

**Advance Packet for
May 9, 2016 City Council Meeting**

Included in this packet is documentation to support the following Agenda items:

1. Ordinances

- a. Ordinance 16-O-756, Adding Chapter 1.15, Citizen Citations, To The Brookings Municipal Code

Documents: [CITIZEN CITATIONS CAR.PDF](#), [CITIZEN CITATIONS.ATT.A.16-O-756.PDF](#), [CITIZEN CITATIONS.ATT.B.ORS EXCERPT.PDF](#), [CITIZEN CITATIONS.ATT.C.MEMO.PDF](#)

- b. Ordinance 16-O-757, Amending Various Sections Of The Brookings Municipal Code To Bring Them Into Conformity With Chapter 1.05, General Penalty

Documents: [GENERAL PENALTY CAR.PDF](#), [GENERAL PENALTY.ATT.A.16-O-757.PDF](#), [GENERAL PENALTY.ATT.B.REVISIONS.PDF](#)

2. Public Notice

Documents: [PN ORD BY TITLE ONLY FOR 5-9-16.PDF](#)

*Obtain [Public Comment Forms](#) on this website or at City Hall prior to the meeting. Return completed forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with 14 days advance notification. Please contact 469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: May 9, 2016

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Ordinance 16-O-756 Adding Chapter 1.15 Regarding Citizen Citations to the Brookings Municipal Code.

Recommended Motion:

Move to adopt Ordinance 16-O-756, adding chapter 1.15, Citizen Citations, to the Brookings Municipal Code

Financial Impact:

N/A

Background/Discussion:

Oregon Revised Statutes 153.058 provides any person other than an enforcement officer may commence a violation proceeding by filing a complaint with a court having jurisdiction over the alleged violation. In Brookings, this authority has been accommodated by allowing citizens to issue "citizen citations" and bringing the alleged offending party to Brookings Municipal Court.

ORS 153.058(7) allows the City Council to enact an Ordinance providing that such violation proceedings may only be commenced by enforcement officers.

Staff has observed a number of Brookings Municipal Court proceedings over the past several months involving citizen citations and recommends that citizen citations be limited to traffic violations. Every non-traffic citizen citation that has been issued has either been dismissed because no violation actually existed, or because the person issuing the citation failed to appear in Court. In at least one case, a citizen issued a citation after an enforcement officer investigated the complaint and found no violation; there was still a protracted court proceeding and the case was ultimately dismissed. In this case, the City's enforcement officer actually testified on behalf of the defendant. In some cases, citizens who have been cited have taken time off work and appeared in Court only to find that the person who issued the citation did not appear and the case was dismissed. It is Staff's observation that many citizen citation issuers: 1) do not understand the regulations they are seeking to enforce, 2) fail to present evidence of a violation or 3) may have issued a citation in the "heat of the moment" as a part of a neighbor dispute and decided later not to follow-up.

In some instances, Staff has also had difficulty in serving notices to appear in Court as citizens have issued citations to defendants who have been miss-identified.

Public Safety Director Chris Wallace recommends retaining citizen citations for traffic violations as police officers typically work with people who have observed these violations to develop appropriate evidence and witnesses.

Ordinance 16-O-756 would continue to allow citizens to issue traffic citations, but would limit the issuance of citations for all other offenses to City personnel who work in the particular field of enforcement (i.e. building code, zoning, fire).

Attachment(s):

- a. Ordinance 16-O-756.
- b. ORS 153.058.
- c. Memo dated March 23, 2016, from Court Clerk Pamela Ganey.

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 16-O-756

IN THE MATTER OF ORDINANCE 16-O-756, AN ORDINANCE ADDING CHAPTER 1.15, CITIZEN CITATIONS, TO THE BROOKINGS MUNICIPAL CODE

Sections:

- Section 1. Ordinance identified.
- Section 2. Adds Chapter 1.15

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance adds Chapter 1.15, Citizen Citations, to the Brookings Municipal Code.

Section 2. Adds Chapter 1.15 : Chapter 1.15 is added to read as follows:

Chapter 1.15 Citizen Citations

1.15.010 Purpose

Oregon Revised Statutes 153.058 (7) provides that a political subdivision may limit the commencement of proceedings for violations of its charter and ordinances to its enforcement officers. The purpose of this ordinance is to regulate the circumstances under which a citizen may cite another person, or persons, into Brookings Municipal Court.

1.15.020 Citizen citations limited to traffic violations.

- A. Citizen citations may only be cited into Brookings Municipal Court for traffic violations committed within the City of Brookings.
- B. Only a police officer, building inspector, code enforcement officer or fire department employee shall have the authority to issue a citation for non-traffic violations of the Brookings Municipal Code.
- C. Any citizen citation issued for a violation other than a traffic violation shall be automatically dismissed by the Court.

First Reading: _____ Passage: _____
Second Reading: _____ Effective Date: _____

Signed by me in authentication of its passage this _____, day of _____, 2016

ATTEST:

Mayor Ron Hedenskog

City Recorder Teri Davis

2013 ORS § 153.058¹

Initiation of violation proceeding by private party

- (1) A person other than an enforcement officer may commence a violation proceeding by filing a complaint with a court that has jurisdiction over the alleged violation. The filing of the complaint is subject to ORS 153.048 (Complaint). The complaint shall be entered by the court in the court record.
- (2) A complaint under this section must contain:

 - (a) The name of the court, the name and address of the person bringing the action and the name and address of the defendant.
 - (b) A statement or designation of the violation that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the violation is alleged to have occurred.
 - (c) A certificate signed by the complainant stating that the complainant believes that the named defendant committed the violation specifically identified in the complaint and that the complainant has reasonable grounds for that belief. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. Complaints filed under this section are subject to the penalties provided in ORS 153.990 (Penalty for false certification).
- (3) Upon the filing of a complaint under this section, the court shall cause a summons to be delivered to the defendant and shall deliver a copy of the complaint to the district attorney for the county in which the complaint is filed. The court may require any enforcement officer to serve the summons.
- (4) If the complaint does not conform to the requirements of this section, the court shall set it aside upon motion of the defendant made before the entry of a plea. A pretrial ruling on a motion to set aside may be appealed by the state.
- (5) A court may, acting in its sole discretion, amend a complaint filed under the provisions of this section.
- (6) A court shall dismiss a complaint filed under this section upon the motion of the district attorney for the county or of the city attorney for a city if:

- (a) The district attorney or city attorney has brought a proceeding against the defendant named in the complaint or intends to bring a proceeding against the defendant named in the complaint; **and**
 - (b) The proceeding is brought by the district attorney or city attorney by reason of the same conduct alleged in the complaint.

- (7) Any political subdivision of this state may require by ordinance that violation proceedings for the purpose of enforcing the charter or ordinances of the political subdivision may not be commenced in the manner provided by this section and that those proceedings may be commenced only by enforcement officers.

- (8) A person other than an enforcement officer may commence a violation proceeding under this section only for:
 - (a) Boating violations under ORS chapter 830, or any violation of rules adopted pursuant to ORS chapter 830 if the violation constitutes an offense;
 - (b) Traffic violations under ORS chapters 801 to 826, or any violation of rules adopted pursuant to those chapters if the violation constitutes an offense;
 - (c) Violations under the wildlife laws, as described in ORS 496.002 (Short title), or any violation of rules adopted pursuant to those laws if the violation constitutes an offense;
 - (d) Violations under the commercial fishing laws, as described in ORS 506.001 (Contents of commercial fishing laws), or any violation of rules adopted pursuant to those laws if the violation constitutes an offense; **or**
 - (e) Violations of ORS 618.121 (License required for commercially operated weighing or measuring instrument) to 618.161 (Notice of violation to owner or operator of unlicensed weighing or measuring instrument), and violation of rules adopted pursuant to those laws if the violation constitutes an offense. [1999 c.1051 §11]

...

Notes of Decisions

County authority under ORS 203.810 (Offenses under county law) to create exceptions governing state court enforcement of county law does not allow county to permit citizen commencement of violation proceeding in state court

where ordinance is not of type listed in this section. Hood River County v. Stevenson, 177 Or App 78, 33 P3d 325 (2001)

News Reports

- **Citizen-initiated citations**

Sellwood/Westmoreland Blog - OregonLive.com, May 14, 2009

“Would it be possible for ordinary citizens to cite a driver for failing to stop at a red light? Eric Bryant, an attorney who has successfully filed citizen-initiated citations, seems to think so. ...”

http://blog.oregonlive.com/sellwood/2009/05/citizeninitiated_citations.html

- **Yes, Virginia, You CAN Make a Citizen’s Arrest in Oregon: Who Knew?**

Laura Orr / Oregon Legal Research, Sep 3, 2008

“Another hitherto little noticed section of the ORS (see also the Jury “Duty” post about ORS 10.235): this time, it’s ORS 153.058, Initiation of violation proceeding by private party. ...”

<http://oregonlegalresearch.blogspot.com/2008/09/yes-virginia-you-can-make-citizens.html>

- **New campaign to bring motorists to justice**

BikePortland.org / Jonathan Maus, Jan 4, 2006

“...[W]ithout requiring any change in law or policy, Oregon bicyclists already have the legal tools to initiate prosecution of traffic law breakers. Oregon law allows a citizen to initiate traffic violation prosecutions in state court, AND to have police help...”

<http://bikeportland.org/2006/01/04/new-campaign-to-bring-motorists-to-justice/>

¹ Legislative Counsel Committee, *CHAPTER 153—Violations and Fines*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors153.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 153*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano153.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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BROOKINGS MUNICIPAL COURT
Judge Richard L. Harper

MEMORANDUM

To: Gary Milliman
FROM: Pamela Ganey
Date: March 23, 2016
Re: Municipal Court Citizen Citations

As we discussed on March 22, 2016 and in the past regarding citizen citations use of time from the court and officers hours due to incorrect information filed, not enough evidence to adjudicate and the issuing parties failing to appear.

For example, I have attached a copy of a citizen's citation that came to the courts attention on February 25, 2016. I have attached all forms we must complete or give to the plaintiff, defendant, police department and the emails pertaining to this case from the court to the police department. Below are Steps one through five we must do to enter a citizen's complaint

1. The Plaintiff goes to the police station and has an officer write the citation.
2. The Plaintiff comes to the court with the citation to be sworn in that the complaint is true and correct. Then a court date is put on the citation.
3. A letter is written to the police department asking to have the defendant served.
4. The officer has to serve the defendant and return the form confirming that the defendant was served to the court.
5. Copies of the ORS are made for the file and the defendant. The court enters the citation into the system.

I am on step 4 with this citation. We have not been able to get the defendant served. We have been working on this for a month now. The citizen making the complaint has given us the wrong address and is not for sure he has the correct person. I have taken 6 telephone calls from the plaintiff and they have come to my office 4 times seeking legal advise which I cannot give and keep referring them to Oregon Law Referral Services. As of Friday, March 18, 2016, the plaintiff is deciding if he wants to go through with the court proceeding.

898 Elk Drive
Brookings, Oregon 97415
Mssg Phone: 541-469-1110 Fax:541-469-3650 Email: court@brookings.or.us

March 23, 2016

Last month in February, we had another citizen's citation that involved a traffic accident and one of the driver's wanted the other driver to be cited for careless driving. I have attached this citation as well. An officer was dispatched to the scene of the accident and could not determine fault.

The driver went to the police office and made a citizens complaint. The case went to trial and the judge did not have enough evidence to determine fault and dismissed the case. We spent about 40 minutes on the trial and that does not include the time we spent doing steps 1-5, multiple phone calls from both parties and a few visits to the court from both parties.

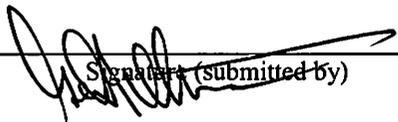
These two cases are the most recent and are fresh on my mind. The court has dealt with many other cases just like these. In the past year we have had people make citizen's complaints and not show up for court. If you need more examples and case files please let me know.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: May 9, 2016

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Ordinance 16-O-757 Amending Various Sections of the Brookings Municipal Code Regarding the General Penalty.

Recommended Motion:

Move to adopt Ordinance 16-O-757, amending various sections of the Brookings Municipal Code to bring them into conformity with chapter 1.05, General Penalty

Financial Impact:

N/A

Background/Discussion:

This is a “clean-up” Ordinance to make the “General Penalty” provision of the Brookings Municipal Code consistent throughout the Code. The “General Penalty” is found in BMC Chapter 1.05 and provides for a fine up to \$720.00. The General Penalty can be enforced or reduced at the discretion of the Municipal Court Judge or other administrative process as prescribed in the particular BMC section addressing the violation.

Most sections of the BMC refer to Chapter 1.05 as the “default” provision on maximum fines. Staff has identified six locations within the BMC where some other maximum fine is provided, or that provides for a General Penalty in an amount other than \$720. Each of these sections of the BMC would be amended to point back to Chapter 1.05 for the amount of the General Penalty.

This change will eliminate inconsistencies in the definition of the General Penalty.

Attachment(s):

- a. Ordinance 16-O-757.
- b. Ordinance 16-O-757 Attachment A *Revisions to various sections of the Brookings Municipal Code*

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 16-O-757

IN THE MATTER OF ORDINANCE 16-O-757, AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE BROOKINGS MUNICIPAL CODE TO BRING THEM INTO CONFORMITY WITH CHAPTER 1.05, GENERAL PENALTY

Sections:

- Section 1. Ordinance identified.
- Section 2. Amends Section 3.10.180
- Section 3. Amends Section 5.05.240
- Section 4. Amends Section 5.10.120
- Section 5. Amends Section 9.10.020
- Section 6. Amends Section 12.30.050(A)
- Section 7. Deletes Section 13.05.250(F)

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance amends Sections 3.10.180, 5.05.240, 5.10.120, 9.10.020 and 12.30.050(A) of the Brookings Municipal Code.

Section 2. Amends Section 3.10.180 : Section 3.10.180 Transient Occupancy Tax, Misdemeanor is amended to read as follows:

Any person willfully violating any of the provisions of this chapter shall be guilty of a misdemeanor and may be punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2,] or by imprisonment in the city or county jail for a period of not more than six months or by both such fine and imprisonment. [Ord. 80-O-342 § 20.]

Section 3. Amends Section 5.05.240 : Section 5.05.240 Business Licenses, Penalty is amended to read as follows:

Any person or persons, association of persons, firm, corporation, or any agent or representative thereof who shall engage in or carry on a business within the corporate limits of the city of Brookings, without having first applied for a license, paid the fee therefore, and obtained a license certificate in accordance with the provisions of this chapter, shall be deemed in violation of this chapter and shall, upon conviction thereof, be punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2] and no license shall be issued to any person convicted hereunder until the full amount of any fine imposed hereunder shall have been first paid. Each business day during which any business activity continues to be conducted in violation of this chapter shall be deemed a separate offense. [Ord. 96-O-518 § 24.]

Section 4. Amends Section 5.10.120 : Section 5.10.120 Taxicabs, Penalty for Violation is amended to read as follows:

Any person, firm or corporation operating a taxicab or taxi service for hire within the corporate limits of the city of Brookings who has not complied with the terms and provisions of this chapter shall be guilty

of a violation of this chapter and, upon conviction thereof, shall be punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2.]

Section 5. Amends Section 9.10.020 : Section 9.10.020 Criminal Code, Offenses, Penalty is amended to read as follows:

Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2,] or by both such fine and imprisonment. [Ord. 82-O-367 § 2; Ord. 51-O-013 § 2.]

Section 6. Amends Section 12.30.050(A) : Section 12.30.050(A) Skate Park Guidelines and Rules, Fines and Forfeitures is amended to read as follows:

The fine for a first offense under this chapter shall be \$50.00, the second violation shall be \$100.00 and the third or subsequent violation shall be punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2.]

Section 7. Deletes Section 13.05.250(F) : Section 13.05.250(F) Public Services, Water Curtailment, Penalties is deleted.

First Reading: _____ Passage: _____
Second Reading: _____ Effective Date: _____

Signed by me in authentication of its passage this _____, day of _____, 2016

ATTEST:

Mayor Ron Hedenskog

City Recorder Teri Davis

Ordinance 16-O-757
Attachment A
Revisions to various sections of the Brookings Municipal Code

Where strikethrough indicates deletions and red font indicates additions:

- 1. 3.10.180 Revenue and Finance; Transient Occupancy Tax; Misdemeanor.**
Any person willfully violating any of the provisions of this chapter shall be guilty of a misdemeanor and may be punishable ~~therefor by a fine of not more than \$500.00~~ **pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2,]** or by imprisonment in the city or county jail for a period of not more than six months or by both such fine and imprisonment. [Ord. 80-O-342 § 20.]
- 2. 5.05.240 Business Licenses; Penalty.**
Any person or persons, association of persons, firm, corporation, or any agent or representative thereof who shall engage in or carry on a business within the corporate limits of the city of Brookings, without having first applied for a license, paid the fee therefor, and obtained a license certificate in accordance with the provisions of this chapter, shall be deemed in violation of this chapter and shall, upon conviction thereof, be ~~punished by a fine of not more than \$500.00~~ **punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2]** and no license shall be issued to any person convicted hereunder until the full amount of any fine imposed hereunder shall have been first paid. Each business day during which any business activity continues to be conducted in violation of this chapter shall be deemed a separate offense. [Ord. 96-O-518 § 24.]
- 3. 5.10.120 Taxicabs; Penalty for violation.**
Any person, firm or corporation operating a taxicab or taxi service for hire within the corporate limits of the city of Brookings who has not complied with the terms and provisions of this chapter shall be guilty of a violation of this chapter and, upon conviction thereof, shall be ~~punished by a fine not exceeding \$1,000. [Ord. 97-O-387.D § 7; Ord. 84-O-387 § 14.]~~ **punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2.]**
- 4. 9.10.020 Criminal Code; Offenses; Penalty.**
Any person violating any of the provisions of this chapter shall, upon conviction thereof, be ~~punished by a fine not exceeding \$500.00~~ **punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2,]** or by imprisonment for not exceeding six months, or by both such fine and imprisonment. [Ord. 82-O-367 § 2; Ord. 51-O-013 § 2.]
- 5. 12.30.050 Streets, Sidewalks & Public Places; Skate Park Guidelines & Rules; Fines & forfeitures.**
A. The fine for a first offense under this chapter shall be \$50.00, the second violation shall be \$100.00 and ~~the third~~ **or subsequent** violation ~~\$500.00~~ **shall be punishable pursuant to Chapter 1.05 BMC, General Penalty [Ord. 12-O-704 § 2; Ord. 09-O-624 § 2.].**
- 6. 13.05.250 Public Services; Water curtailment.**
E. Enforcement.
1. Warning. Each violation shall receive a warning. The letter of warning shall be in writing, shall specify the violation, may require compliance measures, and shall be served upon the resident either personally, by office or substitute service, or by certified or registered mail, return receipt requested.
2. Citation. After the resident has received a warning letter, any subsequent violation shall be treated as a civil violation pursuant to BMC [13.05.270](#).

F. Penalties:

1. First violation: warning letter.

2. Second violation: Class C violation, subject to a **fine** of up to \$100.00 per day.

3. Third violation: Class B violation, subject to a **fine** of up to \$250.00 per day. [~~02-O-553 § 2.~~]

13.05.260 Suspension of rules.

No employee of the city is authorized to suspend or alter any of the policies, rules, and regulations cited herein without specific approval or direction of the city council, except in cases of emergency involving and imminent threat of the loss of life or property or which would place the water system operation in jeopardy. [Ord. 88-O-432; Ord. 66-O-190 § 27.]

13.05.270 Penalties.

Pursuant to Chapter [1.05](#) BMC. [Ord. 07-O-590 § 4; Ord. 06-O-572 § 1; Ord. 88-O-432; Ord. 66-O-190 § 28.]



Legal

To Publish: Wednesday, May 4

Public Notice

NOTICE IS HEREBY GIVEN that on Monday, May 9, 2016, at 7:00pm in City Hall Council Chambers, 898 Elk Drive, during a regular Common Council meeting, Brookings City Council will consider for adoption by title only the following:

- In the matter of Ordinance 16-O-756, an ordinance adding Chapter 1.15, Citizen Citations, to the Brookings Municipal Code
- In the matter of Ordinance 16-O-757, an ordinance amending various sections of the Brookings Municipal Code to bring them into conformity with Chapter 1.05, General Penalty

All persons wishing to address these matters may do so in person at the meeting, or by submitting prior written evidence to the City Recorder, City Hall, 898 Elk Drive, Brookings, OR 97415. Copies of the ordinance and associated staff report will be available for inspection in the City Recorder's office, at the Chetco Community Library, and at www.brookings.or.us, under Council Agendas.

All public City meetings are held in accessible locations. Auxiliary aids will be provided upon request with 14 days advance notification.

Please contact 469-1102 if you have any questions regarding this notice.