

ORDINANCE NO. 5778

**AN ORDINANCE AMENDING TITLE TWO OF THE ALBANY MUNICIPAL CODE AND DECLARING AN EMERGENCY**

WHEREAS, in 2007, the City Council of the City of Albany began a review of the City's Charter and noted several revisions and changes that were needed to bring the Charter into compliance with current legal and procedural practices; and

WHEREAS, the City Council submitted those revisions and changes to the electors of the City in May 2010; and

WHEREAS, the electors approved the changes and the City Council adopted them in June 2010; and

WHEREAS, reviewing the Charter prompted City staff to move on to review more of the Albany Municipal Code, title by title, and recommend changes or revisions that align with those in the revised Charter; and

WHEREAS, the City Council reviewed proposed changes to Title 2 at the August 22, 2011, City Council Work Session, and asked that the changes be brought back for approval;

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Amending Albany Municipal Code Title 2 as follows:

**2.04.030 Attendance.**

If a quorum is not present, at a regular meeting or at any special meeting called pursuant to the requirements of Section 14 of the Charter, those members present may adjourn to a later time. (Ord. 5013 § 1, 1992; Ord. 2722 § 3, 1956).

**2.04.040 Resolutions.**

All resolutions shall be in writing and numbered consecutively in the order in which they are introduced. All resolutions shall be signed by the Mayor, or in the Mayor's absence, by the Council President, and attested by the ~~Recorder~~ City Clerk or his/her deputy. A resolution shall ~~receive only one reading before being put to adoption.~~ **be available for Council and public inspection or orally presented.** (Ord. 5013 § 1, 1992; Ord. 4510 § 3, 1982; Ord. 2722 § 4, 1956).

**2.04.050 Procedure.**

~~All cases not specifically provided for herein or in the Charter shall be governed by Roberts' Rules of Order. (Ord. 2722 § 5, 1956).~~ **The Council shall be guided by Robert's Rules of Order. No action of the Council shall be rendered invalid for failure to comply with Robert's Rules of Order.**

**2.04.060 Voting.**

Unless a member of the Council states that he/she is not voting, his/her silence shall be recorded as an affirmative vote. If a member of the Council states that he/she is not voting, his/her vote is not considered, either for or against the proposition. **Following any vote, the Recorder/City Clerk shall announce the vote count. If the Recorder's count is disputed by any Council member, a roll call shall be taken to decide the issue.** (Ord. 2722 § 6, 1956).

**2.04.080 Notice of special meetings.**

Notice of special meetings of the Council may be given orally or in writing. The City Manager or designee shall be responsible for the notification by telephone of all Councilors of any specially called Council meeting. Within five days after a Councilor shall take oath of office, he/she shall leave a permanent address within the City where all notices of special meetings are to be delivered and shall further designate a telephone number at which all notices of special Council meetings are to be called. Delivery of a written notice of a specially called Council meeting to the address given by the Councilor shall be at least 24 hours before the time of the specially called meeting. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for the meeting shall describe the emergency justifying less than 24 hours notice. In the event a Councilor is notified of a specially called Council meeting by telephone, then the City Manager shall keep a log of the telephone calls in notifying the Councilor as to the number called and the date and time the call was made. Notices to Councilor of a specially called Council meeting shall be entered in the minutes of the special Council meeting and shall be a permanent record of the special meeting. **Written notice may be provided electronically to any councilor who has given written authorization for formal notifications to be received in this fashion.** (Ord. 5013 § 1, 1992; Ord. 4510 § 4, 1982; Ord. 3048 § 1, 1963; Ord. 2722 § 10, 1956).

**2.08.010 Nominations.**

A person, having the qualifications as provided in Section 13 of the Charter may be nominated for office by either of the following methods:

(1) A person may declare himself/herself a candidate for elective office by filing with the Recorder, City Clerk in substantially the following form, his/her declaration of candidacy, together with a filing fee of [ ]:

**DECLARATION OF CANDIDACY**

I, \_\_\_\_\_, hereby declare myself as a candidate for the office of \_\_\_\_\_ to serve for the ensuing term and say that I possess the necessary qualifications as described in Section 13, Charter of the City of Albany, Oregon.

DATED this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_ (Signature of Candidate)

(2) A petition may be filed with the Recorder-City Clerk nominating a person as a candidate for office. The petition must contain ~~25~~ **100** signatures of persons having the same qualifications as the office sought, as provided in Section 13 of the Charter. In addition, the candidate must sign an acceptance of nomination. When filed with the Recorder, City Clerk, the Recorder City Clerk shall check the signatures for validity. A person signing a nominating petition shall sign only one petition for each office. (Ord. 5013 § 1, 1992; Ord. 2799 § 1, 1958).

**2.08.030 Notice of nominations.**

Not less than 90 days prior to each general election, the City Recorder Clerk shall post on the bulletin board of the City Hall a list of officers to be elected at the next general election. This notice shall remain posted until nominations are closed. In addition, the Recorder Clerk shall cause to be published in a newspaper of general circulation, published within the City, a like notice on two occasions not more than 90 days nor less than 75 days prior to the general election.

The notice shall be substantially in the following form:

## NOTICE OF RECEIVING NOMINATIONS

NOTICE IS HEREBY GIVEN that at the regular biennial election, the City of Albany will elect the following officers:

MAYOR Term: January 1, \_\_\_\_, to December 31, \_\_\_\_.

COUNCILOR, Ward I Term: January 1, \_\_\_\_, to December 31, \_\_\_\_.

COUNCILOR, Ward II Term: January 1, \_\_\_\_, to December 31, \_\_\_\_.

COUNCILOR, Ward III Term: January 1, \_\_\_\_, to December 31, \_\_\_\_.

Nominations will be received at the office of the City ~~Recorder~~ **Clerk** on and after August 5 and until 5:00 p.m. on August 20 of this year. Nominations may be made by declaration of candidacy, signed by the candidate, together with a filing fee of \$\_\_\_\_, or by the filing of a petition containing the signatures of ~~25~~ **100** persons having the same qualifications as the office sought and an acceptance of nomination by the candidate. A person signing a petition shall sign only one petition for each office.

Qualifications as prescribed in the Charter of the City of Albany are as follows:

The candidate must be a qualified elector within the meaning of the Constitution of Oregon and have resided in the City during the 12 months immediately preceding the election and in the Ward he or she seeks to represent, in the case of Councilor, for a period of 90 days immediately prior to election.

Forms for petitions and declarations are available at the office of the City Recorder **Clerk** in the Albany City Hall.

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

City ~~Recorder~~ Clerk

### **2.12.020 Pro tempore Municipal Judge**

The office of pro tempore Municipal Judge of the Municipal Court of the City is hereby created. The holder of the office shall be selected by the Council to serve at the pleasure of the Council. The officer shall act only when the Municipal Judge is unable to perform his/her duties by reason of absence from the City, illness, vacations or disqualification by person of knowledge or relationship to the cause before him/her. The pro tempore Judge shall be compensated on an **hourly per diem** basis. (Ord. 2730 s/s 2, 1957.)

## 2.12.060 Jury lists

Upon passage of the ordinance codified in this chapter and **prior to upon** the first days of January, April, July and October, thereafter, the ~~Reeorder~~ **Court** shall select 350 names of persons who must have the qualifications of jurors in the State courts, from the registered voter lists to serve as a jury panel until the next panel is selected. **The Court shall make a reasonable effort to proportionally select representative jurors from Linn and Benton Counties.** No person shall be required to serve more than one term during any calendar year. The selection shall be made at random and the ~~Reeorder~~ **Court** shall not attempt to select or reject any particular persons. No challenge to the panel may be made upon substantial compliance of this portion of this chapter. (Ord. 5530, 2002; Ord. 5013 s/s 1, 1992; Ord. 4545 s/s 2, 1982; Ord. 2730 s/s5, 1957).

## 2.12.070 Selection of the jury

~~— At least seven days prior to the trial date, the defendant or his/her attorney and the City Attorney shall appear before the Municipal Judge. The judge shall then select 10 named by lot from the panel. The defendant or his/her attorney may then challenge four of the prospective jurors and the City two. Additional names shall be selected to replace those jurors challenged.~~

~~When 10 jurors have been selected, they shall be notified to appear at trial at the appointed time and place. From the 10 prospective jurors, six shall be selected to serve as the jury. No further preemptory challenge shall be made by either the defendant or the City, but a prospective juror may be excused for cause. (Ord. 4545 § 1, 1982; Ord. 2730 § 7, 1957).~~

- (1) **For each jury trial date during a court term, the court clerk shall select at random at least 18 persons from the term jury list who are able to serve at the time required.**
- (2) **At the time of trial, the prospective jurors shall be examined as to their qualifications, first by the defendant and then by the City. After they have been passed for cause, preemptory challenges, if any, shall be exercised as provided in subsection 3 of this section. Each party may take challenges for cause and three preemptory challenges unless the judge grants additional challenges. When two or more defendants are tried together, each must join in any challenge or it cannot be taken unless the judge grants additional challenges.**
- (3) **Preemptory challenges shall be taken in writing by secret ballot as follows: the defendant may challenge one juror and the City may challenge one, alternating until the preemptory challenges are exhausted.**
- (4) **Notwithstanding subsection 2 of this section, the defendant and the City may stipulate to taking preemptory challenges orally.**

## 2.12.080 Conduct of trial.

Trials shall be conducted as herein provided and all matters not specifically provided for herein shall be governed by the applicable statutes **and rules** of the State for justice of the peace courts and shall include applicable statutes **and rules** of the State regarding the introduction or admission of evidence. (Ord. 2730 § 8, 1957).

## 2.12.095 Payment of witness fees.

Persons who have been subpoenaed as witnesses to appear in Municipal Court shall be entitled to receive compensation at the rate of [ ] per day plus mileage to and from their place of residence at the rate applicable to appearances in justice court. of [ ] per mile. (Ord. 5013 § 1, 1992; Ord. 3684 § 1, 1973).

## 2.12.100 Payment of jurors.

The jurors who are notified to appear at trial and are selected and serve as actual jurors shall be entitled to receive compensation at the rate of [ ] per day plus mileage to and from their place of residence at

the rate **applicable to appearances in justice court.** of [ ] per mile. Those jurors who are notified to appear at trial but are not selected as jurors shall be entitled to receive [ ] per day plus mileage at the rate of [ ] per mile to and from their place of residence **at the rate applicable to appearances in justice court.** (Ord. 5013 § 1, 1992; Ord. 3684 § 2, 1973; Ord. 2730 § 10, 1957).

### **2.12.110 Power of the Judge.**

The Judge shall have all inherent and statutory powers and duties of a justice of the peace within the jurisdictional limits of the City. The Chief of Police **or designee thereof** shall assist the Judge in the service of subpoenas, notices of jury duty and such other orders of the Court necessary for the proper conduct thereof.

The Judge may, by order, designate a member or members of the Police Department to act as a Clerk of the Court with authority to accept bail in accordance with a minimum bail schedule established by the Court.

The Judge shall be responsible for the keeping of such dockets and accounts necessary to properly record all proceedings of the Municipal Court.

In criminal cases in Municipal Court, the cost and disbursements shall be added to the fine, penalty or sentence imposed provided, the Court, at its discretion in justifiable cases, may on behalf of the City, waive payment of all or part of the costs and disbursements. (Ord. 4545 § 4, 1982; Ord. 2730 § 11, 1957).

### **2.16.010 Established.**

There is established a Planning Commission for the City which shall act as the planning and land use advisory body to the City Council and shall have such other powers and authority as described in this chapter **and state law.** (Ord. 3767 § 1, 1974; Ord. 1356 § 1, 1932).

### **2.16.020 Membership regulations**

~~(3) Any person appointed to membership upon the Planning and Zoning Commission may be removed by the City Council, after hearing, for misconduct or nonperformance of duty. Persons appointed to membership on the Planning Commission shall serve at the pleasure of the Council and may be removed therefrom without cause by vote of the Council.~~

(5) No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit as an individual, or be a member of a partnership, or officer or employee of any corporation **or other legal entity** that is engaged principally in the buying, selling or developing of real estate for profit.

~~(11) No member of the Commission shall vote on any question before the Commission in violation of state ethics laws. No member of the Commission shall vote on any question before the Commission in which said Commissioner has a direct or indirect financial interest nor in which any member of his/her family within the third degree has a direct or indirect financial interest. The interest of any Commission member shall be disclosed and entered on the minutes of the meeting.~~

## **Chapter 2.20 Parks and Recreation Commission**

### **2.20.20 Compensation and Records**

The member of the Parks and Recreation Commission shall serve without pay. The Commission shall annually select one of its members as chairperson. All records and proceedings shall remain in the office of the City ~~Recorder~~ **Clerk** as one of the public records of that office.

## Chapter 2.23 City Tree Commission

### 2.23.050 Procedures

The City Tree Commission shall elect a chairperson and a vice-chairperson and shall develop its own meeting schedule. A majority of the members shall constitute a quorum. The Commission shall keep a journal of its proceedings, which shall be kept on file in the office of the City ~~Recorder~~ Clerk.

## Chapter 2.24 ~~Civil Service Commission~~

~~2.24.010 Purpose and jurisdiction.~~

~~2.24.020 Appointment.~~

~~2.24.030 Meetings.~~

~~2.24.040 Secretary.~~

~~2.24.050 Subpoena powers.~~

~~2.24.060 Complaint filing.~~

~~2.24.070 Complaint form Hearing deadline and notice.~~

~~2.24.080 Witness fees.~~

~~2.24.090 Evidence and counsel at hearing.~~

~~2.24.100 Findings, conclusions and orders.~~

## Chapter 2.28 Emergency Management

### 2.28.010 Purposes.

The declared purposes of this chapter are to:

- (1) Provide for the preparation and carrying out of plans for the protection of persons and property within this City in the event of an emergency; the direction of the emergency management organization; and the coordination of the emergency functions of this City with all other public agencies, corporations, organizations and affected private persons; and
- (2) **Comply with federal directives requiring the use of the National Incident Management System (NIMS) including Incident Command System (ICS) on all emergencies within our jurisdiction and in all responses outside out jurisdiction on mutual aid: and**
- (3) Implement the provisions of ORS Chapter 401. (Ord. 5142 § 1, 1994).

### 2.28.030 Emergency Program Manager.

The City Manager is designated as the City of Albany Emergency Program Manager.

(1) The Emergency Program Manager may appoint an Emergency Management Coordinator to serve as his/her deputy and to coordinate the preparation of the Emergency Management Plan and operation of the City Emergency ~~Operations~~ **Coordination** Center.

(2) The City Emergency Program Manager shall be responsible for the development of the City Emergency Plan which shall provide for the effective mobilization of all of the resources of the City, both public and private, to meet any condition constituting a local emergency, and shall provide for the organization, powers and duties, services and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the City Council. (Ord. 5142 § 1, 1994).

~~2.28.050 Emergency Operations Planning Team.~~

~~The Emergency Operations Planning Team is created and shall consist of at least seven representatives as designated by the City Emergency Program Manager. (Ord. 5142 § 1, 1994).~~

~~2.28.060 Powers and duties of the Emergency Operations Planning Team.~~

~~The Emergency Operations Planning Team shall, under the supervision of the Emergency Program Manager, develop emergency plans and manage the emergency programs of this City, and shall have such other powers and duties as may be assigned by the Emergency Program Manager. (Ord. 5142 § 1, 1994).~~

2.28.070 Emergency organization – Composition. Members

All officers and employees of this City together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations and persons who may, by agreement or operation of law, including persons impressed into service under the provisions of AMC 2.28.0640(6)(c), charged with duties incident to the protection of life and property in this City during such emergency, shall constitute the emergency organization of the City. (Ord. 5142 § 1, 1994).

2.44 Volunteer Fire Department

2.44.020 Membership.

Volunteers to the Fire Department of the City shall be composed of persons who volunteer their services to assist the City in the prevention and extinguishment of fires. ~~The Any~~ volunteers shall be under the direction of the Chief of the Albany Fire Department, or in his/her absence, the Assistant Chief. ~~Volunteers shall, while on duty in assisting the Fire Department, conform to and comply with the directions of authorized officers of the City Fire Department~~ **this or /her designee.** (Ord. 5013 § 1, 1992; Ord. 4535 § 1, 1982; Ord. 2195 § 1, 1950).

~~2.92.020~~ 2.50 Public Library Board

2.50.010 Public Library Board appointments and terms.

There is hereby created a Public Library Board which shall consist of seven members. The Mayor shall appoint the members of the Board, with their appointment to be ratified by the City Council. The members shall be appointed at large from within the City. All members of the Board who have been appointed under the current policy of the City of Albany shall continue in office until the expiration of their terms of office. The first appointments made under this chapter shall be made so that two members' terms expire each year except in the third year in which one member's term shall expire. It is the intention that no more than ~~two~~ **three** members' terms shall expire in any one year. Appointments made under this chapter shall be for terms of four years. (Ord. 5678 § 1, 2007; Ord. 4912 § 1, 1990). (Move the above to 2.50, after 2.44.020)

~~Chapter 2.72 Audit of City Books~~ **Superseded by ORS 297.405-.990**

Chapter 2.88 – Initiative and Referendum

2.88.010 Initiative and referendum process – Authority.

The people of the City are authorized to enact, amend or repeal all local laws for the City by ~~the~~ initiative and referendum process. These powers are reserved to the people by Article IV of the Oregon Constitution. (Ord. 4251 § 1, 1979).

#### 2.88.030 Referendum petitions – Procedures.

Referendum petitions against any ordinance, franchise or resolution passed by the City Council shall be signed by not less than 10 percent of the registered voters of the City. The signatures shall be verified by the County Recorder in the manner provided by state statute. Prospective petitions shall be filed with the City ~~Recorder~~ **Clerk** within 30 days after the passage of the ordinance, resolution or franchise. Any ordinance bearing an emergency clause shall not be subject to referendum. (Ord. 5059 § 1, 1993; Ord. 4251 § 3, 1979).

#### 2.88.050 Action after filing petition.

Upon receipt of an initiative or referendum petition and following the verification that the aforesaid petition contains the requisite number of valid signatures, the petition shall be transmitted to the next session of the City Council. If the City Council shall reject the petition, the City ~~Recorder~~ **Clerk** shall submit it to the voters of the City at the next election held not less than 90 days after the verified petition was first presented to the Council. (Ord. 5059 § 4, 1993; Ord. 4251 § 5, 1979).

#### 2.88.060 Questions proposed in the petition.

The Council may ordain the ordinance or amendment and refer it to the people or it may ordain such ordinance without referring it to the people. If the latter is done, it shall be subject to referendum petition in like manner as other ordinances. If the Council rejects the ordinance or amendment or takes no action on it, it may ordain a competing ordinance or amendment, which shall be submitted by the City ~~Recorder~~ **Clerk** to the people of the City at the same election at which the initiative proposal is submitted. Said competing ordinance or amendment shall be prepared by the Council and ordained within 30 days allowed for its action on the measure proposed by the initiative petition. The Mayor shall not have the power to veto either of such measures. If conflicting ordinances or conflicting Charter amendments are submitted to the people at the same election and two or more conflicting measures are approved by the people, then the measure which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is conflict, even though such measure may not have received the greatest majority. (Ord. 4251 § 6, 1979).

#### 2.88.070 Voter's pamphlets.

Not less than 10 days before the election on which measures are to be voted upon, the City ~~Recorder~~ **Clerk** shall, when so directed by the City Council cause copies of voter's pamphlets containing such measures to be distributed in such a manner that a copy is available to each registered elector in the City. Arguments supporting or opposing municipal measures shall be filed with the City ~~Recorder~~ **Clerk** in conformance with the requirements of ORS ~~255.415~~. **251.255**. The person or organization filing any argument in support or opposing municipal measures shall pay to the City ~~Recorder~~ **Clerk**, at the time of filing such argument, a fee determined by the City ~~Recorder~~ **Clerk** to be sufficient to pay all the expenses for paper and printing of the argument, excluding binding, and the voter's pamphlet. When such arguments are printed in the voter's pamphlet and the cost finally determined, the City ~~Recorder~~ **Clerk** shall refund, to the person or organization who paid it to him/her, any surplus fee. The cost of printing, binding and distributing the arguments should be paid by the City, it being intended that only the cost of the paper in printing the arguments, excluding binding, shall be paid by the person or organizations filing them. It is intended to make the procedure, set forth in this chapter as nearly as practicable, the same as the initiative and referendum procedure for measures relating to people in the State at large. (Ord. 4510 § 5, 1982; Ord. 4251 § 7, 1979.)

#### 2.92.020 Public Library Board appointments and terms.

There is hereby created a Public Library Board which shall consist of seven members. The Mayor shall appoint the members of the Board, with their appointment to be ratified by the City Council. The members shall be appointed at large from within the City. All members of the Board who have been appointed under the current policy of the City of Albany shall continue in office until the expiration of



their terms of office. The first appointments made under this chapter shall be made so that two members' terms expire each year except in the third year in which one member's term shall expire. It is the intention that no more than two members' terms shall expire in any one year. Appointments made under this chapter shall be for terms of four years **from July 1 in the year of their appointment.** (Ord. 5678 § 1, 2007; Ord. 4912 § 1, 1990).

~~Chapter 2.100—Private Property Compensation Claims~~

**Chapter 2.100 Administrative delegation**

**Any power or duty granted or assigned by this code or the Charter to the City Manager may be delegated by the City Manager as he or she may determine to be in the best interests of the city.**

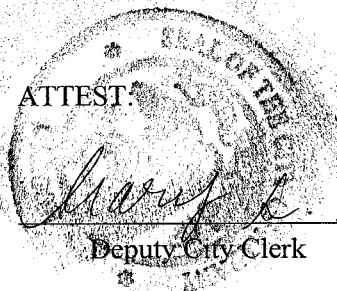

Section 2: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect immediately upon its passage by the Council and approved by the Mayor.

Passed by the Council: March 28, 2012

Approved by the Mayor: March 28, 2012

Effective Date: March 28, 2012

  
\_\_\_\_\_  
Mayor

ATTEST:  
  
  
\_\_\_\_\_  
Deputy City Clerk