

ENFORCEMENT OF COUNTY ORDINANCES**(General Provisions)**

50.005 PURPOSE.

The purpose of this chapter is to ensure timely enforcement of Polk County ordinances and maintain public confidence and certainty in the effectiveness of these ordinances.

50.010 DEFINITIONS.

As used in this chapter, unless the context requires otherwise:

(1) "County ordinance" or "ordinance" means any ordinance adopted by Polk County, including but not limited to one dealing with zoning, planning, nuisance abatement, health, solid waste, public works, building and electrical standards. [Ord. 94-4, Sec. 11]

(2) "Infraction complaint" means a document which, when properly served upon an alleged ordinance violator, brings the matter before the appropriate court for resolution.

(3) "Person" includes 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 chapter, "person" also includes those residing or conducting business or activities in the incorporated or unincorporated areas of Polk County.

(4) "Enforcement officer" means a person appointed to serve infraction complaints pursuant to Section 50.020, by Board order, or to initiate proceedings for nuisance abatement under Chapter 43.

(5) "Violator" means a person who has been accused of a violation of a Polk County ordinance or a person who has admitted or been adjudicated to have violated a Polk County ordinance.

50.015 JURISDICTION OF COURTS.

The Circuit Court has jurisdiction of all proceedings for violation of a Polk County ordinance under this chapter.

50.020 ATTORNEY FOR POLK COUNTY.

The Polk County Board of Commissioners elects to have the prosecution of infraction complaints and enforcement of any other remedy provided by law or ordinance to be conducted by the Office of Polk County Legal Counsel. This does not prevent participation by the Polk County District Attorney in cases deemed appropriate by the Board and District Attorney.

50.025 ENFORCEMENT OFFICERS.

The Board of Commissioners shall appoint one or more persons to act as enforcement officer(s) for the purposes of this chapter. The appointments shall be by order of the Board.

50.030 SEVERABILITY.

If any part of this chapter is declared invalid, such declaration does not affect the validity of any other part.

50.035 AMENDMENT OF OTHER COUNTY ORDINANCES.

It is not the intent of this chapter to repeal any penalty provision in existing Polk County ordinances. It is the intent of this chapter:

- (1) To provide alternative penalties and procedures for enforcement of the penalty provisions already contained in existing Polk County ordinances.
- (2) To apply to all penalty provisions of all existing Polk County ordinances. All penalty provisions of all other existing Polk County ordinances are considered to include this chapter by reference.

(Infraction Complaints)

50.105 REMEDIES.

- (1) Except as otherwise specifically provided in this chapter, an infraction complaint may be used for violation of any Polk County 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.
- (4) Polk County at any time, whether before or after the issuance of one or more infraction complaints, may file a complaint in the Circuit Court for Polk County 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.
- (5) In addition to any other remedy provided by law, Polk County may seek a fine of \$500 for each separate violation and a fine of up to \$10,000 for a continuing violation of any Polk County ordinance, pursuant to this chapter.

50.110 CONTENTS.

- (1) An infraction complaint shall consist of a citation, enforcement officer report, and summons.

(2) The infraction complaint shall contain a form in which the Enforcement Officer shall record that he or she has reasonable grounds to believe, and does believe, the person served with the infraction complaint violated a Polk County ordinance, contrary to law. A certificate conforming to this section and signed by the Enforcement Officer is equivalent to a sworn complaint.

(3) The infraction complaint shall also contain the following:

- (a) The name of the court, the name of Polk County, in whose name the action is brought, and the name of the violator.
- (b) A statement or designation of the alleged violation of Polk County ordinance in such a manner as can be readily understood by an ordinary person making a reasonable effort to do so and the date, time, and place at which the violation is alleged to have occurred.

50.115 SUMMONS.

A summons in an infraction complaint is sufficient if it contains the following:

(1) The name of the court, the name of the person cited, the date on which the infraction complaint was issued, the name of the Enforcement Officer, and the date, time, and place at which the person cited is to appear in court.

(2) A notice to the person cited that the infraction complaint will be filed with the court, based upon the alleged violation of Polk County ordinance.

(3) The bail for violation of the ordinance:

- (a) For a single occurrence, a minimum of \$125 and not to exceed \$500.
- (b) For a continuing occurrence, a minimum of \$250 and not to exceed \$10,000.

(4) A notice that Polk County 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.

50.118 WARNING.

At the discretion of the Enforcement Officer, an official warning may be issued prior to the issuance of a citation. The warning shall be served as set forth in section 50.120 and shall notify the violator as to the observed violation(s) and the action necessary to remedy same. The warning shall set forth a return inspection date at which time if the violation(s) have been remedied the matter will stand closed. If the violation(s) still exist at the time of the return inspection, the Enforcement Officer shall issue a citation.

50.120 SERVICE.

(1) Service of an infraction complaint shall be made by an enforcement officer upon a person whose conduct, actions, or omissions are alleged to constitute a Polk County ordinance

violation.

(2) If the person served under this section is not the owner, title holder, contract buyer, or contract seller of property material to the alleged violation, but 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, or contract seller, after 45-days written notice from Polk County, may also be served personally with an infraction complaint.

(3) If personal service cannot readily be made, substitute service can be made as provided in Rule 7, Oregon Rules of Civil Procedure.

50.125 FILING COPIES.

The Enforcement Officer issuing an infraction complaint shall cause:

(1) A copy of the infraction complaint to be delivered to the Polk County Legal Counsel's office not later than the third business day after service.

(2) The infraction complaint to be delivered to Court Records not later than the fifth business day after service.

50.130 MOTION TO SET ASIDE.

An infraction complaint shall be set aside by the court upon motion of the violator, before a plea, if the complaint does not conform to the requirements of Sections 50.110 and 50.115. A pre-trial ruling on a motion to set aside may be appealed by Polk County. The court may allow Polk County to amend the complaint or to file an amended complaint.

50.135 APPEARANCE / HEARING / DEFAULT.

(1) The violator shall appear in court at the time indicated in the summons, or prior to such time may:

- (a) Request a hearing.
- (b) Admit violation of the Polk County ordinance and give a statement of matters in explanation or mitigation of the violation.
- (c) Submit to the court an executed appearance, waiver of hearing, and admission of violation as set forth on the summons, together with cash, check or money order in the amount of the bail set forth on the summons. A statement in explanation or mitigation may also be submitted with the admission of violation of a Polk County ordinance.

(2) In any case in which the violator personally appears in court at the time indicated in the summons, and the violator desires to admit the violation of the Polk County ordinance and the court accepts the admission, the court shall hear any statement in explanation or mitigation that the violator desires to make.

(3) 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 the fine set forth in the summons, or requested 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 bail set forth on the face of the summons, together with court costs and any special costs.

50.140 EFFECT OF ADMISSION AND STATEMENT BY VIOLATOR.

If a violator has not requested a hearing, but has submitted to the court a written statement in explanation or mitigation 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 bail or portion thereof on the basis of the statement and any testimony or written statement of the Enforcement Officer or other person, if any, which may be presented to the court.

50.145 SCHEDULING HEARING - EFFECT OF FAILURE TO APPEAR.

(1) If the violator requests a hearing, the court shall fix a date and time for the hearing and advise the violator of the date.

(2) If the violator fails to appear at the time set for the hearing without having previously requested in writing a continuance, the court shall enter a judgment against the violator in the amount of the bail set forth on the summons.

(3) No warrant of arrest shall be issued for any violation of a Polk County ordinance.

50.150 CONDUCT OF HEARING.

(1) The hearing of any infraction complaint shall be by the court without a jury unless the violator requests a jury consistent with the Oregon Constitution, Article VII, Section 3.

(2) The hearing of any infraction complaint shall not commence until at least fourteen days have elapsed after the date of the infraction complaint.

(3) Polk County has the burden of proving the violation of an ordinance by a preponderance of the evidence.

(4) The pre-trial discovery rules set forth in the Oregon Rules of Civil Procedure apply to infraction complaints. Polk County may call the violator as a witness at the hearing.

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

(6) At any hearing involving an infraction complaint, the violator is entitled to be represented by counsel, but an attorney shall not be provided at public expense.

50.155 PROSECUTION AS BAR.

Notwithstanding any provision of the Oregon Rules of Civil Procedure or any other provision of this chapter, the prosecution of one infraction complaint does not bar the subsequent prosecution of additional Polk County 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. Evidence of prior ordinance violations is admissible in subsequent prosecution of an ordinance violation.

50.160 CIVIL JUDGMENT.

A judgment upon an infraction complaint is a civil judgment having the same effect as any other civil judgment at 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 the judgment, other than the enforcement by Polk County of the judgment.

50.165 APPEAL.

An appeal from a judgment under Section 50.160 may be taken by either party as provided in ORS Chapter 19.

50.170 COURT COSTS.

- (1) The court, in addition to the fine, shall charge court costs to the violator if:
 - (a) The violator admits violation of the Polk County ordinance and a fine is imposed;
 - (b) The violator fails to appear for the hearing or is found to have violated a Polk County ordinance following a hearing; or
 - (c) The violator enters into an agreement with Polk County for a consent decree whereby the violator does not admit violation of the 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 Polk County ordinances.

(2) Court costs shall be \$75. The costs cannot be waived by Polk County or the violator 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.

50.175 CONSENT DECREE.

(1) Polk County and the violator may enter into a consent decree. The consent decree shall provide that the violator does not admit a violation of a Polk County ordinance but will make necessary corrections and reimburse Polk County for enforcement costs, as set forth in the

agreement, to bring the violator's actions, conduct, omissions, or property into conformance with appropriate Polk County ordinances.

(2) The violator, the violator's attorney, if any, and the Polk County Legal Counsel shall sign all consent decrees.

(3) The consent decree shall be filed with the court as a final adjudication of the proceedings and, upon signature of the Judge, shall constitute a dismissal of the action when violator performs as agreed. The violator or Polk County may seek a court order dismissing the case upon completion of the conditions of the consent decree.

(4) The violator's failure to comply with the consent decree allows Polk County to seek any additional remedies provided by law or ordinance.

50.180 FINES.

(1) All fines collected shall be deposited with the Polk County Treasurer and credited to the Polk County General Fund.

(2) Polk County is entitled to recover all special costs and disbursements that are reasonable and necessary expenses incurred in the successful prosecution of an infraction complaint, including the expenses and salaries of officers, agents, and employees; expenses of witnesses; expenses of taking depositions; expenses 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 trial.

(3) The special costs shall be allowed to Polk County in the same manner as a judgment for fines.

(Nuisance Abatement)

50.205 INVESTIGATION AND REPORT.

(1) An enforcement officer may, and on the bona fide signed complaint of any person or public body shall, investigate to determine whether a nuisance exists under any Polk County ordinance. The Enforcement Officer may request the assistance of the Polk County Sheriff for the purpose of conducting such investigations.

(2) After investigation, if the Enforcement Officer finds reasonable cause to believe a nuisance offense in violation of Chapter 43 exists, the officer shall proceed as provided in this Chapter.

(3) After investigation, if the Enforcement Officer finds reasonable cause to believe a nuisance not described in Chapter 43 exists, the officer shall confer with the Polk County Legal Counsel who in turn may elect to report the results of the investigation to the Board.

50.210 HEARING.

(1) Based on its review of the Enforcement Officer's report, the Board, by order, may

appoint a Hearings Officer to hold a public hearing on the existence of the alleged nuisance. Unless the order declares the probable existence of a substantial threat to the public peace, health, and safety requiring immediate action, the hearing shall not be scheduled earlier than the 10th day after adoption of the order. The Board shall cause written notice of the hearing to be sent by certified mail to the alleged violator and to the owner of the property where the violation is alleged, if the owner is another person.

(2) At the time and place described in the notice, the Hearings Officer shall hold a public hearing on the existence of the alleged nuisance. Any person or public body requesting an opportunity shall be heard and may present evidence. At the conclusion of the hearing, the Hearings Officer shall submit all evidence to the Board together with the summary, findings, and recommendations.

50.215 BOARD ACTION.

(1) After reviewing the material submitted by the Hearings Officer, the Board, by order, on the basis of the record, may dismiss the proceeding or declare the existence of a nuisance and direct the Enforcement Officer to abate the nuisance.

(2) If the Board orders abatement, its order must specify with reasonable certainty the work to be done. The order may authorize County personnel to do the work or contract for it to be done in accordance with laws, rules, and ordinances governing public contracts. Polk County and its agents are not liable for trespass to or conversion of any real or personal property necessarily arising in the course of abating the nuisance.

(3) Unless otherwise directed by the Board, the Polk County Legal Counsel shall bring a civil action to recover the costs of abatement under this section from the violator.