

AN ORDINANCE ESTABLISHING A UNIFORM SHORT FORM COMPLAINT AND CITATION FOR VIOLATION OF CERTAIN CITY ORDINANCES; PROVIDING PENALTIES; AMENDING SAID ORDINANCES; AND DECLARING AN EMERGENCY

The City of Sweet Home does ordain as follows:

Section 1. Establishment and Purpose.

(a) A procedure to handle violations of certain City ordinances as infractions through the issuance of citations, subject to the provisions set forth below, is hereby established pursuant to the home rule powers granted to the City by Article IV, Section 1, and Article XI, Section 2, of the Oregon Constitution and Chapter 1, Section 2, and Chapter VII of the City of Sweet Home City Charter.

(b) A citation procedure has been established for the purposes of facilitating the decriminalization of numerous City ordinances and providing a more efficient enforcement procedure.

Section 2. Definitions. For the purpose of this ordinance, the following definitions apply:

(a) Infraction. A violation of one of the City ordinances or section thereof designated in Section 16, constitutes an infraction and shall be handled in accordance with the procedures established by this ordinance. When a violation of said City ordinance or section thereof is of a continuing nature, a separate infraction will be deemed to occur on each calendar day the violation continues to exist and a separate citation may be filed for each such violation. This ordinance is not intended to apply to Traffic infractions covered by Sweet Home Ordinance No. 380, Section 1, and amendments thereto .

(b) Person. The term "person" as used in this ordinance shall be construed to include any person, firm, partnership, corporation, or association of persons.

Section 3. Notice.

When an infraction of a City ordinance covered by this procedure is brought to the attention of the City Manager or other City employe authorized to enforce the provisions of the City ordinance that is believed to have been violated, said person may determine that the responsible party be given written

notice of the infraction and allow a specified length of time in which the infraction may be remedied before further action is taken. The notice, signed by one of the above referred to parties, shall be sent by certified or registered mail, return receipt requested, and shall contain the following information:

- (1) Sufficient description of the activity in violation to identify the infraction with the recipient of the notice.
- (2) A statement that the activity in question has been found to be an infraction with a brief and concise description of the nature of the infraction.
- (3) A statement of the action required to remedy the infraction and a date by which the remedy must be completed or begun.
- (4) A statement advising that if the required abatement is not completed or commenced within the time specified, a complaint will be filed in the Sweet Home Municipal Court, a summons will be issued for the person to appear to answer the complaint, and that a fine in the maximum amount scheduled could be imposed.

#### Section 4. Short Form Citation Authorized.

- (a) A citation conforming to the requirements of this Section may be used by persons authorized pursuant to Section 6, for the purpose of citing infractions.
- (b) The City Manager or his designated representative shall prescribe the form of the Uniform Infraction Citation and Complaint, but it shall consist of at least three parts. Additional parts may be inserted for administrative purposes by those charged with the enforcement of the ordinances. The required parts are:

- (1) The complaint.
- (2) The City department record.
- (3) The summons.

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

- (1) The name of the court and the court's file number.
- (2) The name of the person cited.
- (3) The infraction with which the person is charged, 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 complainant, the date on which the citation was issued, the name of the complainant, and in case of violation of zoning ordinances, the designation of the zone in which the infraction occurred.

(4) The time and place at which the person cited is to appear in court.

(d) The complaint shall contain a form of verification by the complainant to the effect that the complainant swears or affirms that he has reasonable grounds to believe, and does believe, that the person cited committed the infraction.

(e) The summons shall also contain notice to the person cited that a complaint will be or has been filed in the Municipal Court.

Section 5. Contents of the Summons and of the Complaint.

(a) A summons issued pursuant to Section 4 is sufficient if it contains the following:

(1) The name of the Court; the name of the person cited; the date on which the citation was issued; the name of the complainant; and the time at which the person cited is to appear in Court.

(2) A statement or designation of the infraction in such manner as can be readily understood by a person making a reasonable effort to do so; and the date and place the infraction is alleged to have occurred.

(3) A notice to the person cited that a complaint will be or has been filed with the Court based on the infraction.

(b) A complaint authorized by Section 4 is sufficient if it contains the following:

(1) The name of the Court; the name of the City in whose name action is brought; and the name of the defendant.

(2) A statement or designation of the infraction in such manner as can be readily understood by a person making a reasonable effort to do so; and the time and place of the alleged infraction.

(3) A verification as provided in Subsection (d) of Section 4, signed by the complainant.

(c) The complaint shall be set aside by the Court

upon motion of the defendant before plea when the complaint does not conform to the requirements of this section. A pretrial ruling on a motion to set aside may be appealed by the City.

(d) Nothing prohibits the Court from amending the citation in its discretion.

Section 6. Persons Authorized to Issue Citations.

(a) A citation provided for in Section 4 may be signed and issued by a police officer or other City employee authorized to enforce the provisions of the City ordinance that is alleged to have been violated.

(b) The City employee issuing the citation provided for in Section 4 must have reasonable grounds to believe that the person to be charged with the infraction is in actual violation of said ordinance. For issuing a citation under any other conditions, the City employee shall be subject to disciplinary action.

(c) A City employee authorized to enforce infractions pursuant to this section may issue a citation to any person who commits those infractions. If the person to be issued a citation is a firm, corporation, or other organization, issuance of a citation to any managerial employee, agent or representative thereof shall be sufficient to confer jurisdiction.

Section 7. Delivery of the Summons and Complaint.

(a) The City employee issuing the citation shall cause the summons to be delivered to the person cited, the complaint thereafter to be delivered to the Court and the department record to be delivered to the concerned department.

(b) Service shall be personal, or by certified or registered mail, return receipt requested.

Section 8. Defendant's Appearance; Guilty Plea; Statement.

(a) For infractions, the defendant shall appear in Court at the time indicated in the summons.

(b) When the defendant personally appears in court, if the defendant desires to plead guilty or no contest and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make.

Section 9. Not Guilty Plea; Fixing Hearing Date; Notice to Defendant.

When the defendant personally appears in court and pleads not guilty the court shall fix a date and time for the hearing. If the date and time for hearing is not then set, the court shall, at least 5 days in advance of the hearing, mail to the defendant notice of the date and time so fixed.

Section 10. Warrant for Arrest.

If a person cited under Section 7 fails to comply with the provisions of Section 8, or if the person fails to appear at any time fixed by the court, a warrant for the arrest of the person may be issued. A warrant issued by the municipal court may be served, without further endorsement, in any county in this state.

Section 11. Trial Without Jury; Commencement; Burden of Proof; Pretrial Discovery; Defendant as Witness; Proof of Culpable Mental State Not Element.

- (a) The trial of any infraction shall be by the court without a jury.
- (b) The City shall have the burden of proving the alleged infraction by a preponderance of the evidence.
- (c) The pretrial discovery rules in ORS 135.805 to 135.873 apply to infraction cases.
- (d) The defendant may not be required to be a witness in the trial of any infraction.
- (e) Proof of a culpable mental state is not an element of any infraction.

Section 12. Defense Counsel Not Provided at Public Expense; When Prosecuting Attorney May Appear; Notice if Defense Counsel to Appear.

- (a) At any trial involving an infraction, defense counsel shall not be provided at public expense.
- (b) At any trial involving an infraction, the prosecuting attorney may aid in preparing evidence and obtaining witnesses, but shall not appear unless counsel for the defendant appears. If the defendant intends to be represented by counsel, he shall notify the court not less than three days prior to the hearing date. The court shall insure that the City Attorney is given timely notice if defense counsel is to appear at trial.

Section 13. Appeal. An appeal from a judgment involving

an infraction may be taken by either party as provided by ORS 221.350.

Section 14. Penalty; Conformity with Building Codes.

- (a) The penalty for committing an infraction shall be a fine only, not to exceed \$200. The court may suspend a fine, or a part thereof, on such conditions as it deems proper.
- (b) The penalty imposed by the court for violations of the provisions of the State of Oregon 1979 Edition Structural Specialty Code and Fire and Life Safety Code; 1979 Edition Mechanical Safety Code and Mechanical Fire and Life Safety Code; 1980 Edition Plumbing Specialty Code; 1979 Uniform Building Code; July 1, 1981, Administrative Rules and Statutes Regulating Mobile Homes and Recreational Vehicles; and Chapter 70 of the Appendix of the 1979 State of Oregon Uniform Building Code, shall be in accordance with subsection (a) above and in conformity with the penalties in said codes.

Section 15. Enforcement.

- (a) The procedure prescribed by this ordinance shall be the exclusive procedure for imposing fines for violation of the ordinances that are subject to the procedure. However, the City may use alternative remedies set out in the ordinances covered by this infraction procedure to abate or alleviate ordinance violations and recover expenses thereof.
- (b) The court may cite defendants for contempt of court for failing to comply with its mandates.
- (c) Delinquent fines which were assessed against a property owner for infractions occurring on his real property, or for improper use of his real property may be held as City liens against said real property and collected in the same manner as other such debts owing to the City.
- (d) The City may revoke or deny any City license or permit held or desired by a person owing a fine to the City.

Section 16. Amendment.

- (a) Each of the following listed Sweet Home ordinance sections are amended to read as follows:

"Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

Where the format of an ordinance listed below uses a caption in the section to be amended said caption shall remain the same and shall be a part of the amended section.

Said section of Sweet Home ordinances that are amended hereby, are as follows:

GOVERNMENT:

No. 379, Section 21, Relating to Initiative and Referendum

UTILITIES:

No. 324, Section 9, Relating to Utility Privilege Tax  
No. 645, Section 2 of Article IX, Relating to Sewer Service Rates and Regulations

SANITATION:

No. 285, Section 15, Relating to Garbage Collection Regulations

OFFENSES:

No. 252, Section 3, Relating to Weed Control  
No. 262, Section 2, Relating to Flying a Model Aircraft  
No. 369, Section 26, Relating to Liquor Regulations  
No. 370, Section 20, Relating to Nuisances  
No. 764, Section 11, Relating to Dog Control and Licensing  
No. 777, Section 19, Relating to Park Regulations

TRAFFIC:

No. 529, Section 4, Relating to Pedestrian Regulations  
No. 638, Section 8, Relating to Parking Regulations  
No. 763, Section 8, Relating to Bicycle Regulations

BUSINESS:

No. 40, Section 5, Relating to Dance Halls  
No. 126, Section 6, Relating to Taxicabs  
No. 368, Section 10, Relating to Amusement Devices  
No. 425, Section 15, Relating to Licensing Peddlers

BUILDINGS:

No. 480, Section 3, Relating to Moving Buildings  
No. 873, Section 6, Relating to Parking and Use of Trailer House and Recreational Vehicles

PLANNING:

No. 644, Section 11.010, Relating to Zoning; Schedule A.

(b) LOCAL IMPROVEMENTS:

Ordinance 765, Section 7 and Section 8, relating to Public Works Permits is amended to read as follows:

"Section 7: No person shall work within public right-of-way without acquiring a public work permit. No person working within public right-of-way shall damage any utility owned by the City. If said utility is damaged, the City may receive twice the cost of repair of said damage."

"Section 8: Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

(c) UTILITIES:

Ordinance 785, Section 9, relating to water service rates and regulations is amended to read as follows:

"Section 9. It shall be unlawful for any person to turn on or off any cutoff valve controlling water service to his or other property, or to take water from the city water system without the consent of the City. Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

(d) OFFENSES:

Ordinance 593, Section 22, relating to offenses is amended to read as follows:

"Section 22. Penalties:

(1) Violations of Oregon Revised Statutes made offenses against the city are punishable to the same extent provided in the statutes."

(2) Violation of any other provisions of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

(e) TRAFFIC:

Ordinance 380, Section 46, relating to general traffic



regulations, is amended to read as follows:

"Section 46. Penalties:

(1) Violations of Oregon Revised Statutes made offenses against the city are punishable to the same extent provided in the statutes."

"(2) Violation of any other provisions of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

(f) BUSINESS:

Ordinance 117, Section 1, and Section 3, relating to peddlers, is amended to read as follows:

"Section 1. The practice of going in and upon private residences in the city of Sweet Home, Oregon, by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residence, for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared a nuisance."

"Section 3. Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

(g) BUILDING:

(1) Ordinance 856 is amended by adding Section 4 to read as follows:

"Section 4. Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

(2) Ordinance 861 is amended by adding Section 3 to read as follows:

"Section 3. Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

(h) PLANNING:

Ordinance 716, Section 10.050, relating to subdivision standards and procedures is amended to read as follows:

"Section 10.050. Penalty. In addition to remedies provided by state law, violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance Number 876."

Section 17. Prosecution of Violations Designated as Infractions. Procedures set out in this ordinance for the prosecution of infractions shall apply to all violations of city ordinances that are designated as infractions; however, this section is not intended to apply to Traffic infractions covered by Sweet Home Ordinance No. 380, Section 1, and amendments thereto.

Section 18. Separability Clause. If any section or part of this ordinance is declared by the courts to be unconstitutional, or in violation of any of the provisions of the charter of the city of Sweet Home, Oregon, or in violation of any law of the state of Oregon, or invalid for any other reason, such declaration shall not affect the validity of any other portion of this ordinance.

Section 19. Emergency Clause. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health and safety. Therefore, an emergency is hereby declared to exist, and this ordinance shall take effect and be in full force and effect from and after its passage and approval of the Mayor.

PASSED by the Council and approved by the Mayor this 27th day of July, 1982.

  
Mayor

ATTEST:

  
City Manager