

GENERAL ORDINANCE NO. 93-1166

AN ORDINANCE ADOPTING PROCEDURES FOR THE MUNICIPAL COURT OF THE CITY OF THE DALLES, REPEALING GENERAL ORDINANCE NO. 780, AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF THE DALLES DO ORDAIN AS FOLLOWS:

CHAPTER I. MUNICIPAL COURT

Section 1. Municipal Judge. The Municipal Judge shall be the judicial officer of the City and shall hold court for the transaction of judicial business at such place as the City Council shall provide. The Council may authorize the Municipal Judge to appoint municipal judges pro tem for terms of office set by the judge or the City Council.

Section 2. Criminal Procedure Statutes Govern Generally. Except as otherwise provided by this ordinance, an action in Municipal Court is prosecuted and the judgment enforced in the manner provided in the Oregon Criminal Procedure Code, as the same now exists.

Section 3. Application of State Statutes. Provisions of the Oregon Criminal Code, as the same now exists, relating to defenses and burden of proof, general principles of criminal liability, parties, and general principles of justification, shall apply to offenses and violations defined and made punishable by City ordinance.

Section 4. Form and Sufficiency of Complaint. The form of a criminal complaint and the sufficiency thereof shall be as provided by Oregon Criminal Code, as the same now exists.

Section 5. Issuance, Requisites and Execution of Warrant of Arrest. A warrant of arrest shall be issued, directed and executed in the manner provided for by Oregon Criminal Code, as the same now exists.

Section 6. Reading Complaint to Defendant; Pleading. When the defendant is brought before the Judge, the complaint shall be read to the defendant and the defendant shall enter a plea. A copy of a criminal complaint shall also be provided to the defendant.

Section 7. Release from Custody. Decisions regarding release of persons in custody shall be made according to the provisions of the Oregon Criminal Code, as the same now exists.

Section 8. Judgment on Plea of Guilty, No Contest or Conviction. When the defendant pleads guilty or no contest, or is convicted, either by the Judge or the jury, the Judge shall enter a judgment for such punishment as may be prescribed for the offense.

Section 9. Prosecution.

A. When the defendant appears without an attorney, the action shall be prosecuted by the complainant.

B. When the defendant appears with an attorney, the action shall be prosecuted by the City Attorney.

Section 10. Representation. Except as provided in Section 9, no person other than an attorney licensed to practice in this State shall represent a defendant in Municipal Court.

Section 11. Effect of Nonpayment of Fines or Costs.

A. When a defendant sentenced to pay a fine defaults in the payment thereof or of any installment, the Court on motion of the City Attorney or upon its own motion may require the defendant to show cause why the default should not be treated as contempt of Court, and may issue a show cause citation or a warrant of arrest for the defendant's appearance.

B. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the Court or to a failure on the defendant's part to make a good faith effort to make the payment, the Court may find that the default constitutes contempt and impose one or more of the sanctions authorized by the provisions of ORS Chapter 33, as now constituted.

C. When a fine is imposed on a corporation, unincorporated association, or similar organization, it is the duty of the person authorized to make disbursement from the assets of the corporation, association or organization to pay the fine from those assets, and failure to do so may be held to be contempt unless the person makes the showing required in subsection (b).

D. The term of imprisonment for contempt for nonpayment of fines shall be set forth in the commitment order and shall not exceed one day for each \$25.00 of the fine, or 30 days if the fine was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

E. If it appears to the satisfaction of the Court that the default in the payment of a fine is not contempt, the Court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or the unpaid portion thereof in whole or in part.

F. A default in the payment of a fine or costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine has actually been collected.

Section 12. General Penalty; Continuing Violations.

A. Whenever in this ordinance or in any other ordinance of the City any act is prohibited or is declared to be unlawful, or the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided, the violation of any such provisions of this ordinance or any other ordinance of the City shall be punished by a fine not exceeding \$500, except as provided in subsection (B).

B. If there is a violation of any provision identical to a State Statute with a lesser penalty attaching, punishment shall be limited to the lesser penalty prescribed by State law.

C. Every day a violation of this ordinance or any ordinance of the City continues shall constitute a separate offense.

Section 13. Definitions. As used in Section 13, the following words and phrases shall mean:

A. Court. The Municipal Court of the City of The Dalles.

B. Criminal activities. Any offense with respect to which the defendant is convicted or any other offense admitted by the defendant.

C. Offense. Conduct for which a sentence including a term of imprisonment or a fine can be imposed. An offense is either a crime, a violation, or a traffic infraction.

D. Pecuniary damages. All special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.

E. Restitution. Full, partial, or nominal payment of pecuniary damages to a victim.

F. Victim. Any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities; "victim" shall not include any co-participant in the defendant's criminal activities.

Section 14. Restitution. When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim.

A. In determining whether to order restitution which is complete, partial or nominal, the court shall take into account:

1. The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;
2. The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and
3. The rehabilitative effect on the defendant of the payment of restitution and the method of payment.

B. If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall, at the time of sentencing, allow the defendant to be heard on such issue.

Section 15. Effect of Restitution Order on Other Remedies of Victim. The effect of a restitution order pursuant to Section 14 is intended to be interpreted and applied in a manner consistent with ORS 137.109, as now constituted.

CHAPTER II. JURIES

Section 1. Right of Jury Trial. Every person charged with any offense which has been declared to be treated as a misdemeanor by the City Attorney shall have the right to a trial by a jury of six persons. The request for a jury trial may be in writing or in open Court at the time of entry of plea, or such time as the Court may set.

Section 2. Jury Selection. Juries shall be selected in the manner set forth in the Oregon State Statutes for selection of a jury in a justice court proceeding.

Section 3. Jurors' Fees. The fee for jurors shall be \$10.00 for each juror sworn.

Section 4. Deposit of Jurors' Fees. To insure the right of a trial by jury, the defendant shall submit with his request for a jury trial a deposit of \$60.00 for the payment of jury fees.

A. If the defendant is found not guilty, the deposit shall be returned to him.

B. No jury fee deposit shall be required:

1. If the Court determines that the defendant is indigent; or

2. If no such deposit would be required had the defendant been charged in a State court with the same offense.

Section 5. Voir Dire and Challenges. The Judge shall voir dire the jury. Counsel for the City and the defendant may voir dire the jury with the permission of the Municipal Judge. The City and the defendant may each exercise challenges for cause.

Section 6. Jury Verdict. The verdict of the jury shall be unanimous.

CHAPTER III. APPEALS

Section 1. Appeals. Appeals from the Municipal Court shall be taken in the manner as provided by the Oregon State Statutes, as now constituted.

CHAPTER IV. INSPECTION WARRANTS

Section 1. Issuance of Inspection Warrants. Every Municipal Judge may, upon application of a City official or employee so authorized by the City Manager, issue an inspection warrant whenever an inspection or investigation of any premises is required or authorized by any provision relating to animal control, public nuisances, ordinance, zoning, building, regulated

businesses, or fire safety. The inspection warrant is an order authorizing the inspection or investigation to be conducted at a designated place.

Section 2. Grounds for Issuance of Warrants; Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant hereunder, the ordinance provision or regulation requiring or authorizing the inspection or investigation, the premises to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.

A. Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the particular premises, or there is probable cause to believe that a condition or nonconformity with an ordinance provision exists with respect to the particular premises.

Section 3. Procedure for Issuance of Inspection Warrant. Before issuing an inspection warrant, the Municipal Judge may examine under oath the applicant and any other witness and shall satisfy himself of the existence of grounds for granting such application.

A. If the Municipal Judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, he shall issue the warrant particularly describing the name and title of the person or persons authorized to execute the warrant, the premises to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the Judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

Section 4. Execution of Inspection Warrants. Except as provided in subsection (a) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present his credentials, authority and purpose to an occupant or person in possession of the premises designated in the warrant and show him a copy thereof upon request.

A. In executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of his authority and purpose as previously described, but may promptly enter the designated premises if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition.

B. A peace officer may be requested to assist in the execution of the inspection warrant.

C. An inspection warrant must be executed and returned to the Municipal Judge within 10 days from its date, unless the Judge, before the expiration of such time, by endorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant, unless executed, is void.

CHAPTER V. REPEAL, EMERGENCY CLAUSE

Section 1. Repeal. General Ordinance No. 780, is hereby repealed.

Section 2. Emergency. Whereas it is in the best interest of the health, safety, and welfare of the citizens of The Dalles, that a set of procedures be adopted for the operation of the Municipal Court, NOW, THEREFORE, an emergency is declared to exist, and this ordinance shall go into effect immediately upon its passage and approval.

Passed by the Council and approved by the Mayor the 21st day of June, 1993.