

ORDINANCE NO. 2023-03

**AN ORDINANCE PRESCRIBING CIVIL INFRACTIONS;
PROVIDING PENALTIES AND ENFORCEMENT; AND DECLARING AN EMERGENCY**

THE CITY OF NEHALEM DOES ORDAIN AS FOLLOWS:

Section 1. Definitions.

The following definitions apply in this Ordinance:

- A. **Code enforcement officer** means all Tillamook County Sheriffs, Manzanita Police Department officers, the City Manager, and all other persons designated by the City to serve as code enforcement officers.
- B. **Civil penalty** means the monetary payment imposed for violation of a City ordinance.
- C. **Infraction** means an action or failure to act in violation of any City ordinance, or any order, permit, license, approval, or condition authorized by ordinance.
- D. **Responsible party** means the person responsible for curing or remedying an infraction. "Responsible party" includes:
 - 1. The person alleged to have committed or authorized the infraction.
 - 2. If an infraction involves a condition of or on real property, the property owner, any agent of the property owner, and any person occupying or having possession of the property.
- E. **Respondent** means the person to whom a citation or summons is issued.

Section 2. Purpose

The purpose of this Ordinance is to establish a civil infraction procedure for enforcement of City Ordinances. The City may use the civil infraction procedure for any infraction. The civil infraction procedure is not a criminal procedure. The civil infraction procedure is not exclusive, and the City may use any other procedure for enforcement authorized by law, including the City's nuisance procedure, any procedure established by State law, or enforcement through appropriate actions in circuit court. The civil infraction procedure may be used in conjunction with other enforcement actions or procedures.

Section 3. No Mental State Required

A culpable mental state is not required to establish an infraction unless the mental state is part of the code provision, ordinance, or other requirement alleged to have been violated.

Section 4. Civil Infraction Pre-citation Procedures.

- A. Reporting. All reports or complaints of infractions shall be referred to the appropriate code enforcement officer.
- B. Review of Facts. The appropriate code enforcement officer shall investigate the facts and circumstances surrounding any infraction reported or otherwise made known to the code enforcement officer.
- C. Prior Contact. Before a civil infraction citation is issued, the code enforcement officer may contact a responsible party and may give the responsible party a reasonable opportunity to cure or remedy the alleged infraction. Contact prior to issuance of a citation is solely within the discretion of the code enforcement officer. If prior contact is made, the following information shall be communicated to the responsible party:
 - 1. Description or identification of the activity constituting the alleged infraction and identification of the recipient as being the reputed responsible party for the infraction;
 - 2. A statement that the code enforcement officer has determined the activity to be an infraction;
 - 3. A statement of the action required to remedy the infraction and the time and/or date by which the remedy must be completed;
 - 4. A statement advising that if the required remedy or cure is not completed within the time specified, a citation will be issued and that a civil penalty in the maximum amount provided for the particular infraction may be imposed.

Section 5. Voluntary Compliance Agreement.

The City and a responsible party may enter into a written voluntary compliance agreement to attempt to resolve the alleged infraction. The fact that a person alleged to have committed a civil infraction enters into such an agreement shall not be considered an admission of having committed an infraction for any purpose. The City will not serve or file a citation while a voluntary compliance agreement is in effect and is being complied with. If the terms of the voluntary compliance agreement are satisfied, the City shall take no further action concerning the alleged infraction other than those steps necessary to terminate the matter. If the voluntary compliance agreement is not complied with, the code enforcement officer authorized under Section 6(A) of this Ordinance shall issue a citation for the infraction that is the subject of the voluntary compliance agreement. The maximum penalty for willfully failing to comply with the voluntary compliance agreement shall be double the maximum penalty on the underlying infraction. Nothing in this section precludes informal resolution without a written agreement.

Section 6. Citation Issuance and Form.

- A. Issuance. A civil infraction citation may be issued any time after discovery of an infraction. Unless a code enforcement officer is authorized in writing by the City Manager, only Tillamook County Sheriffs or Manzanita Department of Public Safety officers may issue citations for City ordinance violations.
- B. Form of Citation. The City may use any form sufficient to inform the respondent of the nature of the alleged infraction and the options to respond to the citation. The citation should include:
 - 1. A summons to appear, either personally in court or by submitting a written answer to the court prior to the scheduled court appearance date;
 - 2. The name and location of the court, including the mailing address where written answers may be sent;
 - 3. The name of the person cited;
 - 4. The date, time, and place the infraction occurred, or, if the infraction is of a continuing nature, the date, time, and places the infraction was observed;
 - 5. The date on which the citation was issued;
 - 6. A readily understandable statement of the nature of the alleged infraction;
 - 7. The civil penalty amount for the alleged infraction;
 - 8. The date and time for the court appearance.

Section 7. Service of Summons.

Service of summons on individuals may be made by any of the following means:

- A. **Service by Mail.** Service may be made by mailing a copy of the citation by certified mail, return receipt requested, to the individual's last known mailing address. Service by mail shall be deemed to occur three days after mailing within the State, and seven days after mailing outside the State. Default may be entered against a person served by mail on submission of evidence of receipt, nonacceptance, or rejection of the certified mail by the person served.
- B. **Service by Posting.** If the alleged infraction relates to real property, the citation may be served by posting the citation at the main entry to an occupied residence or office on the property if the person to whom the citation is issued is not present. A copy of the citation shall be mailed by certified mail, return receipt requested, restricted delivery to the responsible person at the mailing address of the property no later than the end of the business day following posting. For the purpose of this section, Saturdays, Sundays, and Federal or City holidays shall not be considered business days. If service is made in accordance with this subsection, service shall be not less than five days before the court appearance date contained in the summons. Service shall be completed upon mailing.
- C. **Other Methods of Service.** Service may be made by any means authorized by Oregon Rules of Civil Procedure (ORCP) 7, and service on entities, minors, and incapacitated persons shall be as provided in ORCP 7.

Section 8. Filing of Citation.

The code enforcement officer shall file the original citation and a return of service showing service as authorized in Section 6(B) with the Municipal Court.

Section 9. Response, Answer and Appearance.

Compliance with the State law "violation" procedure shall be deemed compliance with the procedural requirements of this Ordinance.

- A. **Response Options.** The respondent shall respond to the citation either by appearing in court as specified in the citation or by submitting a written answer that must be received by the Municipal Court prior to the scheduled appearance. Answers and appearances may be through legal counsel. A respondent who submits a written answer received by the City prior to the scheduled appearance is not required to appear at the scheduled appearance. It is the respondent's responsibility to assure that any written answer is received by the court prior to the appearance date.
- B. **Written Answer.** The respondent's answer may take three forms:
 1. A written explanation, with payment of the amount stated in the citation. The statement shall constitute a waiver of hearing and consent to judgment. The written information may contain evidence that the violation has been corrected. The court shall review the written statement, the citation and any other evidence that may be available, including any written submission of the code enforcement officer. The court shall issue a judgment based on the record and may notify the code enforcement officer and the responsible party of the decision. The court may refund some or all of the amount submitted.
 2. An admission of the infraction, accompanied by payment of the amount stated in the citation. On receipt of an answer admitting the civil infraction, the court shall enter judgment in the amount stated in the citation.
 3. A denial and a request for a hearing. Correction of the violation is not a defense.
- C. A written explanation without payment shall be treated as a denial and request for a hearing.
- D. **Appearance.** If the respondent does not file an answer by the scheduled appearance date, the respondent must appear in court as scheduled. At the in-court appearance, the respondent may admit the infraction, not contest the infraction, or deny the infraction. If the respondent admits or does not contest the infraction, the respondent will be allowed to provide an explanation, including evidence that the violation has been cured, and request that the penalty be reduced. If the respondent denies the infraction, the matter will be scheduled for a hearing at least two weeks after the date of the appearance unless an animal has been impounded or an immediate remedy is

required. The court will mail confirmation of the hearing date and time. Appearances may be rescheduled for good cause by agreement of the court and respondent prior to the date scheduled for the hearing. Requests for rescheduling shall be in writing and should normally be made at least seven days prior to the scheduled hearing. If the respondent does not deny the infraction, the Municipal Judge shall determine the amount of the penalty to be imposed and shall enter a judgment.

Section 10. Hearing.

- A. If the respondent's request for a hearing is received by the court prior to the scheduled appearance, a hearing date will be set by the Municipal Court. The Municipal Court shall notify the respondent by mail of the date and time of the hearing.
- B. The respondent may be represented by a lawyer at respondent's expense. Respondent or respondent's lawyer shall provide written notice to the court that respondent will be represented. If notice of appearance by a lawyer has not been provided the Judge at the hearing shall give the code enforcement officer the option of proceeding or postponing the hearing so that the City Attorney may be consulted.
- C. The City Attorney may appear at any hearing where the respondent is represented by a lawyer, and may assist the code enforcement officer in all cases.
- D. Each party shall have the right to present evidence and witnesses, to cross-examine the other party's witnesses, and to submit rebuttal evidence.
- E. If the respondent wishes to compel the attendance of witnesses, the respondent must submit a written request to the court at least 10 days prior to the scheduled hearing, accompanied by a fee of \$35.00 per subpoena, or higher amount authorized by Council resolution, to cover the costs of preparing the subpoena. The code enforcement officer or the City Attorney may also request that the court subpoena witnesses. Signed subpoenas shall be given to the party seeking the subpoena, who shall be responsible for serving the subpoena and for paying subpoenaed witnesses a witness fee of \$35.00 per day per witness.
- F. Only evidence relevant to the infraction alleged in the citation will be considered or admitted.

Section 11. Evidence at Hearings.

- A. Oral evidence shall be taken on oath or affirmation.
- B. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a decision unless it would be admissible under the Oregon Rules of Evidence.
- C. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- D. Irrelevant and unduly repetitious evidence shall be excluded.
- E. The City shall have the burden of proving the alleged infraction by a preponderance of the evidence.
- F. The City shall not call the respondent as a witness, but if the respondent chooses to be a witness, the City may examine the respondent and shall not be limited to cross-examination

Section 12. Decision – Appeal.

- A. The court shall determine whether the infraction alleged in the citation was committed and shall enter judgment accordingly, including the amount of any penalty imposed. A copy of the judgment shall be delivered to the respondent personally or by mail. The judgment may provide that payment be suspended if the violation is cured within a specified time.
- B. The decision of the Municipal Court shall be final. Judicial review of the Municipal Court decision shall be by writ of review under ORS Chapter 34.

Section 13. Enforcement.

- A. Failure to Appear or Answer. If a cited person fails to respond to a citation as required by this chapter, a default judgment shall be entered in the amount of the scheduled penalty.
- B. Payment of Penalty and Fees. Any penalty or fee is to be paid no later than 10 days after entry of the judgment or such later time as authorized by the Municipal Judge or by agreement with the City.

Section 14. Lien Filing and Docketing.

- A. Filing. A copy of a judgment imposing a penalty may be filed in the City lien docket.
- B. Judgment as Lien. A judgment amount entered in the City lien docket shall be a lien for an initial period of 10 years upon all real property in the City owned by the person against whom judgment was entered.
- C. Renewal of Lien. If a judgment is renewed by the Municipal Court, the lien created by subsection (B) of this section is automatically extended 10 years from the renewal date.
- D. Recording Lien in County Records. The City may file the Municipal Court judgment and a declaration of lien with the County Clerk of any County in the State where the person against whom the judgment was entered owns property.
- E. Licenses and Permits. The City may deny or revoke any City license or permit held or applied for by a person who has not paid a judgment imposing a civil penalty.

Section 15. Civil Penalty.

The amount required to be paid as a civil penalty shall be established by the Council by ordinance or resolution. The Council may establish the maximum civil penalty by ordinance and may establish the amount to be paid on issuance of a citation by resolution, which may be less than the maximum civil penalty established by ordinance.

Section 16. Schedule of Penalties.

- A. Infractions for violations of the Nehalem Code are classified as follows:
 - 1. Class A civil infractions with a maximum civil penalty of \$1,000.00.
 - 2. Class B civil infractions with a maximum civil penalty of \$750.00.
 - 3. Class C civil infractions with a maximum civil penalty of \$500.00.

Section 17. Penalty Schedule.

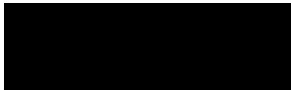
The court is authorized to establish a penalty schedule for any civil infraction. A copy of this schedule is to be kept at the office of the Municipal Court Clerk.

Section 18. Emergency.

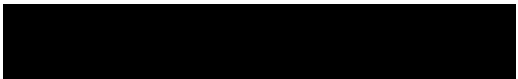
This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

PASSED AND ADOPTED by the City Council on this 13th day of February, 2023; and

APPROVED by the Mayor this 13th day of February, 2023.



Phil Chick, Mayor



ATTEST:

Melissa Thompson-Kiefer, City Manager

First Reading & Second Reading: February 13, 2023

Ayes: 3
Nays: 0
Abstentions: -
Absent: -

Adopted: February 13, 2023

Ayes: 3
Nays: 0
Abstentions: -
Absent: -