

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 2.03 TO APPROVE A)
SCHEDULE OF CIVIL PENALTIES FOR)
METRO'S PARKS, CEMETERIES AND)
NATURAL AREAS)

ORDINANCE NO. 15-1364

Introduced by Metro Attorney Alison R. Kean
in concurrence with Council President Tom
Hughes

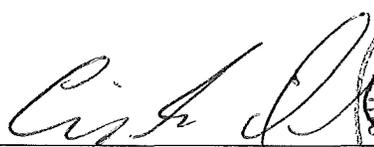
WHEREAS, Metro's Department of Parks and Nature desires to enforce its rules and regulations in Metro's parks, cemeteries, and natural areas; and

WHEREAS, in order to give notice to the public of potential civil penalties, and to clarify enforcement procedures, revisions to Metro Code Chapter 2.03 are required; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

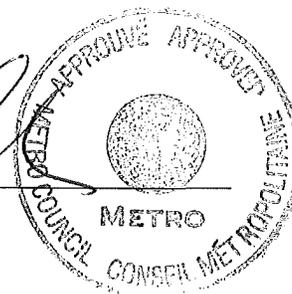
1. Metro Code Chapter 2.03 (Civil Penalties) is amended as set forth in Exhibit A attached to this Ordinance.

ADOPTED by the Metro Council this 28 day of January, 2016.

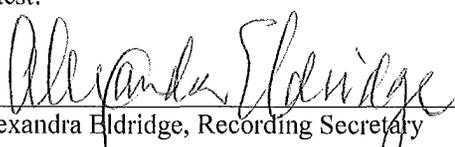


Tom Hughes, Council President

for

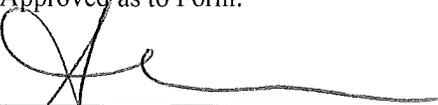


Attest:



Alexandra Eldridge, Recording Secretary

Approved as to Form:



Alison R. Kean, Metro Attorney

EXHIBIT A TO ORDINANCE 15-1364

CHAPTER 2.03

CIVIL PENALTIES

SECTIONS	TITLE
2.03.010	Purposes
2.03.020	Definitions
2.03.030	Consolidation of Proceedings
2.03.040	Notice of Violation and Intent to Assess Civil Penalty
2.03.050	Mitigating and Aggravating Factors
2.03.060	Zoo Schedule of Civil Penalties
2.03.070	Solid Waste Schedule of Civil Penalties
<u>2.03.075</u>	<u>Parks and Nature Schedule of Civil Penalties</u>
2.03.080	Written Notice of Assessment of Civil Penalty; When Penalty Payable
2.03.090	Compromise or Settlement of Civil Penalty by Director

2.03.010 Purposes

The purpose of these rules and regulations is to prescribe the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties.

(Ordinance No. 50, Sec. 1.)

2.03.020 Definitions

Unless otherwise required by context, as used in this subdivision:

(a) "Director" means the "Department Director" as defined in Section 2.17.020(d).

(b) "License" as used in this Code has the meaning given that word by ORS Chapter 183.

(c) "Order" means (i) any action satisfying the definition given in ORS Chapter 183, or (ii) any other action so designated in ORS Chapter 268.

(d) "Respondent" means the person against whom a civil penalty is assessed.

(e) "Violation" means a transgression of any provision or condition of any license and includes both acts and omissions.

(Ordinance No. 50, Sec. 2. Amended by Ordinance No. 02-967, Sec. 1.)

2.03.030 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

(Ordinance No. 50, Sec. 3.)

2.03.040 Notice of Violation and Intent to Assess Civil Penalty

(a) Except as provided in subsection (d) of this section, prior to the assessment of any civil penalty the Director shall serve a written notice of violation and intent to assess civil penalties upon the respondent.

(b) The notice shall be personally delivered or sent by registered or certified mail by an employee of Metro or any other competent person over the age of 18 years to:

- (1) The respondent; or
- (2) Any person designated by law as competent to receive service of a summons or notice for the respondent; or
- (3) Following appearance of counsel for the party, the party's counsel.

(c) A notice of violation shall specify the violation and state that Metro will assess a civil penalty if the violation continues or occurs after five (5) days following service of the notice.

(d) Written notice of violation and intent to assess a civil penalty shall not be required where:

- (1) The respondent has otherwise received actual notice of violation not less than five (5) days

prior to the violation for which a penalty is assessed.

- (2) The violation is of a type that would normally not be in existence for five (5) days or the jurisdiction of Metro to prosecute the violation is liable to be interrupted within that time.

(Ordinance No. 50, Sec. 4.)

2.03.050 Mitigating and Aggravating Factors

(a) In establishing the amount of a civil penalty to be assessed, the Director or the Council shall consider the following factors:

- (1) Whether the respondent has committed any prior violation, regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefor;
- (2) The history of the respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation;
- (3) The economic and financial conditions of the respondent.

(b) In establishing whether a civil penalty should be remitted or mitigated, the Director or the Council may consider the following factors:

- (1) The gravity and magnitude of the violation;
- (2) Whether the violation was repeated or continuous;
- (3) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;
- (4) The opportunity and degree of difficulty to correct the violation;
- (5) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;

- (6) The cost to Metro of investigation and correction of the cited violation prior to the time Metro receives respondent's answer to the written notice of assessment of civil penalty; or
- (7) Any other relevant factor.

(c) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Council may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition or regarding any factor urged in mitigation shall be upon the respondent.

(Ordinance No. 50, Sec. 5.)

2.03.060 Zoo Schedule of Civil Penalties

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Zoo by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(a) Not less than \$100 nor more than \$500 for violation of an order of Metro or its Council.

(b) Not less than \$25 nor more than \$500 for any violation which causes, contributes to, or threatens the injury of any Zoo animals.

(c) Not less than \$25 nor more than \$500 for any other violation.

(Ordinance No. 50, Sec. 6.)

2.03.070 Solid Waste Schedule of Civil Penalties

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the transferring, processing or disposal of solid waste by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(a) Not less than \$100 nor more than \$500 for violation of an order of Metro or its Council.

(b) Not less than \$25 nor more than \$500 for any other violation.

(Ordinance No. 50, Sec. 7.)

2.03.075 Parks and Nature Schedule of Civil Penalties

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to its parks, cemeteries, and natural areas by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(a) Not less than \$100 nor more than \$500 for violation of an order of Metro or its Council.

(b) Not less than \$25 nor more than \$500 for any other violation.

2.03.080 Written Notice of Assessment of Civil Penalty; When Penalty Payable

(a) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service of the written notice of assessment of civil penalty shall be in accordance with the service provisions of Section 2.03.040.

(b) The written notice of assessment of civil penalty shall include:

- (1) A reference to the particular sections of the statute, rule, regulation, standard, order, certificate or permit involved;
- (2) A short and plain statement of the matters asserted or charged;
- (3) A statement of the amount of the penalty or penalties imposed; and

(4) A statement of the respondent's right to request a hearing.

(c) The respondent shall have 20 days from the date of mailing service of the notice in which to make written application for a hearing before the Metro Council.

(d) All hearings shall be conducted pursuant to the contested case hearing procedures in the Metro Code.

(e) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of Oregon Law. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(Ordinance No. 50, Sec. 8. Amended by Ordinance No. 02-967, Sec. 1.)

2.03.090 Compromise or Settlement of Civil Penalty by Director

At any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized ~~to seek~~ to compromise or settle any unpaid civil penalty which ~~he~~ the Director deems appropriate. ~~Any compromise or settlement executed by the Director shall not be final until approved by the Council.~~

(Ordinance No. 50, Sec. 9.)

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 15-1364, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.03 TO APPROVE A SCHEDULE OF CIVIL PENALTIES FOR METRO'S PARKS, CEMETERIES AND NATURAL AREAS

Date: January 21, 2016

Prepared by: Dan Moeller, 503-797-1819
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BACKGROUND

Metro Code 2.03 establishes the procedures and requirements for notice, assessment, collection and enforcement of civil penalties for violations of the Metro Code. Metro's Department of Parks and Nature desires to more actively enforce its rules and regulations in Metro's parks, cemeteries, and natural areas. Section 2.03 does not include provisions specific to enforcement of Parks and Nature rules and regulations. Accordingly, amending the code is needed to set forth a schedule of civil penalties for enforcement of parks rules. The proposed changes will also enable the Director of Parks and Nature to settle civil penalties without Metro Council approval.

These changes to the Metro Code clarify provisions in advance of the adoption of a new rule enforcement manual for Metro parks, natural areas and cemeteries.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents:** Metro Code Chapter 2.03 (Civil Penalties)
3. **Anticipated Effects:** Metro Code 2.03 will include a provision that sets forth a schedule of civil penalties for the Parks and Nature department, and enables the Director of Parks and Nature to settle civil penalties.
4. **Budget Impacts:** None.

RECOMMENDED ACTION

The Office of Metro Attorney recommends adoption by the Metro Council of Ordinance 15-1364.