

Council Communication

April 21, 2015, Business Meeting

First Reading of an Ordinance Amending Chapter 11.28 to Authorize City Council to Establish Presumptive Parking Violation Fines by Resolution and to Clarify Determination of Fines for Single Parking Violations and their Relationship with Other Penalties for Parking Violations

FROM:

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SUMMARY:

This is the first reading of an ordinance the Council identified as a priority in its January 5, 2015 Study Session discussion of potential updates to the Ashland Municipal Code. Passage of this proposed ordinance would (1) clarify that responsibility for setting parking fines is reserved for the Council; (2) authorize the setting of base (presumptive) parking fines by resolution; (3) make clear that one may appear in Municipal Court to seek modification of a presumptive fine for a parking violation; (4) set a legal standard for deviating from presumptive fines; (5) distinguish presumptive fines for parking violations from penalties for multiple parking violations, enhance penalties for ignoring parking tickets, and the current parking fine surcharge; (6) Delete a current \$25 penalty when a person receives a third parking violation in a single calendar year; and (7) limit the penalty for more than four violations in any calendar year to \$50.

BACKGROUND AND POLICY IMPLICATIONS:

The current municipal code sets forth in Sections 11.24.100, 11.28.110A and 11.28.120 specific dollar amounts for penalties for multiple parking violations, for enhanced penalties for ignoring parking tickets, and for a parking fine surcharge. Current code also specifically authorizes impoundment, immobilization by parking boot, and towing as means for dealing with parking violations. But current code does not set the amount for a simple, one-time parking violation and does not state who has responsibility for setting that amount. The current \$11 fine for a parking violation apparently was established by a former municipal court judge more than 30 years ago. In order to set the stage for Council consideration of a resolution updating the fine for a parking violation, staff recommends the attached ordinance amendment.

The ordinance amendment would allow the presumptive fine for a parking violation to be set in the master fee schedule approved annually by Council resolution. This would encourage regular review of the appropriateness of the amount established for the presumptive fine. The other parking violation penalties already set by ordinance would not be affected by this amendment.

Oregon statutes already make clear that one may seek modification of a presumptive parking violation fine by requesting a trial or by entering a plea of no contest and delivering to the court the amount of



the presumptive fine, along with a statement of explanation. ORS 153.061(3)(b); ORS 153.099(2). The proposed ordinance amendment necessarily appropriates the statutory process by which a person may seek modification of a presumptive parking violation fine and adds an explicit further expectation that the presumptive fine be imposed in the absence of reasonable grounds for modification.

The proposed amendment would also make clear that penalties for multiple parking violations; penalties for failing to appear or post bail in the time required by a parking citation; and the City's parking surcharge are all independent of the presumptive fine for a single parking violation and are subject to their own distinct provisions in the Ashland Municipal Code.

The proposed amendment would remove a current requirement to impose a \$50 dollar penalty on each violation in excess of four violations in any calendar year, and instead provides for a one-time \$50 penalty for five or more violations in any calendar year. (See Section 11.28.110A(2) on page 2 of 5 of the proposed ordinance.) This revision reflects the current practice, which was instituted during a time of economic recession and very high gas prices.

Finally, the proposed amendment would modify the current table in Section 11.28.1 110A to make clear that penalties for multiple parking violations are cumulative per calendar year and would eliminate a provision imposing a \$25 penalty when a vehicle receives a third parking citation. This latter change removes the anomaly that getting four parking citations currently incurs the same penalty as getting three. Another reason for the change is that Diamond Parking's tracking system only permits identification of multiple violations upon the fourth citation.

COUNCIL GOALS SUPPORTED:

N/A

FISCAL IMPLICATIONS:

Passage of the ordinance amendment is likely to result in a modest increase in Ashland Municipal Court revenues as a result of making clear the Council's expectation that presumptive fines be imposed in all but unusual circumstances. The ability to increase presumptive fines by resolution also may make possible a modest increase in revenue from parking fines, although the expected primary benefit will be a reduction in parking violations, especially in the downtown area.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Staff recommends approval of this ordinance.

SUGGESTED MOTION:

I move approval of the first reading by title only of an ordinance titled, "An Ordinance Amending Chapter 11.28 to Authorize City Council to Establish Presumptive Parking Violation Fines by Resolution and to Clarify Determination of Fines for Single Parking Violations and Their Relationship with Other Penalties for Parking Violations."

ATTACHMENTS:

Proposed Ordinance



ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 11.28 TO AUTHORIZE CITY COUNCIL TO ESTABLISH PRESUMPTIVE PARKING VIOLATION FINES BY RESOLUTION AND TO CLARIFY DETERMINATION OF FINES FOR SINGLE PARKING VIOLATIONS AND THEIR RELATIONSHIP WITH OTHER PENALTIES FOR PARKING VIOLATIONS

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, penalties for certain violations of parking-related regulations exist in multiple chapters of the Ashland Municipal Code while the fine for a parking violation is not mentioned.

WHEREAS, the City Council has the authority to determine the amount of presumptive fines for parking violations and can exercise that authority in an expeditious manner by resolution.

WHEREAS, neither State statutes or City Code currently provide guidance to the Municipal Court on the standard to be used for deciding whether to modify a presumptive fine for a parking violation.

WHEREAS, the current City Code provision requiring a \$25 penalty for three parking violations is administratively impractical to enforce.

WHEREAS, the current City Code provision requiring a \$50 penalty for each violation in excess of four violations in any calendar year is unduly onerous and contrary to current practice.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 11.28 Restricted Parking Areas, Section 11.28.080 is hereby amended to read as follows:

Section 11.28.080 Parking Violation Prohibition

A parking violation is a violation of any parking prohibition, limitation or regulation of the City of Ashland. A vehicle parked in violation of this chapter or Chapter 11.24 shall have a notice of violation attached to the vehicle, and the owner or operator of the vehicle shall be subject to the finest and other penalties and surcharges provided in Section ~~1.08.020~~ 11.24.100 and this chapter, and may be subject to the impounding of such vehicle as provided in Chapter 11.36. A person who commits a parking violation may not suffer any disability or legal disadvantage based upon conviction of a crime.

SECTION 2. Chapter 11.28 Restricted Parking Areas, Section 11.28.110 Penalties for Parking Violations; Immobilization, Towing, Show Cause and Warrants is hereby amended to read as follows:

Section 11.28.110 Penalties for parking violations, immobilization, towing, show cause and warrants.

A. Fines:

(1) Presumptive fines for parking violations shall be established by resolution of the City Council

- a. Subject to other penalties or charges provided herein, a presumptive fine is the fine amount imposed against the defendant who pleads no contest or is otherwise found guilty of the violation.**
- b. A presumptive fine for a parking violation under this section will be imposed unless the court finds reasonable grounds for either increasing or reducing the fine. Neither financial hardship nor the number of pending parking citations will be considered reasonable grounds to dismiss or reduce a fine.**
- c. No city officer shall make any motion and no judge shall enter any order in derogation of this section.**

(2) Fines shall include the original ticketed amount as well as any enhanced penalties and surcharges, including those set forth in Section 11.24.100 and Section 11.28.120. In addition, a person who commits ~~three or~~ four parking violations in any calendar year shall pay an additional fine of \$25, and a person who commits five or more parking violations in any calendar year shall pay an additional fine of \$50 ~~for each parking violation they receive in that year.~~

Multiple Violation Penalties*

Number of violations	Additional Penalty
3 violations	\$25.00
4 violations in one calendar year	\$25.00
5 or more violations in one calendar year	\$50.00 for each violation

*This table does not include the presumptive fines, enhanced penalties, surcharges, or other fees authorized under this chapter.

B. Immobilizer (boot) Installation and /or Towing.

- (1) When a driver, registered owner, or person in charge of a motor vehicle has either (1) five or more outstanding unpaid City of Ashland parking violations on any number of motor vehicles, or (2) a City of Ashland parking violation, or any number of such violations, with a total unpaid balance that exceeds \$250, regardless of the number of motor vehicles involved, then any police or parking enforcement officer, or contracted parking enforcement provider of the City is authorized, directed and empowered to immobilize such a motor vehicle or vehicles found upon a public street or city off-street parking lot by installing on or attaching to the motor vehicle a device designed to restrict the normal movement of the vehicle. In the alternative, or in addition to immobilization, after 24 hours has elapsed, any police or parking enforcement officer or contracted parking enforcement provider of the City is authorized, directed and empowered to order such vehicle towed, by a licensed tow company under contract with the City or the City's contracted parking enforcement service provider, as applicable.
- (2) For purposes of this section, bail or fine shall be outstanding on a citation when the citation is issued and shall remain outstanding until the bail is posted or the fine is paid.
- (3) Ten days before immobilizing or towing a vehicle according to the provisions of this section, the City, or the City's contracted parking enforcement service provider shall place a notice on the vehicle or mail a notice by certified mail, return receipt requested, to the registered owner of such vehicle as shown by the records of the Oregon Motor Vehicles Division notifying the owner that the motor vehicle or vehicles may be immobilized and/or towed ten days after the date of mailing the notice herein for failure to pay outstanding parking bail or fines.
- (4) If the vehicle is so immobilized, the person who installs or attaches the device shall conspicuously affix to the vehicle a written notice on a form approved by the city, advising the owner, driver, or person in charge of the vehicle that it has been immobilized pursuant to this section and that release of the vehicle may be obtained upon full payment of the outstanding balance owed to the contracted parking enforcement service provider. The notice shall also specify that the vehicle is subject to tow.
- (5) In the event the vehicle is towed, the person who orders the tow, shall send by certified mail, return receipt requested, a notice advising the registered owner of the vehicle that it has been towed pursuant to this section and that release of the vehicle may be obtained upon receipt by the towing company of full payment of the outstanding balance owed.
- (6) A vehicle towed and impounded pursuant to this section shall be held at the expense of the owner or person entitled to possession of the vehicle. Personnel, equipment and facilities of private tow companies under contract with the City or the contracted parking enforcement service provider may be used for the removal and storage of the vehicle.

C. Warning Letter, Show Cause, and Warrants.

- (1) Warning Letter. The Ashland Municipal Court may choose to send a warning letter by first class mail informing the defendant they have outstanding parking tickets and that

their attendance is necessary at a preliminary hearing before issuing a show cause order and warrant.

- (2) Show Cause. The Ashland Municipal Court may issue an order that requires the defendant to appear and show cause why the defendant should not be held in contempt of court, including contempt for failure to appear as ordered or failure to comply. The show cause order shall be mailed to the defendant by certified mail, return receipt requested, no less than ten days prior to the appearance date; alternatively service may be made by any other recognized method, such as personal service according to the same timeframe.
- (3) Warrant. If the defendant is served and fails to appear at the time specified in the show cause order, the court may issue an arrest warrant for the defendant for the purpose of bringing the defendant before the court.

SECTION 3. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 5. Codification. Provisions of this Ordinance shall be incorporated in the City Code, and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any Whereas clauses and boilerplate provisions, *i.e.*, Sections 3-5 need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of _____, 2015, and duly PASSED and ADOPTED this ____ day of _____, 2015.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2015.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney