

**ORDINANCE NO. 643
CITY OF DAYTON, OREGON**

AN ORDINANCE OF THE DAYTON CITY COUNCIL AMENDING DAYTON MUNICIPAL CODE CHAPTER 1 REGARDING VIOLATIONS AND PENALTIES AND THE MUNICIPAL COURT

WHEREAS, the City Charter under Chapter VIII, Section 36 allows the City Council to assign functions to the Municipal Court and Municipal Judge; and

WHEREAS, the City does not have a general penalties and violations section in the Dayton Municipal Code (1.00.00); and

WHEREAS, the City desires to set out additional functions of the Municipal Court and Municipal Judge including information about violations and penalties in the Code; and

WHEREAS, the City desires that these changes go into effect immediately to ensure that future Municipal Court proceedings are handled in a uniform manner.

NOW, THEREFORE, THE CITY OF DAYTON ORDAINS AS FOLLOWS:

Section 1. New subsection is added to Chapter 1, Section 1.00 of the Dayton Municipal Code in substantially the same form as the attached Exhibit A.

Section 2. A new Section is added to Chapter 1 of the Dayton Municipal Code in substantially the same form as the attached Exhibit B.

PASSED AND ADOPTED by the City Council of the City of Dayton on this 4th day of February, 2019.

Mode of Enactment:

Date of first reading: January 7, 2019 by title only

Date of second reading: February 4, 2019 by title only

No Council member present at the meeting requested that the ordinance be read in full.

A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder no later than one week before the first reading of the Ordinance.


Final Vote:

In Favor: Collins, Holbrook, Mackin, Marquez, Price, Wytoski

Opposed: None


Absent: None

Abstained: None



Mayor Elizabeth Wytoski

ATTEST



Patty Ringnald,
City Recorder

EXHIBIT A

1.00.11 Violations – Penalty.

A. It shall be unlawful for any person or entity to violate any provision or to fail to comply with any requirement imposed by the Dayton Municipal Code. Any person or entity violating any provision or failing to comply with any requirement imposed by this code, unless provision is made specifically otherwise in this code, is subject, upon a determination that such violation or failure has occurred, to a civil penalty set through the City's Fee Schedule for each day the violation or failure to comply has existed. Any act or omission made unlawful under the city code includes causing, allowing, permitting, aiding, abetting, or concealing such act or omission.

B. Any person, firm, association, or corporation violating any provision of the ~~DMC~~ Dayton Municipal Code where the penalty is deemed a civil violation ~~should~~ shall be subject to:

1. A civil fine for each violation as set forth on the City's Fee Schedule and as determined by the Class of violation.

C. In establishing the amount of any civil penalty, a court (including the municipal court) should consider any of the following factors that the court deems relevant:

1. The actions taken by the person or entity to mitigate or correct the violation;
2. Whether the violation or the failure to comply is repeated or continuous in nature;
3. The magnitude or gravity of the violation or failure to comply;
4. The cooperativeness of the person or entity with the city;
5. The cost to the city of investigating, correcting, attempting to correct and/or prosecuting the violation or failure; and
6. Any other factor deemed by the court to be relevant.

1.00.12 Attorneys' fees.

In the event the city elects to enforce the terms of its ordinances or resolutions consistent with ORS 30.315 (2017), a court (including an appellate court) may, in its discretion, award attorneys' fees to the prevailing party.

1.00.13 Interest on monies owed city.

Unless specifically agreed to otherwise via a duly approved contract or agreement between the city and some third party or unless otherwise specifically set out in another provision of this code, any and all amount(s) due and owing the city of Dayton from and after March 5, 2019, shall accrue interest at the legal rate as the same is set forth in ORS Chapter 82 from the time it becomes due until fully paid.

EXHIBIT B

1.18.00 MUNICIPAL COURT PROCEDURES FOR CERTAIN CODE ENFORCEMENT MATTERS

1.18.01 Purpose.

The purpose of this chapter is to provide for the prompt, effective, and efficient enforcement and adjudication of the Dayton Municipal Code so as to carry out the policies of the city as those policies are embodied elsewhere in this code other than traffic violations or traffic crimes as defined by ORS 801.545 (2017).

1.18.02 Jurisdiction – Limitation.

A. The municipal court shall have jurisdiction over all cases submitted in accordance with the procedures and conditions set forth in this chapter; however, the municipal court shall not be required to use the procedures and conditions set out herein for:

1. Any offense(s) both treated by the city and described as “violations” by the terms of ORS 153.008 (2017);
2. Traffic violations or traffic crimes as defined by ORS 801.545 (2017); or
3. Parking offenses.

B. Notwithstanding the foregoing, the city reserves to itself the right to exercise the authority granted it pursuant to ORS 30.310 and 30.315 (2017) in situations deemed by the city council, city administrator and/or city attorney to be appropriate.

1.18.03 Definitions.

A. “Municipal court” means the Dayton municipal court (including judge(s) sitting therein) and any other person designated and appointed by the council or municipal judge to act in a judicial capacity in a particular proceeding(s) in the municipal court.

B. “Party” means:

1. The city of Dayton.
2. Any person named by the city as a respondent in the complaint.
3. Any person requesting participation in a hearing as a party or a limited party which the municipal court determines has an interest in the result of the proceeding.

C. "Respondent" means the party(ies) whom the city alleges in the complaint to have committed a violation of city code or to be responsible for such violation.

1.18.04 Authority of the municipal court.

A. In addition to any procedures set forth elsewhere in the code, code enforcement proceedings shall be conducted in accordance with the procedures set forth in this chapter.

B. The municipal court may promulgate rules not inconsistent with this chapter concerning procedure and the conduct of hearings under this chapter, and the municipal court is authorized to adopt rules, procedures and forms to implement the provisions of this chapter.

1.18.05 Initiation of code enforcement proceedings.

A. A proceeding before the municipal court using the procedures set out in this chapter may be initiated as specifically authorized elsewhere in the code or as set forth below.

B. A proceeding before the municipal court can be initiated by the city filing a citation or a complaint with the municipal court on forms approved by the municipal court. In the event a complaint is filed, it shall contain:

1. The name(s) of the respondent(s);
2. The address or location at which the violation is alleged to have occurred;
3. A short and plain statement of the alleged violations, including a reference to the particular city code provision(s), resolution(s), rule(s) or regulation(s) involved;
4. The nature of the relief sought by the city;
5. The city department(s) initiating the proceeding;
6. The name, title, and signature of the person initiating the proceeding on behalf of the city; and
7. Such other information as the municipal court may require.

1.18.06 Setting of hearing.

A. Upon filing of a citation or a complaint, the municipal court shall specify a time, date and place for a hearing on the citation or complaint and the matters alleged therein.

B. The date set for the hearing shall be not less than 7 nor more than 60 days after the date the citation or complaint is first filed, except:

1. That the municipal court may specify a date for hearing less than 7 days after the complaint is filed where it reasonably appears the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person; or

2. By agreement of the parties.

C. The municipal court may postpone, continue, set over or reschedule any hearing:

1. With the consent of all parties;

2. On the motion of any party for good cause shown; or

3. On the court's own motion or the court's convenience in the interest of justice.

1.18.07 Notice of hearing.

A. The city shall give notice of the hearing (along with the applicable citation or complaint) to the respondent(s) and all other parties not less than five calendar days prior to the date set for hearing except:

1. The municipal court may set a shorter period when it reasonably appears the alleged violation poses an immediate and serious hazard to the public health, safety or welfare or the life, health, safety, welfare or property of any person; or

2. By written agreement of all parties.

B. The notice of hearing shall specify the time, date and place for the hearing.

C. Notice may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing. Notice may be given by:

1. Personally delivering the notice to the party(ies);

2. Mailing the notice by United States mail, postage prepaid, and addressed to the residence or business address of the party(ies); or

3. Any method authorized by the Oregon Rules of Civil Procedure for the service of a summons.

If notice is given by mail, such notice shall be deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail.

D. Notice of the hearing and a copy of the citation or complaint shall also be given to:

1. The tenants, residents and lessees of any building, property, or structure if the city has requested in the complaint the vacation, closure or demolition of the building, property or structure or if the municipal court determines such vacation, closure or demolition is a reasonably possible outcome.

2. Any other person who reasonably appears to have an interest in the property involved or who reasonably appears may be adversely affected by any determination, decision, or order of the municipal court.

3. Any person who has requested such notification.

E. The failure of any person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision or order of the municipal court.

1.18.08 Notice – Rights – Procedure.

A. Prior to the commencement of any contested hearing, the municipal court shall inform each party to the hearing of the following:

1. A general description of the hearing procedure including:

a. The order of presentation of evidence;

b. What kinds of evidence are admissible;

c. Whether any objections be made to the introduction of evidence and what kind of objections may be made; and

d. An explanation of the burdens of proof or burdens going forward with the evidence.

2. That a record will be made of the proceedings and the manner of making the record and its availability to the parties.

3. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the municipal court.

4. Whether an attorney will represent the city in the matters to be heard and whether the parties ordinarily and customarily are represented by attorneys.

5. The function of the municipal court including the effect and authority of the municipal court's determination.

6. In the event a party is not represented by an attorney, whether the party may, during the course of proceedings, request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

7. Whether there exists an opportunity for an adjournment at the end if the party then determines that additional evidence should be brought to the attention of the municipal court and the hearing is reopened.

8. Whether there exists an opportunity after the hearing and prior to the final determination or order of the municipal court to review and object to any proposed findings of fact, conclusions of law, summary of evidence, or order of the municipal court.

9. A description of the judicial review process from the determination or order of the municipal court.

B. The information required to be given under subsection A of this section may be given in writing or orally prior to commencement of the hearing. The failure to give said notice (or of any item specified) shall not invalidate any determination or order of the municipal court unless on appeal from or review of the determination or order a reviewing court finds that the failure affects the substantive rights of the complaining party. In the event of such a finding, the reviewing court shall remand the matter to the municipal court for a reopening of the hearing, directing the municipal court as to what steps shall be taken to remedy the prejudice to the rights of the complaining party.

1.18.09 Depositions.

On petition of any party, the municipal court may order that the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken via audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the witness's testimony and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the municipal court may issue a subpoena to require the witness to appear for deposition.

1.18.10 Subpoenas.

A. The municipal court shall issue subpoenas to any party upon showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the city, shall receive fees and mileage as prescribed by Oregon law for witnesses in civil actions.

B. If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, a judge of the circuit court upon the application of

the municipal court (or of a designated representative of the municipal court or of the party requesting the issuance of the subpoena) shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.

1.18.11 Discovery.

A. On petition of any party and a showing of the general relevance of the documents or things sought, the municipal court may enter an order directing any party to produce and make available to the petitioning party to inspect and copy any documents or to inspect and copy, test, or sample any things which are in the possession of a party.

B. The order directing a party to produce and make available documents or things may require the petitioning party to pay the party producing documents and things that party's reasonable costs associated with such production.

C. The municipal court shall not enter an order requiring a party to produce any document or thing which is privileged under the rules of privilege recognized by law or which is exempt from disclosure under the Oregon Public Records Law.

1.18.12 Evidence.

A. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Erroneous rulings on evidence shall not preclude action by the municipal court on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The municipal court shall give effect to the rules of privilege recognized by law.

B. Objections to evidence may be received in written form.

C. All evidence shall be offered and made a part of the record in the case and except for matters stipulated to and, except as provided in subsection D of this section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

D. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

E. The municipal court may take notice of judicially recognizable facts and the municipal court may take official notice of general, technical or scientific facts within the specialized knowledge of city employees.

Parties shall be notified at any time during the proceeding (but, in any event, prior to the final decision) of material officially noticed, and they shall be afforded an opportunity to contest the facts so noticed.

F. No sanction shall be imposed or final order issued except upon consideration of the whole record as supported by, and in accordance with, reliable, probative and substantial evidence.

1.18.13 Proposed and final orders.

The municipal court shall prepare and mail to all parties a proposed order including findings of fact and conclusions of law. The proposed order shall become final on the date specified in the order, which date shall not be less than 14 days after such mailing, unless the municipal court finds that an existing violation is imminently dangerous to the health, safety or property of any person or of the public, in which case the order may specify an earlier date.

1.18.14 Orders.

A. Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

B. Unless otherwise stipulated, a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the municipal court's order. The findings of fact and conclusions of law may be orally stated on the record by the municipal court and those findings and conclusions incorporated in the written order by reference.

C. The municipal court shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

D. Every final order shall include a reference to the fact that the order may be judicially reviewed pursuant to ORS 34.010 to 34.100.

1.18.15 Authority of the municipal court.

A. The municipal court may order a party found in violation of the city code to comply with the provisions of the code or the applicable rule or regulation within such time as the municipal court may by order allow. The order may require such party to do any and all of the following:

1. Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;

2. Abate or remove any nuisance;

3. Change the use of the building, structure, or real property involved;
4. Install any equipment necessary to achieve compliance;
5. Pay the city a civil penalty consistent with the City's Fee Schedule or such greater amount as may be authorized by this code; or
6. Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.

B. In the event any party fails to comply with any provision of an order of the municipal court (except a provision requiring payment of a civil penalty only), the municipal court may authorize the city to undertake such actions as the municipal court may determine are reasonably necessary to correct the violation and/or eliminate or mitigate the effects thereof. The city's reasonable costs of such actions may be made a lien against the affected real property.

1.18.16 Assessments.

A. Costs incurred by the city for any action(s) authorized by the municipal court shall be an assessment lien upon the property subject to the order.

B. The city shall furnish a statement of such costs on the owner, in person or by United States mail, postage prepaid and addressed to the owner(s) at the owner(s)' residence or place of business, and shall file a copy of such statement with the municipal court with proof of service attached.

1. If no objection to such statement is filed with the municipal court within 15 days from the date of service or mailing, the municipal court shall certify such statement and forward the same to the city manager who shall forthwith enter the same in the city lien docket.

2. If an objection to the statement is received within the 15-day period, the municipal court shall schedule and hold a hearing to consider the objections and after the hearing shall certify such statement (or so much of it as determined to be correct and proper) and forward it to the city manager who shall enter it into the city lien docket.

C. The municipal court shall certify to the city manager the amount of any civil penalty imposed under any order of the municipal court, and the finance director shall enter it into the city's lien docket. The lien imposed for the civil penalty shall be in addition to any lien imposed for costs actually incurred by the city.

D. In addition to the lien imposed under this section, any person found by the municipal court to be in violation of the city code shall be personally liable for costs incurred by the city and for any civil penalty imposed by order of the municipal court.

1.18.17 Judicial review.

Review of the final order of the municipal court by any aggrieved party (including the city) shall be by writ of review as provided in ORS 34.010 through 34.100 and not otherwise.

1.18.18 Enforcement.

A. The city may institute appropriate suit or legal action (in law or equity) in any court of competent jurisdiction to enforce the provisions of any order of the municipal court, including, but not limited to, a suit or action to obtain judgment for any civil penalty imposed by an order of the municipal court and/or any assessment for costs or penalties.

B. Unless authorized by the municipal court, it is unlawful for any person to knowingly enter or remain in any building or structure that the municipal court has ordered vacated.