

ORDINANCE NO. 05-11(4)
AMENDMENT 6/26/2018

AN ORDINANCE AMENDING ORDINANCE No. 05-11, RELATING TO THE CITY OF LYONS ENFORCEMENT ORDINANCE.

THE CITY OF LYONS ORDAINS AS FOLLOWS:

Lyons City Code Chapter 1.25 Enforcement Procedures

1.25.010 Title.

This chapter shall be known as the city of Lyons enforcement ordinance. [Ord. 05-11 § 1.010, 2000.]

1.25.020 Purpose.

This chapter is enacted for the purpose of providing procedures to be used in enforcing certain city of Lyons ordinances. [Ord. 05-11 § 1.020, 2000.]

1.25.030 Definitions

A. "Enforcement Officer" means a person or persons appointed by the City Council of the City of Lyons who is specifically designated to enforce the provisions of an Ordinance that has been adopted by the City Council.

B. "Offense" means "violation" as defined in subsection (D) of this section.

C. "Peace Officer" means a sheriff, constable, marshal, municipal policeman, or _____ member of the Oregon State Police.

D. "Violation" means conduct of a person who commits an offense against the City by not adhering to an ordinance of the City of Lyons.

E. "Base Fine" means the fine assessed to any violation that is not specifically stated elsewhere in the Lyons Municipal code. The base fine amount is \$250.00 per violation.

F. "Fee Schedule" means the list of charges, fees, and fines set forth by the City of Lyons ordinances. [Ord. 05- 11 § 1.030, 2000. As amended 6/26/2018]

1.25.040 Enforcement officers.

The city council of the city of Lyons may, by order of the council, designate from time to time, one or more appropriate persons as enforcement officers for the purpose of implementing this chapter. Enforcement officers shall serve at the pleasure of the city council. Designation of an enforcement officer may be limited to enforcement of specific violations. The city council may revoke designation as an enforcement officer without showing cause therefor. A copy of each of the council's orders appointing an enforcement officer or officers or revoking authority of an enforcement officer shall be entered in the minutes of the city council meeting. [Ord. 05-11 § 2.010, 2000.]

1.25.050 Issuance of warnings and notification to city council.

A. The appropriate enforcement officer may issue a warning notice of an alleged ordinance violation. If issued, such warning notice shall give a brief description of the violation alleged to exist, and shall be served personally or by posting at the site of the violation, and, if the person accused of the violation is known, by certified mail to that person as well. The warning notice shall further contain the name of the city official to contact regarding the violation, the name of the person issuing the warning notice, the date the warning was issued, and a statement that failure to correct the alleged violation may result in initiation of enforcement procedures.

B. Prior to commencing legal action on an alleged ordinance violation, the enforcement officer shall inform the city council of the alleged violation. The city council shall review the alleged violation and make a determination as to whether it should be resolved by following the procedures as outlined in this chapter. Notwithstanding the foregoing, in the event that in the course of an investigation of a violation the city manager or the enforcement officer deems the actions of the person or persons accused of the violation to be chronic, ongoing and habitual, the city manager or the enforcement officer shall contact the members of the city council by telephone to advise them of the problem and to request their authorization to issue a citation for such violation. Upon receipt of authorization from a majority of the members of the city council, the city manager or the enforcement officer can have the order cited immediately. [Ord. 05-11 § 2.020, 2000, as amended 9/24/2004.]

1.25.060 Jurisdiction of courts.

Violation of city ordinances is subject to ORS 8.665, ORS Chapter 153 and this chapter. A circuit court or justice court has concurrent jurisdiction of all violations. [Ord. 05-11 § 2.030, 2000, as amended 10/22/2002.]

1.25.070 Commencement of action for ordinance violation.

Whether or not a warning notice of an alleged ordinance violation has been issued, the enforcement officer may commence proceedings by issuing a citation by the method outlined in this chapter, and filed in a Linn County circuit court, or Linn County justice court. [Ord. 05-11 § 2.040, 2000.]

1.25.080 Enforcement by means of citation filed in circuit or justice court.

If the enforcement officer determines that enforcement of a violation defined by ordinance, statute, or administrative rule by means of a citation filed in circuit or justice court is warranted, the enforcement officer may proceed as provided in this chapter. [Ord. 05-11 § 2.050, 2000.]

1.25.090 Form and content of citation.

A. A citation conforming to the requirements of this chapter and ORS 1.525 may be used for all ordinance violations that occur in the city of Lyons, Oregon.

B. Except as provided in this chapter, the procedures and substantive provisions of ORS Chapter 153 shall be followed.

C. The citation shall consist of at least four parts. Additional parts may be inserted for administrative use. The required parts are:

1. The complaint;
2. The abstract of record;
3. The police or enforcement officer record;
4. The summons.

D. Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

E. The complaint shall contain a form of certificate in which the complainant shall certify, under the penalties provided in ORS 153.990, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. [Ord. 05-11 § 3.010, 2000, as amended 10/22/2002.]

1.25.100 Minimum requirements for summons.

A summons in a violation subject to this chapter, ORS 8.665, and ORS Chapter 153, is sufficient if it contains the following:

A. 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 and place at which the person cited is to appear in court.

B. A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

C. A notice to the person cited that a complaint will be filed with the court based on the offense.

D.The amount of the base fine, if any, fixed for the offense. [Ord. 05-11 § 3.020, 2000, as amended 10/22/2002.]

1.25.110 Minimum requirements for complaint.

A.Except as provided in this section, a complaint in a violation subject to this chapter, ORS 8.665 and ORS Chapter 153 is sufficient if it contains the following:

1.The name of the court; the name of the state, of the city, or other public body in whose name the action is brought; and the name of the defendant.

2.A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

3.A certificate, as specified by ORS Chapter 153, signed by the complainant.

B.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.

C.Nothing prohibits the court from amending the citation in its discretion. [Ord. 05-11 § 3.030, 2000, as amended 10/22/2002.]

1.25.120 Hearing – Trial – Commencement – Burden of proof – Pretrial discovery – Offender as witness.

A.The hearing of any violation complaint shall be by the court without a jury.

B.The hearing of any violation complaint shall not commence until the expiration of seven days from the date of the complaint.

C.The city shall have the burden of proving the violation by a preponderance of the evidence.

D.The pretrial discovery rules set forth in the Oregon Rules of Civil Procedure shall apply to violation complaints. The plaintiff may call the offender as a witness at the hearing.

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

F.At any hearing involving a violation complaint, an attorney shall not be provided for a defendant at public expense. At any hearing involving a violation complaint, the city attorney may appear only if the defendant is represented by an attorney. [Ord. 05-11 § 4.010, 2000.]

1.25.130 Prosecution of violation complaint.

Notwithstanding any provision of the Oregon Rules of Civil Procedure or any other provision of this chapter, the prosecution of one violation complaint shall not bar the subsequent prosecution of additional city 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 violations. [Ord. 05-11 § 4.020, 2000.]

1.25.140 Civil judgment.

A judgment upon a violation complaint is a civil judgment, as in any other civil judgment at law. The judgment involves only a fine, and may also include a lien against the property. The judgment does not incur loss by forfeiture, suspension or revocation of any license or any other privilege or civil penalty. A person against whom a judgment is issued does not suffer any disability or legal disadvantage, based upon said judgment, other than the enforcement by the city of Lyons of the judgment. [Ord. 05-11 § 5.010, 2000.]

1.25.150 Appeal from judgment.

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

A.From a proceeding in justice court, as provided in ORS Chapter 53.

B.From a proceeding in circuit court, as provided in ORS 19.005 to 19.510. [Ord. 05-11 § 5.020, 2000.]

1.25.160 Court costs.

A.The court shall charge court costs to the violator where:

1.The offender admits a violation of the city ordinance;

2.The offender, following a hearing, is found to have violated a city ordinance; or

3.The offender enters into an agreement with the city for a consent decree whereby the offender does not admit violating the city ordinance but agrees to make necessary corrections, as set forth in the agreement, in order to bring the offender’s conduct, actions, omissions or property into compliance with city ordinances.

B.Court costs shall be \$100.00. In any proceeding, said costs cannot be waived by the city, the offender or the court except in case of indigence or undue hardship under ORS 21.605. If the offender fails to pay the costs, the costs shall be entered as a judgment against the offender in the same manner and with like effect as a judgment for a fine. [Ord. 05-11 § 5.030, 2000, as amended 10/22/2002.]

1.25.170 Consent decree.

A.The city and the offender may enter into a consent decree. The consent decree may provide that the offender does not admit violation of a city ordinance but will make necessary corrections, as set forth in the agreement, to bring the offender’s actions, conduct, omissions or property into conformance with appropriate city ordinances.

B.The offender, the offender’s attorney, if any, and the city’s representative shall sign all consent decrees.

C.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 the offender performs as agreed. The violator or the city of Lyons may seek a court order dismissing the case upon completion of the conditions of the consent decree.

D.The offender’s failure to comply with the consent decree allows the city of Lyons to seek any additional remedies provided by law or this chapter. [Ord. 05-11 § 5.040, 2000.]

1.25.180 Fines.

All fines paid to the city shall be credited to the general fund, to be used for general city purposes. [Ord. 05-11 § 6.010, 2000.]

1.25.190 Special costs.

A.The city shall be entitled to recover all special costs and disbursements that are reasonable and necessary expenses incurred in the successful prosecution of a violation complaint, other than for legal services, but including the costs of cleaning up the property, the costs and expenses of witnesses, the necessary expenses of taking depositions, the expense of publication of summons or notices, postage, compensation of expert witnesses, and the expense of copying any public or private record, book or document used as evidence in the trial.

B.The special costs shall be allowed to the city in the same manner as a judgment for fines. [Ord. 05-11 § 6.020, 2000.]

1.25.200 Issuance of citation.

A peace officer or enforcement officer may issue a citation for violation of a city of Lyons ordinance. [Ord. 05-11 § 7.010, 2000.]

1.25.210 Appearance by defendant.

The defendant shall either appear in court at the time indicated in the summons, or prior to such time shall deliver to the court the summons, together with cash, checks or money order in the amount of the base fine amount set forth on the summons, enclosing therewith:

A.A request for a hearing; or

B.A statement of matters in explanation or mitigation of the offense charged; or

C.The executed appearance, waiver of hearing and plea of guilty appearing on the summons. A statement in explanation or mitigation may also be enclosed with the guilty plea;

D.In any case in which the defendant personally appears in court at the time indicated in the summons, if the defendant desires to plead guilty and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make. [Ord. 05-11 § 7.020, 2000.]

1.25.220 Effect of statement and explanation in mitigation.

If a defendant has submitted to the court any written statement in explanation or mitigation under LMC 1.25.210 or

ORS 153.061, the statement constitutes a waiver of hearing and consent to judgment. The court may declare a forfeiture of the base fine amount on the basis of the statement and any testimony or written statement of the person issuing the citation or other person that may be presented to the court. [Ord. 05-11 § 7.030, 2000, as amended 10/22/2002.]

1.25.230 Fixing hearing dates – Notice to defendants.

A.If the defendant requests a hearing under ORS 153.061, or if pursuant to LMC 1.25.240, the court directs that a hearing be held, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant a notice of the date and time so fixed.

B.Notice to the defendant required pursuant to subsection (A) of this section shall be made in the form of a court “notice to appear” and be sent by certified mail addressed to the defendant at his last known address with postage prepaid thereon, or by other notice deemed adequate by the court to provide actual notice to the defendant. [Ord. 05-11 § 7.040, 2000, as amended 10/22/2002.]

1.25.240 Hearing discretionary with court – Exception.

A.For any ordinance violation for which a citation has been issued, the court may direct a hearing be held or may enter the appropriate judgment, impose a fine, direct that a fine be paid out of the base fine amount deposit and unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

B.No fine may be imposed in excess of the amount of base fine amount deposited unless a hearing is held. [Ord. 05-11 § 7.050, 2000.]

1.25.250 Warrant for arrest.

A.If a person cited fails to comply with the provisions of LMC 1.25.210 or ORS 153.064, 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 a circuit or justice court may be served, without further endorsement, in any county in this state.

B.No warrant of arrest may be issued pursuant to this section after a period of 60 days from the date of entry of an order declaring a forfeiture of the base fine amount or other security given by the defendant. Unless a warrant has been issued before the expiration of that period, the order of forfeiture shall be deemed the final disposition of the case. [Ord. 05-11 § 7.060, 2000, as amended 10/22/2002.]

1.25.260 Enforcement and penalties

A. Any individual, firm or corporation, whether as principal, agent, or employee, violating any provision of a City of Lyons ordinance shall be punished, upon conviction thereof, by a fine not less than \$50.00 and not more than \$1,000.

B. For purposes of this chapter, a failure to comply with any provision of a city of Lyons ordinance from day to day shall be a separate offense for each such day. [Ord. 05-11 § 8.010, 2000. As amended 6/26/2018]

1.25.270 Base Fine Amount

The base fine amount for each violation shall be 25 percent of the amount set out as a maximum fine by LMC 1.25.260. [Ord. 05-11 § 8.020, 2000.] 1.25.260. [Ord. 05-11 § 8.020, 2000.]

Whereas, the City Council of the City of Lyons considers it necessary that the foregoing Ordinance be enacted for the protection of the peace, health, safety, and welfare of the residents of the City of Lyons, Oregon, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage by the City Council and its approval by the Mayor.

Passed by the Council this 26th day of June, 2018

Approved: _____
Troy Donohue
Mayor of the City of Lyons, Oregon

Date: _____

ATTEST:

By: _____
Micki Valentine
Recorder of the City of Lyons, Oregon

Date: _____