

TIGARD MUNICIPAL CODE

Chapter 1.16 CIVIL INFRACTIONS*

Sections:

Article I. General Provisions

- 1.16.010 Title for Provisions
- 1.16.020 Establishment and Purpose
- 1.16.030 Definitions
- 1.16.040 Use of Language
- 1.16.050 Reference to State Law
- 1.16.060 Culpability, Not Exclusive, Remedies Cumulative
- 1.16.065 Liability
- 1.16.070 Effect of This Chapter
- 1.16.080 Severability
- 1.16.090 Reports of Infractions
- 1.16.100 Assessment by Code Enforcement Officer
- 1.16.105 Administrative Rules
- 1.16.110 Warrants—Right of Entry
- 1.16.111 Warrants—Grounds for Issuance
- 1.16.112 Warrants—Procedure for Issuance
- 1.16.113 Warrants—Execution
- 1.16.114 Warrants—Disposal of Seized Property
- 1.16.115 Voluntary Compliance Agreement
- 1.16.120 Notice—Notice of Violation and Letter of Complaint
- 1.16.140 Time to Abate Infraction After Notice
- 1.16.150 Immediate Remedial Action Required When

Article II. Judicial Enforcement

- 1.16.160 Notice—Methods of Service
- 1.16.170 Notice—Computation of Time Period
- 1.16.180 Notice—Information
- 1.16.190 Failure to Respond to Notice
- 1.16.210 Civil Infraction Summons and

- 1.16.220 Complaint—Timing Civil Infraction Summons and Complaint—Process Requirements
- 1.16.230 Civil Infraction Summons and Complaint—Service—Failure to Receive—Default
- 1.16.240 Civil Infraction Summons and Complaint—Respondent’s Response Required
- 1.16.250 No Right to Jury
- 1.16.260 Representation by Counsel
- 1.16.270 Opportunity to be Heard—Cross-Examination
- 1.16.280 Witnesses
- 1.16.290 Hearing—Admissible Evidence
- 1.16.295 Burden of Proof
- 1.16.300 Hearing—Decision by Hearings Officer
- 1.16.310 Order to Abate—Judicial
- 1.16.320 Hearing—Records
- 1.16.330 Finality of Decision—Appeals
- 1.16.340 Remedial Action by the City—Summary Abatement
- 1.16.350 Default Judgment

Article III. Administrative Enforcement

- 1.16.400 Order to Abate—Administrative
- 1.16.410 Abatement by the Responsible Party
- 1.16.420 Order to Abate—Administrative—Appeal Process
- 1.16.430 Abatement by the City
- 1.16.440 Judicial Review

Article IV. Penalties, Fees and Costs

- 1.16.600 Continuous Infractions
- 1.16.610 Failure to Comply With Judgment Order, Order to Abate or Notice of Assessment

TIGARD MUNICIPAL CODE

- 1.16.620 Penalties, Fees and Costs—
Payment Due When**
- 1.16.630 Penalties and Fees—
Classifications**
- 1.16.640 Penalties and Fees—Amounts
to be Assessed**
- 1.16.650 Penalties and Fees—Repeat
Violations**
- 1.16.660 Penalties and Fees—Prior to
First Appearance in Court**
- 1.16.670 Delinquent Penalties, Fees and
Costs**
- 1.16.680 Penalties, Fees and Costs—
Assessment**
- 1.16.690 Administrative Fees and
Costs—Notice of Assessment**
- 1.16.700 Administrative Fees and
Costs—Notice of Objection and
Hearing**
- 1.16.710 Penalties, Fees and Costs—
Collection, Lien Filing and
Docketing**

* Prior ordinance history: Ord. No. 86-20 as amended by Ord. Nos. 86-35, 86-41, 99-01, 02-27 and 07-03.

Article I. General Provisions

1.16.010 Title for Provisions

The ordinance codified in this chapter shall be known as the “civil infractions ordinance,” and may also be referred to herein as “this chapter.” (Ord. 12-01 §1)

1.16.020 Establishment and Purpose

A. The purpose of this chapter is to establish civil procedures for the enforcement of certain provisions of the Tigard Municipal Code (TMC).

B. The procedures for the judicial enforcement process and the administrative

enforcement process established herein are for the purpose of:

1. Decriminalizing penalties for infractions of certain civil ordinances; and
2. Providing a convenient and practical forum for the hearing and determination of cases arising out of such infractions.

The civil infractions procedures are intended to be used for all violations of the TMC other than certain violations of Title 7 and Title 10.

C. The civil infractions abatement procedures established herein are for the purpose of authorizing the city to proceed to abate such infractions:

1. If it is determined that the infraction presents an immediate danger to the public health, safety or welfare; or
2. If it is determined that the property owner or responsible person is incapable of abating, or unwilling to abate, the infraction within a timeline satisfactory to the city. (Ord. 12-01 §1)

1.16.030 Definitions

For the purposes of this chapter, the following definitions shall apply:

A. “Abate” means to restore a property to its condition prior to the infraction, or similar condition that is free of the subject infractions. In the case of graffiti, “abate” means to remove graffiti from the public view.

B. “City manager” means the city manager or any other city employee designated by the city manager.

C. “Civil infraction” or “infraction” means:

TIGARD MUNICIPAL CODE

1. The failure to comply with a provision of this code other than certain provisions of Title 7 and Title 10; and

2. The process of imposing a civil penalty under this chapter.

References to “uniform infraction” throughout the code other than in certain provisions of Title 7 and Title 10 shall be deemed to be references to “civil infraction.”

D. “Civil infractions hearings officer” means the municipal judge or the individual appointed by the municipal judge with the delegated authority to preside over the code enforcement hearings and to perform the related functions as specified by this chapter.

E. “Code enforcement officer” means the individual or individuals appointed or designated by the director of community development or the city manager to enforce the provisions of this chapter. For enforcement of Chapters 10.16 through 10.32, Section 6.02.060 and Chapter 7.60, “code enforcement officer” also includes community service officers of the police department.

F. “Costs” means any expenses incurred and charges associated with any action taken by the city under this chapter including but not limited to the cost to the public of the staff time invested and, regarding items confiscated for violation of Sections 6.03.010 and 6.03.020, all expenses incurred and charges associated with the removal, storage, detention, processing, disposition and maintenance thereof.

G. “Finance officer” means the senior financial officer of the city or the designee of the senior financial officer.

H. “Letter of complaint” means a letter of notification to a responsible party that the city has

received a complaint indicating that a violation may exist on the party’s property.

I. “Notice of assessment” means a formal letter or form notifying a respondent or recipient that an administrative fee, administrative costs or costs of abatement have been assessed against them or against property in which they hold an interest.

J. “Notice of violation” means a formal letter or form notifying a responsible party that the city has probable cause to believe that a violation has been found to exist on the party’s property.

K. “Order to abate” means an order to a respondent or responsible party to abate an infraction from the municipal court as provided in Article II, or from the code enforcement officer as provided in Article III.

L. “Person” means an individual human being and may also refer to a firm, corporation, unincorporated association, partnership, limited liability company, trust, estate or any other legal entity.

M. “Premises” means a parcel of land and any improvements on it.

N. “Recipient” means a person who has received a letter of complaint under the administrative process.

O. “Respondent” means a person charged with a civil infraction. A respondent will have received a notice of violation or a summons and complaint as provided in Article II or an order to abate as provided in Article III.

P. “Responsible party” means any one of the following:

1. An owner;

TIGARD MUNICIPAL CODE

2. An entity or person acting as an agent for an owner by agreement that has authority over the property, is responsible for the property's maintenance or management, or is responsible for curing or abating an infraction;

3. Any person occupying the property, including bailee, lessee, tenant or other having possession; or

4. The person who is alleged to have committed the acts or omissions, created or allowed the condition to exist, or placed the object or allowed the object to exist on the property.

There may be more than one responsible party for a particular property or infraction.

Q. "Violation" means failure to comply with a requirement imposed directly or indirectly by this code. "Violation" may also mean civil infraction, except as used in those portions of Title 7 and of Title 10 that do not use the civil infraction procedure.

R. "Voluntary compliance agreement" means an agreement, whether written or verbal, between the city and the recipient or respondent, which is intended to resolve the alleged civil infraction. (Ord. 12-01 §1)

1.16.040 Use of Language

As used in this chapter, pronouns indicating the masculine gender shall include the feminine and neuter genders; the singular shall include the plural; and "person" shall, where appropriate, include any partnership, corporation, unincorporated association, the State of Oregon or other entity. (Ord. 12-01 §1)

1.16.050 Reference to State Law

Any reference to an Oregon state statute incorporates into this chapter by reference the

statute in effect on the effective date of the ordinance codified in this chapter. (Ord. 12-01 §1)

1.16.060 Culpability, Not Exclusive, Remedies Cumulative

A. Acts or omissions to act which are designated as an infraction by any city ordinance do not require a culpable mental state as an element of the infraction.

B. The procedures prescribed by this chapter shall be the exclusive procedures for imposing civil penalties; however, this section shall not be read to prohibit in any way alternative remedies set out in the Tigard Municipal Code which are intended to abate or alleviate code infractions, nor shall the city be prevented from recovering, in any manner prescribed by law, any costs incurred by it in abating or removing ordinance infractions pursuant to any code provision.

C. The remedies and procedures for abatement of civil infractions provided in this chapter are in addition to all other remedies and procedures provided by law. Nothing in this chapter shall limit or restrict in any way the city's right to obtain abatement by means of a civil infraction, judicial action, an administrative enforcement action, a criminal action, a civil lawsuit or any other form of procedure to obtain abatement. (Ord. 12-01 §1)

1.16.065 Liability

A. The city shall not be liable to any person for any loss or injury to person or property growing out of any casualty or incident happening to such person or property on account of a property owner, lessee or occupant of property who fails or neglects to promptly comply with the duties imposed by this section.

TIGARD MUNICIPAL CODE

B. The city shall be exempt from all liability, including but not limited to common-law liability that it might otherwise incur to an injured party as a result of the city's negligent failure to abate an infraction.

C. If any property owner, lessee or occupant, by his or her failure or neglect to perform any duty required of him or her by the terms of this section, contributes in causing injury or damages, they shall reimburse the city for all damages or injury it has sustained or has been compelled to pay in such case, including but not limited to reasonable attorney fees for the defense of the same, and such payments as may be enforced in any court having jurisdiction. (Ord. 12-01 §1)

1.16.070 Effect of This Chapter

A. Citations or complaints issued and filed with the municipal court prior to the effective date of the ordinance codified in this chapter shall be processed in accordance with the provisions in effect at the time the complaint was issued.

B. Nothing in this chapter shall be construed as a waiver of any prior assessment, bail or fine ordered by the municipal court. (Ord. 12-01 §1)

1.16.080 Severability

The provisions of this chapter are severable. If any section, sentence, clause or phrase of this chapter is adjudged to be invalid by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of the chapter. (Ord. 12-01 §1)

1.16.090 Reports of Infractions

All reports or complaints of infractions covered by this chapter shall be made or referred

to an authorized code enforcement officer. (Ord. 12-01 §1)

1.16.100 Assessment by Code Enforcement Officer

A. Upon receiving a report or complaint or otherwise becoming aware of a violation of this code, the code enforcement officer shall review the facts and circumstances surrounding the alleged infraction and if he or she deems it appropriate will proceed with appropriate enforcement actions.

B. The code enforcement officer shall not proceed further with the matter if the officer determines that there is not sufficient evidence to support the allegation, or if the officer determines that it is not in the best interest of the city to proceed. (Ord. 12-01 §1)

1.16.105 Administrative Rules

The city manager is authorized to draft and adopt administrative rules to define procedures to work with respondents or recipients toward the abatement of civil infractions. Any such administrative rules and regulations shall be adopted pursuant to the provisions of Chapter 2.04, be consistent with this chapter, and shall include the following:

A. Specific form documents or templates for all written communications referenced in this chapter to ensure that communications from the city are uniform, including a:

1. Letter of complaint;
2. Notice of violation;
3. Order to abate;
4. Notice of assessment.

TIGARD MUNICIPAL CODE

B. Procedures for the preparation, execution, delivery, and posting of notices of a:

1. Letter of complaint;
2. Notice of violation;
3. Order to abate;
4. Notice of assessment.

C. Procedures for review by the civil infractions hearing officer to consider protest by a responsible party of an administrative order to abate consistent with Section 1.16.420.

D. Procedures for determination of the time allowed to abate an infraction or otherwise respond as provided in a:

1. Letter of complaint;
2. Notice of violation;
3. Order to abate.

E. Procedures for the calculation of administrative fees.

F. Standards for confidential or anonymous reporting and circumstances in which such reporting is allowed. (Ord. 12-01 §1)

1.16.110 Warrants—Right of Entry

A. The city manager or designee may enter property, including the interior of structures, at all reasonable times whenever an inspection is necessary to enforce any regulations of this code, or whenever the city manager or designee has reasonable cause to believe that there exists in any structure or upon any property any condition which constitutes a violation of provisions of this code.

B. In the case of entry into areas of property that are plainly enclosed to create privacy and prevent access by unauthorized persons, the following steps shall be taken.

1. The code enforcement officer shall first make a reasonable attempt to locate the owner or other persons having charge or control of the property, present proper credentials and request entry.

2. If entry is refused or if the owner or other persons having charge or control of the property cannot be located, the code enforcement officer may attempt to obtain entry by obtaining a warrant. (Ord. 12-01 §1)

1.16.111 Warrants—Grounds for Issuance

A. A warrant for inspection, investigation, removal or abatement purposes shall only be issued upon cause, supported by affidavit, particularly describing:

1. The applicant's status in applying for the warrant;

2. The statute, ordinance or regulation requiring or authorizing the inspection or investigation or the removal and abatement of the violation;

3. The building or property to be inspected, investigated or entered;

4. The purpose for which the inspection, investigation, removal or abatement is to be made;

5. The basis upon which cause exists to inspect, investigate, remove or abate the violation; and

TIGARD MUNICIPAL CODE

6. In the case of removal or abatement, a statement of the general types and estimated quantity of the items to be removed or conditions abated.

B. Cause shall be deemed to exist if:

1. Reasonable legislative or administrative standards for conducting a routine, periodic, or area inspection or for removing and abating violations are satisfied with respect to any building or upon any property; or

2. An investigation is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with regulations; or

3. There is cause to believe that a violation exists for which removal or abatement is required or authorized by this chapter. (Ord. 12-01 §1)

1.16.112 Warrants—Procedure for Issuance

A. Before issuing a warrant, a judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.

B. If the judge is satisfied that cause for the inspection, investigation, removal or abatement of any infraction exists and that other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing:

1. The person or persons authorized to execute the warrant;
2. The property to be entered; and
3. The purpose of the inspection or investigation or a statement of the general types

and estimated quantity of the items to be removed or conditions abated.

C. The warrant shall contain a direction that it be executed on any day of the week between the hours of eight a.m. and six p.m., or where the judge has specifically determined, upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

D. In issuing a warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the city in any way necessary to enter the property and complete the investigation or remove and abate the infraction. (Ord. 12-01 §1)

1.16.113 Warrants—Execution

A. In executing a warrant on occupied property the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request.

B. In executing a warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection A above, but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the warrant shall be conspicuously posted on the property.

C. A warrant must be executed within 10 working days of its issue and returned to the judge

TIGARD MUNICIPAL CODE

by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant unless executed is void. (Ord. 12-01 §1)

1.16.114 Warrants—Disposal of Seized Property

The city manager or designee may cause any items removed pursuant to an abatement warrant to be disposed of in an approved manner whenever the city manager or designee, in his or her sole discretion, finds that the fair and reasonable value of the items at resale would be less than the cost of storing and selling the items. In making the above determination, the city manager or designee may include in the costs of sale the reasonable cost of removing the items to a place of storage, of storing the items for resale, of holding the resale including reasonable staff allowances and all other reasonable and necessary costs of holding the sale. (Ord. 12-01 §1)

1.16.115 Voluntary Compliance Agreement

A. The code enforcement officer may, at any time prior to a first appearance in court, enter into a voluntary compliance agreement with a respondent or recipient. The agreement shall include the time allowed to abate the infraction and shall be binding on the respondent or recipient.

B. The fact that a person alleged to have committed a civil infraction enters into a voluntary compliance agreement shall not be considered an admission of having committed the infraction for any purpose.

C. The city shall suspend further processing of the alleged infraction during the time allowed in the voluntary compliance agreement for completion of the necessary corrective action. The city shall take no further

action concerning the alleged violation if all terms of the voluntary compliance agreement are satisfied, other than steps necessary to terminate the enforcement action.

D. Failure to comply with any term of a signed voluntary compliance agreement constitutes an additional and separate infraction which shall be handled in accordance with procedures established by this chapter. After the voluntary compliance agreement has been signed no further notice need be given before a civil infraction summons and complaint based on this infraction is issued. The city may also proceed on the alleged infraction that gave rise to the voluntary compliance agreement. (Ord. 12-01 §1)

1.16.120 Notice—Notice of Violation and Letter of Complaint

A. Upon receiving a report or complaint or otherwise becoming aware of a violation of this code, the code enforcement officer may cause a notice of the alleged civil infraction to be given to any responsible party for the property containing the alleged infraction.

B. Under the judicial enforcement process set forth in Article II, a notice of violation for the alleged civil infraction may be given to the responsible party before a civil infraction summons and complaint is issued for an infraction. Verification of the violation is a requirement for a notice of violation. A notice of violation is not required before a summons and complaint is issued. The use of a notice of violation is at the sole discretion of the code enforcement officer.

C. Under the administrative enforcement process set forth in Article III, a letter of complaint may be mailed to any responsible party for the property containing the alleged civil infraction. Verification of the violation is not a requirement for issuing a letter of complaint but

TIGARD MUNICIPAL CODE

the issuance of a letter of complaint is a required first step in the administrative process. (Ord. 12-01 §1)

1.16.140 Time to Abate Infraction After Notice

A. If a notice of violation or a letter of complaint is given to a recipient or respondent pursuant to this chapter, the code enforcement officer shall give the recipient or respondent a specific timeline within which to cure or to abate the alleged infraction consistent with subsection B of this section.

B. The time allowed shall not be less than 24 hours for a notice of violation, or five days for a letter of complaint, nor more than 30 days except in cases where compliance is voluntary and the code enforcement officer deems it appropriate to enter into a voluntary compliance agreement with the recipient or respondent.

C. The code enforcement officer may grant additional time to the respondent if, in the officer's judgment, compliance within the 30-day timeline would constitute a significant hardship to the recipient or respondent or other significant mitigating circumstances exist. (Ord. 12-01 §1)

1.16.150 Immediate Abatement Action Required When

A. Notwithstanding the abatement time periods contained in Section 1.16.140, if the code enforcement officer determines that the alleged infraction presents an immediate danger to the public health, safety or welfare, or that any continuance of the violation would allow the recipient or respondent to profit from the violation or would otherwise be offensive to the public at large, the officer may require immediate remedial action.

B. If, in such cases, the code enforcement officer is unable to serve a notice of violation or letter of complaint on the recipient or respondent or, if after such service the recipient or respondent refuses or is unable to remedy the infraction, the city may proceed to remedy the infraction as provided in subsection C of this section.

C. In the case of an immediate danger to the public health, safety or welfare determined under subsection A of this section, the city may abate the infraction and charge the abatement cost back to the recipient or respondent, after obtaining a warrant to enter the property and abate the infraction. If the immediate danger constitutes an emergency threatening immediate death or physical injury to persons, the city may abate the infraction without obtaining a warrant if the delay associated with obtaining the warrant would result in increased risk of death or injury, and may charge the abatement costs back to the recipient or respondent. (Ord. 12-01 §1)

Article II. Judicial Enforcement

1.16.160 Notice—Methods of Service

If a notice of violation is given to a respondent pursuant to this chapter, service of such notice may be given as follows:

A. To the respondent in person by the code enforcement officer.

B. By a telephone call to the respondent. If notice is given in this manner, the respondent may be given, at the code enforcement officer's discretion, a notice of violation by first class mail sent to his or her last known address as soon as possible after the initial notice by telephone.

C. By mailing to the respondent at his or her last known address.

TIGARD MUNICIPAL CODE

D. By affixing to the main door of the property or premises. If notice is given in this manner, the code enforcement officer may, at his or her discretion, also provide the respondent with a notice of violation by mail sent to the respondent's last known address as soon as possible after the initial notice by posting. (Ord. 12-01 §1)

1.16.170 Notice—Computation of Time Period

A. When the notice of violation is delivered in person or by telephone, the time period to abate the infraction shall begin immediately upon such delivery.

B. When the notice of violation is mailed to the respondent, notice to abate the infraction shall be considered complete three days after such mailing, if the address to which it is mailed is within the state, and seven days after mailing if the address to which it is mailed is outside the state.

C. When the notice of violation is affixed to the main door of the property or premises, for purposes of computing the time period to abate the infraction, notice shall be considered complete three days after such affixation. (Ord. 12-01 §1)

1.16.180 Notice—Information

A. The following information shall be included in the notice of violation if one is given:

1. A description or identification of the activity or condition constituting the alleged infraction, and the identification of the recipient as the respondent.

2. A statement that the code enforcement officer has determined the activity or condition to be an infraction.

3. A statement of the action required to abate the alleged infraction and the time and date by which abatement must be completed unless a voluntary compliance agreement is executed.

4. A statement advising the respondent that if the required abatement is not completed within the time specified and the respondent has not entered into a voluntary compliance agreement, a civil infraction summons and complaint will be issued and civil penalties for the particular infraction may be imposed.

B. The code enforcement officer has the discretion to include in the notice of violation an invitation to contact the code enforcement officer to discuss any questions the respondent may have about the alleged violation, the requirements for compliance and any possibility of entering into a voluntary compliance agreement. (Ord. 12-01 §1)

1.16.190 Failure to Respond to Notice

If notice is given, and the respondent either receives or rejects the notice of violation and fails to abate the alleged infraction within the time specified in the notice of violation, the code enforcement officer may serve the respondent with a civil infraction summons and complaint. (Ord. 12-01 §1)

1.16.210 Civil Infraction Summons and Complaint—Timing

A civil infraction summons and complaint may be served on the respondent:

A. Immediately upon discovery of the infraction;

B. Where the response period given in a notice of violation has expired; or

TIGARD MUNICIPAL CODE

C. Where the period for compliance given in a voluntary compliance agreement expired and the infraction has not been abated. (Ord. 12-01 §1)

1.16.220 Civil Infraction Summons and Complaint—Process Requirements

A. The physical form taken by a civil infraction summons and complaint is not material. What is material is the substance, the information contained therein. The city may utilize various physical formats for the summons and complaint. The state uniform citation may be used. Any form prepared by the city should normally contain or solicit the following information, but no complaint or summons shall be considered invalid for failure to comply with these rules, so long as the basic information regarding the infraction and the court date is included.

B. The civil infractions summons and complaint shall contain the following information:

1. The name and address of the respondent;
2. A description of the infraction that can be understood by a person making a reasonable effort to do so;
3. The date, time and place at which the infraction is alleged to have been committed. If the infraction is alleged to be ongoing, the civil infractions summons and complaint shall so state and shall list a date on which the infraction was observed;
4. A file or reference number;
5. The date the civil infraction summons and complaint was issued;
6. The name of the code enforcement officer issuing the citation;

7. The time, date and location at which the respondent is to appear in court;

8. A notice that a complaint based on the violation will be filed with the court;

9. The amount of the maximum civil penalty for the infraction;

10. An explanation of the respondent's obligation to appear at the hearing and that a monetary judgment may be entered for up to the maximum civil penalties if the respondent fails to make all required court appearances;

11. A space wherein the respondent may admit having committed the alleged infraction;

12. The time period for returning the form to the court;

13. A notice that, if the respondent admits having committed the infraction as charged, payment, in the amount shown on the summons and complaint or as agreed with the code enforcement officer pursuant to Section 1.16.660 of this chapter, as may be appropriate, must accompany the admission; and

14. A form of verification that the person signing the complaint swears that the person has reasonable grounds to believe, and does so believe, that the respondent committed the alleged infraction. (Ord. 12-01 §1)

1.16.230 Civil Infraction Summons and Complaint—Service—Failure to Receive—Default

A. Service of the civil infraction summons and complaint shall be made consistent with the requirements of the Oregon Rules of Civil Procedure and may be made by:

TIGARD MUNICIPAL CODE

1. Personal service on the respondent or an agent for the respondent;

2. Substitute service at the respondent's dwelling or office;

3. Affixing to the main door of the property or premises; or by

4. Certified mail, return receipt requested, to the respondent at his or her last known address.

B. In the event of substitute service at the respondent's dwelling, the person served must be at least 14 years of age and residing in the respondent's place of abode.

C. Service at the respondent's office must be made during regular business hours. Substitute service at the respondent's office must be made to the person who is apparently in charge.

D. If substitute service is used, a true copy of the summons and complaint, together with a statement of the date, time and place at which service was made, must be mailed to the respondent at the respondent's last known address. Service will be considered complete upon such a mailing.

E. Service by any other method reasonably calculated, under all the circumstances, to apprise the respondent of the existence and pendency of the infraction and to afford a reasonable opportunity to respond shall be acceptable.

F. Service on particular respondents, such as minors, incapacitated persons, corporations, limited partnerships, the state, other public bodies and general partnerships shall be as prescribed for the service of a civil summons and complaint by the Oregon Rules of Civil Procedure.

G. No default shall be entered against any respondent without proof that the respondent had notice of the civil infraction summons and complaint. A sworn affidavit of the code enforcement officer outlining the method of service, including the date, time and place of service shall create a rebuttable presumption that the respondent had such notice. (Ord. 12-01 §1)

1.16.240 Civil Infraction Summons and Complaint—Respondent's Response Required

A. A respondent served with a civil infraction summons and complaint shall respond to the complaint by personally appearing at the scheduled first appearance in court or by making a written response by mail or personal delivery to the court.

B. If the respondent admits the infraction, the respondent may so indicate on the summons and forward the form to the court. Payment in the amount of the civil penalty for the infraction, as shown on the summons or as agreed with the code enforcement officer pursuant to Section 1.16.660 of this chapter shall be submitted with the response. Any appropriate findings shall be entered in the records of the civil infraction hearings officer indicating the receipt of the civil penalty.

C. If the respondent does not admit the infraction, the respondent must appear at the scheduled first appearance in court.

1. At the first appearance, the respondent may deny the infraction and request a hearing, admit the infraction, or not contest the infraction.

2. If the respondent either admits or does not contest the infraction the respondent shall be given the opportunity to provide a statement. Based on the statement provided by the

TIGARD MUNICIPAL CODE

respondent and any additional information provided by the code enforcement officer, the civil infractions hearings officer shall impose a civil penalty not to exceed the maximum civil penalty allowed for the infraction.

3. If the respondent requests a hearing, a hearing shall be scheduled. (Ord. 12-01 §1)

1.16.250 No Right to Jury

Any hearing to determine whether an infraction has been committed shall be held before the civil infraction hearings officer without a jury. (Ord. 12-01 §1)

1.16.260 Representation by Counsel

The respondent may be represented by legal counsel; however, legal counsel shall not be provided at public expense. Written notice shall be provided to the hearings officer and code enforcement officer no later than five days prior to any appearance by legal counsel at an appearance or hearing. (Ord. 12-01 §1)

1.16.270 Opportunity to be Heard— Cross-Examination

At a hearing a respondent shall have the right to present evidence and witnesses in the respondent's favor, to cross-examine any witnesses who testify against the respondent, and to submit rebuttal evidence. (Ord. 12-01 §1)

1.16.280 Witnesses

A. The respondent may request that witnesses be ordered by subpoena to appear at the hearing. The respondent shall make such request in writing to the court at least five days prior to the scheduled hearing.

B. Subject to the same five-day limitation, the code enforcement officer, the citizen who signed the complaint or the city attorney, as appropriate, may also request in writing that the court order certain witnesses to appear by subpoena.

C. If a civil penalty is declared in the final order, the order shall also provide that the respondent shall pay any witness fees payable in connection with the hearing. (Ord. 12-01 §1)

1.16.290 Hearing—Admissible Evidence

A. The hearing shall be limited to production of evidence only on the infraction alleged in the complaint.

B. Oral evidence shall be taken only upon oath or affirmation administered by the civil infractions hearings officer.

C. Evidence shall be admitted if it is of the type which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might render such evidence inadmissible in civil actions in courts of competent jurisdiction in this state.

D. Irrelevant or unduly repetitious evidence shall be excluded. (Ord. 12-01 §1)

1.16.295 Burden of Proof

The complainant or, if the city is the complainant, the code enforcement officer, shall have the burden of proving the alleged civil infraction by a preponderance of the evidence. (Ord. 12-01 §1)

TIGARD MUNICIPAL CODE

1.16.300 Hearing—Decision by Hearings Officer

A. The hearings officer shall determine if the respondent committed the infraction as alleged in the complaint.

B. When the infraction has not been proven, a written order dismissing the complaint shall be entered in the court records.

C. When the hearings officer finds that the infraction was committed, written findings shall be prepared which set out sufficient information to substantiate the commission of the infraction.

D. Written orders, including findings, shall be prepared within 10 working days of the oral decision. The court shall serve true copies of the hearings officer's findings, order and judgment on all parties, either personally or by mail. (Ord. 12-01 §1)

1.16.310 Order to Abate—Judicial

Upon a finding that the infraction was committed by the respondent, the hearings officer may issue an order to abate requiring the respondent to abate the ordinance infraction within a specified time period identified in the final order. Orders to abate issued under this section may only be appealed pursuant to Section 1.16.330. (Ord. 12-01 §1)

1.16.320 Hearing—Records

The court shall maintain a record of the hearing proceedings. A mechanical recording of the hearing, accompanied by any written documents, correspondence or physical evidence associated with the matter shall be sufficient to meet the requirements of this section. (Ord. 12-01 §1)

1.16.330 Finality of Decision—Appeals

The determination of the hearings officer shall be final. Review of the hearing officer's determination shall be to the circuit court by writ of review, pursuant to Chapter 34 of the Oregon Revised Statutes. (Ord. 12-01 §1)

1.16.340 Remedial Action by the City—Summary Abatement

Upon finding that an infraction was committed, as determined by a final decision of the hearings officer, the city may, after obtaining a warrant to enter the property and abate the infraction, proceed to abate the infraction and charge the abatement costs back to the respondent pursuant to Section 1.16.680.C. For the purposes of this section "a final decision of the hearings officer" means a final decision for which judicial review was not sought within the time allowed by law or a decision of the hearings officer that was upheld by a final decision in the judicial review and appeal process. (Ord. 12-01 §1)

1.16.350 Default Judgment

Subject to the limitations set forth in Section 1.16.230, a default judgment shall be entered in an amount up to the maximum civil penalty applicable to the charged infraction if the respondent fails to appear at the scheduled hearing. (Ord. 12-01 §1)

Article III. Administrative Enforcement

1.16.400 Order to Abate—Administrative

A. Upon finding any of the following, the code enforcement officer may cause an order to abate to be posted on the subject property and mailed to the owner and each other known responsible party:

1. A violation exists; or

TIGARD MUNICIPAL CODE

2. Any responsible party is not responsive or cooperative after receiving a letter of complaint; or

3. A recipient failed to comply with the terms of a voluntary compliance agreement.

B. The order shall require the respondent to abate the ordinance infraction within a specified time period.

C. Prior to mailing or posting an order to abate, the code enforcement officer must have probable cause to believe that a civil infraction exists, based on personal observation of the violation by the code enforcement officer or other credible authority.

D. The code enforcement officer shall cause a copy of the order to abate to be posted on the premises at the site of the violation.

E. An order to abate shall be mailed by first class or certified mail to the last known address of the responsible party. An order to abate shall contain:

1. A description of the real property, by street address or otherwise, on which the infraction exists.

2. The date of the order.

3. A direction to abate the infraction within no less than 10 days and no more than 30 days from the date of the order.

4. A description of the infraction.

5. A statement that, unless the infraction is removed:

a. A warrant may be obtained;

b. The city may abate the infraction; and

c. The cost of abatement will be charged to the responsible party.

6. A statement that failure to abate an infraction may result in imposition of an administrative fee or lien on the property.

7. A statement that the responsible party may protest the order to abate by giving notice to the code enforcement officer within 10 days following the date of the order. Contact information for the code enforcement officer shall be included in the order to abate.

F. Upon completion of mailing and posting, the persons mailing and posting shall execute and file certificates stating the date and place of the mailing and posting, respectively.

G. An error in the address or name of the responsible party shall not make the order to abate void, and in such case the posted notice shall be sufficient. (Ord. 12-01 §1)

1.16.410 Abatement by the Responsible Party

A. Within the timeline specified in the order to abate, the responsible party shall abate the infraction or appeal the order to abate pursuant to Section 1.16.420.

B. Any responsible party intending to abate the infraction shall provide notice to the code enforcement officer before abating the infraction and shall allow the city to inspect during and on completion of the abatement. The notification shall state how the infraction will be abated, when it will be abated, and who will be abating it. (Ord. 12-01 §1)

TIGARD MUNICIPAL CODE

1.16.420 Order to Abate— Administrative—Appeal Process

A. A responsible party protesting that the alleged infraction does not exist shall file with the code enforcement officer a written statement specifying the basis for the protest before the abatement date specified in the order or at most within 10 days of the date of the notice. Standing to protest is limited to a responsible party.

B. Upon receipt of a written statement of protest from a responsible party, the code enforcement officer shall, within 10 days of receipt of the protest, schedule a hearing before the civil infractions hearings officer, to be held within 30 days of receipt.

C. At the hearing set for consideration of the infraction, the person protesting may appear and be heard by the civil infractions hearings officer and the civil infractions hearings officer shall determine whether or not an infraction in fact exists. The city manager is authorized to draft and adopt rules and policies to provide for a civil infractions hearings officer review process consistent with this subsection and principles of due process. The civil infractions hearings officer's determination shall be required only in those cases where a written protest has been filed as provided in this section.

D. If the civil infractions hearings officer determines that an infraction does in fact exist, the responsible party shall, within five days after the civil infractions hearings officer's determination, abate the infraction, unless the civil infractions hearings officer determines that the responsible party should not be given the opportunity to abate or unless the civil infractions hearings officer decision allows a period of time greater than five days.

E. The civil infractions hearings officer may determine that the responsible party for the infraction should not be given the opportunity to abate only if the civil infractions hearings officer finds that the responsible party for the infraction is unlikely to properly abate the infraction. The determination that a responsible party is unlikely to properly abate the infraction shall be based on the findings as to one of the following:

1. Whether the person acted intentionally or whether the infraction is egregious; or

2. Whether the person had knowledge that the action was a violation of state law or city code; or

3. Whether the person has the professional expertise to perform the abatement. (Ord. 12-01 §1)

1.16.430 Abatement by the City

If, within the time allowed, the infraction has not been abated by the responsible party, the city manager may cause the infraction to be abated by securing an abatement warrant pursuant to Sections 1.16.110 through 1.16.114. (Ord. 12-01 §1)

1.16.440 Judicial Review

Judicial review of a decision of the civil infractions hearings officer on the appeal of an order to abate shall be on the record by writ of review pursuant to ORS Chapter 34 and not otherwise. (Ord. 12-01 §1)

Article IV. Penalties, Fees and Costs

1.16.600 Continuous Infractions

When an infraction is of a continuous nature, unless otherwise specifically provided, a separate

TIGARD MUNICIPAL CODE

infraction shall be deemed to occur on each calendar day the infraction continues to exist. (Ord. 12-01 §1)

1.16.610 Failure to Comply With Judgment Order, Order to Abate or Notice of Assessment

A. Failure to comply with a judicial order to abate an infraction or pay a civil penalty or court costs imposed within the time allowed for abatement or payment shall constitute a Class 1 civil infraction.

B. Failure to comply with an administrative order to abate an infraction or to pay an administrative fee or statement of administrative or abatement costs within the time allowed for such abatement or payment in a notice of assessment shall constitute a Class 1 civil infraction.

C. Failure to comply with a judgment order, an order to abate or a notice of assessment is a continuous infraction and a separate infraction will be deemed to occur each calendar day the failure to comply infraction continues to exist past the time allowed in the judgment order. (Ord. 12-01 §1)

1.16.620 Penalties, Fees and Costs—Payment Due When

Any civil penalty, administrative fees or costs assessed shall be paid no later than 30 days after the final order or the date of notice. Such period may be extended by the code enforcement officer for the administration process or upon order of the hearings officer. (Ord. 12-01 §1)

1.16.630 Penalties and Fees—Classifications

For the purpose of determining civil penalties and administrative fees, infractions are classified as Class 1, 2 or 3 infractions. (Ord. 12-01 §1)

1.16.640 Penalties and Fees—Amounts to be Assessed

The civil penalty or administrative fee to be assessed for a specific infraction shall be as follows:

A. For Class 1 infractions:

1. An amount not to exceed \$250 per day under either the judicial or the administrative enforcement process; or

2. Under the administrative enforcement process, an amount:

a. Computed in a manner established by administrative rule pursuant to Section 1.16.105,

b. For the entire period the violation exists and not for each day of the violation; or

3. For the specific urban forestry violations listed in Section 8.02.030.F, an amount remitted into the Urban Forestry Fund for tree planting and early establishment:

a. Not less than \$250 per unlawfully removed tree and not more than the city's cost to plant and maintain for three years an equivalent number of 1½ inch caliper trees with a combined caliper equal to the DBH of each unlawfully removed tree,

TIGARD MUNICIPAL CODE

b. Not less than \$250 and not more than \$500 for damaging, moving or removing a tree protection fence,

c. Not less than \$250 and not more than \$500 for each failure to provide inspection reports by the project arborist or landscape architect.

B. For Class 2 infractions, an amount not to exceed \$150 per day.

C. For Class 3 infractions, an amount not to exceed \$50 per day. (Ord. 12-11 §1; Ord. 12-01 §1)

1.16.650 Penalties and Fees—Repeat Violations

The maximum amounts of the civil penalties and administrative fees set forth in Sections 1.16.640.A.1, 1.16.640.B and 1.16.640.C shall be doubled in the event that the respondent is found in violation of a second and similar violation within 24 months of the initial violation and quadrupled in the event of a third or subsequent repetition within 24 months of the initial violation. (Ord. 12-01 §1)

1.16.660 Penalties and Fees—Prior to First Appearance in Court

The code enforcement officer is authorized to reduce the amount of a civil penalty that could be imposed or the amount of an administrative fee if compliance has been achieved and the amount is to be paid in full on or before the time and date of the first appearance in court or before the timeline set out in a letter of complaint or an order to abate. (Ord. 12-01 §1)

1.16.670 Delinquent Penalties, Fees and Costs

Delinquent civil penalties, administrative fees or costs and penalties imposed by default judgment may be collected or enforced pursuant to Oregon Revised Statutes 30.310 or any other method. (Ord. 12-01 §1)

1.16.680 Penalties, Fees and Costs—Assessment

A. Upon a finding by the civil infractions hearings officer that an infraction was committed by the respondent, the civil infractions hearings officer may assess a civil penalty pursuant to Sections 1.16.600 through 1.16.650, plus costs.

B. Upon a finding by the code enforcement officer that an infraction was committed by the respondent and if, within the time allowed in an order to abate, the infraction has not been abated by the responsible party, the code enforcement officer may assess an administrative fee pursuant to Sections 1.16.600 through 1.16.650, plus costs.

C. For abatement of a violation by the city by judicial process pursuant to Section 1.16.340 or administrative process pursuant to Section 1.16.430, the code enforcement officer shall keep an accurate record of the costs incurred by the city in abating the violation. The total amount of these charges will be assessed against the responsible party as the cost of abatement. (Ord. 12-01 §1)

1.16.690 Administrative Fees and Costs—Notice of Assessment

Upon the assessment of administrative fees or costs pursuant to Section 1.16.680, the code enforcement officer shall forward to all persons responsible for the violation a notice of assessment stating:

A. The total administrative fees and costs, if any, assessed for the violation;

TIGARD MUNICIPAL CODE

B. That the total amount of the fees and costs as indicated will be assessed to and become a lien against the property of persons responsible for the violation unless paid within 30 days from the date of the notice;

C. That any responsible party for the fees and costs may file a written notice of objection to the amount of the fees and costs with the code enforcement officer not more than 10 days from the date of the notice. (Ord. 12-01 §1)

1.16.700 Administrative Fees and Costs—Notice of Objection and Hearing

If an objection to an administrative fee or costs is filed as provided in Section 1.16.690, the code enforcement officer shall, within 10 days, cause a hearing to be scheduled to be held within 30 days before the civil infractions hearings officer. The civil infractions hearing officer shall hear the objection and determine the amount of the fee and costs to be assessed including the costs to the city of responding to the objection if the city's position is sustained. (Ord. 12-01 §1)

1.16.710 Penalties, Fees and Costs—Collection, Lien Filing and Docketing

A. When a judgment is rendered by the hearings officer in favor of the city for the sum of \$100 or more, exclusive of costs, the code enforcement officer shall, at any time thereafter while the judgment is enforceable, file with the city finance officer a certified transcript of all those entries made in the docket of the hearings officer with respect to the action in which the judgment was entered.

B. An assessment of the administrative fees and costs as stated in the notice of assessment shall be made if:

1. No objection to administrative fees and costs is filed as provided in Section 1.16.700; or

2. Fees or costs remain applicable following a hearing on an objection and the fees and costs are not paid within 30 days from the date of the notice or the date of the hearing order.

C. The code enforcement officer shall file with the city finance officer a certified statement of the total fees and costs due.

D. Upon receiving the statement of total fees and costs due or the certified transcript, the city finance officer shall enter that total on the city's lien docket.

E. The city may bring legal action to collect any civil penalties, fees, costs or interest provided for in this chapter. The city may also use a professional collection agency, or cause the full amount of civil penalties, fees, costs or interest owed to be entered into the city's lien docket and, from the time of entry on the city's lien docket it shall constitute a lien upon property of all persons responsible for the violation.

F. A lien shall bear interest at the rate of nine percent per year. Such interest shall commence to run from date of the entry of the lien in the lien docket.

G. An error in the name of any person to whom notice is sent shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against property of the responsible party for the violation.

H. The finance officer shall file the statement of total fees and costs due or the transcript of the court judgment with the Washington County Clerk for entry in the judgment docket of the circuit court. All costs

TIGARD MUNICIPAL CODE

associated with the filing of the transcript shall be added to the amount of the statement. (Ord. 12-01 §1) ■