

Chapter 2.10 CIVIL ENFORCEMENT

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2.120.010 Purpose and Applicability. This Ordinance provides a process for enforcing the requirements of the Mosier Zoning Ordinance, Land Division Ordinance, Nuisance Ordinance and all other ordinances, regulations, permits, licenses or approvals issued by the city pursuant to the city’s permitting or regulatory authority. Where any city ordinance provides its own or a different enforcement procedure, those procedures shall be in addition to those provided in this Ordinance. The civil process set forth in this Ordinance is designed to provide prompt notice to property owners and other interested parties that appear to be in violation of the city’s requirements and to guarantee those accused of an infraction the right to an evidentiary hearing on the alleged infraction. The process is designed to provide a measure of certainty to the citizens of Mosier that violations will be addressed promptly and decisively and to ensure that the due process rights of those accused of infractions are protected. This Ordinance shall apply to all infractions of any provision of the Mosier Zoning Ordinance, Land Division Ordinance, Nuisance Ordinance any other city ordinance or regulation adopted by the city. This Ordinance also provides a mechanism for enforcing the requirements of any permit, license or other approval granted by the city. This Ordinance shall not apply to criminal matters.

2.10.020 Definitions. For the purposes of this Ordinance the following definitions shall apply:

- A. “Civil infraction” means the violation or failure to comply with any provision of the Mosier Zoning Ordinance (Ordinance No. 136), Land Division Ordinance (Ordinance No. 137), Nuisance Ordinance (Ordinance No. _____) and any other ordinance adopted by the City that imposes legal obligations or regulations on people, property or activities. Civil infraction also includes any violation or failure to comply with any provision or requirement of any permit, order, license or approval granted by an authorized City official, the City Council or other decision maker.

- B. “Code” means, collectively, the Mosier Zoning Ordinance (Ordinance No. 136), Land Division Ordinance (Ordinance No. 137), Nuisance Ordinance (Ordinance No. ____) and any other ordinance adopted by the city that imposes legal obligations, regulations or prohibitions on people, property or activities plus any other regulation adopted or administered by the City of Mosier. “Code” also means any codification of ordinances that the city may adopt and from time to time amend.
- C. “Officer” means a sworn peace officer or any person appointed by the mayor and authorized to administer and enforce the city’s code, including, but not limited to, the city planner and the city attorney.
- D. “Permit” means permit, order, license or approval granted by an authorized city official, the city council or other governmental decision maker plus any other permit or approval administered or enforced by the City of Mosier.
- E. “Person” means any individual, corporation, limited liability corporation, partnership, unincorporated association, local government, government agency or other legal entity.
- F. “Respondent” means any person, corporation, limited liability corporation, partnership, unincorporated association, local government, government agency or other legal entity alleged to have committed a civil infraction and any owner of the property on which a civil infraction is alleged to have occurred.

2.10.030 Enforcement Requirements and Civil Infractions.

- A. No person or other entity shall engage in, or cause to occur, any use, development, construction, reconstruction, alteration, or maintenance of any property, building, structure or vehicle, or alter or use any land in violation of the Code or in violation of any permit. No person or other entity shall engage in any use of property, or allow a use of property under their ownership or control, that is prohibited by the Code. No person shall fail to pay any charge due the city when such failure to pay is made a civil infraction.
- B. No permit for the construction, occupation or use of a property, building, structure or business shall be issued unless it has first been determined that such building, structure or business or use as proposed, and the land upon which it is proposed to be located, complies with all applicable provisions of the Code and state law, or is exempt from those provisions, and is not a nuisance.
- C. Failure to obtain a permit or other approval as required by the Code shall constitute a nuisance and a civil infraction. Violation of any provision of the Code enforced under this Ordinance may constitute grounds for revocation, nonrenewal or denial of a permit issued by the city.

D. Violation of any requirements of this section is a civil infraction and a nuisance. Each day of violation shall constitute a separate civil infraction that can give rise to a separate citation, conviction and fine.

2.10.040 Citation for Civil Infractions.

A. Basis for the Citation: Upon a determination by an Officer that one or more civil infractions have occurred, the Officer shall issue a citation to the person or other entity who the Officer has probable cause to believe is responsible for the activity or failure to act that is deemed to be the civil infraction. The person or entity that committed the alleged violation shall be responsible for the civil infraction. In addition, if the person who committed the alleged violation is on property owned by another, with the property owner's permission, the property owner shall be jointly and severally responsible for the alleged violation.

B. Service of the Citation: The Officer shall serve the citation on the respondent(s) by personal service; certified first class mail, return receipt requested; or by any means provided in Rule 7 of the Oregon Rules of Civil Procedure.

2.10.050 Contents of the Civil Infraction Citation.

A. The citation for a civil infraction shall include at least the following information:

1. The name and address of the respondent(s);
2. The time, date and place the civil infraction was alleged to have occurred;
3. A statement describing the civil infraction(s) alleged to have occurred with a reference to the pertinent Code references or other commonly understood reference to the law, ordinance or permit alleged to have been violated.
4. A summons indicating the time, date and place for arraignment in municipal court, at which time the respondent(s) shall appear and enter a plea responding to the charge(s) alleged in the citation.
5. A certification that the Officer issuing the citation has reasonable grounds to believe, and does believe, that the respondent(s) committed the civil infraction contrary to law. This certificate shall be deemed equivalent to a sworn complaint.

B. A uniform traffic citation and complaint shall be an acceptable form for any civil infraction citation under this Ordinance.

2.10.060 Municipal Court Proceeding.

A. The municipal court shall have jurisdiction over all civil infractions prosecuted under this Ordinance. The municipal court may adopt, and amend from time to time, procedural rules governing its proceedings. The city recorder shall serve as the court clerk.

B. The following procedures shall be followed in proceedings before municipal court:

1. The respondent(s) shall appear in municipal court at the time and date indicated in the citation for arraignment, at which time the respondent(s) shall enter a plea stating whether the respondent(s) committed or did not commit the infraction. The respondent(s) may enter a plea by mail prior to the arraignment date indicated in the citation so long as the written plea is actually received by the municipal court before the stated time of the arraignment.
2. If a respondent enters a plea of having committed the infraction, no contest, or fails to appear or otherwise enter a plea, the municipal court shall find that the respondent committed the infraction as alleged and shall enter an order directing the respondent to abate, correct or otherwise remedy the violation, and the court shall impose a civil penalty in accordance with this Ordinance.
3. If a respondent timely enters a plea of not having committed the infraction, the court shall schedule the matter for hearing.
4. At the hearing, the citing Officer shall present the case and evidence in support of the citation. The respondent shall be afforded an opportunity to review and rebut the Officer's evidence, cross-examine the Officer's witnesses, and present testimony, evidence and witnesses in support of respondent's case. Any party may be represented by an attorney, but the city is not responsible for providing any respondent with an attorney.
5. The court shall enter an order in favor of the city if the Officer proves by a preponderance of the evidence that the respondent committed the infraction, in which case the court shall enter an order directing the respondent to abate, correct or otherwise remedy the violation by a time certain, and the court shall impose a civil penalty in accordance with this Ordinance.

2.10.070 Nuisance Abatement by the City and Cost Recovery.

A. Nuisance and abatement order: Upon a finding that the respondent committed a civil infraction, the municipal court shall declare the civil infraction to be a nuisance, and if the violation still exists, the municipal court shall order the respondent to abate, correct or otherwise remedy the nuisance. In the event the respondent fails to so abate or remedy the nuisance within the time provided for in the Court's Order, the Officer, without further proceedings, may take

any action the Officer deems to be reasonably necessary to abate or remedy the nuisance and/or the Officer may seek from the municipal court an order of contempt against respondent for failing to comply with the court's abatement order. The City is eligible to recover all costs associated with abating a nuisance under this section, including the costs of obtaining a contempt order and/or a summary abatement order, and all other administrative costs, plus the cost of work to remove or otherwise abate or correct the nuisance and any associated disposal costs.

B. Summary abatement by the City in emergency situations: With or without the respondent first having appeared, the Officer may seek, and the municipal court may order, the summary abatement of the activity alleged in the civil infraction citation upon a finding that:

1. An imminent and substantial threat to the public health, safety or welfare exists by virtue of the alleged action or inaction; and
2. Immediate abatement of the activity or nuisance is necessary to prevent a threatened harm to the public health, safety or welfare.

C. Upon the issuance of a summary abatement order under this section, the Officer may, without further notice or proceedings, take whatever steps are necessary to abate, correct or remedy the nuisance that is the basis for the citation. The City may seek cost recovery against the respondent(s) for all of the Officer's expenses incurred in undertaking a summary abatement action.

D. Recovery of the City's Enforcement Prosecution and Abatement Costs: Following entry of an order against a respondent as provided by Section 6, the City may petition the Court to recover from respondent(s) all of its reasonable administrative, professional and other costs incurred in an enforcement action from the initiation of the action through and including all costs associated with abating or otherwise correcting the nuisance, including reasonable attorney and expert witness fees, disposal, correction and clean-up costs. Following the conclusion of the abatement action, the City may file with the court and serve on respondent(s) a sworn statement of its costs incurred in the action. The court shall review the sworn statement and any objections thereto, and issue an order that the respondent(s) shall pay the City its reasonable costs incurred in the enforcement and abatement action. The court's cost recovery order shall be in the form of a money judgment that may be recorded without further notice by the City as a lien against the respondent's real property as a lien. If the amount of the cost recovery order is not paid within 30 days of issuance, the Officer may, without further notice or proceedings, record the debt in the city's lien docket or the county real property records as a lien against any real property owned by respondent(s).

2.10.080 Fines.

A. Upon conviction of an infraction of any provision of the Code or any permit, license or other approval, the court may impose a maximum civil penalty up to \$500 per conviction.

B. Each day of violation, event or incident shall constitute a separate citable and sanctionable civil infraction.

C. The remedies and penalties provided in this Ordinance are in addition to, and not in lieu of, any other remedy or penalties provided by law, including, but not limited to revocation or nonrenewal of a permit or license, injunction, a city-initiated land use proceeding, abatement or civil damages as provided by the Code or state law in any court or agency of competent jurisdiction.