

## CHAPTER 2.03

### CIVIL PENALTIES

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#### **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 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 50, Sec. 2; Ordinance 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 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 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 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.

(Ordinance 15-1364.)

#### **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 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 50, Sec. 8.; Ordinance 02-967, Sec. 1.; Ordinance 15-1364.)

### **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 compromise or settle any unpaid civil penalty which the Director deems appropriate.

(Ordinance 50, Sec. 9.; Ordinance 15-1364.)