

**AN ORDINANCE ESTABLISHING AN ENFORCEMENT
PROCEEDING FOR VIOLATIONS OF CITY ORDINANCES
AND ESTABLISHING A GENERAL PENALTY FOR VIOLA-
TION OF CITY ORDINANCES**

FINDINGS:

A. Section 6 of the Dunes City Charter of 1974 (Charter) provides:

Except as this charter provides otherwise, all powers of the city shall be vested in the council.

B. Section 10 of the Charter gives the Council discretion to establish the office of municipal judge. The Council has elected not to create the office of municipal judge and has determined to retain within its powers the authority to establish the procedures and to enforce the ordinances it enacts.

Dunes City ordains as follows:

Section 1. The above findings are hereby adopted and made a part hereof.

Section 2. In addition to any other enforcement procedures or penalties imposed by any other ordinance of the City, the procedures and penalties provided in this ordinance may be used and imposed.

Section 3. Imposition of Civil Fines.

(1) When the city recorder determines that a person has violated or is violating any provision of City ordinances which authorizes the imposition of a fine, the city recorder may issue a notice of civil fine to the person. If the condition determined to be a violation is also declared a nuisance under any ordinance of the City, the city recorder may include in the notice an order to abate the nuisance.

(2) The notice of civil fine shall either be served by personal service or shall be sent by first-class mail and registered or certified mail. Any such notice served by mail shall be deemed

received for purposes of any time computations hereunder three days after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside this state. A notice of civil fine shall include:

- (a) Reference to the particular ordinance provision involved;
- (b) A short and plain statement of the matters asserted or charged;
- (c) A statement of the amount of the fine or fines imposed; and
- (d) A statement of the party's right to appeal the fine to the City Council.

(3) Any person who is issued a notice of civil fine may appeal to the City Council within the time and in the manner set forth in Section 4.

(4) A civil fine imposed hereunder shall become final upon expiration of the time for filing an appeal unless the person appeals the city recorder's determination to the City Council pursuant to, and within the time established by, Section 4. If the person appeals the city recorder's determination to the City Council, the Council shall determine the final amount of the civil fine, if any, and if included in the notice, the existence or non-existence of a nuisance, in its written decision.

(5) Failure to pay a fine imposed hereunder within ten days after the fine becomes final as provided in Subsection 3(4) shall constitute a violation against the City. Each day the fine is not paid shall constitute a separate violation. This offense is punishable by a fine not to exceed \$500 and is not subject to the penalty in Section 5 of this ordinance. The City may collect civil fines by any action authorized by its ordinances or state law.

(6) The civil fines authorized by this section shall be in addition to

- (a) assessments or fees for any costs incurred by the city in remediation, cleanup or abatement, and
- (b) any other actions authorized by law.

(7) Unless the City Council expressly provides to the contrary in its decision, if a civil fine is imposed on a person because of a violation of any provision of the City's ordinances resulting from prohibited use or activity on real property, including any use, activity or condition on real property which constitutes a nuisance under the City's ordinances, and the civil fine remains unpaid ten days after such civil fine becomes final, the City hereby assesses the property the full amount of the unpaid fine and such fine shall be, and until paid remain, a lien from the date the city recorder causes it to be recorded in the City lien docket and with the Department of Records of Lane County, Oregon.

(8) An unpaid civil fine shall earn interest at the rate of 12% per annum starting the eleventh day after it becomes final.

(9) The city recorder is hereby authorized to collect all civil fines imposed under this ordinance. In the absence of faithful performance of an agreement to pay the civil fine in installments as may be approved by the city recorder, any lien authorized by this ordinance may be foreclosed as provided by state law for the foreclosure of street improvement assessment liens.

Section 4. Appeal of Civil Fine.

(1) Any person who is issued a notice of civil fine may, within 45 days of the after the date of notice of the civil fine, appeal the fine to the City Council by filing a written appeal with the city recorder. The appeal shall be accompanied by a fee established by the City and shall state:

- (a) The name and address of the appellant;
- (b) The fine being appealed;
- (c) The reason the condition that is the basis for the civil fine is not a violation and/or the reason the amount of the fine is incorrect;

(d) What the correct determination of the appeal should be.

An appellant who fails to file such a statement and pay the appeal fee within the time permitted waives his/her objections, and his/her appeal shall be dismissed. Except as provided in Subsection 4(4), the appeal fee is not refundable.

(2) Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Council within 30 days of the date of filing of the appeal. At least ten days before the hearing, the City shall mail notice of the time and location thereof to the appellant.

(3) The City Council shall hear and determine the appeal on the basis of the evidence supporting the city recorder's determination, the appellant's written statement and evidence, and such other facts or documents of which the Council takes notice and discloses to the appellant during the hearing on the appeal. The appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply. The City shall have the burden of proving by a preponderance of the evidence that the violation occurred or exists and that the imposition of the fine was proper.

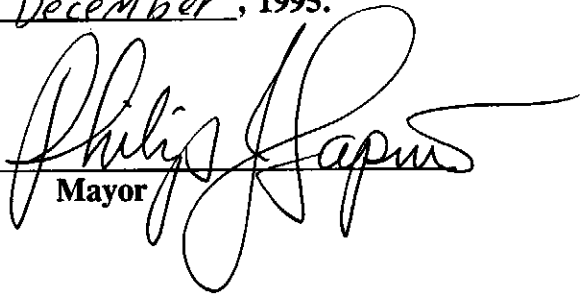
(4) The City Council shall issue its decision at the conclusion of the hearing or at such other time as the Council deems appropriate. The decision of the Council, in addition to imposing a civil fine, may include an order to abate any condition declared to be a nuisance in any ordinance of the City. The decision of the City Council is final and may include a determination that the appeal fee be refunded to the applicant upon a finding by the City Council that the appeal was not frivolous.

(5) A written summary and notice of the Council's decision signed by the Mayor shall be served on the appellant as provided in Subsection 3(2) of this ordinance.

Section 5. The maximum civil fine which may be imposed under this ordinance or any other ordinance of the City shall be \$2,500 for each violation or offense. Each day the violation or offense exists is a separate violation or offense.

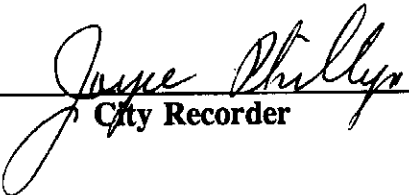
Passed by the City Council this 14th day of December, 1995.

Approved by the Mayor this 14th day of December, 1995.



Mayor

Attest:



City Recorder