

ORDINANCE 10-269
CIVIL VIOLATIONS AND ENFORCEMENT

Repealed Aug 12, 2010

Chapter 1.16

CIVIL VIOLATIONS AND ENFORCEMENT

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1.16.010 Declaration of purpose.

The council finds that the enforcement of the ordinances of the city (hereinafter "code") and applicable state laws throughout the city is an important public service. Code enforcement is vital to protection of the public's health, safety and quality of life. The council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative enforcement hearings and judicial proceedings. The council further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with code regulations. Failure to comply with an administrative code enforcement action may require the city attorney to file a judicial action to gain compliance. The council further finds that an enforcement ordinance would provide a more efficient method of notifying individuals of possible violations and of preventing or insuring correction of dangerous or otherwise illegal conditions.

1.16.020 Definitions.

As used in this chapter:

"Enforcement official" means a person authorized under this chapter to enforce infractions.

"Laws" mean statutes, administrative rules, ordinances, orders, resolutions and provisions thereof. Editorially amended during 2000 codification.

1.16.030 General enforcement authority.

The city administrator, the city attorney, chief of police or their designated enforcement officials have the authority and powers necessary to gain compliance with the provisions of the municipal code and applicable state codes. These powers include the power to issue notices of violation and citations, inspect public and private property and use whatever judicial and administrative remedies are available under the municipal code or applicable state laws.

1.16.040 Notice of violation on real property.

Whenever an enforcement official determines that a violation of the municipal code or applicable

state codes exists, the enforcement official may issue a notice of violation to a responsible person. The notice of violation shall include the following information:

- A. The name and address of the property's owner of record and occupant, if known;
- B. Street address of the property;
- C. The Lakeside City Ordinance section in violation;
- D. A description of the property's condition, which violates the applicable codes;
- E. A list of necessary corrections to bring the property into compliance;
- F. A deadline or specific date to correct the violations listed in the notice of violation;
- G. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline, including, but not limited to: civil injunction, administrative abatement, civil penalties, revocation of permits, imposition of a lien, recordation of the notice of violation and withholding of future municipal permits, and prosecution for civil penalties in court.

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1.16.050 Lakeside Municipal Code violations generally.

A. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of the Lakeside City Ordinance. A violation of any of the provisions or failure to comply with any of the mandatory requirements of the code shall constitute an infraction.

B. When a violation is of a continuing nature, separate violations shall be deemed to have occurred on each calendar day the violation continues. A separate violation citation or complaint may be filed for each such violation.

C. Prosecution for the violation of city ordinance shall be commenced by the filing of a complaint with the municipal judge of the city, said complaint to be signed by the person or persons preferring the charge and verified before a licensed notary public.

D. Except as specifically provided otherwise by city ordinance or statute, enforcement of the violations declared to be civil violations shall follow the procedure for the enforcement of infractions set forth by the ORS.

E. The infraction procedures contained in the ORS are incorporated into this chapter by reference and are adopted as a method for the enforcement of city ordinance and other laws subject to the following:

1. References to the state are to be read as the city;
2. The fines provided by the ORS do not apply to the municipal courts;
3. Incorporation of the ORS shall not limit the use of such other enforcement procedures that are provided by law;
4. The council may, by resolution, establish and modify recommended schedules of bail for civil violations enforceable under this chapter. Any court with jurisdiction over the civil violations enforceable under this chapter may accept or modify such bail schedules. The recommended bail for civil violations filed under this chapter shall be those established by the most current council resolution.

1.16.060 Issuance of warnings.

A. An enforcement official may, in lieu of issuing a citation, issue a written warning for the commission of any offense declared to be a civil violation under this chapter.

B. If an enforcement official issues a warning, it shall be in writing and shall be delivered to the alleged offender in person or in any other manner reasonably calculated to give notice of the offense, including posting, regular mail or certified mail.

C. A written warning shall include the following information:

1. The name of the person warned;

2. The date on which the warning was issued;
3. The name of the person issuing the warning;
4. The ordinance or other law alleged to be violated;
5. A statement or designation of the alleged civil violation in such a manner as can be readily understood by a person making a reasonable effort to do so;
6. The date, time and place at which the civil violation is alleged to have occurred, or if it is a continuing civil violation, a statement to that effect and the date the civil violation was first observed by the person issuing the warning;
7. The name of the person, department or office to contact regarding the warning;
8. A deadline for contacting the person, department or office noted;
9. A statement that failure to correct the alleged civil violation or to contact the noted person, department or office by the deadline may result in issuance of a citation to appear in court;
10. A statement that if a citation is issued, payment of a fine or forfeiture of bail does not relieve a violator of the responsibility to remedy the civil violation;
11. The maximum fine that may be imposed for the civil violation if a citation is issued and the person cited is found guilty.

D. As used in this section, "enforcement official" means persons designated in Section 1.16.020.

1.16.070 Monetary penalties.

The only penalty to be imposed for a civil violation is a monetary penalty called forfeiture. The forfeiture to be assessed for a specific civil violation will be determined from a forfeiture schedule. The procedure prescribed by this chapter shall be the exclusive procedure for imposing forfeiture. However, this section shall not be read to prohibit in any way any other alternative remedy set out in the city code or provided for by state law which is intended to abate or alleviate code violations, nor shall the city be prohibited from recovering, in any manner prescribed by law, any expense incurred to it in abating or removing code violations pursuant to said code.

1.16.080 Additional remedies.

In addition to any other remedy provided by this code, any provision of this code may be enforced by injunction issued by the circuit court upon a suit brought by the city.

1.16.090 Maximum penalties.

As part of a civil action filed to enforce provisions of the Lakeside code, a court may assess a maximum civil penalty of seven hundred fifty dollars (\$750.00) per violation of any ordinance for each day during which any person commits, continues, allows or maintains a violation of any provision of the ordinance.

1.16.100 Other remedies preserved.

In lieu of this procedure or in addition to it, any and all other remedies provided by laws to abate or enjoin acts or conditions declared by this chapter to be nuisances, or to otherwise enforce the laws enforceable under this chapter, are preserved and may be utilized by any enforcement official, the city council and any authorized prosecutor to seek compliance with the law and to remedy or penalize violations. The city shall be entitled to its reasonable costs, disbursements and attorneys' fees for any enforcement action taken under this section.

1.16.110 Decision not to take enforcement action.

A. Enforcement of those offenses declared to be civil violations by this chapter utilizing the procedures set out in this chapter, by an enforcement officer as defined in Section 1.16.020, is permissive and not mandatory.

B. Except to the extent specifically, clearly and expressly stated otherwise in the relevant laws, the enforcement by any other means authorized by law including, but not limited to, mandamus, injunctive and other equitable proceedings, is also permissive and not mandatory.

C. When any enforcement official receives information from any source that leads the enforcement official to believe an offense declared to be a nuisance and civil violation by this chapter has occurred, or is occurring, or a violation of any other laws, whatsoever has occurred, or is occurring, that the enforcement official or the city is authorized by law to enforce by any method, the enforcement official shall make a determination, considering the severity of the alleged violation, the council or city staff, time and resources necessary, and the possibility of success, whether enforcement action is warranted and what type of enforcement action should be undertaken. If that information is brought to the enforcement official's attention by formal written complaint and the enforcement official determines that enforcement is not warranted, the enforcement official shall promptly mail or deliver written notice to the complainant of the decision not to take enforcement action.

D. Within ten (10) calendar days of the mailing date, or service date if served personally, of the written notice by the enforcement official of a decision not to take enforcement action, a person who filed a formal written complaint may appeal the decision to the council. The appeal must be in writing, must be signed by the complainant, must state why the enforcement official's decision should be reconsidered and must be received by the council within the ten (10) calendar day period. When an appeal is properly filed, an appeal hearing will be scheduled within thirty (30) days at which the complainant may present evidence to demonstrate that enforcement action is warranted considering the severity of the alleged violation, the availability of departmental and city staff, the time and resources necessary, and the probability of success. The enforcement official may also, but need not, offer evidence at such hearing. At the conclusion of such hearing, the council may either reverse, affirm or modify the enforcement official's decision. The council will promptly mail or deliver written notice of the decision to the complainant. The owner, occupant of the property that is the subject of the complaint, or the person whose actions or conduct is complained about shall be notified of the hearing.

E. The burdens of proof, of persuasion and of going forward with evidence to justify enforcement action shall be on the complainant.

F. A decision made not to take enforcement action is declared to be an act of discretion as described by the ORS.

G. Review of a council decision not to take enforcement action may be requested pursuant to the ORS.

H. The means provided by this section for seeking city enforcement action are not exclusive, but they are the exclusive means of compelling city enforcement action. The requirements herein are jurisdictional and strict adherence to them is required.

I. Notwithstanding any decision by an enforcement official or the city not to take enforcement action, any person adversely affected by an offense declared to be a nuisance and civil violation under this chapter shall retain any authority and jurisdiction given under state law or common law to pursue private civil remedies, whether legal or equitable, including nuisance abatement or injunctive relief, against the alleged offender.

RIGHT OF ENTRY

1.16.111 Authority to inspect.

Any designated enforcement official or designee is authorized to enter upon any property or premises to ascertain whether the provisions of the city ordinance or applicable state codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If an owner, occupant or agent refuses permission to enter or inspect, the enforcement official may seek an administrative inspection warrant pursuant to the procedures provided for in Sections _____ of this code. The enforcement official will take reasonable steps to notify the property owner or legal occupant of the need to enter upon the property. If the enforcement official determines in his or her discretion that entry is necessary without notification or that notification is not practical, then the owner or legal occupant shall be notified as soon as reasonably possible after the inspection.

Therefore, this Ordinance shall become effective 30 days upon its passage by the City Council and approval by the mayor.

FIRST READ to the Council the 8th day of July, 2010.

PASSED by the Council this 8th day of July, 2010.

SIGNED by the Mayor this 8th day of July, 2010.

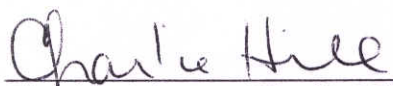
Effective this 7th day of August, 2010.

APPROVED:



Mayor

ATTEST:



City Administrator/Charlie Hill