

ORDINANCE NO. 2305

AN ORDINANCE REPEALING SECTION 31.01 OF CHAPTER 31 OF THE HERMISTON MUNICIPAL CODE; AMENDING SECTIONS 33.35 THROUGH 33.40 OF CHAPTER 33 AND ADDING SECTIONS 33.40, 33.41, AND 33.42 TO CHAPTER 33 OF THE HERMISTON MUNICIPAL CODE RELATING TO COURT ADMINISTRATION.

WHEREAS, pursuant to the 2015 Hermiston Charter, the City Manager is established as the administrative head of the city government and is responsible to the Mayor and Council for the proper administration of all city business (Charter, Section 35(e)).

WHEREAS, the City Manager has no authority over the Council or over the judicial functions of the Municipal Judge but retains authority over the administrative functions of the Municipal Court (Charter, Section 35(f)).

WHEREAS, all proceedings of the Municipal Court conform to state laws governing justices of the peace and justice courts (Charter, Section 37(d)).

WHEREAS, the Municipal Court has jurisdiction over every offense created by city ordinance and the court also has jurisdiction under state law unless limited by city ordinance (Charter, Section 37 (d)).

WHEREAS, the Municipal Court has jurisdiction unless limited by City ordinance.

WHEREAS, the City Council mindful of the law regarding collection of financial obligations and desiring to ensure the integrity of the Municipal Court by clarifying judicial and administrative authorities.

WHEREAS, debt owed to the Municipal Court is debt owed to the City of Hermiston, now, therefore,

The City of Hermiston ordains as follows:

(New language is in red and underlined and repealed language has a line through it.)

Section 1. Section 31.01 of Chapter 31 of the Hermiston Municipal Code is repealed.

~~31.01 POSITION OF VIOLATIONS CLERK ESTABLISHED.~~

~~There is hereby established the position of Violations Clerk in the Office of the Municipal Judge of the city. The Violations Clerk is to be appointed by the Municipal Judge of the city. The Violations Clerk is authorized to accept pleas, accept bail forfeitures and similar functions as outlined in guidelines to be established by the judges of the Municipal Court.~~

Section 2. The heading for Chapter 33, City Polices, applicable to the Municipal Court in the Hermiston Municipal Code is amended to read:

PROCESS AND PROCEDURE OF THE MUNICIPAL COURT

~~TRIAL BY JURY IN MUNICIPAL COURT~~

Section 3. Section 33.35 of the Hermiston Municipal Code is amended to read:

33.35 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COURT. The Municipal Court of the City of Hermiston, Oregon.

COURT CLERK. Any person(s) sworn in as a clerk of the court.

COURT MANAGER. The person appointed by the City Manager to administer the Municipal Court and supervise the court clerks.

JUDGE. A judge of the Municipal Court of the City of Hermiston, Oregon.

JUDGE PRO-TEM. A qualified person properly appointed under Charter Section 37 to serve in the absence of or the conflict of the Municipal Judge.

Section 4. Section 33.36 of the Hermiston Municipal Code is amended to read:

33.36 ADOPTION OF STATE STATUTES.

~~Unless superseded by a mandatory of state law, the Oregon State Statutes, 2017 Edition, shall govern, to the extent applicable to trial by juries in the Municipal Court, including but not limited to, ORS 10.010 through 10.105 and ORS 10.115.~~

The most edition of the Oregon State Statutes shall govern proceedings in the Municipal Court, subject to constraints and limitations of the Ordinances of the City of Hermiston, including, but not limited to, the following:

(A) The Municipal Judge may, at the initiation of the City Prosecutor, issue processes to enforce judgments under Charter Section 37(e)(7) but the Municipal Judge may not initiate enforcement or collection of debts.

(B) The penalization of contempt as described in Charter Section 37(e)(6) refers to the issuance of Orders to Show Cause and not initiation of contempt other than summary contempt. The City Prosecutor shall have the sole authority to initiate contempt proceedings, other than summary contempt, as otherwise allowed under ORS 153.064(2), ORS 161.685 and elsewhere under law, by motion. In determining whether to initiate Orders to Show Cause upon failure to appear on a violation citation where default has been entered, among other considerations the City Prosecutor shall consider whether the presumptive fine is not adequate by reason of previous convictions of the defendant, the nature of the offense charged or other circumstances.

(C) Default Judgments under ORS 153.090(3) and ORS 153.102(1) are limited to default of the presumptive fine amount unless the default is entered as a result of (1) a failure to appear at trial

under ORS 153.061 or ORS 153.070, (2) failure to appear or failure to pay under ORS 153.061(6) where the court determines that the presumptive fine is not adequate by reason of previous convictions of the defendant, the nature of the offense charged or other circumstances, and the court requires that a trial be held unless an additional fine amount is paid by the defendant before a specified date, with notice of the date to appear or pay by and the additional fine amount given to the defendant by mail.

(D) No-contest pleas submitted by a defendant with a statement in explanation under ORS 153.051(7) and ORS 153.061 are limited to imposition of the presumptive fine or the reduced amount not lower than the minimum fine under ORS 153.021, unless the judge determines under ORS 153.061(6) that the presumptive fine is not adequate by reason of previous convictions of the defendant, the nature of the offense charged or other circumstances, and the court requires that a trial be held unless an additional fine amount is paid by the defendant before a specified date, with notice of the date to appear or pay by and the additional fine amount given to the defendant by mail.

(E) For any Violation for which there may be a Victim, Victims shall have 90 days to file a motion or request for restitution or for particular orders expressly applicable to the Violation type after a judgment has been entered.

(F) Pretrial discovery in Violation cases as described in ORS 153.076 applying ORS 135.805 to 135.873, to Violation proceedings is a pre-trial responsibility of the City Prosecutor and the Hermiston Police Department. Production of discovery in any offense at the written request of defendant or their attorney shall be prompt and the cost thereof reflecting the usual and normal charges for similar documents by the Hermiston Police Department.

Section 5. Section 33.37 of the Hermiston Municipal Code is amended to read:

33.37 TRIAL ~~BY JURY IN CRIMINAL CASES~~ BEFORE THE MUNICIPAL COURT.

(A) In all prosecutions for any crime designated as such by state law or ordinance over which the Municipal Court has jurisdiction, the defendant shall have the right of trial by jury, of six in number, unless waived in writing by the defendant. Except as otherwise provided in this code, jurors shall be selected and may be challenged in the same manner as misdemeanor cases in circuit courts. The verdict of the jury shall be unanimous.

(B) In all prosecutions for any offenses of State law punished as violations, trial shall be before the Municipal Judge or pro-tempore.

(C) In all prosecutions for a misdemeanor treated as a violation by the prosecutor, trial shall be before the Municipal Judge or pro-tempore, unless written motion for jury trial is filed within 10 days after arraignment and the judge determines upon hearing that by the nature of the offense, under the law of the State of Oregon, that a jury trial right is Constitutionally required.

(D) In all prosecutions for any violation of ordinance of the City of Hermiston, trial shall be before the Municipal Judge or pro-tempore.

Section 6. Section 33.38 of the Hermiston Municipal Code is amended to read:

33.38 JURY LIST.

(A) Annually, the City Recorder at the request of the Court Manager shall obtain a list of the latest tax roll and voter registration books used at the city election for persons initially eligible to serve as a juror. The Court Manager shall select and make from the roll a jury list of persons to serve as the jury pool and potential for the next three months, and until another is selected.

(B) When a jury is demanded the Court Manager shall cause a sufficient number of jurors to be advised to appear for jury selection.

(C) A person may be excused as a juror for any reason under state law and that they have previously served as a juror in Federal, State, Justice or Municipal Court within the last 12 months.

~~(A) — Juries shall be selected from the latest tax roll and voter registration books used at the city election. On the first Monday of January of each year, the Court Clerk shall deliver to the Municipal Judge a current tax roll of registered voters in the city. The Court Clerk, under the direction of the Municipal Judge, shall select and make from the roll a jury list of persons to serve as jurors for the next three months, and until another is selected. Subsequent jury lists for each following three-month period will be prepared at least 30 days prior to the expiration of the current jury list.~~

~~(B) — The list, when made, will be dated and signed by the Municipal Judge and Court Clerk.~~

~~(C) — No person shall be placed on the jury list who has served on the jury list of the court during the preceding 12 months.~~

Section 7. Section 33.39 of the Hermiston Municipal Code is amended to read:

33.39 JURORS FEES OF JURORS AND WITNESSES.

~~Each juror shall be entitled to an attendance fee as adopted by Council resolution.~~

(A) The jurors who are notified to appear at trial and are selected and serve as actual jurors shall be entitled to receive compensation plus mileage to and from their place of residence at the rate applicable to appearances in justice court as described in ORS 10.061. Authority for establishing any additional fees and expenses for jurors is delegated to the City Manager. Those jurors who are notified to appear at trial but are not selected as jurors shall be entitled to receive mileage to and from their place of residence at the rate applicable to appearances in justice court.

(B) Persons who have been subpoenaed as witnesses to appear in Municipal Court by the City shall be entitled to receive compensation plus mileage to and from their place of residence at the rate applicable to appearances in justice court.

(C) Fees shall be submitted to the Court Manager within 14 days of service to be paid by the Municipal Court.

Section 8. Section 33.40 of the Hermiston Municipal Code is amended to read:

33.40 ASSESSMENT OF COSTS AND FINANCIAL OBLIGATIONS.

(A) Upon conviction, the court may impose costs, fees, fines, compensatory fines, restitution and allowed financial requirements on a defendant to the extent and in the manner allowed or required by law.

(B) Financial amounts due the Municipal Court by judgment are deemed administrative matters.

~~To the extent authorized by law, the court may include in its judgment a money award requiring that the person repay, in full, or in part, the administrative costs of determining the eligibility of the person for appointed counsel, and the costs of the legal and other services that are related to the provision of appointed counsel.~~

(C) The creation of costs and fees over statutory required costs, fees and fines are deemed administrative matters.

~~The court may not require a person to pay costs unless the person is or may be able to pay the costs. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the person and the nature of the burden that payment of costs will impose. The person may seek remission of payment as provided by state law.~~

(D) Unless expressly allowed or required by state law, costs and fees imposed by the Municipal Court shall be approved by the City Manager by fee schedule maintained by the Court Manager. As applicable, the charges provided by ORS 51.310, entitled "Schedule of Fees," is incorporated herein by this reference, payable to the City.

(E) To the extent authorized by law, the court may include in its judgment a money award requiring that the person repay, in full, or in part, the administrative costs of determining the eligibility of the person for appointed counsel, and the costs of the legal and other services that are related to the provision of appointed counsel. Such fee schedule shall be approved by the City Manager.

(F) The court may not require a person to pay costs unless the person is or may be able to pay the costs. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the person and the nature of the burden that payment of costs will impose. The person may seek remission of payment as provided by state law.

Section 9. The Hermiston Municipal Code is amended by adding Section 33.41 to read:

33.41. VIOLATIONS BUREAU.

(A) Pursuant to ORS 153.800, a Violations Bureau is created within the Municipal Court for further Administrative Order by the Municipal Judge creating the reduction schedule and the rules of operation.

(B) Within the Violations Bureau of the Municipal Court, there is hereby established the position of Violations Clerk(s). All Clerks of the Municipal Court, including the Court Manager are Violation Clerks unless otherwise determined by the Court Manager. The Violations Clerk is authorized to perform all Violation Clerk duties as set forth in statute, including but not limited to accepting pleas, establish Violation Bureau judgments on Violations and corrections of such, accepting payments, administer default judgments, correct and similar functions as outlined in statute and the order to be established by the Municipal Court Judge.

(C) The Violations Bureau is limited to actions relating to the acceptance and default judgments of presumptive fines and lower amounts set forth by schedule established by the Municipal Judge in an Administrative Order.

(D) Once a judgment has been issued by the Violations Bureau, that judgment is deemed administrative for collection and correction purposes.

Section 10. The Hermiston Municipal Code is amended by adding Section 33.42 to read:

33.42 RECORDS OF THE MUNICIPAL COURT.

(A) The Court Manager, as ‘court administrator or ‘clerk of the court’, is the custodian of the records and files of the court, including but not limited to the docket as described under ORS 221.352 and Oregon Administrative Rules including but not limited to OAR 166-200-0290 on municipal court records. Such records and files may not be taken out of the office, and electronic records may not be removed from any file or electronic database, by any person except the court manager or as allowed by special order of the court or a judge or general rule made by the court. For the records required under ORS 221.352, the Court Manager and clerks of the Municipal Judge shall enter the required information into the docket on behalf of the Municipal Judge. The Judge shall sign as appropriate such orders and judgments as necessary to create the docket record in addition to the clerk entries in electronic form under ORS 221.352(2).

(B) Any Audio recording or reporting of proceedings under ORS 221.358 shall be coordinated by the requesting party through the Court Manager.

(C) Judgments. The judgments of the Municipal Judge shall substantially comply with ORS 18.048. No judgment, other than Violation Bureau Judgments for which Violation Bureau Clerks may sign, shall be entered without a judge’s signature under ORS 18.052. Any pleadings, orders or judgments which have been entered which appear to the court manager to not comply with law shall be administratively withdrawn and any orders or judgments administratively vacated. The Court Manager is authorized in such instances to make clerical correction to the Violation Bureau judgments issued as contemplated by the court under ORS 137.172 to bring such judgments into compliance or to remit unpaid costs or modify the method of payment under ORS 161.665(5).

(D) If an order used as a judgment or a judgment and the supporting file and records of the case fails to substantially comply with ORS 18.048, or fails to demonstrate facial compliance with the Oregon Rules of Civil Procedure, the Court Manager may not enter the judgment and may withdraw an entered judgment from the records of the court.

Section 11. The Hermiston Municipal Code is amended by adding Section 33.43 to read:

JUDICIAL ETHICS CODE. As described in Section 37(e)((b) of the City Charter, and as a matter of judicial diligence to the duties of the position under the Oregon Rules of Professional Conduct, and to ensure clarity, Municipal Judges for the City of Hermiston, and the pro-tempore judges appointed, shall adhere to the Oregon Code of Judicial Conduct in its current and subsequent versions, and therein follow the rules pertaining to judges of a justice court therein. Exceptions to this policy may be provided by the City Manager at the City Manager's discretion.

Section 12. Emergency. Because fair and accessible justice services by the Hermiston Municipal Court are necessary to protect the rights of individuals, preserve community welfare and inspire public confidence, an emergency is declared to exist, and this ordinance is effective immediately upon its passage as of the date and year set out below.

PASSED by the Common Council the 26th day of May 2020.

SIGNED by the Mayor the 26th day of May 2020.

Dr. David Drotzmann, Mayor

ATTEST:

Lilly Alarcon-Strong, CMC, City Recorder