pretrial Discovery.**

(1) The hearing of any violation citation shall be by the court  
without a jury.

(2) The hearing of any violation citation shall not commence until

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the expiration of a minimum of seven (7) days from the date of the violation citation.

(3) The County shall have the burden of proving the violation of the ordinance(s) by a preponderance of the evidence.

(4) The pretrial discovery rules set forth in the Oregon Rules of Civil Procedure shall apply to violation citations.

(5) Proof of negligence, malfeasance, misfeasance, nonfeasance, willful conduct, knowing conduct, intentional conduct, or any other culpable mental state is not an element of any ordinance violation.

(6) At any hearing involving a violation citation, an attorney shall not be provided at public expense.

SECTION 14. Prosecution of Violation Citation.

Notwithstanding any provision of the Oregon Rules of Civil Procedure or any other provision of this ordinance, the prosecution of one violation citation shall not bar the subsequent prosecution of additional county ordinance violations occurring or committed at the same time or as part of the same act or transaction or as part of the same occurrence as other ordinance violation(s). Evidence of prior ordinance violation(s) shall be admissible in any subsequent prosecution of any ordinance violation.

SECTION 15. Civil Judgment.

A judgment upon a violation citation shall be treated as a civil judgment. The judgment involves only a fine, assessment and costs and does not incur loss by forfeiture, suspension or revocation of any license or any other privilege or other civil penalty. A person against whom a judgment is issued does not suffer any disability or legal disadvantage similar to that imposed on one convicted of a crime.

SECTION 16. Appeal from Judgment.

An appeal from a judgment may be taken by either party as follows:

(1) From a proceeding in Justice court, as provided in ORS Chapter 53; or

(2) From a proceeding in Circuit Court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200.

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SECTION 17. Court Costs.

(1) The court, in addition to any fine, shall charge court costs to the defendant(s) where any judgment is rendered finding the defendant(s) did violate a Marion County Ordinance.

(2) Court costs shall be \$25.00. Said costs cannot be waived by the County, the defendants or the court in any proceeding. If the defendant fails to pay the costs, the costs shall be entered as a judgment against the defendant in the same manner and with like effect as a judgment for a fine.

SECTION 18. Consent Decree.

(1) The County and the defendant may enter into a consent decree. The consent decree shall provide that the defendant does not admit a violation of County ordinance but will make necessary corrections, as set forth in the agreement, to bring the defendant's actions, conduct, omissions or property into conformance with appropriate County ordinances.

(2) The defendant, the defendant's attorney if any, and the County Legal Counsel shall sign all consent decrees.

(3) The consent decree shall be filed with the court as a final adjudication of the proceedings and shall constitute a dismissal of the action when defendant performs as agreed. The defendant or Marion County may seek a court order dismissing the case upon completion of the conditions of the consent decree.

(4) The defendant's failure to comply with the consent decree shall allow Marion County to seek any additional remedies provided by law or this ordinance.

SECTION 19. Administrative Fees

The court, in addition to any fines or court costs, shall charge an administrative fee to any defendant(s) where any judgment in favor of Marion County is rendered finding the defendant(s) did violate a Marion County Ordinance. This administrative fee shall be in the amount of \$100.00 and shall be used to recoup the county's costs of enforcement including but not limited to enforcement officer investigation, monitoring, paperwork, legal costs and costs of legal enforcement. This fee shall automatically be imposed and may not be waived. The administrative fee may only be imposed once per violation citation.

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1 SECTION 20. Special Costs.

2 (1) The County shall be entitled to recover all special costs and  
3 disbursements that are reasonable and necessary expenses incurred in  
4 the successful prosecution of a violation citation other than for legal  
5 services, but including the costs/expenses/salaries of officers, employees  
6 and witnesses, the necessary expenses of taking depositions, the  
7 expense of publication of summons or notices, postage, compensation of  
8 expert witnesses, the expense of copying any public record, book or  
9 document used as evidence in the trial.

(2) The special costs shall be allowed to the County in the same  
manner as a judgment for fines.

10 SECTION 21. Penalties.

11 (1) Except as provided in subsection (2) below, violation of this  
12 ordinance shall be punishable, upon conviction, by a fine of not more  
13 than \$500.00 for a noncontinuing offense and a fine of not more than  
14 \$1,000.00 for a continuing offense.

15 (2) Violation of the state building code as defined in ORS  
16 455.010(8) and administered in the county through the Marion County  
17 Building Code shall be punishable by a fine of not more than \$100.00 per  
18 day for each day that the court determines a violation has existed prior to  
19 judgment.

(3) All fines collected by the county, excluding county  
assessment, shall be distributed to the department that initiated  
prosecution of the violation.

20 SECTION 22. Private Right of Action.

21 (1) Any person, whether acting as principal, agent or employee,  
22 whose interest is or may be affected by any violation of a Marion County  
23 ordinance may, in addition to the other remedies provided by law, file a  
24 violation citation in the following manner:

- 25 (a) The private citizen shall prepare and present the violation  
26 citation to the appropriate enforcement officer. If the  
enforcement officer fails to act upon the violation citation  
within fourteen (14) days, the citizen may submit the violation  
citation to Legal Counsel. Legal Counsel may investigate the  
alleged violation of a County ordinance and, after consultation  
with the appropriate department or division head, shall either  
(A) cause the violation citation to be served and prosecute or  
(B) decline to serve the violation citation or to prosecute.



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Legal Counsel shall notify the private citizen of said action within fourteen (14) days from the date the violation citation is presented to Legal Counsel.

- (b) The private citizen, following notice by Legal Counsel of Legal Counsel's refusal to prosecute may within sixty (60) days of such notice bring an action pursuant to this ordinance in the citizen's name against the alleged violator in the same manner and form as provided by this ordinance. Should the private citizen prevail against the violator, any fine imposed, and special costs shall be awarded to the plaintiff private citizen.

SECTION 23. Severability Clause.

Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground but valid on another, it shall be construed that the valid ground is the one upon which the ordinance or such portion thereof was enacted.

SECTION 24. Repealer.

This ordinance repeals Ordinance 692.

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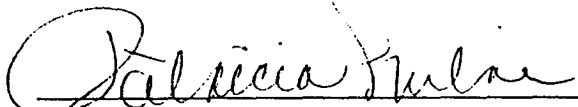
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SECTION 25. Effective Date.

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

SIGNED AND FINALIZED at Salem, Oregon, this 17<sup>th</sup> day of March, 1999.

MARION COUNTY BOARD OF COMMISSIONERS

  
Chair

  
Recording Secretary

1999 enforcement ordinance

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