

A BILL FOR AN ORDINANCE ENACTING )  
THE LEBANON ENFORCEMENT CODE, )  
CREATING CHAPTER 8.02 OF THE LEBANON )  
MUNICIPAL CODE AND CREATING PENALTIES )  
FOR VIOLATIONS AND DECLARING AN )  
EMERGENCY )

Ordinance Bill No. 16  
for 2004

Bill Number 23109

WHEREAS, the City of Lebanon requires the enforcement of its ordinances for the prevention and remediation of nuisances and other conditions contrary to the public safety, health or welfare; and

WHEREAS, the enforcement of such code provisions does not require the expertise or training of trained or certified police officers; and

WHEREAS, the city desires to retain discretion in the methods of enforcing codes, such as building codes, nuisance prevention codes, and similar regulations, with the use of a "Code Enforcement Officer", who need not be a certified police officer;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF LEBANON DO ORDAIN AS FOLLOWS:

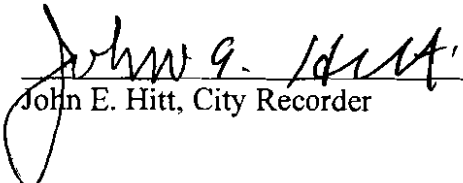
Section 1. There is hereby created the Lebanon Enforcement Code, which shall be included within Title 8 of the Lebanon Municipal Code at Chapter 8.02. A copy of said Lebanon Enforcement Code is attached to this ordinance as Exhibit "A", and is incorporated herein at this point as if fully stated herein.

Section 2. As the Lebanon Enforcement Code provides for the prompt and immediate enforcement of provisions of the Lebanon Municipal Code which is necessary for the peace, health and safety of the people of the city of Lebanon, an emergency is declare to exist, and this ordinance is effective upon its passage by the City Council.

Passed by a vote of 6 for and 0 against by the Lebanon City Council on the 8<sup>th</sup> day of ~~November~~, 2004.  
December

  
\_\_\_\_\_  
Kenneth I. Toombs, Mayor

ATTEST:

  
\_\_\_\_\_  
John E. Hitt, City Recorder

## Exhibit "A"

### 8.02.010 Title

This Chapter, LMC 8.02.010 to 8.02.300, shall be known and may be cited as the "Lebanon Enforcement Code" or simply as the "Enforcement Code."

### 8.02.020 Definitions

For purposes of this Chapter, and in addition to the meaning given in ORS Chapter 153, the following definitions apply:

- (A) "**Enforcement Officer**" means an individual described in LMC 8.02.050.
- (B) "**Offense**" means "violation" as defined in subsection (D) of this section.
- (C) "**Peace Officer**" means a sheriff, constable, marshal, municipal police officer, or member of the Oregon State Police.
- (D) "**Violation**" means conduct prohibited by a City ordinance or the Lebanon Municipal Code (LMC), or by an Oregon administrative rule cited in this Code, and for which a fine is provided by such ordinance, Code, or rule, and which is not a crime. The term includes offenses described elsewhere as infractions, and for purposes of the Lebanon Municipal Code conduct described as an infraction shall be regarded as a violation.

### 8.02.030 Purpose

This Chapter is enacted pursuant to the authority granted to cities by Oregon Revised Statutes for the purpose of providing procedures to be used in enforcing the Lebanon Municipal Code.

### 8.02.040 Application

(A) Prosecution and enforcement of any violations of this Chapter of the Lebanon Municipal Code shall be conducted as violation proceedings under ORS Chapter 153 may, by order of the Chief of Police, be ("Violations and Traffic

Offenses") as supplemented by the provisions of this Chapter.

(B) In addition to violations of the Municipal Code, this Chapter applies to the prosecution of the conduct that is prohibited by the administrative rules described in this Code, for which City officials have enforcement authority.

(C) Whenever a provision of this Chapter refers to a Lebanon Municipal Code violation, such provision shall be interpreted to include violations of the administrative rules described in subsection (B) of this section.

(D) In all cases where the same violation is made punishable by different clauses or sections of any provision of this Code, or if the same violation is made punishable by more than one provision, the enforcement officer may elect under which to proceed. Not more than one recovery shall be had against the same person for the same violation, provided that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced, nor shall an order for abatement for nuisance, as provided by Chapter 8.08 of this Code, be considered a recovery or penalty.

### 8.02.050 Enforcement officers

(A) The Chief of Police may appoint, from time to time, one or more appropriate persons as enforcement officers for the purpose of implementing this Chapter.

(B) Enforcement officers serve at the pleasure of the Chief of Police.

(C) The authority of any enforcement officer may, by order of the Chief of Police, be limited to enforcement of specific violations or amended at any time.

(D) A person designated or appointed as an enforcement officer have all authority to carry out the purposes of this Chapter

## Exhibit "A"

and the provisions of the Code under their authority.

(E) The City may establish a job position having as its principle function the enforcement of the Lebanon Municipal Code. Such enforcement officer shall have authority to enforce the Lebanon Municipal Code pursuant to this Chapter.

(F) Any person with lawful authority, other than by appointment or designation under this section, to enforce violations under this Chapter may enforce the Lebanon Municipal Code.

### **8.02.055 Other authority for enforcement of statutes and rules**

(A) A violation of a statute or administrative rule that is not adopted by this Code may be enforced in the manner provided in that statute or rule by a person having lawful authority to enforce such statute or rule.

(B) Notwithstanding any other provision in this Chapter, a violation of a statute or administrative rule that is defined by that statute or rule as a felony or misdemeanor may be enforced in the manner provided in that statute or rule by a person having lawful authority to enforce such statute or rule.

### **8.02.060 Nature of an enforcement prosecution under this Chapter**

(A) Prosecution and enforcement action of any violation of the Lebanon Municipal Code shall be brought as violation proceedings under this Chapter.

(B) A violation of any provision in any chapter of the Lebanon Municipal Code that does not have an enforcement procedure in that chapter to dispose of that violation is subject to this Chapter.

(C) A judgment issued pursuant to this Chapter involves only a fine, and does not incur loss by forfeiture, suspension

or revocation of any license or any other privilege or other civil penalty.

(D) A person against whom a judgment is issued pursuant to this Chapter does not suffer any disability or legal disadvantage, based upon said judgment, other than the enforcement of the judgment by the City of Lebanon.

(E) The parties in an enforcement action are the plaintiff, City of Lebanon, and the defendant, the person prosecuted.

### **8.02.080 Enforcement by City Attorney**

To the extent consistent with ORS 153.076, the City Attorney, upon information or complaint of any person having authority to enforce violations subject to this Chapter, may prosecute a case in which it appears there has been a violation of the Municipal Code.

### **8.02.090 Jurisdiction of courts**

The Municipal Court and the Linn County Circuit Court have concurrent jurisdiction of all violations under this Chapter.

### **8.02.100 Administrative search warrant**

#### **Procedures - Definitions**

As used in this chapter:

(A) "**Place**" means any building, premises, or other location subject to the Lebanon Municipal Code.

(B) "**Judge**" means the Lebanon Municipal Judge, or any judge of the circuit court, or any justice of the peace.

### **8.02.110 Enforcement authority**

(A) *Generally.* Any enforcement officer designated by this Chapter acting in the course of official duties is hereby authorized to make such inspections and take such actions as may be required to enforce this Code or other applicable

## Exhibit "A"

statute or regulation applicable under this Chapter.

(B) *Inspections.* Whenever necessary to make an inspection to enforce any of the provisions of the Code or other applicable statute or regulation or whenever an enforcement officer has cause to believe that there exists in any place any condition or violation which makes such place a safety or health hazard or danger, the enforcement officer may enter a place at all reasonable times to inspect the same or to perform any duty imposed upon the enforcement officer by any State statute or regulation, or any City ordinance or Code or regulation, relating to safety or health. However, if such place is occupied, the enforcement officer shall first present proper credentials and request entry. If such entry is refused, the enforcement officer may apply for an inspection warrant under this Chapter to obtain entry.

### **8.02.120 Issuance of inspection warrants for safety and health inspections**

Judges authorized to issue search warrants may, upon application of any enforcement officer in the course of official duties, issue an inspection warrant whenever an inspection or investigation of any place is required or authorized by any State statute or regulation, or any City ordinance or Code or regulation, relating to safety or health, or as authorized in this Chapter. The inspection warrant is an order authorizing the safety or health inspection or investigation to be conducted at a designated place.

### **8.02.130 Grounds for issuance of inspection warrants; requirements of affidavit**

(A) An inspection warrant shall be issued only upon cause. The inspection warrant shall be supported by affidavit. The affidavit shall particularly describe the following:

- (1) the applicant's status in applying for the warrant;
- (2) the statute or regulation, or the City ordinance or Code or regulation requiring or authorizing the inspection or investigation;
- (3) the place to be inspected or investigated;
- (4) the purpose for which the inspection or investigation is to be made;
- (5) the basis upon which cause exists to inspect; and
- (6) that entry has been sought but not granted, despite reasonable efforts to obtain entry for voluntary inspection. This statement shall recite those efforts undertaken by the Code Enforcement Officer in seeking entry. For purposes of this subsection, reasonable efforts include but are not limited to, attempts to contact the owner or occupant of the place for which the warrant is sought to obtain entry either personally, by phone, or by letter sent certified mail return receipt requested which is returned or otherwise not accepted for delivery.

(B) Cause for an inspection warrant shall be deemed to exist:

- (1) if there is probable cause to believe that a condition of nonconformity which a safety or health statute or regulation, or City ordinance or Code or regulation exists with respect to the particular place;
- (2) an investigation is reasonably believed to be necessary in order to determine or verify whether there exists a condition of nonconformity with a safety or health statute or regulation, or City ordinance or Code or regulation with respect to the particular place, or

## Exhibit "A"

(3) for the purpose of carrying out a routine periodic inspection, if the place is other than a private residence.

(C) For the purpose of subsections (B) (1) and (B) (2) of this section, in determining whether an investigation is reasonably believed to be necessary an enforcement officer may look to the following factors:

- (1) the history of violations at the particular place if any;
- (2) the willingness to cure such violations if any;
- (3) whether or not a complaint regarding the particular place has been filed with the Code Enforcement Officer by a citizen; or
- (4) the willingness to accept voluntary inspections of the particular place.

The list of factors herein does not limit consideration of other factors by the enforcement officer, so long as the factors are of a type regularly relied upon by Code Enforcement Officers in determining whether an investigation is reasonably believed to be necessary, and so long as these factors are articulated in the affidavit required in subsection (A) of this section.

### **8.02.140 Procedure for issuance of inspection warrant by Judge.**

- (A) Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness to be satisfied of the existence of grounds for granting such application.
- (B) If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing the name and title of the person or persons authorized to execute the warrant, the place 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 the inspection warrant cannot be effectively executed between those hours that it be executed at any additional or other time of the day or night.

### **8.02.150 Execution of inspection warrants**

(A) Except as provided in subsection (B) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the place designated in the warrant and show the occupant or person in possession of the place the warrant or a copy thereof upon request.

(B) In executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection (A) of this section, but may promptly enter the designated place 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.

(C) A peace officer may be requested to assist in the execution of the inspection warrant.

(D) An inspection warrant must be executed and returned to the judge by whom it was issued within 10 days from the date of issue, unless such judge before the expiration of such time, by endorsement thereon, extends the time for 5 days. After the expiration of the time prescribed by this subsection, the warrant is void unless executed.

Exhibit "A"

**8.02.160 Refusal of entry when inspection warrant obtained**

(A) When an enforcement officer has obtained an inspection warrant to secure entry to a place, no owner or occupant or any other persons having charge, care or control of any place shall fail or neglect, after proper request is made as provided in this Chapter, to promptly permit entry therein by the enforcement officer for the purpose of the inspection or investigation.

(B) Any failure or neglect to promptly permit entry under this section shall be punishable under this Chapter.

**8.02.170 Enforcement Procedures -- Commencement of enforcement or civil action**

The enforcement official may do one or both of the following:

- (1) issue a citation pursuant to this Chapter; or
- (2) request the City Attorney to commence civil proceedings such as, but not limited to, a complaint seeking injunction, mandamus, abatement, fine or other appropriate remedy filed in a court in Linn County having jurisdiction, to prevent, temporarily or permanently enjoin, abate or penalize the violation; or
- (3) take appropriate enforcement action as provided in LMC 8.02.330.

**8.02.180 Method of enforcement discretionary**

(A) The decision by the City to seek enforcement of a particular violation is discretionary.

(B) Nothing in the Lebanon Municipal Code shall be construed to create a duty, enforceable in mandamus or other similar proceeding, on the part of the City or any of its officers or agents to enforce any particular violation of the Code.

**8.02.190 Enforcement by complaint for injunction or other relief**

(A) If the City determines that enforcement by means of a complaint for injunction, mandamus, abatement, or fine, or other appropriate proceeding, would be the most effective manner to proceed, the Board shall direct the City Attorney, to institute civil action to require compliance with the Code or penalize the violator or both.

(B) The City Attorney may then prosecute such action to judgment and may seek to enforce that judgment by appropriate legal means.

**8.02.200 Enforcement by citation filed in Municipal or Circuit Court**

(A) If the enforcement officer determines that enforcement of a violation defined by the Code by means of a citation filed in Circuit or Municipal Court is warranted, the enforcement officer may issue a citation under this Chapter.

(B) Any peace officer or enforcement officer may issue and serve a citation for violation of the Lebanon Municipal Code.

(C) Pursuant to ORS 153.030(8), any peace officer may serve a person with a citation on which an enforcement officer made a certification pursuant to ORS 153.045.

(D) Pursuant to ORS 153.030(8), the person making the certification required by ORS 153.045 is not required to be the person who serves the citation on the person believed to be in violation of the Code.

(E) Pursuant to ORS 153.042 and 153.030(8), an enforcement officer or peace officer may issue a violation citation pursuant to this Chapter even if the conduct alleged to constitute a violation does not take place in the presence of the officer, if the officer has

Exhibit "A"

reasonable grounds to believe that the conduct alleged constitutes a violation. (F) Violation proceedings for the purpose of enforcing the Lebanon Municipal Code and this Chapter may be commenced only by enforcement officers or peace officers. No private party may initiate a violation proceeding pursuant to ORS 153.058 or other law.

**8.02.210 Hearing discretionary with court; exception**

(A) For any Code violation for which a citation has been issued, the Court may direct a hearing be held or may enter the appropriate judgment, impose a fine, direct that a fine be paid out of the base fine deposit, and unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant. (B) No fine may be imposed in excess of the amount of the base fine deposited unless a hearing is held.

**8.02.220 Hearing procedures**

(A) The trial of any violation complaint shall be in accordance with this Chapter. Prosecution and enforcement of any violations of the Lebanon Municipal Code under this Chapter shall be conducted as violation proceedings under ORS Chapter 153 ("Violations and Traffic Offenses") as supplemented by the provisions of this Chapter. (B) Proof of negligence, malfeasance, misfeasance, nonfeasance, willful conduct, knowing conduct, intentional conduct, or any other culpable mental state is not an element of any violation.

**8.02.230 Role of enforcement officers**

Notwithstanding ORS 9.160 and 9.320, in any trial of a violation under this Chapter, in which the City Attorney or other attorney is barred by statute from appearing on behalf of the City, the

enforcement officer who issued the citation for the violation may present evidence, examine and cross examine witnesses and make arguments relating to:

- (A) the application of statutes and rules to the facts in the case;
- (B) the literal meaning of the statutes or rules at issue in the case;
- (C) the admissibility of evidence; and
- (D) proper procedures to be used in the trial.

**8.02.240 Prosecution of subsequent violations**

(A) The prosecution of one violation complaint shall not bar the subsequent prosecution of additional City Code violations occurring or committed at the same time or as part of the same act or transaction or as part of the same occurrence as other Code violations. (B) Evidence of prior Code violations shall be admissible, subject to ORS 40.170, in any subsequent prosecution of any Code violation.

**8.02.250 Court costs**

(A) The court shall charge court costs to the violator, including but not limited to the unitary and county assessments established under ORS 137.290 and 137.309, where:  
(1) The violator admits a violation of a provision of the Code;  
(2) The violator fails to appear for the hearing or, following a hearing, is found to have violated a provision of the Code. (B) Court costs shall be as described in the most recent court costs/fee schedule adopted by the court. If the violator fails to pay the costs, the costs shall be entered as a judgment against the violator in the same manner and with like effect as a judgment for a fine.

## Exhibit "A"

### **8.02.260 Fines**

All fines paid to the City shall be credited to the general fund to be used for general City purposes.

### **8.02.270 Costs and disbursements**

(A) The City shall be entitled to recover all costs and disbursements that are reasonable and necessary expenses incurred in the successful prosecution of a violation complaint, other than for legal services, but including the costs, expenses, salaries and overhead costs of officers, employees and witnesses, the necessary expenses of taking depositions, the expense of publication of summons or notices, postage, compensation of expert witnesses, and the expense of copying any public or private record, book or document used as evidence in the trial.

(B) The costs and disbursements shall be allowed to the City in the same manner as a judgment for fines. When the City is entitled to recover costs and disbursements, the City may within 30 calendar days of judgment file with the court a signed and detailed statement identifying the amount of the costs and disbursements and shall provide a copy of the statement to the offender. The court shall award the costs and disbursements unless the court finds the costs or disbursements unreasonable. If the court so finds, the court shall award an amount for the costs and disbursements that the court deems reasonable. No findings of fact or conclusions of law shall be necessary.

### **8.02.280 Enforcement; penalties**

(A) The penalty for a violation of this chapter is a fine not more than \$600.

(B) For purposes of this Chapter a failure to comply with any provision of the Lebanon Municipal Code from day

to day shall be a separate offense for each such day.

(C) If there is a violation of any provision identical to a statute of the State of Oregon with a lesser penalty attaching, punishment shall be limited to the lesser penalty prescribed in Oregon State law.

### **8.02.300 Judgment of Abatement**

In addition to, and not in lieu of, any remedy allowed by this Chapter, and pursuant to ORS 153.090 (1)(e), as part of a judgment entered under this Chapter a court may order a violator to abate any violation of which the violator is found guilty or enters a plea of guilty or no contest. Any failure to abate the violation as ordered by the court shall be contempt of court.