

Title 1

GENERAL PROVISIONS

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Ordinance History No.: 15, 954, 1150, 1375, 1449, 1421, 1469, 1522,

Chapter 1.01

CODE ADOPTION

Sections:

- 1.01.010 Adoption.
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Ordinance History: 1449

1.01.010 Adoption.

There is adopted the "Bandon Municipal Code," as compiled, edited and published by Book Publishing Company, Seattle, Washington.

1.01.020 Title--Citation--Reference.

This code shall be known as the "Bandon Municipal Code" and it shall be sufficient to refer to said code as the "Bandon Municipal Code" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the "Bandon Municipal Code." References may be made to the titles, chapters, sections and subsections of the "Bandon Municipal Code" and such references shall apply to those titles, chapters, sections or subsections as they appear in the code.

1.01.030 Reference applies to all amendments.

Whenever a reference is made to this code as the "Bandon Municipal Code" or to any portion thereof, or to any ordinance of the city of Bandon, Oregon, codified herein, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made.

1.01.040 Title, chapter and section headings.

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof.

1.01.050 Reference to specific ordinances.

The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within this code.

1.01.060 Ordinances passed prior to adoption of the code.

The last ordinance included in this code was Ordinance No. 1437, passed January 18, 2000. The following ordinances, passed subsequent to Ordinance No. 1437, but prior to adoption of this code are adopted and made a part of this code: Ordinance Nos. 1438, 1439, 1440, 1441,

1442, 1443, 1444, 1445, 1446, 1447, 1448.

1.01.070 Effect on code on past actions and obligations.

The adoption of this code does not affect prosecutions for ordinance violations committed prior to the effective date of this code, does not waive any fee or penalty due and unpaid on the effective date of this code, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any ordinance.

1.01.080 Constitutionality.

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

Chapter 1.04

GENERAL PROVISIONS

Sections:

- 1.04.010 Definitions.
- 1.04.020 Interpretation of language.
- 1.04.030 Grammatical interpretation.
- 1.04.040 Acts by agents.
- 1.04.050 Prohibited acts include causing and permitting.
- 1.04.060 Repeal shall not revive any ordinances.
- 1.04.070 Constitutionality.
- 1.04.080 References to include amendments and replacement provisions.

Ordinance History: 1421

1.04.010 Definitions.

The following words and phrases, whenever used in the ordinances of the city of Bandon, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

"City" means the city of Bandon, Oregon, or the area within the territorial limits of the city, and such territory outside the city which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

"Council" means the city council of the city of Bandon. "All its members" or "all council members" means the total number of council members holding office.

"County" means the county of Coos.

"Law" denotes applicable federal law, the Constitution and statutes of the state of Oregon, the ordinances of the city, and when appropriate, any and all rules and regulations which may be promulgated thereunder.

"May" is permissive.

"Month" means a calendar month.

"Must" and "shall" are each mandatory.

"Oath" means and includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

"Owner," applied to a building or land, means and includes any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, of the whole or a part of such building or land.

"Person" means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

"Preceding" and "following" mean next before and next after, respectively.

"Property" means and includes real and personal property.

"State" means the state of Oregon.

"Written" means and includes printed, typewritten, mimeographed, multi-graphed, or otherwise reproduced in permanent visible form.

"Year" means a calendar year.

1.04.020 Interpretation of language.

All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

1.04.030 Grammatical interpretation.

The following grammatical rules shall apply in the ordinances of the city unless it is apparent from the context that a different construction is intended:

- A. General. Each gender includes the masculine, feminine and neutral genders.
- B. Singular and Plural. The singular number includes the plural and the plural includes the singular.
- C. Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable.

1.04.040 Acts by agents.

When an act is required by an ordinance, such requirement shall be construed to include all such acts performed by an authorized agent.

1.04.050 Prohibited acts include causing and permitting.

Whenever in the ordinances of the city any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

1.04.060 Repeal shall not revive any ordinances.

The repeal of an ordinance shall not repeal the repealing clause of an ordinance or revive any ordinance which has been repealed thereby.

1.04.070 Constitutionality.

It shall be considered that it is the city's intent, in the enactment of any ordinance, that if any part of the ordinance is held unconstitutional, the remaining parts shall remain in force unless:

- A. The ordinance provides otherwise;
- B. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that the remaining parts would not have been enacted without the unconstitutional part; or
- C. The remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the city's intent.

1.04.080 References to include amendments and replacement provisions.

When one ordinance refers to another, either by general or by specific reference or designation, the reference shall extend to and include, in addition to the ordinance to which reference was made, amendments thereto and ordinances enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to, or ordinance enacted in lieu of the ordinance referred to, is substantially different in the nature of its essential provisions.

Chapter 1.06

EMERGENCY POWERS

Sections:

- 1.06.010 Definitions
- 1.06.020 Emergency Declaration
- 1.06.030 Police Powers During a State of Emergency
- 1.06.040 Effect of Rules and Orders During an Emergency
- 1.06.050 Compensation for Seizure of Property
- 1.06.060 Termination of State of Emergency
- 1.06.070 Penalty
- 1.06.080 Emergency Clause

Ordinance History: #1522

1.06.010 Definitions

- A. "Emergency" includes any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to fire, explosion, flood, tsunami, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in the ORS, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.
- B. "Emergency Management Agency" means an organization created and authorized under the ORS by the state, county or city to provide for and assure the conduct and coordination of functions for comprehensive emergency program management.
- C. "Emergency Services" includes those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out or recover from an emergency. These activities include, without limitation, coordination, preparedness, planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in the ORS, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as 'civil defense' in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 2252).

1.06.020 Emergency Declaration

In the event of an Emergency, as defined above, the Mayor shall have the authority to declare a state of emergency exists in the City of Bandon. In the event of the Mayor's death or inability to act, the Council President shall have the authority to declare an emergency. In the event of the Mayor and Council President's death or inability to act, the City Manager shall have the authority to declare the state of emergency.

1.06.030 Police Powers During a State of Emergency

During a state of emergency, the City Manager or the City Manager's designee shall have the authority to:

- A. Exercise, within the City, all reasonable police powers necessary to reduce vulnerability of the City to loss of life, injury to persons or property and human suffering, and financial loss

- resulting from the emergency, and to provide for recovery and relief assistance for the victims of such occurrence;
- B. Suspend provision of any order or rule of the City if the City Manager or the City Manager's designee determines and declares that strict compliance with the provisions of the order or rule would in any way prevent, hinder or delay mitigation effects of the emergency;
 - C. Impose a general curfew;
 - D. Order mandatory evacuations;
 - E. Close streets, alleys and parking areas to motor vehicle and/or pedestrian traffic.
 - F. Control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of goods, water, food, fuel, clothing and other commodities, materials, goods and services.
 - G. Prescribe and direct activities in connection with the use, conservation, salvage and prevention of waste of materials, services and facilities, including but not limited to, production, transportation, power and communication facilities, training, and supply of medical care, nutrition, housing rehabilitation, education, welfare, child care, recreation, consumer protection and other essential civil needs.
 - H. Suspend competitive bidding requirements for goods and services for the duration of the emergency.
 - I. Take any other action that may be necessary for the management of resources during a state of emergency.

1.06.040 EFFECT OF RULES AND ORDERS DURING AN EMERGENCY

- A. All rules and orders issued hereunder shall have the full force and effect of City law during the state of emergency. All sections of the City Code inconsistent with this ordinance shall be inoperative during the state of emergency to the extent such inconsistencies exist.
- B. The authority exercised hereunder may be exercised with respect to the entire City or to any specified part thereof.

1.06.050 Compensation for Seizure of Property

When real or personal property is taken under powers granted herein, the owner of the property shall be entitled to reasonable compensation from the City.

1.06.060 Termination of State of Emergency

- A. The Mayor or other person authorized to declare the state of emergency shall terminate the state of emergency by proclamation when the emergency no longer exists, or when the threat of an emergency has passed.
- B. The state of emergency may also be terminated at any time by majority vote of the City Council.
- C. When the state of emergency is terminated, the powers granted to the City Manager shall terminate.

1.06.070 Penalty

Any person who willfully fails or refuses to abide by any rules or orders issued under 1.06.030, or to obey the lawful commands issued in connection therewith of any enforcement officer or person charged with the responsibility of enforcing the state of emergency shall be guilty of a violation of the Bandon Municipal Code. A court may assess a maximum civil penalty of seven hundred fifty dollars (\$750) per violation for each day any person commits, continues, allows or maintains a violation.

1.06.080 Emergency Clause

It is necessary for the peace, health and safety of the people of the City of Bandon that this ordinance is effective upon its passage by the City Council.

Chapter 1.08

CITY SEAL

Sections:

1.08.010 City seal adopted.

Ordinance History: 15, 954, 1150

1.08.010 City seal adopted.

A. The seal to be used as the official seal of the city of Bandon shall consist of an outer rim within which shall be the lettering, "City of Bandon, Coos County, Oregon 1891." Within the center of the seal shall be an outline of the Coquille River Lighthouse. The seal shall be two inches in diameter and may be either impressed or printed. The form of the seal shall be as follows:

B. The seal described in subsection A of this section and as impressed above is adopted as the seal of the city of Bandon, Oregon.

Chapter 1.12

RIGHT OF ENTRY

Sections:

1.12.010 Authority to inspect.

Ordinance History: 1375

1.12.010 Authority to inspect.

Any designated enforcement official or designee is authorized to enter upon any property or premises to ascertain whether the provisions of the municipal code or applicable state codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If an owner, occupant or agent refuses permission to enter or inspect, the enforcement official may seek an administrative inspection warrant pursuant to the procedures provided for in Sections 15.08.070 and 15.08.090 of this code. The enforcement official will take reasonable steps to notify the property owner or legal occupant of the need to enter upon the property. If the enforcement official determines in his or her discretion that entry is necessary without notification or that notification is not practical, then the owner or legal occupant shall be notified as soon as reasonably possible after the inspection.

Chapter 1.16

CIVIL VIOLATIONS AND ENFORCEMENT

Sections:

- 1.16.010 Declaration of purpose.
- 1.16.020 Definitions.
- 1.16.030 General enforcement authority.
- 1.16.040 Notice of violation on real property.
- 1.16.050 Bandon Municipal Code violations generally.
- 1.16.060 Issuance of warnings.
- 1.16.070 Monetary penalties.
- 1.16.080 Additional remedies.
- 1.16.090 Maximum penalties.
- 1.16.100 Other remedies preserved.
- 1.16.110 Decision not to take enforcement action.

Ordinance History: 1375, 1469

1.16.010 Declaration of purpose.

The council finds that the enforcement of the ordinances of the city (hereinafter "code") and applicable state laws throughout the city is an important public service. Code enforcement is vital to protection of the public's health, safety and quality of life. The council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative enforcement hearings and judicial proceedings. The council further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with code regulations. Failure to comply with an administrative code enforcement action may require the city attorney to file a judicial action to gain compliance. The council further finds that an enforcement ordinance would provide a more efficient method of notifying individuals of possible violations and of preventing or insuring correction of dangerous or otherwise illegal conditions.

1.16.020 Definitions.

As used in this chapter:

"Enforcement official" means a person authorized under this chapter to enforce infractions.

"Laws" mean statutes, administrative rules, ordinances, orders, resolutions and provisions thereof. Editorially amended during 2000 codification.

1.16.030 General enforcement authority.

The city manager, the city attorney, chief of police or their designated enforcement officials have the authority and powers necessary to gain compliance with the provisions of the municipal code and applicable state codes. These powers include the power to issue notices of violation and citations, inspect public and private property and use whatever judicial and administrative remedies are available under the municipal code or applicable state laws.

1.16.040 Notice of violation on real property.

Whenever an enforcement official determines that a violation of the municipal code or applicable state codes exists, the enforcement official may issue a notice of violation to a responsible person. The notice of violation shall include the following information:

- A. The name and address of the property's owner of record and occupant, if known;
- B. Street address of the property;
- C. The Bandon Municipal Code section in violation;
- D. A description of the property's condition which violates the applicable codes;
- E. A list of necessary corrections to bring the property into compliance;
- F. A deadline or specific date to correct the violations listed in the notice of violation;
- G. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline, including, but not limited to: civil injunction, administrative abatement, civil penalties, revocation of permits, imposition of a lien, recordation of the notice of violation and withholding of future municipal permits, and prosecution for civil penalties in court.

1.16.050 Bandon Municipal Code violations generally.

- A. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of the Bandon Municipal Code. A violation of any of the provisions or failure to comply with any of the mandatory requirements of the code shall constitute an infraction.
- B. When a violation is of a continuing nature, separate violations shall be deemed to have occurred on each calendar day the violation continues. A separate violation citation or complaint may be filed for each such violation.
- C. Prosecution for the violation of city code shall be commenced by the filing of a complaint with the municipal judge of the city, said complaint to be signed by the person or persons preferring the charge and verified before the said municipal judge or before a licensed notary public.
- D. Except as specifically provided otherwise by city code or statute, enforcement of the violations declared to be civil violations shall follow the procedure for the enforcement of infractions set forth by the ORS.
- E. The infraction procedures contained in the ORS are incorporated into this chapter by reference and are adopted as a method for the enforcement of city codes and other laws subject to the following:
 - 1. References to the state are to be read as the city;
 - 2. The fines provided by the ORS do not apply to the municipal courts;
 - 3. Incorporation of the ORS shall not limit the use of such other enforcement procedures that are provided by law;
 - 4. The council may, by resolution, establish and modify recommended schedules of bail for civil violations enforceable under this chapter. Any court with jurisdiction over the civil violations enforceable under this chapter may accept or modify such bail schedules. The recommended bail for civil violations filed under this chapter shall be those established by the most current council resolution.
Editorially amended during 2000 codification.

1.16.060 Issuance of warnings.

- A. An enforcement official may, in lieu of issuing a citation, issue a written warning for the commission of any offense declared to be a civil violation under this chapter.
- B. If an enforcement official issues a warning, it shall be in writing and shall be delivered to the alleged offender in person or in any other manner reasonably calculated to give notice of the offense, including posting, regular mail or certified mail.

- C. A written warning shall include the following information:
1. The name of the person warned;
 2. The date on which the warning was issued;
 3. The name of the person issuing the warning;
 4. The ordinance or other law alleged to be violated;
 5. A statement or designation of the alleged civil violation in such a manner as can be readily understood by a person making a reasonable effort to do so;
 6. The date, time and place at which the civil violation is alleged to have occurred, or if it is a continuing civil violation, a statement to that effect and the date the civil violation was first observed by the person issuing the warning;
 7. The name of the person, department or office to contact regarding the warning;
 8. A deadline for contacting the person, department or office noted;
 9. A statement that failure to correct the alleged civil violation or to contact the noted person, department or office by the deadline may result in issuance of a citation to appear in court;
 10. A statement that if a citation is issued, payment of a fine or forfeiture of bail does not relieve a violator of the responsibility to remedy the civil violation;
 11. The maximum fine that may be imposed for the civil violation if a citation is issued and the person cited is found guilty.
- D. As used in this section, "enforcement official" means persons designated in Section 1.16.020. Editorially amended during 2000 codification.

1.16.070 Monetary penalties.

The only penalty to be imposed for a civil violation is a monetary penalty called a forfeiture. The forfeiture to be assessed for a specific civil violation will be determined from a forfeiture schedule. The procedure prescribed by this chapter shall be the exclusive procedure for imposing forfeiture. However, this section shall not be read to prohibit in any way any other alternative remedy set out in the city code or provided for by state law which is intended to abate or alleviate code violations, nor shall the city be prohibited from recovering, in any manner prescribed by law, any expense incurred to it in abating or removing code violations pursuant to said code. Editorially amended during 2000 codification.

1.16.080 Additional remedies.

In addition to any other remedy provided by this code, any provision of this code may be enforced by injunction issued by the circuit court upon a suit brought by the city.

1.16.090 Maximum penalties.

As part of a civil action filed to enforce provisions of the Bandon code, a court may assess a maximum civil penalty of seven hundred fifty dollars (\$750.00) per violation of any ordinance for each day during which any person commits, continues, allows or maintains a violation of any provision of the ordinance.

1.16.100 Other remedies preserved.

In lieu of this procedure or in addition to it, any and all other remedies provided by laws to abate or enjoin acts or conditions declared by this chapter to be nuisances, or to otherwise enforce the laws enforceable under this chapter, are preserved and may be utilized by any enforcement official, the city council and any authorized prosecutor to seek compliance with the law and to remedy or penalize violations. The city shall be entitled to its reasonable costs, disbursements and attorneys' fees for any enforcement action taken under this section.

Editorially amended during 2000 codification.

1.16.110 Decision not to take enforcement action.

- A. Enforcement of those offenses declared to be civil violations by this chapter utilizing the procedures set out in this chapter, by an enforcement officer as defined in Section 1.16.020, is permissive and not mandatory.
- B. Except to the extent specifically, clearly and expressly stated otherwise in the relevant laws, the enforcement by any other means authorized by law including, but not limited to, mandamus, injunctive and other equitable proceedings, is also permissive and not mandatory.
- C. When any enforcement official receives information from any source that leads the enforcement official to believe an offense declared to be a nuisance and civil violation by this chapter has occurred, or is occurring, or a violation of any other laws, whatsoever has occurred, or is occurring, that the enforcement official or the city is authorized by law to enforce by any method, the enforcement official shall make a determination, considering the severity of the alleged violation, the council or city staff, time and resources necessary, and the possibility of success, whether enforcement action is warranted and what type of enforcement action should be undertaken. If that information is brought to the enforcement official's attention by formal written complaint and the enforcement official determines that enforcement is not warranted, the enforcement official shall promptly mail or deliver written notice to the complainant of the decision not to take enforcement action.
- D. Within ten (10) calendar days of the mailing date, or service date if served personally, of the written notice by the enforcement official of a decision not to take enforcement action, a person who filed a formal written complaint may appeal the decision to the council. The appeal must be in writing, must be signed by the complainant, must state why the enforcement official's decision should be reconsidered and must be received by the council within the ten (10) calendar day period. When an appeal is properly filed, an appeal hearing will be scheduled within thirty (30) days at which the complainant may present evidence to demonstrate that enforcement action is warranted considering the severity of the alleged violation, the availability of departmental and city staff, the time and resources necessary, and the probability of success. The enforcement official may also, but need not, offer evidence at such hearing. At the conclusion of such hearing, the council may either reverse, affirm or modify the enforcement official's decision. The council will promptly mail or deliver written notice of the decision to the complainant. The owner, occupant of the property that is the subject of the complaint, or the person whose actions or conduct is complained about shall be notified of the hearing.
- E. The burdens of proof, of persuasion and of going forward with evidence to justify enforcement action shall be on the complainant.
- F. A decision made not to take enforcement action is declared to be an act of discretion as described by the ORS.
- G. Review of a council decision not to take enforcement action may be requested pursuant to the ORS.
- H. The means provided by this section for seeking city enforcement action are not exclusive, but they are the exclusive means of compelling city enforcement action. The requirements herein are jurisdictional and strict adherence to them is required.
- I. Notwithstanding any decision by an enforcement official or the city not to take enforcement action, any person adversely affected by an offense declared to be a nuisance and civil

violation under this chapter shall retain any authority and jurisdiction given under state law or common law to pursue private civil remedies, whether legal or equitable, including nuisance abatement or injunctive relief, against the alleged offender.
Editorially amended during 2000 codification.

Chapter 1.20

GENERAL PENALTY

(Reserved)