



CITY OF WASILLA

CODE ORDINANCE

290 E. HERNING AVE. REQUESTED BY: LEGAL/POLICE DEPARTMENT
WASILLA, ALASKA 99654-7091 PREPARED BY: RICHARD DEUSER, ATTORNEY
PHONE: (907) 373-9050
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ORDINANCE SERIAL NO. 95-01

AN ORDINANCE OF THE CITY OF WASILLA ALLOWING DISPOSITION OF CERTAIN ORDINANCE VIOLATIONS WITHOUT A COURT APPEARANCE AND ESTABLISHING A SCHEDULE OF BAIL AMOUNTS AND FINES FOR EACH OFFENSE.

BE IT ORDAINED AND ENACTED BY THE CITY OF WASILLA, ALASKA, AS FOLLOWS:

SECTION I. Classification. This ordinance is of a general and permanent nature and shall become part of the Wasilla Municipal Code.

SECTION II. Purpose. To establish that ordinance violations may be disposed of in accordance with court rules that govern infractions and further establishing a schedule of bail amounts and fines for such offenses.

SECTION III. Amendment.

Chapter 13.50.040 [curfew/penalty] of the Wasilla Municipal Code shall be amended by adding the following:

The provisions set forth hereafter in this Section .040 are made pursuant to the authority granted by A.S. 29.25.070, providing that a municipality may allow disposition of a violation without court appearance and may establish a schedule of fine amounts for such offenses in the instance of violations that cannot result in incarceration or the loss of a valuable license. A person charged with an offense pursuant to this curfew ordinance may dispose of the charge by paying the fine in the amount of \$100 and checking the "no contest" box on the citation form charging the curfew ordinance violation. Such disposition may be by mail or in person. The person may, alternatively, choose to appear in court and contest the citation. In such an event, there shall be no monetary bail amount required of a person so charged who responds to the summons provided for in the citation. Trial, if any, shall be held without jury. A person contesting a curfew violation citation shall not be entitled to a court-appointed lawyer. If the court, conducting trial without jury, finds the person so charged guilty, no incarceration may be ordered and the maximum fine is to be the amount set forth above — \$100.

Chapter 1.24.010(A) [General Penalty] of the Wasilla Municipal Code shall be amended by deleting and substituting the following language:

A. GENERAL PENALTIES. A person who violates an ordinance of the City of Wasilla, where that ordinance specifies particular penalties, punishments, or enforcement provisions, shall be subject to the penalties, punishments, or enforcement provisions so specified. By way of example, but not by way of limitation, ordinances specifying particular penalties can be found in WMC 12.05, Animal Control, WMC 14.01, Wasilla

Traffic Code, WMC 13.50, Curfew, WMC 6.50, Sales Tax, and WMC 16.43, Development Code. A person who violates any other ordinance of the City of Wasilla is guilty of a misdemeanor or an infraction violation, and, unless the offense is designated as a misdemeanor or felony under state law, upon conviction is punishable by a fine of not more than One Thousand Dollars (\$1,000.00). Two Hundred Dollars (\$200.00). All penalty codes conflicting with the provisions of this section, provided for herein, are hereby repealed except as expressly provided in Subsection (B) below.

Chapter 1.24.010(B) [General Penalty] of the Wasilla Municipal Code shall be amended by deleting all of the existing language and adding the following language:

B. PROCEDURE ON INFRACTION VIOLATIONS. Charges of a violation of an ordinance may be, but are not required to be, subject to issuance of a citation and may be, upon the action of a City official choosing to issue a citation, subject to the following court procedures unless (1) specifically provided otherwise in a particular ordinance, and/ or unless (2) the charge is subject to a penalty greater than a fine of \$1,000.00 and/or unless (3) the charge is subject to the potential of a penalty of incarceration and/or unless (4) the charge is subject to the potential of the loss of a valuable license and/or unless (5) the charge is classified as a misdemeanor or felony under state law and/or unless (6) the charge is filed with the court in the form of a criminal summons and complaint rather than a citation form.

The provisions set forth hereafter in this Section 1.24.010(B) are made pursuant to the authority granted by A.S. 29.25.070, providing that a municipality may allow disposition of a violation without court appearance and may establish a schedule of fine amounts for such offenses in the instance of violations that cannot result in incarceration or the loss of a valuable license. The Mayor of the City of Wasilla or subordinate City officials with the responsibility of administering particular provisions of the Wasilla Municipal Code (for example, but not by way of limitation, sales tax is administered by the Senior Accountant, the development Code is administered by the City Planner, and utility operation is administered by the Public Works Director) are authorized to issue citations. A person charged with an offense under an applicable municipal ordinance may dispose of the infraction by paying the fine in the amount set forth in the ordinance charged and checking the "no contest" box on the citation form charging the ordinance violation. Such disposition may be by mail or in person. The person may, alternatively, choose to appear in court and contest the citation. In such an event, the monetary bail amount required of a person so charged shall be the amount established by the ordinance charged to be violated. In the absence of a bail amount specified in the ordinance, there shall be no bail amount required of the person so charged and who chooses to contest the citation. Trial, if any, shall be held without jury. A person contesting an ordinance citation shall not be entitled to a court-appointed lawyer. If the court, conducting trial without jury, finds the person so charged guilty, no incarceration may be ordered and the maximum possible fine is to be the amount set forth either in Sub-section (A), above, or, as set forth by the specific terms of the ordinance charged to be violated.

SECTION IV. Effective Date. This ordinance shall become effective upon passage by the Wasilla City Council.

Introduction: December 12, 1994


Public Hearing: January 9, 1995

ADOPTED by the Council of the City of Wasilla this 23rd day of JANUARY, 1995 ~~1994~~



JOHN C. STEIN, Mayor

ATTEST:



MARJORIE D. HARRIS, CMC
City Clerk

MEMORANDUM

To: City Council Members/Mayor John Stein/Chief Irl Stambaugh

From: Richard Deuser

Date: December 7, 1994

Re: Curfew Ordinance – Amendment to Conform to Court Procedures;

Enclosed is proposed ordinance serial no. 95-01. The purpose of this ordinance is to conform the curfew ordinance to established court procedures involving infractions. While so amending the curfew procedure, I think it is advisable that the general penalties clause be up-dated so as to harmonize that general penalties clause with the rest of the code as it has evolved (e.g., animal control and traffic offenses). Consider the following:

The Council will be familiar with the concepts behind the enclosed ordinance by reason of past explanations concerning the animal control penalties/procedures and the traffic code penalties/procedures. Briefly, there is both state statutory law and case law that stands for the proposition that ordinance penalties that expose the defendant to incarceration or, alternatively, expose the defendant to substantial monetary fines will require the City to make available trial by jury and a court-appointed lawyer in the absence of an ability to afford one.

By contrast however, ordinance infractions that do not involve loss of a valuable license or incarceration and that do not reach a certain dollar level penalty do not require the due process rights of trial by jury or the right to a court-appointed lawyer.

The City has previously considered these issues. Most recently, the Council may recall the approach taken to the traffic code ordinance. Briefly, we structured that ordinance to make it clear that the potential fine would be well below the amount that would invoke the due process rights to trial by jury and/or the right to appointed counsel. We also adopted, by reference, the state's administrative bail system for the state traffic code and

permitted charged defendants to dispose of a citation by merely paying the fine in the amount specified pursuant to the bail guidelines. Similarly, the animal control ordinance is subject to procedures that are simplified.

PLEASE NOTE. Both the traffic code and the animal control code have instances where the violation is deemed to be of a more serious nature and therefore are handled, under the terms of the ordinance, with more serious penalties and consequently invoke more involved procedures.

Quite frankly, as an afterthought, it has occurred to us that we have not expressly provided for the **procedures** that will apply to curfew violations. The same intent to simplify the court procedure applies to the curfew ordinance.

The General Penalty Ordinance, 1.24.010 does create a uniform penalty unless otherwise specified by an ordinance. However, the oversight on the curfew ordinance arose because we have never made the General Penalty Ordinance, 1.24.010, uniform in **procedure**. In addition, State law has been modified and now establishes that matters at or below \$1,000.00 can be treated as infractions and thereby avoid complex due process procedures. Consequently, the enclosed amendment raises the level of matters considered infractions to \$1,000.00. The amendment would empower City officials (Dean Baugh for sales tax, Duane Dvorak for the development code, and Lee Wyatt for public works) to issue citations for minor infractions. This will hopefully address a perpetual problem - how to enforce nuisance non-compliance with City ordinances without spending inordinate amounts of money on involved court procedures and attorney fees.

Council input is sought on whether the maximum infraction penalty amount (\$1,000) is desirable or whether some lower maximum number should be chosen.

The enclosed ordinance first sets out the procedure for citations issued for curfew violations. In addition, so as to make the **procedural** concept uniform to minor citations in general, I am proposing similar language that would then also be adopted for the City's General Penalty, 1.24.010. The maximum penalty under an infraction is set at \$1,000.00.

As always, I am available to respond to any questions.

Sincerely,

Richard Deuser

Richard Deuser

RD:lll
enclosure