

AFFIDAVIT OF POSTING

ORDINANCE CB-O-2-83

STATE OF OREGON )  
 )  
COUNTIES OF CLACKAMAS )  
AND WASHINGTON )  
 )  
CITY OF WILSONVILLE )

I, the undersigned, City Recorder of the City of Wilsonville, State of Oregon, being first duly sworn on oath depose and say:

On the 16th day of February, I caused to be posted copies of the attached Ordinance CB-O-2-83, an ordinance amending the penalty provisions of the Wilsonville Code, 1981, and of Special Ordinance #209, standardizing the enforcement procedures thereof; and declaring an emergency, in the following four public and conspicuous places of the City, to wit:

WILSONVILLE POST OFFICE  
WILSONVILLE CITY HALL  
LOWRIE'S FOOD MARKET  
KOPPER KITCHEN

The ordinance remained posted for more than five (5) consecutive days prior to the time for said public hearing on the 21st day of February, 1984.

  
DEANNA J. THOM, City Recorder

Subscribed and sworn to before me  
this 22<sup>nd</sup> day of February, 1984.

  
NOTARY PUBLIC, STATE OF OREGON

My commission expires: August 23, 1985

ORDINANCE # 253

AN ORDINANCE AMENDING THE PENALTY PROVISIONS  
OF THE WILSONVILLE CODE, 1981 AND  
OF SPECIAL ORDINANCE 209, STANDARDIZING THE  
ENFORCEMENT PROCEDURES  
THEREOF; AND DECLARING AN EMERGENCY

WHEREAS, the City Council of the City of Wilsonville finds that it is in the public interest, health, and welfare to amend the penalty provisions in its Code and standardize the enforcement provisions thereof,

NOW, therefore, the City of Wilsonville hereby ordains as follows:

Section 1. A new section 1.011 shall be added to the Code as follows:

1.011 Fines and Prison Terms For Misdemeanors (1) Any person convicted of a misdemeanor shall be punished by a fine or by imprisonment or by both such fine and imprisonment subject to the limitations in sub-paragraphs (2) and (3) below:

(2) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

- (a) \$2,500.00 for a Class A Misdemeanor
- (b) \$1,000.00 for a Class B Misdemeanor
- (c) \$ 500.00 for a Class C Misdemeanor

(3) A sentence for a misdemeanor shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

- (a) 1 year for a Class A Misdemeanor
- (b) 6 months for a Class B Misdemeanor
- (c) 30 days for a Class C Misdemeanor

Section 2. Section 1.012 shall be added to the Code as follows:

1.012 Fines for Violation (1) A sentence to pay a fine for a violation shall be a sentence to pay an amount fixed by the court, not exceeding \$250.00.

Section 3. Section 1.013 shall be added to the Code as follows:

1.013 Violation Enforcement (1) Violations shall be enforced as an infraction pursuant to the provisions of ORS 153.110 to 153.300.

Section 4. Section 1.014 shall be added to the Code as follows:

1.014 Misdemeanor Enforcement (1) Misdemeanors shall be enforced pursuant to the applicable sections of ORS Chapter 133.

Section 5. Section 1.015 shall be added to the Code as follows:

1.015 Requirements of Culpability (1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is capable of performing.

(2) Except as provided in Subsection (3), a person is not guilty of an offense unless he acts with a culpable mental state as defined by ORS 161.085 with respect to each material element of the offense that necessarily requires a culpable mental state.

(3) Notwithstanding Subsections (1) and (2), a culpable mental state is not required if the offense constitutes a violation as defined by Section 1.012, unless a culpable mental state is expressly included in the definition of the offense.

Section 6. Section 1.016 shall be added to the code as follows:

1.016 Definitions (1) The definitions contained in the Oregon Criminal Code, as defined by ORS 161.005, as now or hereafter constituted, are adopted by reference and made a part of the Wilsonville Code. Except where the context clearly indicates a different meaning, the general definitions appearing in the definitional and other sections of particular articles of the Oregon Criminal Code shall be applicable throughout the Wilsonville Code

Section 7. Section 2.003(22) shall be amended to read as follows:

"(22) Any person violating the provisions of Section 2.003(16)(b) of this Code shall upon a first conviction be guilty of a violation and shall be punished pursuant to Section 1.012, and shall upon any subsequent conviction be guilty of a Class C Misdemeanor and shall be punished pursuant to Section

1.011. In any suit, action or claim of relief, inclusive of appeal, to enforce any provisions of this Section, the City shall recover its costs, inclusive of reasonable attorneys fees."

Section 8. The third line of Section 2.358(1) shall be amended to read as follows:

"Violations of this Section are punishable as a violation pursuant to Section 1.012."

Section 9. Section 2.402(2) shall be amended to read as follows:

"(2) Legal voters of the City are qualified to sign a petition for the referendum or for the initiative for any measure which they are entitled to vote upon. Any person intentionally signing any name other than his own to a petition, or knowingly signing his name more than once for the same measure at one election, or signing a petition knowing he is not at the time of signing same a legal voter of the City, or any officer or other person violating any provisions of this Code section, shall upon conviction thereof be guilty of a Class B Misdemeanor and shall be punished pursuant to Section 1.011."

Section 10. Section 2.524(1) shall be amended to read as follows:

"If a person duly summoned to attend Municipal Court as a juror fails to attend as required or to give a valid excuse therefore, he shall, upon conviction, be guilty of a violation and shall be fined pursuant to Section 1.012."

Section 11. Section 3.030(2) shall be amended to read as follows:

"(2) Any person violating any park rule or regulation as delineated by Sections 3.000 and 3.020 of this Code, shall be punished upon a first conviction for a violation pursuant to Section 1.012, and upon a subsequent conviction for a Class C misdemeanor pursuant to Section 1.011."

Section 12. Section 3.106(1) shall be amended to change the word "suing" on line six to "using", and to change that portion of the sentence after the last comma as follows: "shall be guilty upon a first conviction of a violation pursuant to Section 1.012, and upon a subsequent conviction of a Class B Misdemeanor pursuant to Section 1.011."

Section 13. Section 3.220(3) shall be amended to read as follows:

"(3) Any person violating any provisions of this Section shall be punished upon a first conviction for a violation pursuant to Section 1.012, and upon a subsequent conviction for a Class C Misdemeanor pursuant to Section 1.011. Each day of any violation constitutes a separate offense."

Section 14. Section 4.192(4) shall be amended to read as follows:

"(4) A violation of any provision of Sections 4.100 to 4.199 of this code is punishable upon a first conviction, as a violation pursuant to Section 1.012, and upon a subsequent conviction, as a Class C Misdemeanor pursuant to Section 1.011. In the case of a continuing offense, each day of any violation constitutes a separate offense."

Section 15. Section 4.290(1) shall be amended to read as follows:

"(1) Any person who violates or fails to comply with any provisions of Sections 4.200 to 4.280 shall, upon a first conviction thereof, be punished for a violation, pursuant to Section 1.012, and upon a subsequent conviction thereof, be punished for a Class C Misdemeanor pursuant to Section 1.011."

Section 16. Section 5.300(1) and (2) shall be amended to read as follows:

"5.300 Penalties (1) "Violations of Sections 5.060 through 5.070 and 5.080 through 5.120, and Sections 5.126, 5.130, 5.140 and 5.200 through 5.220 are punishable as a violation pursuant to Section 1.012."

Section 17. Section 5.400(6) shall be amended to read as follows:

"(6) Violation of any provision of this Section is punishable as a violation pursuant to Section 1.012."

Section 18. Section 6.020(1) shall be amended to read as follows:

(1) Any violation of Sections 6.000 to 6.010 shall be punishable upon a first conviction as a violation pursuant to Section 1.012; and upon a subsequent conviction, as a Class C Misdemeanor pursuant to Section 1.011."

Section 19. Section 6.160(1) shall be amended as follows:

"(1) Any person who shall violate or fail to comply with the provisions of Sections 6.100 to 6.150, or, who having obtained a permit hereunder, shall willfully fail to continue to comply with the terms and conditions hereunder, or who shall counsel, aid or abet in violation of these Sections, shall upon a first conviction thereof, be guilty of a violation pursuant to Section 1.012, and upon a subsequent conviction thereof, be guilty of a Class C Misdemeanor pursuant to Section 1.011."

Section 20. Section 6.210(2) and (3) shall be amended to read as follows:

(2) "Maintaining a nuisance shall be punished according to Section 6.240."

(3) "Each day's violation of this Section shall constitute a separate violation."

Section 21. Section 6.240(1) shall be amended to read as follows:

"(1) "Any person who creates or maintains a nuisance as defined by 6.200 to 6.210 or other Ordinance or Resolution of the City Council and who fails or neglects to abate such nuisance upon notice thereof and within the time prescribed in such notice shall be guilty upon a first conviction of a violation pursuant to Section 1.012, and upon a subsequent conviction of a Class C Misdemeanor pursuant to Section 1.011. Each day's violation of this Section shall constitute a separate violation."

Section 22. The last phrase in Section 7.000(1) after the last comma in the sentence, is amended to read as follows:

", and punishable as such nuisance as a violation pursuant to Section 1.012 upon the first conviction thereof, and as a Class C Misdemeanor pursuant to Section 1.011 on any subsequent conviction thereof."

Section 23. Section 7.010(2) shall be amended to read as follows:

"(2) Any person convicted of perpetrating a nuisance as described and prohibited in Section 7.000 of this Code, upon a first conviction thereof, shall be punished for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof, shall be punished for a Class C Misdemeanor pursuant to Section 1.011."

Section 24. Section 7.280(1) shall be amended to read as follows:

"(1) Any operator or other person who shall fail or refuse to register as required herein, or who shall fail or refuse to furnish any return, supplemental return or other data required herein or by the tax administrator, or, with intent to defeat or evade the determination of any amount due hereunder, shall make, render, sign, or verify any false or fraudulent report, commits an offense which constitutes a violation of Section 7.210 to 7.276, punishable upon conviction as a violation pursuant to Section 1.012."

Section 25. Section 7.370(2) shall be amended to read as follows:

"(2) Any person violating any of the provisions of Section 7.300 to 7.360 shall, upon a first conviction thereof, be punished for a violation pursuant to Section 1.012 and upon a subsequent conviction thereof, be punished for a Class C Misdemeanor, pursuant to Section 1.011."

Section 26. Section 8.050(1) shall be amended as follows:

"(1) A person convicted of a violation of any provision of Sections 8.010 to 8.040 shall be punished upon a first conviction thereof for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof for a Class C Misdemeanor pursuant to Section 1.011. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punished as such hereunder."

Section 27. Section 8.114(1) shall be amended to read as follows:

"(1) Any person violating any of the terms of Sections 8.110 to 8.112 shall upon a first conviction thereof, be punished for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof, be punished for a Class C Misdemeanor pursuant to Section 1.011. In addition, upon a conviction, a person shall be liable for the costs of prosecution."

Section 28. The last sentence of Section 8.154(1) shall be amended to read as follows:

"Any person violating this provision shall, upon a first conviction thereof, be punished for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof, be punished for a Class B misdemeanor, pursuant to Section 1.011."

Section 29. Section 8.170(1), (2) and (3) shall be amended as follows:

"Penalties (1) Any person or persons violating any of the provisions of Sections 8.120 to 8.160, shall upon a first conviction thereof, be punished for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof, be punished for a Class C Misdemeanor pursuant to Section 1.011.

(2) Any person or persons who, as a result of violating Sections 8.120 to 8.160, cause any expenses, loss or damage to the City shall immediately become liable to the City for the full sum of such expense, loss or damage. The City may, in its discretion, instruct the City Attorney to proceed against any such person or persons, in any court of competent jurisdiction in a civil action to be brought in the name of the City for the recovery of the full sum of any such expense, loss or damage sustained by the City."

Section 30. Section 9.260(1) shall be amended to read as follows:

"(1) Except as otherwise provided in the foregoing Section 9.110, any person violating any provision of Sections 9.200 to 9.250 or the Uniform Building Code or Specialty Codes as identified in the foregoing Sections 9.000 to 9.040 and 9.200 to 9.250 and which are adopted by reference or lawful orders of the Building Official shall be punished upon conviction as a Class A Misdemeanor pursuant to Section 1.011. If any person is convicted of a violation for which a penalty is not provided by these Sections, such person shall be punished upon a first conviction or violation pursuant to Section 1.012, and upon a subsequent conviction for a Class C Misdemeanor pursuant to Section 1.011. Each day of any violation constitutes a separate offense."

Section 31. Section 9.370(1) shall be amended to read as follows:

"(1) Any person who shall violate any of the provisions of the Fire Prevention Code hereby adopted or who fails to comply therewith or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specification or plans submitted and approved thereunder, or any certificate or permit issued thereunder and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by a court of competent jurisdiction, shall severally, for each and every violation and non-compliance respectively, be guilty upon a first conviction of a violation pursuant to Section



1.012, and upon a subsequent conviction of a Class C Misdemeanor pursuant to Section 1.011."

Section 32. Section 10.430(1) shall be amended to read as follows:

"(1) Violation of any provision of Chapter 10 is punishable as a Class A Misdemeanor pursuant to Section 1.011, provided, however, if there is a violation of any provision of Oregon Statutory Law adopted by reference with a lesser penalty attaching, punishment shall be limited to the lesser penalty described in the State law."

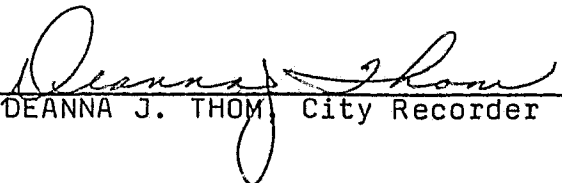
Section 33. Section VII(A) of Special Ordinance 209 is amended as follows:

"(A) Any person violating any provision of this ordinance shall be punished for a violation pursuant to Section 1.012 of the Wilsonville Code. If the violation is a continuing offence, each day such violation is continued or permitted to continue shall constitute a separate offense and shall be punished as such hereunder."

Section 34. Section 1.015 shall be amended to read Section 1.017.

Section 35. It being determined by the Wilsonville City Council an emergency exists, this Ordinance shall be affect immediately upon a final reading and passage by the Wilsonville City Council.

Submitted to the Council and read the first time at a regular meeting thereof on the 6th day of February, 1984, and scheduled for second reading at a regular meeting of the Council on the 21st day of February, 1984, commencing at the hour of 7:30 p.m., at the Wilsonville City Hall.

  
DEANNA J. THOM, City Recorder

ENACTED by the Council on the 21st day of February, 1984, by the following vote: YEAS 5 NAYS 0

  
DEANNA J. THOM, City Recorder

DATED and signed by the Mayor this 22nd day of  
February, 1984.

  
WILLIAM G. LOWRIE, Mayor

CITATION TO APPEAR IN THE  
MUNICIPAL COURT OF THE CITY OF WILSONVILLE  
30000 S. W. Town Center Loop, East  
Wilsonville, Oregon 97070

CITY OF WILSONVILLE  
vs.

CITATION NO. \_\_\_\_\_

NAME \_\_\_\_\_  
(Last) (First) (Middle)

RES. ADDRESS \_\_\_\_\_

CITY AND STATE \_\_\_\_\_

BUS. ADDRESS \_\_\_\_\_

CITY AND STATE \_\_\_\_\_

DOB \_\_\_\_\_ HT. \_\_\_\_\_ WT. \_\_\_\_\_ EYES \_\_\_\_\_ SEX \_\_\_\_\_

HAIR \_\_\_\_\_ RACE \_\_\_\_\_ DRIVER'S LICENSE NO. \_\_\_\_\_

ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_, AT APPROXIMATELY  
\_\_\_\_\_ O'CLOCK \_\_M., YOU DID UNLAWFULLY COMMIT THE OFFENSE OF

YOU HAVE BEEN ARRESTED BY \_\_\_\_\_  
\_\_\_\_ POLICE OFFICER \_\_\_\_ PRIVATE CITIZEN

BAIL IS SET IN THE AMOUNT OF \$ \_\_\_\_\_.

A COMPLAINT (\_\_\_\_) HAS BEEN (\_\_\_\_) WILL BE FILED AGAINST YOU IN  
THE ABOVE-NAMED COURT. (NUMBER \_\_\_\_\_).

YOU ARE CITED TO APPEAR IN COURT AT \_\_\_\_\_ O'CLOCK \_\_.M., ON THE  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_.

I HEREBY CERTIFY THAT I SERVED A COPY OF THIS CITATION ON THE  
ABOVE-NAMED DEFENDANT.

DATE \_\_\_\_\_ OFFICER \_\_\_\_\_ BADGE # \_\_\_\_\_

DEFENDANT: PLEASE READ THE FOLLOWING CAREFULLY

This Citation is not a complaint or an information. One may be filed and you will be provided a copy thereof at the time of your first appearance. You MUST appear in court at the time set in this Citation. IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION HAS BEEN FILED, THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST. IN ADDITION, YOU MAY BE CHARGED WITH THE CRIME OF WILLFUL FAILURE TO APPEAR.

## GENERAL PROVISIONS

**133.005 Definitions for ORS 131.655, 133.005 to 133.381 and 133.410 to 133.450.** As used in ORS 131.655 and 133.005 to 133.381 and 133.410 to 133.450, unless the context requires otherwise:

(1) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. A "stop" as authorized under ORS 131.605 to 131.625 is not an arrest.

(2) "Federal officer" means an officer of the United States Customs Service who is authorized under ORS 133.245 to make arrests.

(3) "Peace officer" means a member of the Oregon State Police or a sheriff, constable, marshal, municipal policeman, or investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon. [1973 c.836 §62; 1979 c.656 §1; 1981 c.808 §1]

**133.007 Sufficiency of information or complaint.** (1) An information or complaint is sufficient if it can be understood therefrom that:

(a) The defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is unknown to the complainant.

(b) The offense was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable within.

(c) The offense was committed at some time prior to the filing of the information or complaint and within the time limited by law for the commencement of an action therefor.

(2) The information or complaint shall not contain allegations that the defendant has previously been convicted of any offense which might subject him to enhanced penalties.

(3) Words used in a statute to define an offense need not be strictly followed in the information or complaint, but other words conveying the same meaning may be used. [1973 c.836 §63]

133.010 [Amended by 1965 c.508 §1; repealed by 1973 c.836 §358]

**133.015 Contents of information or complaint.** An information or complaint shall contain substantially the following:

(1) The name of the court in which it is filed;

(2) The title of the action;

(3) A statement that accuses the defendant or defendants of the designated offense or offenses;

(4) A separate accusation or count addressed to each offense charged, if there be more than one;

(5) A statement in each count that the offense charged therein was committed in a designated county;

(6) A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time;

(7) A statement of the acts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended; and

(8) The verification by the complainant and the date of the signing of the information or complaint. [1973 c.836 §64]

**133.020 Magistrate defined.** A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime.

**133.030 Who are magistrates.** The following persons are magistrates:

(1) Judges of the Supreme Court;

(2) Judges of the Court of Appeals;

(3) Judges of the circuit court;

(4) Judges of the district court;

(5) County judges and justices of the peace; and

(6) Municipal judges. [Amended by 1961 c.724 §27; 1969 c.198 §59; 1977 c.746 §1]

133.037 [1971 c.743 §289; 1978 c.836 §33; renumbered 131.655]

133.040 [Repealed by 1965 c.508 §8]

## CITATION IN LIEU OF CUSTODY

**133.045 Application of ORS 133.055.** ORS 133.055 shall apply in any instance when a person is subject to arrest on a misdemeanor or violation charge or on a felony charge

which may be deemed a misdemeanor charge after sentence is imposed and:

(1) The arrest is made without a warrant pursuant to ORS 133.310; or

(2) The magistrate before whom an information or complaint is filed authorizes it; or

(3) The person is arrested by a private party and delivered to a peace officer pursuant to ORS 133.225. [1969 c.244 §1; 1973 c.836 §65; 1974 s.s. c.42 §1]

133.050 [Repealed by 1959 c.426 §1]

**133.055 Citation in lieu of custody; exception for domestic disturbance; notice of rights.** (1) A peace officer in lieu of taking the person into custody may issue and serve a citation to the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450.

(2) Notwithstanding the provisions of subsection (1) of this section, when a peace officer is at the scene of a domestic disturbance and has probable cause to believe that an assault has occurred between spouses, former spouses or adult persons related by blood or marriage or persons of opposite sex residing together or who formerly resided together, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

(3) Whenever any peace officer has reason to believe that a family or household member has been abused as defined in ORS 107.705, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or visitation with a

minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order directing the party not granted custody to pay support of minor children, or for support of the other party if that party has a legal obligation to do so.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is under \$700.

For further information you may contact:

[1969 c.244 §2; 1977 c.845 §1; 1981 c.779 §1]

**133.060 Cited person to appear before magistrate; effect of failure to appear.**

(1) The person cited shall appear before a magistrate of the county in which he was cited at the time, date and court specified in the citation, which shall not be later than two weeks from the date the citation was issued.

(2) If the cited person fails to appear at the time, date and court specified in the citation, and a criminal complaint or information is filed, the magistrate shall issue a warrant of arrest immediately upon the person's failure to appear. [1969 c.244 §5]

**133.065 Service of citation; contents.**

(1) If a citation is issued as described in ORS 133.055, the peace officer shall serve one copy to the person arrested and shall, as soon as practicable, file a duplicate copy with the magistrate specified therein along with his proof of service.

(2) Each copy of the citation issued under authority of ORS 133.045 to 133.080, 133.110 and 156.050 shall contain:

(a) The name of the court at which the cited person is to appear.

(b) The name of the person cited.

(c) A brief description of the offense of which the person is charged, the date, the time and place at which the offense occurred, the date on which the citation was issued, and the name of the peace officer who issued the citation.

(d) The time, date and place at which the person cited is to appear in court.

State Police that the federal officer has received proper training within the agency to enable that officer to make arrests under this section. [1981 c.808 §3]

133.250 [Repealed by 1973 c.836 §358]

133.260 [Repealed by 1973 c.836 §358]

133.270 [Repealed by 1973 c.836 §358]

133.280 [Repealed by 1971 c.743 §432]

133.290 [Repealed by 1973 c.836 §358]

133.300 [Repealed by 1973 c.836 §358]

**133.310 Authority of officer to arrest without warrant.** (1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed:

(a) A felony, a Class A misdemeanor or an unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class A misdemeanor, or a major traffic offense as defined in ORS 484.010 (5); or

(b) Any other offense in the officer's presence except traffic infractions as defined in ORS 153.305.

(2) A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

(3) A peace officer shall arrest and take into custody a person without a warrant when the peace officer has probable cause to believe that:

(a) There exists an order issued pursuant to ORS 107.095 (1)(c) or (d), 107.716 or 107.718 restraining the person; and

(b) A true copy of the order and proof of service on the person has been filed as required in ORS 107.720; and

(c) The peace officer has probable cause to believe that the person to be arrested has violated the terms of that order. [Amended by 1963 c.448 §1; 1973 c.836 §72; 1974 s.s. c.42 §2; 1977 c.845 §2; 1979 c.522 §2; 1981 c.780 §8; 1981 c.818 §2]

**133.315 Liability of peace officer making arrest.** No peace officer shall be held criminally or civilly liable for making an arrest pursuant to ORS 133.055 (2) or 133.310 (3) provided he acts in good faith and without malice. [1977 c.845 §9]

133.320 [Repealed by 1973 c.836 §358]

133.330 [Repealed by 1973 c.836 §358]

**133.340 Magistrate's authority to order arrest for offense in his presence.** When an offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender and may thereupon proceed as if the offender had been brought before him upon a warrant of arrest. [Amended by 1973 c.836 §73]

133.350 [Repealed by 1973 c.836 §358]

**133.360 Arrests on warrant or order transmitted by telegraph.** Whenever any person has been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest has been issued, the magistrate issuing the warrant, or any judge of the Supreme Court, or of the Court of Appeals, or of a circuit or county court, may indorse thereon an order signed by him authorizing the service thereof by telegraph. Thereupon the warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman and, on receipt of the telegraphic copy thereof, as defined in ORS 165.840, by any such officer, he shall have the same authority and be under the same obligations to arrest, take into custody and detain the person as if the original warrant of arrest with the proper direction for its service duly indorsed thereon had been placed in his hands. The telegraphic copy shall be entitled to full faith and credit and shall have the same force and effect in all courts and places as the original. Prior to indictment or conviction, no such order shall be made by any officer unless in his judgment there is probable cause to believe the accused person guilty of the offense charged, but the making of such order by any officer is prima facie evidence of the regularity thereof and of all proceedings prior thereto. The original warrant and order, or a copy thereof certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent and in telegraphing the same, the original or the certified copy may be used. [Amended by 1969 c.198 §61]

133.370 [Repealed by 1971 c.743 §432]

**133.375 Definitions for ORS 133.375 to 133.381.** As used in ORS 133.375 to 133.381 and 156.705:

(1) "Animal" includes all brute creatures.

(2) "Owner" or "person" includes corporations as well as individuals. [Formerly 770.210]

(6) Command any peace officer to arrest the person against whom the charge was made and to bring him before the magistrate issuing the warrant, or if the magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county;

(7) Specify that the arresting officer may enter premises, in which he has probable cause to believe the person to be arrested to be present, without giving notice of his authority and purpose, if the issuing judge has approved a request for such special authorization; and

(8) Specify the amount of security for release. [Amended by 1961 c.443 §1; 1973 c.836 §70; 1977 c.746 §3]

133.150 [Repealed by 1961 c.443 §3]

133.160 [Amended by 1959 c.664 §28; repealed by 1961 c.443 §3]

133.170 [Amended by 1961 c.443 §2; repealed by 1973 c.836 §358]

## ARREST

133.210 [Repealed by 1973 c.836 §358]

**133.220 Who may make arrest.** An arrest may be effected by:

- (1) A peace officer under a warrant;
- (2) A peace officer without a warrant;
- (3) A private person; or
- (4) A federal officer. [Amended by 1981 c.808 §2]

**133.225 Arrest by a private person.**

(1) A private person may arrest another person for any crime committed in his presence if he has probable cause to believe the arrested person committed the crime. A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate or deliver him to a peace officer.

(2) In order to make the arrest a private person may use physical force as is justifiable under ORS 161.255. [1973 c.836 §74]

133.230 [Repealed by 1971 c.743 §432]

**133.235 Arrest by a peace officer; procedure.** (1) A peace officer may arrest a person for an offense under ORS 133.005 to 133.045, 133.075, 133.100 to 133.340 and 133.450 to 133.475, at any hour of any day or night.

(2) A peace officer may arrest a person for an offense, pursuant to ORS 133.310 (1), whether or not such offense was committed

within the geographical area of such peace officer's employment, and the peace officer may make such arrest within the state, regardless of the situs of the offense.

(3) The officer shall inform the person to be arrested of the officer's authority and reason for the arrest, and, if the arrest is under a warrant, shall show the warrant, unless the officer encounters physical resistance, flight or other factors rendering this procedure impracticable, in which case the arresting officer shall inform the arrested person and show the warrant, if any, as soon as practicable.

(4) In order to make an arrest, a peace officer may use physical force as justifiable under ORS 161.235, 161.239 and 161.245.

(5) In order to make an arrest, a peace officer may enter premises in which the officer has probable cause to believe the person to be arrested to be present.

(6) If after giving notice of the officer's identity, authority and purpose, the officer is not admitted, the officer may enter the premises, and by a breaking, if necessary. [1973 c.836 §71; 1981 c.818 §1]

133.240 [Repealed by 1973 c.836 §358]

**133.245 Arrest by a federal officer; procedure.** (1) A federal officer may arrest a person:

(a) For any crime committed in the federal officer's presence if the federal officer has probable cause to believe the arrested person committed the crime.

(b) When the federal officer has received positive information in writing or by telephone, telegraph, teletype, radio or other authoritative source that a peace officer holds a warrant for the person's arrest.

(2) The federal officer shall inform the person to be arrested of the federal officer's authority and reason for the arrest.

(3) In order to make an arrest, a federal officer may use physical force as is justifiable and authorized of a peace officer under ORS 161.235, 161.239 and 161.245.

(4) A federal officer making such an arrest without unnecessary delay shall take the arrested person before a magistrate or deliver the arrested person to a peace officer.

(5) A federal officer shall be authorized to make arrests under this section upon certification by the Regional Commissioner of Customs to the Superintendent of the Oregon

(e) Whether a complaint or information had been filed at the time the citation was issued.

(f) If the arrest was made by a private party, the name of the arresting person.

(g) The following:

#### READ CAREFULLY

This citation is not a complaint or an information. One may be filed and you will be provided a copy thereof at the time of your first appearance. You **MUST** appear in court at the time set in the citation. **IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION HAS BEEN FILED, THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST.**

[1969 c.244 §6]

**133.070 Citation where arrest without warrant is authorized for ordinance violation.** (1) In any instance in which a person is subject to arrest without a warrant for violation of an ordinance of a county, city or municipal corporation, any peace officer who is authorized to make the arrest may make the arrest but in lieu of taking the person into custody he may issue and serve a citation to the person to appear at any court within the jurisdictional unit by which he is authorized to act.

(2) Any citation issued under this section shall conform to the requirements of ORS 133.065.

(3) The person cited shall appear before the court in which his appearance is required at the time, date and court specified in the citation. If he fails to appear at that time and a criminal complaint is filed, the court immediately shall issue a warrant for his arrest.

[1969 c.244 §8]

**133.075 Penalty for failure to appear on citation.** If any person wilfully fails to appear before a court pursuant to a citation issued and served under authority of ORS 133.045 to 133.080, 133.110 and 156.050 and a complaint or information is filed, he is guilty of a Class A misdemeanor. [1969 c.244 §9; 1973 c.836 §66]

**133.080 Application to traffic, boating, littering, hunting and fishing violations.** Nothing in ORS 133.045 to 133.080, 133.110 and 156.050 applies to violations of

law enforceable under ORS 153.505 to 153.635, 482.655 and 484.010 to 484.480, to violations enforceable under ORS 153.325 to 153.440, to violations enforceable under ORS 153.705 to 153.765 or to violations enforceable under ORS 133.100 and 164.775 (5). [1969 c.244 §7; 1971 c.404 §5; 1975 c.451 §172; 1979 c.477 §2]

**133.100 Citations for certain littering violations.** A citation conforming to the requirements of ORS 153.510 to 153.550 and 484.230 shall be used for all violations of ORS 164.805 in this state. [1971 c.404 §1; 1973 c.836 §67]

#### WARRANT OF ARREST

**133.110 Issuance; citation.** If the magistrate is satisfied that there is probable cause to believe that the person charged has committed the offense complained of, he shall issue a warrant of arrest. However, on a misdemeanor or violation charge or on a felony charge which in the discretion of the court may be considered a misdemeanor charge at the time sentence is imposed he may authorize a peace officer to issue and serve a citation as provided in ORS 133.055. [Amended by 1969 c.244 §3; 1973 c.836 §68]

**133.120 Authority to issue warrant.** A judge of the Supreme Court or the Court of Appeals may issue a warrant of arrest for any offense committed or triable within the state, and any other magistrate mentioned in ORS 133.030 may issue a warrant for any offense committed or triable within the territorial jurisdiction of the magistrate's court. [Amended by 1969 c.198 §60; 1973 c.836 §69; 1977 c.746 §2]

133.130 [Repealed by 1973 c.836 §358]

**133.140 Content and form of warrant.** A warrant of arrest shall:

(1) Be in writing;

(2) Specify the name of the person to be arrested, or if his name is unknown, shall designate the person by any name or description by which he can be identified with reasonable certainty;

(3) State the nature of the offense;

(4) State the date when issued and the county or city where issued;

(5) Be in the name of the State of Oregon or the city where issued, be signed by and bear the title of the office of the magistrate having authority to issue a warrant for the offense charged;



**133.377 Arrest of persons for cruelty to animals.** (1) Any person violating ORS 167.850 may be arrested and held without warrant, in the same manner as in case of persons found breaking the peace.

(2) The person making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owners of the animals found in the charge of the person arrested, and shall properly care and provide for such animals until the owners or their duly authorized agents take charge of them; provided, such owners or agents shall claim and take charge of the animals within 60 days from the date of said notice.

(3) The person making such arrest shall have a lien upon the animals for the expense of such care and provisions. [Formerly 770.230]

**133.379 Duty of peace officer to arrest and prosecute violators of cruelty to animals laws; disposition of fines.** (1) It shall be the duty of any sheriff, deputy sheriff, constable or police officer to arrest and prosecute any violator of ORS 167.850 for any violation which comes to his knowledge or notice.

(2) All fines and forfeitures collected for violations of ORS 167.850 shall be paid into the county treasury of the county in which it is collected, and placed to the credit of the county school fund. [Formerly 770.240]

133.380 [Repealed by 1971 c.743 §432]

**133.381 Procedure in arrests for violation of certain restraining orders; arrest of person not in county where order or warrant issued.** (1) When a peace officer arrests a person pursuant to ORS 133.310 (3) or pursuant to a warrant issued under ORS 33.040 by a court or judicial officer for the arrest of a person charged with contempt for violating an order issued under ORS 107.095 (1)(c) or (d), 107.716 or 107.718, if the person is arrested in a county other than that in which the warrant or order was originally issued, the peace officer shall take the person before a magistrate as provided in ORS 133.450. If it becomes necessary to take the arrested person to the county in which the warrant or order was originally issued, the costs of such transportation shall be paid by that county.

(2) If a person arrested for the reasons described in subsection (1) of this section is subsequently found guilty of contempt, the court, in addition to any other sentence it may

impose, may order the person to repay a county all costs of transportation incurred by the county pursuant to subsection (1) of this section. [1979 c.162 §2; 1981 c.780 §9]

### UNIFORM ACT ON FRESH PURSUIT

**133.410 Short title.** ORS 133.410 to 133.440 may be cited as the Uniform Act on Fresh Pursuit.

**133.420 Definitions for ORS 133.410 to 133.440.** As used in ORS 133.410 to 133.440:

(1) "Fresh pursuit" includes fresh pursuit as defined by the common law; the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony; and the pursuit of a person suspected of having committed a felony, though no felony actually has been committed, if there is reasonable ground for believing that a felony has been committed. It does not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(2) "State" includes the District of Columbia.

**133.430 Authority of officers of other states to make arrest.** (1) Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in the other state has the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

(2) This section shall not be construed to make unlawful any arrest in this state which otherwise would be lawful.

**133.440 Proceedings following arrest by officer of other state.** If an arrest is made in this state by an officer of another state in accordance with ORS 133.430, he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he shall commit the person arrested to await for

a reasonable time the issuance of an extradition warrant by the Governor of this state. If the magistrate determines that the arrest was unlawful, he shall discharge the person arrested.

### PROCEDURES AFTER ARREST

#### 133.450 After arrest; within or without county in which warrant was issued.

(1) If the defendant is arrested in the county in which the warrant issued, he shall be taken before the magistrate who issued the warrant, or, if the magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county; but if he is arrested in another county and the crime charged in the warrant is a misdemeanor, the officer shall, upon being required by the defendant, take him before a magistrate of that county, who shall make a release decision as provided in ORS 135.230 to 135.290. The officer shall at the same time deliver to the magistrate the warrant with his return indorsed and subscribed by him.

(2) After making the release decision, the magistrate shall certify that fact on the warrant and return the warrant and release agreement or security release to the officer having charge of the defendant. The officer shall then discharge the defendant from arrest and without delay deliver the warrant and release agreement or security release to the clerk of the court in the other county at which the defendant is required to appear.

(3) If the defendant is to be released and he does not agree to the release agreement, or a security deposit is not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant or some other magistrate in that county, as provided in this section, together with the warrant. [Formerly 133.520]

**133.455 Receipts for property taken from person in custody; penalty.** (1) Whenever any jailer, peace officer or health officer takes or receives any money or other valuables from any person in custody for safekeeping or for other purposes, the officer or jailer receiving such valuables or money forthwith shall tender one of duplicate receipts for the property being surrendered to the person in custody. If possible, the person in custody shall countersign both the original and duplicate receipts. If the person is unable to sign

the receipts or receive the duplicate thereof, the same shall be signed by and delivered to the person when reasonably possible. A file of the original receipts shall be kept for at least six months after the money or valuables have been returned to the person in custody, his agent or representative or other person entitled to the same.

(2) A person violating any of the provisions of subsection (1) of this section commits a Class B misdemeanor. [Formerly 142.210]

**133.460 Forfeiture of conveyances used unlawfully to conceal or transport stolen property.** (1) Any boat, vehicle, aircraft or other conveyance used by or with the knowledge of the owner or the person operating or in charge thereof, other than stolen conveyances, in the unlawful transportation of livestock, livestock carcasses, poultry or other personal property, as provided in ORS 142.070, or in which any such personal property unlawfully possessed is kept or concealed by or with the knowledge of such owner or person operating or in charge thereof, shall be forfeited to the state as provided in this section.

(2) If the person arrested under ORS 133.465 is not the owner of the vehicle or conveyance seized, the sheriff shall make reasonable effort to determine the name and address of the owner. If the sheriff is able to determine the name and address of the owner, he shall immediately notify the owner by registered or certified mail of the seizure and of the owner's rights and duties under this section and ORS 133.465.

(3) A person notified under subsection (2) of this section, or any other person asserting a claim to rightful possession of the vehicle or conveyance seized, except the defendant, may move the court having ultimate trial jurisdiction over any crime charged in connection with the seizure, to return the vehicle or conveyance to the movant.

(4) The movant shall serve a copy of the motion upon the district attorney of the county in which the vehicle or conveyance is in custody. The court shall order the vehicle or conveyance returned to the movant, unless the court is satisfied by clear and convincing evidence that the movant knowingly consented to the unlawful use that resulted in the seizure. If the court does not order the return of the vehicle or conveyance, the movant shall obtain the return only as provided in ORS 133.465.

(5) If the court orders the return of the vehicle or conveyance to the movant, the movant shall not be liable for any towing or storage costs incurred as a result of the seizure.

(6) If the court does not order the return of the vehicle or conveyance under subsection (4) of this section, and the arrested person is convicted for any offense in connection with the seizure, the vehicle or conveyance shall be subject to forfeiture as provided in this section and ORS 133.470 and 133.475. [Formerly 142.080]

**133.465 Seizure of stolen animals or other property being transported; proceedings against person arrested.** (1) When any peace officer discovers any person in the act of transporting any stolen live meat food animal or fowl, any meat food animal or fowl carcass, or any part thereof, or any wool, hides, grain or any other article which has been stolen in or upon any vehicle, boat, aircraft or conveyance of any kind, the officer shall seize all such articles or things found therein, take possession of the vehicle or other conveyance and arrest any person in charge thereof.

(2) The officer shall at once proceed against the person arrested, under the provisions of the law which has been violated, in any court having competent jurisdiction and shall deliver the vehicle or other conveyance to the sheriff of the county in which such seizure has been made.

(3) The vehicle or other conveyance shall be returned to the owner if he is the person arrested, upon execution of a good and valid bond, with sufficient sureties in a sum double the value of the property, which bond shall be approved by the court and shall be conditioned upon the return of said property to the custody of the sheriff at a time to be specified by the court. [Formerly 142.090]

**133.470 Sale of seized property; rights of owner and lien holder.** (1) The court, upon conviction of the person arrested pursuant to ORS 133.465, shall, unless the bona fide owner or a bona fide lien holder registers his objection as provided in this section, subject to the ownership rights of innocent third parties, order a sale of the property at public auction by the sheriff of the county where it was seized.

(2) The sheriff, after deducting the expense of keeping the property and the cost of

sale, shall pay, according to their priorities, all liens which are established by intervention or otherwise at such hearing or in other proceedings brought for said purpose and shall pay the balance of the proceeds into the general fund of the county.

(3) No claim of ownership or of any right, title or interest in the vehicle or other conveyance shall be held invalid unless the state shows to the satisfaction of the court, by clear and convincing evidence that the claimant had knowledge that the vehicle or other conveyance was used or to be used in violation of law.

(4) No such conveyance shall be sold under this section and unless the state proves to the court, by clear convincing evidence that the person asserting a claim of ownership or other right, title or interest in the conveyance had knowledge that such conveyance was to be used to convey stolen property, in which case the court shall order the vehicle or other conveyance to be released. All liens against property sold under this section or ORS 133.475 or 133.485 shall be transferred from the property to the proceeds of the sale of the property. [Formerly 142.100]

**133.475 Notice to owner.** If no one claims the vehicle or other conveyance, as provided in ORS 133.470, the taking of the same with description thereof shall be advertised in some daily newspaper published in the city or county where taken or, if there is no daily newspaper published in such county or city, in a newspaper having weekly circulation in the city or county once a week for two weeks and by notice posted in three public places near the place of seizure. The legal owner, in the case of a motor vehicle, if licensed by the State of Oregon, as shown by his name and address in the records of the Motor Vehicles Division of the Department of Transportation, shall be notified by mail. If no claimant appears within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the county. [Formerly 142.110]

**133.485 Perishable property; live-stock.** If any of the property seized, as provided in ORS 133.465, is perishable, or livestock or fowls where the cost of keeping is great, the sheriff shall, upon order of the court, sell the same in the manner in which property is sold on execution. [Formerly 142.120]

**133.495 Retention of property to answer order of court.** The proceeds of the sale mentioned in ORS 133.485 and other property seized shall be retained by liens, if not released on bond, to answer any order that may be entered by the court upon the trial of the person arrested. [Formerly 142.130]

**133.510** [Repealed by 1965 c.508 §8]

**133.515 Interpreter to be made available to handicapped person.** (1) Upon the arrest of a handicapped person and before interrogating or taking the statement of the handicapped person, the arresting peace officer, or when the arrest is by a private person, the officer to whom the handicapped person is delivered, shall make available to the handicapped person, at the earliest possible time, a qualified interpreter to assist the handicapped person throughout the interrogation or taking of a statement. The county in which the arrest is made shall pay the fees and expenses of the qualified interpreter if:

(a) The handicapped person, subsequent to the arrest, makes a verified statement and provides other information in writing under oath showing his inability to obtain a qualified interpreter, and provides any other information required by the court having jurisdiction over the offense for which the handicapped person was arrested concerning his ability to obtain such an interpreter; and

(b) It appears to the aforesaid court that the handicapped person was without means and was unable to obtain a qualified interpreter.

(2) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against him, or is incapable of presenting or assisting in the presentation of his defense, because he is deaf, or because he has a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for him, and accurately repeat and translate the statements of the handicapped person to the officer or other person. [1973 c.386 §3]

Note: The amendments to 133.515 by section 139, chapter 3, Oregon Laws 1981 (special session), take effect January 1, 1983. See section 5, chapter 3, Oregon Laws 1981 (special session). 133.515, as amended, is set forth for the users' convenience.

**133.515.** (1) Upon the arrest of a handicapped person and before interrogating or taking the statement of the handicapped person, the arresting peace officer, or when the arrest is by a private person, the officer to whom the handicapped person is delivered, shall make available to the handicapped person, at the earliest possible time, a qualified interpreter to assist the handicapped person throughout the interrogation or taking of a statement.

(2) The public employer of the arresting peace officer or officer to whom the handicapped person is delivered shall pay the fees and expenses of the qualified interpreter if:

(a) The handicapped person, subsequent to the arrest, makes a verified statement and provides other information in writing under oath showing inability to obtain a qualified interpreter, and provides any other information required by the court having jurisdiction over the offense for which the handicapped person was arrested concerning the inability to obtain such an interpreter; and

(b) It appears to the court that the handicapped person was without means and was unable to obtain a qualified interpreter.

(3) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the person, or is incapable of presenting or assisting in the presentation of a defense, because of deafness, or because of a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings, and accurately repeat and translate the statements of the handicapped person to the officer or other person.

Note: Section 140, chapter 3, Oregon Laws 1981 (special session), provides:

Sec. 140. The amendments of section 47, chapter 892, Oregon Laws 1981 [40.325], and ORS 133.515 by sections 138 and 139 of this Act are not applicable in respect to qualified interpreters appointed or made available before the operative date specified in section 5 of this Act [January 1, 1983].

**133.520** [Amended by 1965 c.508 §2; 1973 c.836 §75; renumbered 133.450]

## SEARCH AND SEIZURE (Generally)

**133.525 Definitions for ORS 133.525 to 133.703.** As used in ORS 133.525 to 133.703, unless the context requires otherwise:

(1) "Judge" means any judge of the district or circuit court, the Court of Appeals, the Supreme Court, any justice of the peace or municipal judge authorized to exercise the powers and perform the duties of a justice of the peace.

## INFRACTIONS GENERALLY

**153.110 Persons who may enforce infractions; issuance of citation; arrest prohibited.** (1) Persons specifically authorized under law and all peace officers of this state or of any political subdivision thereof have jurisdiction of and may enforce infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(2) Any person authorized to enforce infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 may issue a citation to any person who violates those infractions. If the person to be issued a citation is a firm, corporation or other organization, issuance of a citation to any employe, agent or representative thereof shall be sufficient to confer jurisdiction.

(3) Any person authorized to issue citations pursuant to this section may not arrest for violation of the infraction but may detain any individual reasonably believed to have committed a violation, or any employe, agent or representative of a firm, corporation or organization reasonably believed to have committed a violation, only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state. [1981 c.692 §11]

**153.120 Citation requirements; delivery of summons to person cited; delivery of other parts of citation.** (1) A citation issued pursuant to ORS 153.110 shall comply with the requirements of ORS 8.665, 153.110 to 153.310 and 153.990.

(2) The authorized person issuing a citation under ORS 153.110 shall cause:

(a) The summons to be delivered to the person cited; and

(b) The complaint and abstract of court record to be delivered to the court. [1981 c.692 §12]

**153.130 Uniform citation.** (1) Except as otherwise specifically provided for an infraction, a uniform citation conforming to the requirements of this section shall be used for all infraction offenses subject to ORS 8.665, 153.110 to 153.310 and 153.990. This section does not prohibit the use of a uniform citation:

(a) For offenses other than infraction offenses subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(b) Retaining other language in addition to that specified in this section.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

(a) The complaint.

(b) The abstract of record.

(c) The police record.

(d) The summons.

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

(4) The complaint shall contain a form of certificate in which the complaint 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. [1981 c.692 §13]

**153.140 Minimum requirements for summons.** A summons in an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 is sufficient if it contains the following:

(1) 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.

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

(4) The amount of bail, if any, fixed for the offense. [1981 c.692 §15]

**153.150 Minimum requirements for complaint.** (1) Except as provided in this section, a complaint in an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 is sufficient if it contains the following:

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

(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 certificate under ORS 153.130, signed by the complainant.

(2) 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 state.

(3) Nothing prohibits the court from amending the citation in its discretion. [1981 c.692 §16]

**153.160 Defendant's appearance; bail; request for hearing; statement; guilty plea.** (1) For infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990, 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 check or money order in the amount of the bail set forth in the summons, and inclosing therewith:

(a) A request for a hearing;

(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 also may be inclosed with the guilty plea.

(2) 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. [1981 c.692 §17]

**153.170 Statement as waiver of hearing and consent to judgment; bail forfeiture.** If a defendant has submitted to the court any written statement in explanation or mitigation under ORS 153.160, the statement constitutes a waiver of hearing and consent to judgment. The court may declare a forfeiture of bail on the basis of the statement and any testimony or written statement of the person issuing the citation or other person which may be presented to the court. [1981 c.692 §18]

**153.180 Fixing hearing date; notice to defendant; waiver.** If the defendant requests a hearing under ORS 153.160, or if pursuant to ORS 153.190, the court directs that a hear-

ing be had, 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 notice of the date and time so fixed. [1981 c.692 §19]

**153.190 Hearing discretionary; powers of court on hearing and without hearing.** For infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990, the court may direct that a hearing be held or may enter the appropriate judgment, impose a fine, direct that the fine be paid out of the bail deposited by the defendant and remit to the defendant any amount by which the bail exceeds the fine. No fine may be imposed in excess of the bail deposited by the defendant unless a hearing is held. [1981 c.692 §20]

**153.200 Warrant for arrest; time limit on issuance; effect of failure to issue warrant.** (1) If a person cited under ORS 153.120 fails to comply with the provisions of ORS 153.160, 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, district, justice or municipal court may be served, without further indorsement, in any county in this state.

(2) No warrant of arrest may be issued pursuant to this section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail or other security given by the arrested person. 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. [1981 c.692 §21]

**153.210 Proceedings to conform to ORS 153.110 to 153.310.** All proceedings concerning infractions under ORS 8.665, 153.110 to 153.310 and 153.990 shall conform to the provisions of ORS 1.510, 1.520, 8.665, 153.110 to 153.310 and 153.990. [1981 c.692 §22]

**153.220 Jurisdiction of courts.** (1) A circuit or district court has concurrent jurisdiction of all infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(2) A justice court, for offenses committed within the county, and a city court, for offenses committed within the jurisdictional authority of the city, have concurrent jurisdiction of all infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(3) The city attorney shall have authority to prosecute in the name of the state for an

infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 that is committed within the jurisdictional authority of the city as provided in this section, and in any appeal therefrom, except as provided in ORS 180.060. [1981 c.692 §23]

**153.230 Venue where action may be commenced.** (1) An action for an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 may be commenced in any of the following counties:

(a) The county in which the offense was committed.

(b) Any other county whose county seat is a shorter distance by road from the place where the offense was committed than the county seat of the county in which the crime was committed, if the action is commenced in the circuit or district court.

(2) If the action is commenced in a county other than that in which the offense was committed, at the request of the defendant the place of trial may be changed to the county in which the offense was committed. A request for a change of the place of trial shall be made prior to the date set for the trial and shall, if the action is commenced in a circuit or district court, be governed by the provisions of ORS 131.305 to 131.415. If the action is commenced in a justice court a request for change of the place of trial shall be governed by the provisions of ORS 156.100.

(3) If the offense is committed on any body of water located in, or adjacent to, two or more counties or forming the boundary between two or more counties, trial for the offense may be held in any nearby county bordering on the body of water. [1981 c.692 §24]

**153.240 Trial without jury; commencement; burden of proof; pretrial discovery; defendant as witness; proof of culpable mental state not element.** (1) The trial of any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall be by the court without a jury.

(2) The trial of any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall not commence until the expiration of seven days from the date of citation for the infraction unless the defendant waives the seven-day period.

(3) The state, municipality or political subdivision shall have the burden of proving the alleged infraction under ORS 8.665,

153.110 to 153.310 and 153.990 by a preponderance of the evidence.

(4) The pretrial discovery rules in ORS 135.805 to 135.873 apply to infraction cases under ORS 8.665, 153.110 to 153.310 and 153.990.

(5) The defendant may not be required to be a witness in the trial of any infraction under ORS 8.665, 153.110 to 153.310 and 153.990.

(6) Proof of a culpable mental state is not an element of an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990. [1981 c.692 §25]

**153.250 Defense counsel not provided at public expense; when prosecuting attorney may appear; notice if defense counsel to appear.** (1) At any trial involving an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 only, defense counsel shall not be provided at public expense.

(2) At any trial involving an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 only, the prosecuting attorney may aid in preparing evidence and obtaining witnesses but shall not appear unless counsel for the defendant appears. The court shall insure that the prosecuting attorney is given timely notice if defense counsel is to appear at trial. As referred to in this subsection, the prosecuting attorney includes the district attorney, a city attorney or a county counsel, as appropriate. [1981 c.692 §26]

**153.260 Prosecution of crime not bar to prosecution for infraction; admissibility of conviction or infraction in subsequent proceedings.** (1) Notwithstanding ORS 131.505 to 131.535, if a person commits both a crime and an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 as part of the same criminal episode, the prosecution for one offense shall not bar the subsequent prosecution for the other. However, evidence of the first conviction shall not be admissible in any subsequent prosecution for the other offense.

(2) Notwithstanding ORS 43.130 and 43.160, no plea, finding or proceeding upon any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall be used for the purpose of res judicata or collateral estoppel, nor shall any plea, finding or proceeding upon any infraction be admissible as evidence, in any civil proceeding. [1981 c.692 §27]

**153.270** When infraction occurs; effect of conviction; criminal procedures apply to prosecution of infraction; conviction cannot be used to impeach in any other action. (1) An offense is an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 if it is so designated in the statute defining the offense and if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty.

(2) A person who commits an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 shall not suffer any disability or legal disadvantage based upon conviction of crime.

(3) Except as otherwise specifically provided in statutes relating to an infraction under ORS 8.665, 153.110 to 153.310 and 153.990, the criminal and criminal procedure laws of this state relating to a violation as described in ORS 161.505 and 161.565 apply with equal force and effect to an infraction under ORS 8.665, 153.110 to 153.310 and 153.990.

(4) A judgment that a person has committed an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 shall not be used to impeach the character of a witness in any criminal or civil action or proceeding. [1981 c.692 §8]

**153.280** Appeal. An appeal from a judgment involving an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 may be taken by either party:

(1) From a proceeding in justice's court, as provided in ORS chapter 53;

(2) From a proceeding in district court, as provided in ORS chapter 46; or

(3) From a proceeding in circuit court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200. [1981 c.692 §28]

**153.290** Infractions Violations Bureau; duties and powers. (1) Any court, when it determines that the efficient disposition of its business and the convenience of persons charged so requires, may establish an Infractions Violations Bureau and constitute the clerk or deputy clerk of the court or any other appropriate official within the jurisdiction in which the court is held as a violations clerk for the Infractions Violations Bureau.

(2) The violations clerk shall accept written appearance, waiver of trial, plea of guilty and payment of fine, and costs in infraction cases under ORS 8.665, 153.110 to 153.310 and 153.990, subject to any limitations set

forth in this section and ORS 153.300. The violations clerk shall serve under the direction and control of the court appointing the clerk.

(3) The court shall by order designate the infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 that are within the authority of the violations clerk. Such offenses shall not include any misdemeanors or felonies.

(4) The court shall establish schedules, within the limits prescribed by law, of the amounts of fines to be imposed for first, second and subsequent offenses, designating each offense specifically. The order of the court establishing the schedules shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid to, receipted by and accounted for by the violations clerk in the same manner as other fines and costs are received by the court. [1981 c.692 §29]

**153.300** Violation procedure; effect of previous infractions. (1) Any person charged with any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 that is within the authority of the violations clerk under ORS 153.290, upon signing an appearance, may:

(a) Enter a plea of guilty and waiver of trial; and

(b) Pay the clerk the fine established for the offense charged, and costs.

(2) A person who has been found guilty of, or who has signed a plea of guilty to, one or more previous infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 in the preceding 12 months within the jurisdiction of the court shall not be permitted to appear before the violations clerk unless the court, by general order applying to certain specified offenses, permits such appearance. [1981 c.692 §30]

**153.310** Schedule of penalties. (1) Except as otherwise provided in the statute defining the offense, the penalty for committing an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall be a fine only.

(2) Infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 are classified for the purpose of sentence into the following categories:

(a) Class A infractions; and

(b) Class B infractions.



LAW OFFICES OF  
KOHLHOFF & MOEN  
FORUM WEST BUILDING SUITE 1  
P. O. Box 706-9475 S.W. WILSONVILLE ROAD  
WILSONVILLE, OREGON 97070  
TELEPHONE (503) 682-3955

MICHAEL E. KOHLHOFF  
STEPHEN A. MOEN  
BETH ELLEN MARKS

December 27, 1983

TO: Dan Potter  
City Administrator

FROM: Michael E. Kohlhoff  
City Attorney

SUBJECT: Business Licenses

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It seems to me the first thing we need to do to improve our business license enforcement is to decriminalize the first offense so that we are able to get business license violators into municipal court to enforce the Code. I have prepared a suggested ordinance which decriminalizes most of the first offenses in the Wilsonville Code. Included in this ordinance is the decriminalization of business license offenses on the first conviction. I have included a memorandum to Mayor Lowrie and members of the City Council, which you should review. This memorandum explains the ordinance. Following the memorandum is a chart which shows the penalty provisions of the Wilsonville Code as it is now written.

I have also drafted a proposed citation form, which the Sheriff can serve on violators of the Wilsonville Code, in order to start the violation process. In the case of business licenses, I would suggest that our office send out an initial letter to the business license violator before the citation is served. We should set up some sort of time table so that there is no delay between the various steps of the violation process. We will also prepare a complaint which will be filed in the Wilsonville Municipal Court, and which will be given to the violator when he or she appears in court. After the first offense and until the City of Wilsonville is able to hold jury trials, offenses will have to be prosecuted in the Clackamas County District Court.

I have enclosed copies of two sections from the Oregon Revised Statutes, which detail the process that we will need to go through for violations (infractions) and for misdemeanors. These sections will be incorporated into the Wilsonville Code.

Finally, I will draft an ordinance which will amend the business license code to more like that of the City of Pendleton.

Please let me know if you have any comments on the above proposals.

*M.E.R.*

M E M O R A N D U M

TO: Mayor William Lowrie  
Members of City Council

FROM: Michael E. Kohlhoff  
City Attorney

SUBJECT: Changes to Enforcement Provisions in Code

DATE: 12/27/83

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I have attempted to standardize the enforcement provisions in the Wilsonville Code as much as possible. In order to do this, I have added four new sections to the code (1.011, 1.012, 1.013 and 1.014) defining misdemeanors and violations. All violations shall now be a sentence to pay a fine in the range of \$1.00 to \$250.00. All Class A, B and C misdemeanors are also standardized in Section 1.011, with maximum fines and jail sentences.

Attached is a list of the penalty provisions in the Wilsonville Code as it now is written.

I have attempted to standardize the majority of these penalty provisions to provide that a first offense is punishable as a violation, a non-criminal offense with a maximum fine of \$250.00. In other words, a person could be fined anywhere from \$1.00 to \$250.00 on a first offense. Second or subsequent offenses are punishable as Class C misdemeanors, a criminal offense with a maximum fine of \$500.00 and a maximum jail sentence of 30 days. There are several sections that do not conform to this, for several reasons. Since Section 2.358, the library fine provision, is already listed as a violation in the code, I have followed the original intent and kept it as a violation on the first and all subsequent offenses. Section 2.402, the false referendum provision, was already listed as a Class B misdemeanor (6 months in jail) and also included language that required a knowing act. It involved interfering with our voting system and I felt it would be best to keep the original intent and punish by a stiffer penalty than several of the other penalty provisions. Section 2.524, jurors' failure

to attend a trial, was listed originally as a violation with no criminal penalty and I felt it best to keep with the original intent. Section 3.106, violation of the water rules, was listed as a Class B misdemeanor (6 months in jail) and again, I felt it best to keep with the original intent. In this case, however, I did standardize it so that the first offense would be a violation and the second offense would be a Class B misdemeanor. Section 5.300, the traffic penalties provision, was originally intended to be a violation in all cases, and I have kept it as a violation, since traffic penalties are not generally punishable as misdemeanors, except in exceptional cases. I have done the same thing with 5.400(6), the golf cart violation provision, feeling that best way was to keep all golf cart violations as no-criminal offenses, punishable by a \$250.00 maximum fine in all cases. Section 8.154 is listed as a violation for first offenses and a Class B misdemeanor for subsequent offenses, conforming to the original intent of the Code. Similarly, Section 7.280 was retained as a violation in all cases, conforming to the original intent of the code. Section 9.260(1) was left as a Class A misdemeanor as originally stated in the Code. In talking with the Building Director, he felt that the extra threat of a Class A misdemeanor is necessary to enforce the Building Code and requested that it be left as originally set out in the Code. Finally, Section 10.430 was originally listed as a Class A misdemeanor for all criminal provisions and I felt that this was also better left as originally intended, as a Class A Misdemeanor, due to the severity of most of the crimes.

These changes should provide for some standardization of the penalty provisions of the Code. It will also enable the City of Wilsonville to prosecute most of these first offense violations in the Wilsonville Municipal Court without need for a jury. If, at a later time, the City of Wilsonville does have a provision for a jury, it might be wise to reconsider some of these provisions and decide whether they should be punished as a misdemeanor on the first offense, rather than just on subsequent offenses. The disadvantage to this system is that the threat of a violation is not as great as the threat of a misdemeanor. It is possible that these new provisions will provide less deterrence than the old provisions. The advantage of these changes is the ability to prosecute in Municipal Court and the standardization of most of the penalty provisions.

*MER*

PENALTY PROVISIONS OF WILSONVILLE CODE  
AS NOW WRITTEN

SECTION	PAGE	REGARDING	FINES	JAIL TERMS
2.033(22)	11	Disrupting council	\$500.00	2 days
2.358	28	Library violations	\$5.00 to \$25.00	
2.402	31	False referendum signatures	\$500.00	6 mos.
2.524	34	Juror non-attendance	\$25.00	
3.030	49	Park violations	\$500.00	30 days
3.106	52	Water rules	\$500.00	6 mos.
3.220	63	Public works standards	\$500.00	30 days
4.192	183	Zoning	\$100.00 or \$500.00	
4.290	198	Subdivisions	\$500.00	30 days
5.300	—	Traffic penalties	\$50.00 or \$100.00	
5.400(6)	—	Golf carts	\$100.00	
6.020	241	Gambling	\$500.00	90 days
6.160	248	Outdoor events	\$500.00	6 mos.
6.210	245	Nuisances	\$500.00	30 days
6.240	248	Nuisances	\$500.00	30 days
7.000	259	Peddlers	\$200.00	100 days
7.010	259	Peddlers	\$200.00	100 days

SECTION	PAGE	REGARDING	FINES	JAIL TERMS
7.280	269	Tax evasion	\$250.00	
7.370(2)	273	Business licenses	\$200.00	60 days
8.050	286	Use of water	\$5.00 to \$50.00	10 days
8.114	289	Garbage	\$200.00	90 days plus 1 day for each \$2.00 fine remaining unpaid
8.154	—	Damage to public sewers	\$500.00	6 mos.
8.170(1)				
8.170(2)	297	Sewers	\$300.00	
9.260(1)	316	Building code	\$2,500.00 or \$10.00 to \$50.00	1 year or 30 days
9.370	321	Fire prevention	\$50.00 to \$500.00	30 days
10.430	336	Criminal penalties	\$1,000.00	1 year
Special Ordinance No. 209	—	Violation of amended comprehensive plan provisions	\$ 100.00 per day if continuing offense; \$ 500.00 per day if non-continuing offense	