

A BILL FOR AN ORDINANCE FOR THE) ORDINANCE BILL NO. 15
 ENFORCEMENT OF NUISANCE ABATE-) for 1994
 MENT, LAND DIVISION AND LAND USE)
 ORDINANCES, STATE AND CITY) ORDINANCE NO. 2156
 BUILDING AND STRUCTURAL CODES AND)
 ORDINANCES; AND DECLARING AN)
 EMERGENCY.)

WHEREAS, violations of the City Land Division and Land Use Ordinances, Nuisance Abatement Ordinances, and State and City Building and Structural Codes and Ordinances threaten the health, safety, and welfare of the citizens of Lebanon; and

WHEREAS, the above-mentioned ordinances and regulations are currently enforced through procedures that are slow, cumbersome, and expensive; and

WHEREAS, a Citation Ordinance would provide a more efficient method of notifying individuals of possible statutory violations and of preventing or insuring correction of dangerous or otherwise illegal conditions;

NOW, THEREFORE, it is ordained by the City Council of the City of Lebanon as follows:

Section 1: Title

This ordinance may be cited as the Lebanon Citation Ordinance.

Section 2. Authority

This ordinance is adopted under the authority of Oregon Revised Statute 221.410. The enforcement of this ordinance is authorized by ORS 221.915 and ORS 221.916, and the issuance of citations by ORS 133.045 to 133.080. The City is further and more specifically authorized as follows:

- a) To enforce land division and land use ordinances by ORS Chapters 92, 197 and 227;
- b) To enforce building codes and other structural codes by ORS Chapter 455;

- c) To define and enforce nuisances by ORS 221.915; and
- d) By other provisions of law not specifically enumerated herein.

Section 3. Laws Enforceable Under This Ordinance

The following ordinances, statutes, and regulations shall be enforceable under the provisions of this ordinance:

- a) Lebanon City Zoning Ordinance, No. 1773, 1980 and as amended thereafter and as codified in Title 17 of the Lebanon Municipal Code;
- b) Lebanon City Land Division Ordinance, No. 1774, 1980 and as amended thereafter and codified in Title 16 of the Lebanon Municipal Code;
- c) Lebanon City Building, Mechanical, and Structural Codes, Ordinance No. 1871, 1982 and as amended thereafter and codified in Title 15 of the Lebanon Municipal Code;
- d) Nuisance Abatement Ordinances, No. 1814, 1980 and as amended thereafter and codified in Title 8 of the Lebanon Municipal Code.
- e) All amendments to the Ordinances listed in this Section made subsequent to the adoption of this ordinance.

Section 4. Persons Authorized to Issue Citations

The following persons are authorized to issue citations under this ordinance:

- a) the Building Official of the City of Lebanon; or
- b) the Chief of Police of the Lebanon Police Department or a Police Officer of the City of Lebanon Police Department.

Section 5. Issuance of Warnings

- a) The Building Official for the City may issue a warning of an alleged violation of a provision enforceable under this ordinance.
- b) If issued, a warning notice shall be in writing and shall be delivered to the alleged violator in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail.

- c) A warning notice shall include at least the following:
- 1) A brief description of the nature of the violation;
 - 2) The legal provision or provisions alleged to be violated;
 - 3) The date and time at which the violation is alleged to have occurred, or if it is a continuing violation, a statement to that effect and the date the violation was first observed;
 - 4) The name of the person, department, or office to contact regarding the violation;
 - 5) The name of the person issuing the warning;
 - 6) The date the warning was issued;
 - 7) A statement that failure to correct the alleged violation or to contact the appropriate City office within a specified time may result in issuance of a citation to appear in the Municipal Court;
 - 8) A statement that if a citation is issued, payment of a fine or bail does not relieve a violator of the responsibility to remedy the violation; and
 - 9) The maximum penalty that may be assessed if a citation is issued for the violation and a finding of guilt is entered.

Section 6. Citation Form and Content

- a) A citation conforming to the requirements of this section shall be used for all violations enforceable under this ordinance committed in the presence of the complainant and occurring within the city limits of the City of Lebanon.
- b) The citation shall consist of the following four parts and any additional parts inserted for administrative use:
 - 1) The complaint;
 - 2) The department or Lebanon Police Department's record of violation;
 - 3) The city attorney's record of violation;
 - 4) The summons.
- c) Each part of the citation shall contain the following information or blanks for entry of information:

- 1) The name of the court and the court's docket or file number;
 - 2) The name of the person cited;
 - 3) The ordinance, statute, or regulation violated;
 - 4) A brief description of the violation of which the person is charged in a manner that can be readily understood by a person making a reasonable effort to do so;
 - 5) The date and time at which the violation is alleged to have occurred, or if it is a continuing violation, a statement to that effect and the date the violation was first observed by the complainant;
 - 6) The place at which the violation is alleged to have occurred;
 - 7) The date on which the citation was issued;
 - 8) The name of the complainant;
 - 9) The time and place where the person cited is to appear in court;
 - 10) The bail, if any, fixed for the violation; and
 - 11) The method of service and a certification that service has been made. If service is made by certified mail, return receipt requested, it shall be so stated on the complaint and the required certification of service may be made upon receipt of the "return receipt" and after the filing of the complaint. Service by certified mail shall be as specified in Section 8 of this ordinance.
- d) (1) The complaint shall contain a certification by the complainant that the complainant has reasonable grounds to believe, and does believe, that the person cited committed a violation enforceable under this ordinance. If made by a person not listed in Section 5 of this ordinance, the certification shall be made before a judge of the Lebanon Municipal Court, clerk, or deputy court clerk, and entered in the record.
- (2) A certificate conforming to this subsection shall be deemed equivalent to a sworn complaint.
- e) The reverse side of the complaint shall contain the court record and shall substantially conform to the reverse side of other uniform complaints used in the Municipal Court, or shall be as directed by a judge of the Municipal Court.

- f) The summons shall notify the person cited that the complain will be filed in the Municipal Court for the City of Lebanon.
- g) The reverse side of the summons shall contain the following information:

READ CAREFULLY

You have been charged with a violation of a City of Lebanon ordinance, state statute, or regulation as stated on the front of this Summons. You **MUST** do **ONE** of the following:

1. Appear in Court at the time when this Summons requires you to appear and request a hearing. The Court will then set a time for a hearing, OR
2. Mail to the Court this Summons, together with a check or money order in the amount of the bail indicated on the other side of this Summons and tell the Court you request a hearing. **THIS SUMMONS AND THE BAIL MUST REACH THE COURT BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR IN COURT.** If you don't want a hearing, but wish to explain your side, send your explanation with the Summons and bail. The Court will then consider your explanation and may forfeit your bail or part of it on the basis of your explanation and what the authorized official tells the Court, OR
3. Sign the plea of guilty below and send this Summons to the Court, together with a check or money order in the amount of bail indicated on the other side of this Summons. **THIS SUMMONS AND THE BAIL MUST REACH THE COURT BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR IN COURT.** NOTE: If you have already given bail or other security for your appearance, proceed as mentioned above, but do not send in any additional sum as bail.

FORFEITURE OF BAIL OR PAYMENT OF A FINE FOR THIS CITATION DOES NOT RELIEVE A VIOLATOR OF THE RESPONSIBILITY TO REMEDY THE VIOLATION. FAILURE TO REMEDY A VIOLATION PRIOR TO THE COURT APPEARANCE DATE STATED IN THIS CITATION MAY CONSTITUTE A CONTINUING VIOLATION AND MAY GIVE RISE TO ISSUANCE OF ADDITIONAL CITATIONS.

APPEARANCE, PLEA OF GUILTY, AND WAIVER

I, the undersigned, do hereby enter my appearance on the complaint of the violation charged on the other side of this Summons. I have been informed of my right to a hearing, that my signature to this plea of GUILTY will have the same force and effect as a judgment of the court. I do hereby PLEAD GUILTY to the violation as charged, WAIVE my right to a HEARING by the court, and agree to pay the penalty prescribed for my violation. I understand that my agreement to pay a fine or forfeit bail does not relieve me of my responsibility to remedy the violation charged.

(Defendant's Name)

(Defendant's Address)

MAIL YOUR REMITTANCE TO:

Lebanon Municipal Court
40 East Maple St.
Lebanon, OR 97355

NOTICE

IF YOU FAIL TO MAKE AN APPEARANCE THROUGH ONE OF THE THREE FOREGOING PROCEDURES, OR FAIL TO APPEAR FOR A HEARING AT THE TIME SET BY THE COURT, THE COURT IS EMPOWERED TO DECLARE YOU IN DEFAULT ON THE COMPLAINT. IN THE EVENT OF A DEFAULT, OR FAILURE TO PAY A FINE PURSUANT TO COURT ORDER UPON CONVICTION OF A VIOLATION, THE COURT MAY AUTHORIZE THE FOLLOWING PROCEDURES TO SATISFY THE UNPAID FINE OR BAIL.

1. ISSUE A CITATION FOR YOU TO SHOW CAUSE WHY YOU SHOULD NOT BE HELD IN CONTEMPT OF THE COURT.
 2. DIRECT THE COMPLAINANT HEREIN TO INVESTIGATE AND DETERMINE WHETHER OR NOT FURTHER CITATIONS SHOULD ISSUE FOR CONTINUING VIOLATION.
 3. OTHER LEGAL RELIEF AS PROVIDED BY LAW.
- h) An error in transcribing information into the blanks provided in the citation form, when determined by the Court to be non-prejudicial to the defendant's

defense, may be corrected at the time of trial or prior to the time of trial with notice to the defendant. Except as provided in this subsection, a complaint that does not conform to the requirements of this section may only be set aside by the court upon motion of the defendant for entry of a plea.

- g) The court may amend a citation in its discretion.

Section 7. Service of Citation

An authorized official shall served a person cited as follows:

- 1) Personally;
- 2) By delivery to a member of the person's family over 14 years of age residing at the person's abode if the person is not available at the abode for service; or
- 3) By certified mail, return receipt requested. Service by certified mail shall not be valid unless the return receipt is signed by the person to whom the citation is issued.

Section 8. Prosecution

The Lebanon City Attorney shall have authority to prosecute a person cited for committing a violation enforceable under this ordinance.

Section 9. Appearance by Defendant

- a) The defendant shall either appear in court at the time indicated in the summons, or prior to the time of hearing shall deliver to the court the summons, a check or money order in the amount of bail set forth on the summons; and
 - 1) A request for hearing;
 - 2) A statement of explanation in mitigation of the offense charged; or
 - 3) The executed appearance, waiver of hearing and plea of guilty appearing on the summons.
- b) A written statement of explanation submitted by a defendant shall constitute a waiver of hearing and consent to judgment by the court and forfeiture of all or any part of the bail as determined by the court.
- c) If the defendant requests a hearing, the court shall fix a date and time for a hearing. Unless notice is waived, the court shall mail to defendant a notice of

the date and time of the hearing at least five days in advance. The notice shall:

- 1) Be in the form of a court "Notice to Appear" and contain a warning that if the defendant fails to appear, the defendant may be charged with failure to appear, a criminal offense; and
- 2) Be sent to the defendant at his last known address by regular mail.

Section 10. Failure of Defendant to Appear

If a person cited and notified of a court appearance as provided in this ordinance fails to appear at either the original appearance noticed on the summons or at a subsequent hearing scheduled by the court:

- (a) The defendant shall forfeit any bail that has been posted on the citation.
- (b) A complaint or information may be filed, charging the defendant with failure to appear on a citation, a Class A misdemeanor. The complaint or information may be accompanied by a warrant for the arrest of the defendant.

Section 11. Bail Schedules and Fines

- (a) The City Council for the City of Lebanon may by order establish and modify schedules of bail for violations enforceable under this ordinance.
- (b) Until modified by order of the City Council, bail shall be \$100 for the first offense, and \$250 for the second or any subsequent offense. A second or subsequent offense is a violation of any law enforceable under this ordinance when defendant has previously forfeited bail or been found guilty of a provision of law enforceable under this ordinance.
- (c) A person accused of committing a violation enforceable under this ordinance who requests a trial must post bail unless bail is expressly waived by the judge of the court.
- (d) Any individual, firm, or corporation, whether as principal, agent, or employee, who violates any provision enforceable under this ordinance, shall be punished upon conviction by a fine of not more than \$500 for each separate offense and of not more than \$1,000 for a continuing offense. Failure to comply with a provision enforceable under this ordinance may be counted as a separate offense for each day that noncompliance continues.
- (e) Forfeiture of bail or payment of a fine on a citation issued under this ordinance does not relieve a violator of the responsibility to remedy the violation.

- (f) The court may impose reasonable court costs in addition to any fine levied by the court.

Section 12. Disposition of Forfeited Bail and Fine Money Received

Fines and costs recovered and bail amounts forfeited shall be paid to the clerk of the Municipal Court and deposited in the City's general fund.

Section 13. Other Remedies Preserved

Nothing in this ordinance is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this ordinance. The City Council, City Attorney, or any person whose interest is or may be affected by violation of a provision enforceable under this ordinance may take whatever legal or equitable actions necessary to abate a nuisance or remedy damage regardless of whether an action has been commenced under this ordinance. Such remedy or action may also be contained elsewhere within the Lebanon Municipal Code.

Section 14. Hearings Procedure

- (a) The criminal procedure laws of the State of Oregon relating to a violation as described in ORS 161.505 and 161.565 shall apply to a violation of a provision enforceable under this ordinance unless provided otherwise in this ordinance.
- (b) The hearing on any violation shall be by the court without a jury.
- (c) The hearing shall not commence until the expiration of seven days from the date of citation for the violation, unless the defendant waives this seven day period.
- (d) The City shall have the burden of proof of the alleged violation by a preponderance of the evidence.
- (e) The pretrial discovery rules in ORS 135.805 to 135.873 shall apply. As used in ORS 135.805 to 135.873, "District Attorney" shall include the Lebanon City Attorney for violations prosecuted under this ordinance.
- (f) The defendant may not be required to be a witness in the hearing.
- (g) Proof of a culpable mental state is not an element of a violation unless expressly provided in the ordinance alleged to have been violated.

Section 15. Establishment of Rules

The City Administrator or the Building Official may by rule or policy statement establish procedures to carry out this ordinance.

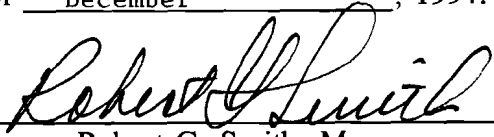
Section 16. Severability Clause

If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this ordinance is found to be invalid or unconstitutional by a court of competent jurisdiction, that portion of the ordinance shall be deemed separate and distinct, and the remainder of this ordinance shall continue in full force and effect.

Section 17. Emergency Clause

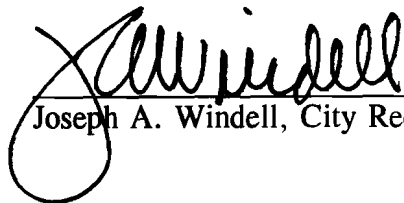
Inasmuch as the provisions of this ordinance are necessary for the immediate preservation of the peace, health and safety of the people of the City of Lebanon, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council of the City of Lebanon by a vote of 4 for and 0 against, and approved by the Mayor this 14th day of December, 1994.



Robert G. Smith, Mayor

ATTEST:



Joseph A. Windell, City Recorder