

Council Communication

May 19, 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 How Single Parking Violations Relate to Other Penalties for Parking Violations

FROM:

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SUMMARY:

This agenda item 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; and (3) distinguish presumptive fines for parking violations from penalties for multiple parking violations, from enhanced penalties for ignoring parking tickets, and from the current parking fine surcharge.

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 amounts for simple, one-time parking violations and does not state who has responsibility for setting those amounts. The current \$7 fine for a simple overtime parking violation (to which is added a \$4 parking surcharge for parking improvements) 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 fines for parking violations, staff recommends the attached ordinance amendment.

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

By cross-referencing other relevant AMC provisions on penalties related to parking citations, the proposed amendment would also make clear that those penalties are all independent of the presumptive fines for single parking violations and are subject to their own distinct provisions in the Ashland Municipal Code.



The proposed amendment would retain current code language imposing a \$50 dollar penalty on each violation in excess of four violations in any calendar year. This provision has been in effect for a number of years but in recent years has not been rigorously observed. The proposed amendment also adds the phrase “in one calendar year” to the table already contained in current AMC 11.28.110A. This addition is to make the timeframe in the table clearly consistent with the timeframe in the immediately preceding text.

Following a future study session on enforcement of parking regulations, staff anticipates proposing to Council further, more extensive changes to AMC chapters 11.24 and 11.28.

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 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.”

ATTACHMENTS:

Proposed Ordinance



ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTER 11.28 TO AUTHORIZE
CITY COUNCIL TO ESTABLISH PRESUMPTIVE PARKING
VIOLATION FINES BY RESOLUTION**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **bold 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 cumulative violations of parking-related regulations exist in multiple chapters of the Ashland Municipal Code.

WHEREAS, the amounts of fines for one-time parking violations are not mentioned in the Ashland Municipal Code.

WHEREAS, the City Council has the authority to determine the amount of a presumptive fine for each type of parking violation and can exercise that authority in an expeditious manner by resolution.

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. Fine-s

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

a. Separate from and in addition to other penalties or charges provided herein, a presumptive fine is the fine amount imposed against a person who pleads no contest to or is otherwise found guilty of a violation.

(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 <u>in one calendar year</u>	\$25.00
5 or more violations <u>in one calendar year</u>	\$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