

ORDINANCE NO. 207

AN ORDINANCE PROVIDING FOR ENFORCEMENT OF CITY ORDINANCES AND DECLARING AN EMERGENCY. THIS ORDINANCE REPEALS ORDINANCE 122 AND ORDINANCE 136 IN ITS ENTIRETY.

The City of Detroit, Oregon ordains as follows:

Section 1: Short Title. This ordinance shall be known and may be cited as the Detroit Enforcement Ordinance.

Section 2: Purpose. The purpose of this ordinance is to provide for the welfare, safety and health of the citizens of Detroit by establishing a procedure wherein the ordinances of Detroit can be enforced. The city council specifically finds that existing city ordinances and procedures are not adequate. It is immediately necessary to enact this ordinance enforcement procedure in lieu of others, in order to ensure timely enforcement of city ordinances and maintain public confidence and certainty in said ordinances.

Section 3: Definitions. For the purposes of this ordinance, the following definitions shall be used:

- A. "CITY ORDINANCE" means all ordinances duly enacted by the City of Detroit, including but not limited to zoning and nuisance abatement.
- B. "INFRACTION COMPLAINT" means that document(s) which, when properly served upon the alleged ordinance violator, brings the matter before the appropriate court for resolution. The elements of an infraction complaint are set forth in Section 8 of this ordinance.
- C. A "PERSON" includes:
 1. The United States or agencies thereof, any state, public or private corporation, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity, contractor, subcontractor or combination thereof. For the purposes of this ordinance, "person" also includes those residing in or conducting business or activities in the City of Detroit; and
 2. The owner, titleholder, contract seller, or contract buyer of the land upon which the violation is occurring, is equally responsible for the violation of a city ordinance, as is the possessor of the land, user of the land, or the person who is taking the action, conduct or omission which constitutes a violation of any city ordinance.
- D. "ENFORCEMENT OFFICER" means that person(s) who is appointed to serve infraction complaints pursuant to Sections 4 and 5 of this ordinance.

- E. "Violator" means any person who has admitted violation of city ordinance, or a person who has been adjudicated to have violated a city ordinance.

Section 4: *Enforcement Officer.* An ordinance officer assigned by the Detroit City Council shall act as enforcement officer, for the purposes of issuing infraction complaints, abstract of record, and summons.

Section 5: *Service of Infraction Complaint.*

- A. Service of the infraction complaint shall be by the enforcement officer upon the person(s) whose conduct, action(s), or omissions(s) constitute the ordinance violation(s).
- B. If the alleged ordinance violator is not the owner, title holder, contract buyer or contract seller of the property and is the person whose action, conduct or omission is creating or causing (by act or omission) the ordinance violation, then the owner, title holder, contract buyer and contract seller may also be served personally with an infraction complaint.
- C. If personal service cannot readily be made, substitute service can be made as provided in Oregon Rules of Civil Procedure 7 (D).

Section 6: *Designation of a Prosecutor for the City of Detroit.* The City of Detroit City Council hereby elects to have the prosecution of infraction complaints and/or any other remedy provided by law to be conducted by the city attorney.

Section 7: *Service of Summons, Complaint, and Abstract of Record.*

- A. An infraction complaint issued pursuant to this ordinance shall comply with the requirements of Sections 10, 11, and 12, respectively.
- B. The ordinance officer issuing an infraction complaint shall cause:
 - 1. The summons to be delivered to the person;
 - 2. A copy of the complaint, abstract of record and summons to be delivered to the Detroit City Office within seven business days after service of the summon.

Section 8: *Infraction Complaint; Occurrence; and Other Remedies.*

- A.
 - 1. Except as otherwise specifically provided in this ordinance, an infraction complaint shall be used for violation of any city ordinance.
 - 2. Infraction complaints may be filed against the same person for repeated violations of the same ordinance, or for a continuing violation of the same ordinance.
 - 3. Each 24-hour period constitutes a separate occurrence.

B. The city may at any time, whether before or after the issuance of one or more infractions complaints:

1. Notify the property owner that a violation exists, and that action to rectify violation shall be made within a specified time.

a. If the violation has not been abated by the property owner within the specified time, the city may proceed to abate the violation. The person charged with abatement of such violation shall have the right, at reasonable times, to enter into or upon the property to investigate or cause the removal of the violation. The city may assess the cost of abatement plus ten (10) percent administrative overhead. Unpaid fees become a lien against the property within sixty (60) days from the date of the notice to the owner of assessment of costs.

2. Institute a complaint in the Circuit Court for any other remedy provided by law, including injunction, mandamus, abatement, or other appropriate proceedings, to prevent, temporarily or permanently enjoin, or abate the violation.

C. In addition to any other remedy provided by law to the city, the city may seek a fine of up to \$250 for each separate violation pursuant to this ordinance.

Section 9: *Private Right of Action.*

A. Any person, whether acting as principal, agent, or employee whose interest is or may be affected by any violation of a city ordinance, may, in addition to the other remedies provided by law, file an ordinance complaint.

1. The private citizen shall prepare and file an ordinance complaint with the city recorder.
2. The citizen's signature on the ordinance complaint form will be considered confidential; and the city recorder will not disclose this information, as provided in ORS 192.502(4).

B. Two members of the city council shall have the right, at reasonable times, to enter into or upon the property to investigate the alleged violation of a city ordinance. Within thirty (30) days of the filing of the ordinance complaint the city council shall:

1. Have served an infraction complaint and prosecute;

2. Decline to serve an infraction complaint or to prosecute; or
3. Use other remedies in Section 8 (B) of this ordinance.

Section 10: *Infraction Complaint.*

- A. The infraction complaint shall consist of four parts. The required parts are:
1. The complaint
 2. The abstract of record
 3. The enforcement officer record
 4. The summons

Each of the parts shall contain the information required by this ordinance.

- B. The complaint shall contain a form or certificate in which the enforcement officer shall certify that he/she has reasonable grounds to believe, and does believe, the person served with the infraction complaint violated a city ordinance, contrary to law. A certificate conforming to this section shall be deemed equivalent to a sworn complaint.
- C. Minimum requirements for infraction complaint: The infraction complaint is sufficient if it contains the following:
1. The name of the court; the name of the City of Detroit, in whose name the action is brought, and in whose city limits the land subject to the infraction complaint lies; and the name of the violator(s).
 2. A statement or designation of the alleged violation of city ordinance in such a 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 violation of city ordinance is alleged to have occurred.
 3. A certificate signed by the enforcement officer issuing the infraction complaint.
- D. Motion to set aside: The complaint shall be set aside by the court upon motion of the violator, before a 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. The court may allow the City of Detroit to amend the complaint, or to file an amended complaint.

Section 11: *Summons.* A summons in an infraction complaint is sufficient if it contains the following:

- A. The name of the court, the name of the person cited, the date on which the infraction complaint was issued, the name of the complainant, and the date, time, and place at which the person cited is to appear in court.
- B. A statement or designation of the violation of city ordinance in such a manner as can be readily understood by the person making a reasonable effort to do so, and the date, time, and place at which the ordinance violation is alleged to have occurred.
- C. A notice to the person cited that an infraction complaint will be filed with the court, based upon the alleged violation of city ordinance.
- D. The amount of forfeiture for a violation of the ordinance shall be \$250.00 for a first offense and \$250.00 for all subsequent offenses of the same ordinance section.
- E. A written notice on the face of the summons that the city may seek any and all other legal remedies, including, but not limited to, injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate the ordinance violation.

Section 12: *Violator's Appearance, Payment of Fine, Request for Hearing, Statement, and Admission of Violation.*

- A. The violator shall either appear in court at the time indicated in the summons, or prior to such time must do one of the following:
 - 1. Submit to the court an executed appearance, waiver of hearing, and admission of violation as set forth on the summons, together with a statement of termination of the violation and cash, check or money order in the amount of ten (10) percent of the forfeiture set forth on the summons;
 - 2. Admit violation of the city ordinance and give a statement of matters in explanation, or abatement of the violation;
 - 3. Request a hearing.
- B. In any case in which the violator personally appears in court at the time indicated in the summons, the violator desires to admit the violation of the city ordinance, and the court accepts the admission, the court shall hear any statement in explanation or mitigation that the violator desires to make.
- C. If the violator does not appear in court at the time indicated in the summons, and has not, prior to such time, submitted an executed appearance and waiver of hearing to the court, together with cash, check or money order in the amount of ten (10) percent of the fine set forth in the summons, or granted, in writing, a continuance of the time to appear in court, the court shall enter a judgment against the violator in an amount equal to the forfeiture for the violation, together with court costs and any special costs.

Section 13: *Forfeiture.*

- A. If a violator has not requested a hearing, but has submitted to the court a written statement in explanation or abatement of the ordinance violation, the statement constitutes a waiver of hearing and consent to the entry of judgment against the violator. The court may declare a forfeiture of the fine or portion thereof on the basis of the statement, and/or any testimony, if any, which may be presented to the court.
- B. The municipal judge or such other judge as the council may designate from time to time may, in the exercise of the judge's discretion and where the judge deems cause to exist in a particular case, remit all or any portion of the forfeiture set forth on the face of the summons, or require any additional sum the judge deems necessary.

Section 14: *Hearing Date, Notice to Violator and Waiver.*

- A. If the violator requests a hearing, the court shall fix a date and time for the hearing; and advise the violator of the date.
- B. If the violator fails to appear at the time set for the hearing without having been granted a continuance in writing, the court shall enter a judgment against the violator in the amount of the forfeiture set forth on the summons together with court costs and any special costs.
- C. No warrant of arrest can be issued for any violation of a city ordinance. Nothing in this section shall prohibit the court from issuing a warrant of arrest for any contempt of court which occurs.

Section 15: *Hearing, Trial, Commencement, Burden of Proof, Pretrial Discovery, and Violator as Witness.*

- A. The hearing of any infraction complaint shall be by the court without a jury.
- B. The hearing of any infraction complaint shall not commence until the expiration of seven (7) days from the date of the infraction complaint.
- C. The city shall have the burden of proving the violation of the ordinance by a preponderance of the evidence.
- D. The pretrial discovery rules set forth in the Oregon Rules of Civil Procedure shall apply to infraction complaints. The city may call the violator 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 ordinance violation.
- F. At any hearing involving any infraction complaint, an attorney shall not be provided at public expense. At any hearing involving an infraction complaint, the city's attorney may appear, but is not required to appear.

Section 16: *Prosecution of Infraction Complaint.* Notwithstanding any provision of Oregon law, or any other provision of this ordinance, the prosecution of one

infraction complaint shall not bar the subsequent prosecution of any additional city ordinance violation 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 violation(s). Evidence of prior ordinance violation(s) shall be admissible in any subsequent prosecution of any ordinance violation.

Section 17: *Civil Judgment.* A judgment upon any infraction complaint is a civil judgment, as is any other civil judgment of law. The judgment involves only a fine, and does not incur loss by forfeiture, suspension, or revocation of any license, or any other privilege or other 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 Detroit of the judgment.

Section 18: *Penalties.*

- A. Despite any penalty provision of any ordinance enacted prior to this ordinance, all violations of city ordinances shall be considered an infraction punishable by a fine of up to \$250.00. Each day and/or occurrence of violation shall constitute a separate offense.
- B. All monetary penalties imposed pursuant to this ordinance shall be payable immediately. If the person who committed the infraction is unable to pay at that time, the court may, in its discretion, grant an extension of time, or allow payment in installments, or assign a community service project.

Section 19: *Docket of City Liens.*

- A. Lien – The municipal court judge shall enter the judgment as a lien in the docket of city liens if the defendant has an ownership interest in real property within the city.
- B. Foreclosure – At any time after such lien has been so docketed, a suit to foreclose it may be brought in the Circuit Court of the State of Oregon for Marion County, in the name of the city. Said liens may be foreclosed in the same manner as any other city liens.

Section 20: *Appeal from Judgment.* Either party may take an appeal from a judgment as follows:

- A. From a proceeding in the municipal courts, as provided in ORS Chapter 53;
- B. From a proceeding in Circuit Court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200.

Section 21: *Court Costs.*

- A. The court, in addition to the fine, shall charge court costs to the violator where:
 - 1. The violator requests a hearing, admits violation of the city ordinance, and the minimum fine is imposed;

2. The violator requests a hearing, admits violation of the city ordinance, and a fine other than the minimum fine is imposed;
 3. The violator fails to appear for the hearing, or is found to have violated a city ordinance following a hearing; or
 4. The violator enters into an agreement with the city for a consent decree whereby the violator does not admit violation of the city ordinance, but agrees to make necessary corrections, as set forth in the agreement, in order to bring the violator's conduct, actions or property into compliance with city ordinance.
- B. Court costs shall be actual court costs, including, but not limited to, cost of the city attorney, additional filing fees, and administrative fees. Said costs cannot be waived by the city, the violator, or the court in any proceeding. If the violator fails to pay the costs, the costs shall be entered as a judgment against the violator in the same manner and with like effect as a judgment for a fine.

Section 22: *Consent Decree.*

- A. The city and the violator may enter into a consent decree. The consent decree shall provide that the violator does not admit a violation of city ordinance, but will make necessary corrections, as set forth in the agreement, to bring the violator's actions, conduct, omissions, or property into conformance with appropriate city ordinances.
- B. The violator, the violator's attorney, if any, and the city 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 violator performs as agreed. The violator or the city may seek a court order dismissing the case upon completion of the conditions of the consent decree,
- D. The violator's failure to comply with the consent decree allows the city to seek any additional remedies provided by law or this ordinance.

Section 23: *Fines.* All fines collected shall be distributed to the Judicial Fund.

Section 24: *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 an infraction complaint in addition to legal services, including the costs/expenses/salaries of officers, employees and 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 record, book or document used as evidence in the hearing.

- B. The special costs shall be allowed to the city in the same manner as a judgment for fines.

Section 25: Severability. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground, but valid on another, it shall be construed that the valid ground is the one upon which the ordinance or such portion thereof was enacted.

Section 26: Emergency Clause. It being necessary for the peace, health, safety and sound development of the city of Detroit, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its passage by the council and signature by the mayor.

First read for the record in full on November 14, 2006.
Second reading by title only on November 14, 2006.

Passed by the Detroit City Council and signed by the Mayor this 14th day of November 2006.



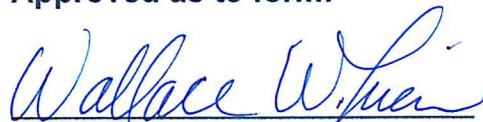
Patrick J. Carty, Mayor

Attest:



Christine Pavoni, City Recorder

Approved as to form:



Wallace W. Lien, City Attorney

Ayes: 6
Nays: 0
Absent: 1