

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF ORDINANCES AMENDING)	
KLAMATH COUNTY CODE CHAPTER 400, SOLID	)	ORDINANCE NO. 15.09
WASTE MANAGEMENT; CHAPTER 401, NUISANCE	)	ORDINANCE NO. 15.10
CONTROL; CHAPTER 405, AMBULANCE	)	ORDINANCE NO. 39.07
REGULATION; CHAPTER 407, KLAMATH COUNTY	)	ORDINANCE NO. 46.04
PARK REGULATIONS; CHAPTER 408,	)	ORDINANCE NO. 16.02
ENTERTAINMENT ASSEMBLIES; CHAPTER 600,	)	ORDINANCE NO. 55.01A
ACCELERATION OF TAX FORECLOSED	)	ORDINANCE NO. 21.04
PROPERTY; CHAPTER 601, SOCIAL GAMES;	)	ORDINANCE NO. 62.02
CHAPTER 602, SECONDHAND DEALERS;	)	ORDINANCE NO. 38.03
CHAPTER 603, TRANSIENT ROOM TAX;	)	ORDINANCE NO. 67.01
CHAPTER 604, CABLE COMMUNICATION	)	ORDINANCE NO. 28.08
SYSTEMS; CHAPTER 701, PLUMBING CODE;	)	ORDINANCE NO. 27.03
CHAPTER 703, MANUFACTURED DWELLING	)	ORDINANCE NO. 57.04B
PLACEMENT; CHAPTER 800, ENFORCEMENT)	
OF THE KLAMATH COUNTY CODE)	
)	

WHEREAS, a periodic review of the Klamath County Code indicates that some housekeeping amendments are necessary to make the Klamath County Code consistent with the Oregon Revised Statutes and the Oregon Administrative Rules; and

WHEREAS, it is in the best interest of Klamath County to amend the Code to make it consistent with the Oregon Revised Statutes and the Oregon Administrative Rules;

NOW, THEREFORE, the Board of County Commissioners ordains that the Klamath County Code will be amended to read as follows ¹:

\\

\\

¹ Portions deleted from the old Code are placed in brackets and lined out and portions to be added are boldface and underlined.

(2) When the Klamath County Building Department has determined that a person has failed to obtain inspections, permits, labels, insignias, tags, and/or plan reviews when required by the Department, the person shall be charged double the amounts required in OAR 918-500-0100.

(3) Persons requesting inspections when work is not ready for inspection, causing an inspector to make an additional trip shall be charged reinspection fees of \$85.00 per OAR 918-500-~~[100-17]~~ 105 (4).

(4) Electrical fees shall be in accordance with O.R.S. 479.845.

(5) Plumbing Fees shall be in accordance with O.R.S. 447.010 to 447.160.

(6) Mechanical Fees shall be in accordance with O.R.S. 455.010 to 455.~~[990]~~ 895.

.

703.900 Penalties. Violation of KCC 703.800 shall be punishable by a fine of not more than \$~~[500.00]~~ 600. In the case of a continuing violation, each day of continuance of the violation is a separate offense.

.

ORDINANCE NO. 57.04B

**DIVISION 8
ENFORCEMENT**

CHAPTER 800 CONTENTS

**CHAPTER 800
UNIFORM CIVIL ~~[INFRACTION]~~ VIOLATION PROCEDURE**

800.001	Purpose	180
800.005	Definitions	180
800.100	[Infraction] <u>Violation</u> Procedure	181
800.110	Issuance of Uniform [Infraction] <u>Violation</u> Citation and Complaint	182

800.120	Service	183
800.130	Answer.	183
800.140	Hearing.	183
800.200	Enforcement.	184
800.210	Lien Filing and Docketing.	185
800.300	Effect of Citation on Nuisance.	185
800.400	No Mental State Required.	185
800.450	Non-Exclusive Remedy.	185
800.900	Schedule of Penalties.	185
800.920	Severability.	186

Ordinance No. 57.00B - 08/30/89
 Ordinance No. 57.01B - 01/08/92
 Ordinance No. 57.02B - 05/18/94
 Ordinance No. 57.03B - 06/25/97

CHAPTER 800
UNIFORM CIVIL [~~INFRACTION~~] VIOLATION PROCEDURE

800.001 Purpose. A civil [~~infraction~~] violation procedure has been established for the purpose of decriminalizing penalties for [~~infractions~~] violations of certain civil ordinances and for the purpose of providing a convenient and practical forum for the civil hearing and determination of cases arising out of said violations.

800.005 Definitions. For the purpose of this Ordinance the following mean:

(1) "Civil [~~infraction~~] violation" means commission of an act or omission to act in a manner prescribed by this Ordinance or other County ordinance constituting breach or infringement of a section of a County ordinance or of this Ordinance constitutes a civil infraction and shall be handled in accordance with the procedures established by this Ordinance. [~~When an infraction is of a continuing nature, except where specifically provided otherwise, a separate infraction will be deemed to occur on each~~]

~~calendar day the infraction continues to exist, and a separate citation may be filed for each such infraction.]~~

(2) "Enforcement Officer" means the County Commissioners or any designee or designees whom the County Commissioners appoints by Resolution or Order to enforce the Code.

(3) "Penalty; Penalty schedule" means the only penalty to be imposed for a ~~[n infraction]~~ violation is a monetary penalty. The penalty to be assessed for a specific ~~[infraction]~~ violation will be determined pursuant to specific provisions within the ordinance defining the ~~[infraction]~~ violation or the penalty schedule found in KCC 800.900. The procedure prescribed by this Ordinance shall be exclusive procedure for imposing a penalty; however, this section shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statute or state law which are intended to abate or alleviate ordinance violations, nor shall the County be prohibited from recovering, in a manner prescribed by law, any expense incurred by it in abating or removing ordinance violations pursuant to any ordinance.

(4) "Person" means any natural person or persons, firm, partnership, association or corporation.

(5) "Prior contact" means:

(a) Any prior contact between the Enforcement Officer and the responsible party regarding the alleged ~~[infraction]~~ violation, including, but not limited to phone calls, personal oral communication at any location, letters or other forms of written communication, or a prior citation issued for the same or similar ~~[infraction]~~ violation.

(b) Prior contact shall be deemed to occur without actual contact between the Enforcement Officer and a responsible party if the alleged ~~[infraction]~~ violation is related to regulated activity for which the County has issued any permit, license, agreement, or written directive required by law or policy of the County in conjunction with the regulated activity. No time limit shall restrict prior contact which is deemed to have occurred under the terms of this section.

(6) "Responsible party" means the person responsible for curing or remedying a ~~[n infraction]~~ violation and includes:

(a) The owner of the property or the owner's manager or agent or other person in control of the property on behalf of the owner;

(b) The person occupying the property including bailee, lessee, tenant or other person having possession;

(c) The person who is alleged to have committed or authorized the commission of the ~~[infraction]~~ violation.

800.100 ~~[Infraction]~~ Violation Procedure.

(1) Reporting. All reports or complaints of [~~infractions~~] violations covered by this Ordinance shall be made to the Enforcement Officer.

(2) Review of Facts By Enforcement Officer. When a [~~n~~] ~~infraction~~] violation covered by this procedure is reported to the Enforcement Officer, the Enforcement Officer may refuse to proceed further with the matter after a review of the facts and circumstances surrounding the alleged [~~infraction~~] violation, and upon making a determination that sufficient evidence does not exist to support the allegation that a [~~n~~] ~~infraction~~] violation has occurred or if the Enforcement Officer deems it in the best interest of the County.

(3) Prior Contact. Before a uniform [~~infraction~~] violation citation and complaint is issued for a civil [~~infraction~~] violation the Enforcement Officer may make a prior contact with the responsible party. Whether a prior contact is made prior to issuance of a uniform [~~infraction~~] violation citation and complaint for a civil [~~infraction~~] violation, is solely within the sound discretion of the Enforcement Officer while enforcing the best interests of the County.

In making the prior contact, the following information shall be communicated to the responsible party:

(a) a description or identification of the activity constituting the alleged [~~infraction~~] violation and identification of the recipient as being the responsible party for the [~~infraction~~] violation;

(b) a statement that the Enforcement Officer has determined the activity to be a [~~n~~] ~~infraction~~] violation;

(c) a statement of the action required to remedy or cure the [~~infraction~~] violation and the time and/or date by which the remedy must be completed or begun;

(d) a statement advising that, if the required abatement is not completed or commenced within the time specified, a uniform [~~infraction~~] violation citation and complaint will be issued and that a penalty in the maximum amount provided by Section [7] 800.900 of this Ordinance for that particular [~~infraction~~] violation could be imposed.

(4) When the Enforcement Officer considers it advisable, the Enforcement Officer may enter into a written agreement resolving the problems which gave rise to the complaint. The agreement shall be known as a voluntary compliance agreement and shall be binding on the responsible party. The fact that a person alleged to have committed a civil [~~infraction~~] violation enters into such an agreement shall not be considered an admission of having committed a [~~n~~] ~~infraction~~] violation for any purpose.

(5) During the time allowed in the voluntary compliance agreement for the completion of necessary correction action, the

County shall hold in abeyance further processing of the alleged violation. If all terms of the voluntary compliance agreement are satisfied, the County shall take no further action concerning the alleged violation other than those steps necessary to terminate the matter.

(6) The failure to comply with any term of the voluntary compliance agreement constitutes a separate Class [±] A Civil [~~Infraction~~] Violation and shall be handled in accordance with the procedures established in this Chapter. The County may also proceed with processing the alleged [~~infraction~~] violation giving rise to the voluntary compliance agreement.

800.110 Issuance of Uniform [~~Infraction~~] Violation Citation and Complaint.

(1) If the responsible party with whom prior contact was made fails to cure or remedy the alleged [~~infraction~~] violation or if the Enforcement Officer does not make a prior contact, a uniform [~~infraction~~] violation citation and complaint signed by the Enforcement Officer or any citizen may be filed with the circuit court charging the responsible party with the civil [~~infraction~~] violation and setting a date for the responsible party to appear before the court to answer said complaint. The violator may be prosecuted by the County in the name of the County or be made a defendant in a civil proceeding as prescribed by O.R.S. 203.065.

(2) The Enforcement Officer shall prescribe the form of the uniform [~~infraction~~] violation citation and complaint, but it shall consist of an original and three copies. The required copies are to be distributed as follows:

- (a) One to the Enforcement Officer;
- (b) One to the person being cited;
- (c) The original and one copy to the Court.

(3) Each of the three pages shall contain the following information:

- (a) the name of the court and the court's file number, if available;
- (b) the name of the person cited;
- (c) the [~~infraction~~] violation with which the person is charged;
- (d) the date, time and place the [~~infraction~~] violation occurred, or if the [~~infraction~~] violation is of a continuing nature, the date, time and place the [~~infraction~~] violation was observed by the enforcement officer, or the citizen signing the complaint;
- (e) the date on which the citation was issued;
- (f) the scheduled penalty for the alleged [~~infraction~~] violation;

(g) the time and place at which the person cited is to appear in court to answer the complaint.

(4) The complaint shall contain a form of verification that the person signing the complaint swears that the person has reasonable grounds to believe, and does so believe, that the person cited committed the [~~infraction~~] violation.

800.120 Service. Service of the uniform [~~infraction~~] violation citation and complaint shall be made by personal service upon the responsible party. If personal service cannot be made then service of the uniform [~~infraction~~] violation citation and complaint shall be in accordance with the Oregon Rules of Civil Procedure.

800.130 Answer.

(1) A person who receives a summons and complaint alleging a [~~n—infraction~~] violation shall answer such complaint by personally appearing to answer at the time and place specified therein; except an answer may be made by mail or personal delivery if received by the County within ten (10) days of the date of the receipt of the summons as provided in subsection 2 and 3 below.

(2) If the person alleged to have committed a [~~n—infraction~~] violation admits the [~~infraction~~] violation, the person may complete the appropriate answer on the back of each summons and forward the summons to the circuit court. Cash, check or money order in the amount of the penalty for the [~~infraction~~] violation alleged as shown on the face of the summons shall be submitted with the answer. Upon receipt of the penalty, an appropriate order shall be entered in the circuit court records.

(3) If the person alleged to have committed the [~~infraction~~] violation denies part or all of the [~~infraction~~] violation, the person may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for court fees. Upon receipt, the answer shall be entered and a hearing date established by the circuit court. The circuit court shall notify the person alleged to have committed the [~~infraction~~] violation by return mail of the date of the hearing. The security received shall be returned upon appearance by the person alleged to have committed the [~~infraction~~] violation for the hearing, except as otherwise provided in this Chapter. The security deposit may be waived in whole or in part at the discretion of the court for good cause shown and upon written application of the person alleged to have committed the [~~infraction~~] violation setting forth the reason for requesting the waiver and certifying that the person alleged to have committed the [~~infraction~~] violation will attend the hearing when scheduled.

800.140 Hearing.

(1) Every hearing to determine whether a [~~n—infraction~~] violation has been committed shall be held before the circuit court without a jury.

(2) The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense. If legal counsel is to appear, written notice shall be provided to the court at least ten days prior to the hearing date.

(3) Klamath County may be represented by legal counsel or the designated Klamath County Code Enforcement Officer.

(4) The defendant shall have the right to present evidence and witnesses in the defendant's favor, to cross-examine witnesses who testify against the defendant and to submit rebuttal evidence.

(5) The hearing shall be limited to production of evidence only on the [~~infraction~~] violation alleged in the complaint.

(6) The complainant or, if the County is the complainant, the Enforcement Officer, shall have the burden of proving the alleged ordinance [~~infraction~~] violation by a preponderance of the evidence.

(7) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the [~~infraction~~] violation as alleged in the complaint was committed.

When the [~~infraction~~] violation has not been proven, an order dismissing the complaint shall be entered in the circuit court records. A copy of the order shall be delivered to the person named in the order personally or by mail. When the court finds that the [~~infraction~~] violation was committed, and upon written request by a party to the hearing, the order shall include a brief statement of the necessary findings of fact to establish the [~~infraction~~] violation alleged.

(8) Upon a finding that a [~~n—infraction~~] violation has occurred, the court shall assess a penalty pursuant to the schedule established in accordance with this Chapter, plus court costs and witness fees. The circuit court judge is authorized to set reasonable court costs including security for court fees by court order.

800.200 Enforcement.

(1) If a cited person fails to answer the summons and complaint or appear at a scheduled hearing as provided herein, a default judgment shall be noted for the scheduled penalty applicable to the charged [~~infraction~~] violation. In addition, when a person fails to appear for a hearing, the security posted, or an amount equal to the security waived, shall be ordered forfeited. Nothing in this subsection shall be construed to limit in any way the contempt powers of the [~~district~~] circuit judge

granted by State law, and the judge may exercise those powers as the judge considers necessary and advisable in conjunction with any matter arising under the procedures set forth in this Chapter.

(2) Any penalty assessed is to be paid no later than ten (10) days after the receipt of the final order declaring that penalty. Such period may be extended upon order of the [~~district~~] circuit judge.

(3) Delinquent penalties and those brought to default judgment which were assessed for [~~infractions~~] violations may in addition to any other method be collected or enforced pursuant to O.R.S. 30.310 or 30.315.

800.210 Lien Filing and Docketing.

(1) When a judgment is given in circuit court in favor of the County for the sum of \$10.00 or more, exclusive of costs or disbursements, [~~the Enforcement Officer may, at any time thereafter while the judgment is enforceable, file with the Circuit Court clerk a lien certificate as set out in O.R.S. 18.350(4)] such judgment shall become a lien upon all the judgment debtor's real property as set out in O.R.S. 18.350.~~

800.300 Effect of Citation on Nuisance. The requirement to abate a nuisance is not a penalty for violating nuisance ordinances, but is an additional remedy. The imposition of a civil [~~infraction~~] violation penalty does not relieve a person of the duty to abate a nuisance.

800.400 No Mental State Required. Acts or omissions to act which are processed pursuant to the provisions of this Ordinance or are designated a [~~n-infraction~~] violation by a County ordinance, do not require a culpable mental state as an element of the [~~infraction~~] violation.

800.450 Non-Exclusive Remedy. The procedures and remedies contained in this Ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or State statutes or State law which are intended to alleviate ordinance violations or abate nuisances, and the procedures set forth in this Chapter shall not be prerequisites for utilizing any of said alternative remedies.

800.900 Schedule of Penalties.

(1) [~~Infractions~~] Violations are classified for the purpose of determining penalties in the following categories:

- (a) Class [~~1-civil infractions~~] A violations.
- (b) Class [~~2-civil infractions~~] B violations.

(2) An assessment of a penalty for a ~~[n—infraction]~~ violation shall be an assessment to pay an amount not exceeding:

(a) \$~~[500.00]~~ 600.00 for Class ~~[1—civil infractions]~~ A violations;

(b) \$~~[250.00]~~ 300.00 for Class ~~[2—civil infractions]~~ B violations;

(3) For a continuing offense where only one citation is used, a fine of not more than \$1,000.00 may be assessed.

(4) ~~[Infractions]~~ Violations of specific Klamath County Ordinances are classified as follows:

CODE PROVISION	CLASS
KCC Chapter 400	[±] <u>A</u>
KCC Chapter 401	[±] <u>A</u>
KCC Chapter 402	[±] <u>A</u>
KCC Chapter 405	[2] <u>B</u>
KCC Chapter 406	[±] <u>A</u>
KCC Chapter 407	[±] <u>A</u>
KCC Chapter 408	[±] <u>A</u>
KCC Chapter 601	[±] <u>A</u>
KCC Chapter 602	[±] <u>A</u>
*KCC Chapter 603	[±] <u>A</u>
KCC Chapter 604	[±] <u>A</u>
KCC Chapter 700	[±] <u>A</u>
KCC Chapter 701	[2] <u>B</u>
KCC Chapter 702	[2] <u>B</u>
KCC Chapter 703	[±] <u>A</u>
Land Development Code	[±] <u>A</u>

* This Chapter is also applicable to KCC Chapter 603, however, the penalties for KCC Chapter 603 are outlined at KCC Chapter 603, Section 603.400.

Ordinances enacted after the effective date of this Ordinance which provide a penalty provision for their enforcement shall expressly incorporate the ~~[infraction]~~ violation procedure set out herein and classify violations thereof in accordance with this Section of this Ordinance.

\\

\\


\\


\\

800.920 Severability. The provisions of this Chapter are severable. If a portion of this Chapter is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter.

DONE and dated this 28 day of November, 2000.


KLAMATH COUNTY BOARD OF COMMISSIONERS


Al Switzer
Chairman


William R. Garrard
Commissioner


M. Steven West
Commissioner

APPROVED AS TO FORM:


Reginald R. Davis
Klamath County Counsel