

— Oregon Municipal Handbook —

CHAPTER 6: MUNICIPAL COURTS



Chapter 6: Municipal Courts

This chapter addresses the role that municipal courts play in cities across Oregon. Part I covers the authority that cities have to create municipal courts through their local charter or by ordinance. Part II provides an overview of the jurisdiction that municipal courts possess to hear violations and misdemeanors under state and local law. Part III then turns to the process of hearing these types of cases, with a particular focus on when and where criminal procedure, aspects of which are guaranteed by the Oregon and U.S. Constitutions, might be required in municipal court. Finally, Part IV covers the intricacies of appealing a municipal court decision and, ultimately, how to enforce municipal court judgments against defendants.

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I. CREATING MUNICIPAL COURTS

As with city charters, the authority for cities to create municipal courts exists under the Oregon Constitution.¹ Article VII, Section 1, which states, “Municipal Courts may be created to administer the regulations of incorporated towns, and cities.”² Unlike city charters, however, municipal courts are authorized under the original Oregon Constitution, ratified in 1857, not the 1906 home rule amendments.³ Prior to 1906, municipal courts were conferred jurisdiction by special laws of the Oregon Legislature.⁴

Under state law, a municipal court may be created either “by charter *or* by ordinance.”⁵ For many cities, municipal courts are established by charter.⁶ Municipal courts must comply with a number of state and federal requirements that govern the judicial process, but are also subject to local laws.⁷ Cities that establish a municipal court must decide whether its judges will be elected or appointed and also how long its judges will serve in office.⁸ Some cities go further and prohibit judges from practicing law while serving on the bench, for example.⁹ Others develop their own sets of local court procedures, provided these procedures comply with all state and federal requirements.¹⁰

As an alternative to creating a municipal court, any city may enter into an agreement with a justice court, such as one operated by a county, or another municipal court to provide the city with court services.¹¹ Cities may also contract with the local county circuit court for these services through the state court administrator.¹² Contracting with these other courts for them to serve as a city’s municipal court does not constitute the holding of two public offices for the judge or judges who work in this capacity.¹³

¹ Or Const, Art VII, § 1.

² *Id.*

³ *Id.*

⁴ *See* Grayson v. State, 249 Or 92, 101 (1968).

⁵ ORS 221.336 (emphasis added).

⁶ *See, e.g.*, EUGENE, OR., CHARTER Ch. 5, § 17 (2019); *see also* LEAGUE OF OREGON CITIES, MODEL CHARTER FOR OREGON CITIES 7-9 (2018), <https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf> (last accessed Sept. 2, 2020).

⁷ *See, e.g.*, SALEM, OR., CODE § 4.001 (2020);

⁸ *Id.* at § 4.020.

⁹ *Id.*

¹⁰ *See, e.g.*, EUGENE, OR., CODE § 2.785 (2020);

¹¹ ORS 221.355; *see also* ORS 51.037.

¹² ORS 221.357.

¹³ *Id.*

For cities with a population of more than 300,000 — Portland being the only such city — the circuit court must serve as the city’s municipal court.¹⁴ Significantly, Portland is not prohibited from holding quasi-judicial hearings to investigate violations of Portland laws, nor is it prohibited from enforcing local laws through civil penalties or other relief.¹⁵ However, the city cannot exercise this quasi-judicial authority for “any traffic or parking offense.”¹⁶ These latter offenses are reserved for the Multnomah County Circuit Court.¹⁷

State law does not specify a process for cities to **abolish** their municipal courts.¹⁸ Unfortunately, unless their local charter or ordinances say otherwise, cities are left without much guidance when terminating the operation of their municipal court. That said, state law does provide a process for abolishing justice courts, if a county seeks to do so.¹⁹ The main requirement for counties when abolishing a justice court is to send “the docket and files of that court” to the clerk of the county circuit court.²⁰ While it does not appear to be statutorily required,²¹ the LOC strongly encourages cities to do the same with their court records if any choose to abolish their municipal court. Failing to do so could present due process concerns over pending or past litigation.

II. JURISDICTION

Under the Oregon Constitution, municipal courts possess jurisdiction over local “regulations.”²² At a minimum, this means that municipal courts have jurisdiction to hear cases involving its city’s ordinances.²³

In addition, state law vests municipal courts with jurisdiction over “all violations” and most misdemeanors that are “committed or triable in the city.”²⁴ This means municipal courts also have jurisdiction to hear cases involving violations or misdemeanors *under state law*.²⁵ One

¹⁴ ORS 3.136.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See generally* ORS 221.336 to ORS 221.358.

¹⁹ ORS 51.130.

²⁰ *Id.*

²¹ In the context of hearing state offenses, state courts have held that municipal courts act as justice courts. *See, e.g., City of Salem v. Bruner*, 299 Or 262, 265 (1985). Arguably, this provides a legal framework to find that municipal courts are also “justice courts” in the context of a city’s decision to abolish its municipal court, particularly where that municipal court has tried defendants for state offenses.

²² Or Const, Art VII, § 1.

²³ *See* ORS 221.339.

²⁴ *Id.*

²⁵ *Id.* Arguably, there is a limit on the civil jurisdiction of municipal courts. On multiple occasions, Oregon courts have found that municipal courts operate as “justice courts” under ORS Chapter 51 when adjudicating state offenses.

exception to this is “designated drug-related misdemeanors” under ORS 423.478, which are expressly excluded from the jurisdiction of municipal courts.²⁶ Municipal courts also are clearly limited to hearing misdemeanor cases; in that sense, municipal courts cannot hear any cases that involve felony charges, nor may cities adopt their own felony criminal ordinances.²⁷ Felonies are any crimes punishable by more than a year in prison, and the punishment of these crimes is exclusive to state law and state courts.²⁸

Municipal courts have what is known as **concurrent jurisdiction** over violations and (most) misdemeanors that happen within their city limits.²⁹ The circuit court for the county in which the city is located, as well as any justice courts established by the county, have jurisdiction over the same set of violations and misdemeanors.³⁰

Cities may decide to limit the jurisdiction of their municipal courts to certain subjects, thereby leaving jurisdiction over those matters to the circuit court or a justice court in their county.³¹ There are exceptions, however.³² If a city establishes a municipal court, that court must retain jurisdiction over two types of laws. First, a city cannot ever restrict the court’s jurisdiction over any “misdemeanors created by the city’s own charter or by ordinances.”³³ Second, a city cannot restrict its court’s jurisdiction over state “traffic crimes as defined in ORS 801.545,” meaning that all municipal courts that are established must hear traffic crimes if they are filed in the court.³⁴

Jurisdiction of Municipal Courts

Municipal courts may hear any of the following types of cases under state or local law, if authorized by the city’s charter or by ordinance:

- 1) All violations committed or triable in the city; and
- 2) Misdemeanors committed or triable in the city, except for designated drug-related misdemeanors.

Municipal courts must hear the following types of cases:

- 1) Misdemeanors created by the city’s own charter or by ordinance; and
- 2) Traffic crimes, as defined under ORS 801.545.

See, e.g., City of Brookings v. Harmon, 86 Or App 534, 535 (1987). Under Chapter 51, the civil jurisdiction of justice courts is limited to “the recovery of any penalty or forfeiture ... not exceeding \$10,000. ORS 51.080(1)(c).

²⁶ ORS 221.339(3).

²⁷ *Id.*

²⁸ *Id.*

²⁹ ORS 221.339(1)-(2).

³⁰ *Id.*

³¹ ORS 221.339(4).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

Local violations and misdemeanors generally are enforced in municipal court, though a city may choose to enter into an agreement with the district attorney to prosecute these offenses in circuit court.³⁵ State violations and misdemeanors that occur within a city can appear either in circuit court or in municipal court. These offenses can be prosecuted either by the district attorney or a city attorney.³⁶ Absent a written agreement with a city, the district attorney does not have superior authority over city attorneys to prosecute state violations or misdemeanors that occur within the city.³⁷ By law, city attorneys have equal authority to prosecute; as such, whether state violations and most state misdemeanors are decided in municipal court or circuit court often comes down to where the citing officer files the matter.³⁸

Finally, state law does not prohibit cities from creating private rights of action that allow individuals to sue other individuals in municipal court.³⁹ On one occasion, the Oregon Court of Appeals upheld a Portland law that created a private right of action for an individual to sue a local business under an anti-discrimination ordinance.⁴⁰ In general, most cities have not taken the steps to create private rights of action under state law; therefore, almost all cases that are heard in municipal courts are filed by local prosecutors enforcing state or local offenses.

III. COURT PROCESS

Assuming a municipal court has jurisdiction to hear a case, the next step for the court is determining what procedures to follow in adjudicating the case. In many cases, the first potential issue is a motion to transfer the case to circuit court. This is an option for defendants in certain circumstances.⁴¹ If there is no transfer, then municipal courts proceed under the rules for civil or criminal cases under ORS chapter 153 and the Oregon Criminal Code, respectively.⁴² Cities may modify these processes under local law, provided these laws do not conflict with state law.⁴³ Finally, the classification of certain offenses as “violations” does not always absolve municipal courts of the need for criminal procedure when trying the offense.⁴⁴ On appeal, courts may look at several factors to determine whether a so-called violation should have been treated as a crime

³⁵ ORS 221.315.

³⁶ ORS 221.339(5); *see also* Clatsop County Dist. Attorney v. City of Astoria, 266 Or App 769, 782-83 (2014).

³⁷ *Id.*

³⁸ *Id.* at 784.

³⁹ *See* Sims v Besaw’s Cafe, 16 O App 180, 185 (2000).

⁴⁰ *Id.* at 183.

⁴¹ *See, e.g.,* City of Brookings v. Harmon, 86 Or App 534, 535 (1987).

⁴² *See* ORS 153.030 *et. seq.*; *see also* ORS Chapters 131-138, 142, 146, 147, and 151.

⁴³ *See, e.g.,* SALEM, OR., CODE § 4.001 (2020).

⁴⁴ *See* Brown v. Multnomah Cty. Dist. Ct., 280 Or 95, 102-108 (1977).

in municipal court, including the nature and enforcement of the offense, the size of the fine, and whether any other punitive measures were taken against the defendant.⁴⁵

A. Transfers to Circuit Court

Under state law, some cases in municipal court may be transferred to state court, meaning that the case will be heard by the circuit court for the county in which the city is located rather than by the city’s municipal court.⁴⁶ A case in municipal court may be transferred to state court if: **(1)** the defendant is charged with certain offenses under state law and **(2)** the municipal court is not a **court of record**.⁴⁷ If a case can be transferred, the municipal court must notify the defendant of this right to transfer at their arraignment.⁴⁸

i. Establishing a Municipal Court of Record

A court of record is a standard set by state law for municipal courts and justice courts.⁴⁹ To become a court of record, municipal courts must meet certain requirements.⁵⁰ First, the municipal judge or judges must be members of the Oregon State Bar.⁵¹ This is not required for municipal courts that are not courts of record, though many municipal judges meet this requirement anyway.⁵² Second, the city must provide a court reporter or some audio recording device for its municipal court.⁵³ Third, the city’s governing body must adopt an ordinance that approves making the municipal court a court of record.⁵⁴ Fourth, the city must then file a declaration with the Oregon Supreme Court stating that it meets these requirements.⁵⁵ The declaration must also provide the address and the telephone number for the clerk of the municipal court and the date on which the municipal court will “commence operations” as a court of record.⁵⁶ The Oregon Supreme Court cannot charge a fee for this declaration.⁵⁷ Fifth and finally, upon reviewing this declaration, the Oregon Supreme Court must enter an order that acknowledges the city’s municipal court as a court of record.⁵⁸

⁴⁵ *Id.*

⁴⁶ *Harmon*, 86 Or App at 535; *see also* ORS 51.050(2).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ ORS 221.342; ORS 51.025.

⁵⁰ ORS 221.342.

⁵¹ ORS 221.342(6).

⁵² *See, e.g.*, SALEM, OR., CODE § 4.015(b) (2020); *see also* FLORENCE, OR., CODE § 1-5-2-3 (2020).

⁵³ ORS 221.342(4).

⁵⁴ ORS 221.342(1)(a).

⁵⁵ ORS 221.342(2).

⁵⁶ *Id.*

⁵⁷ ORS 221.342(3).

⁵⁸ ORS 221.342(1)(b).

For the most part, municipal courts in Oregon are not acknowledged courts of record.⁵⁹ At present, only six cities have taken the steps needed to establish municipal courts of record, those cities being West Linn, St. Helens, Lake Oswego, Beaverton, Florence and Milwaukie.⁶⁰ For these cities and any other cities that choose to declare their municipal court a court of record, there is a process for reversing that declaration in the future.⁶¹ To cease operating a court of record, the city must file a declaration with the Oregon Supreme Court and specify the date this change will take effect.⁶²

i. Right to Transfer in Certain Cases

The significance of establishing or not establishing a court of record is that it can affect the right of individuals, under state law, to transfer a case out of municipal court.⁶³ Note that whether a municipal court is a court of record also affects the way in which an individual may appeal the court's decision.⁶⁴ This issue is addressed in the section below on municipal court appeals.

Defendants in municipal court who are charged with a **state misdemeanor** have a statutory right to transfer their case into the circuit court for the county in which the municipal court is located.⁶⁵ State violations, such as traffic offenses, generally do not grant defendants a right to transfer.⁶⁶ Also, as noted above, this right created by ORS

Establishing a Local Court of Record

- 1) The municipal judge or judges must be members of the Oregon State Bar;
- 2) The municipal court must have a court reporter or some form of audio recording device;
- 3) The city must adopt an ordinance approving the court of record;
- 4) The city must file a declaration with the Oregon Supreme Court that provides a start date for the court of record; and
- 5) The Oregon Supreme Court must acknowledge this declaration in an order.

⁵⁹ *Oregon Justice/Municipal Court Registry*, Oregon Judicial Department, https://www.courts.oregon.gov/courts/Documents/rpt_JP-Muni_Court_Registry_by_County.pdf (last accessed Nov. 13, 2020).

⁶⁰ *Other Courts*, Oregon Judicial Department, <https://www.courts.oregon.gov/courts/pages/other-courts.aspx> (last accessed Nov. 13, 2020).

⁶¹ ORS 221.343.

⁶² *Id.*

⁶³ ORS 51.050(2).

⁶⁴ ORS 221.342(5).

⁶⁵ ORS 51.050(2).

⁶⁶ *Id.* (noting that the statute only applies to “a defendant charged with a misdemeanor”). However, note that defendants have a right to transfer a civil case to circuit court under ORS 52.320 if they present counterclaims that exceed \$10,000 in damages, thereby exceeding the jurisdiction of “justice courts” under ORS Chapter 51. *See* ORS 52.320; *see also* ORS 51.080(1)(c). This could be relevant for municipal courts because Oregon courts have found that municipal courts operate as “justice courts” under ORS Chapter 51 when adjudicating state criminal offenses. *See, e.g.,* *City of Brookings v. Harmon*, 86 Or App 534, 535 (1987). Arguably then, a municipal court adjudicating a

51.050(2) extends only to instances where the municipal court is not a court of record.⁶⁷ If a municipal court is a court of record, state law does not provide a right to a transfer and the case is heard in municipal court.⁶⁸ It also is unlikely that a city could create a right to transfer under local law, either for defendants of state violations or whose cases are being heard in a court of record, because by doing so the city would be expanding the jurisdiction of Oregon’s circuit courts.⁶⁹ Cities do not have the authority to compel a state court to hear cases arising in municipal court; this power lies with the legislature.⁷⁰

Under state law, if a defendant has a right to transfer their case to circuit court, then the municipal court is statutorily required to notify the defendant of this right at the arraignment, with the notice coming “immediately after” a plea of not guilty.⁷¹ For example, a defendant who is charged with the offense of driving under the influence (DUI), a class A misdemeanor under state law, has a right to transfer their case out of a municipal court that is not a court of record.⁷² If a city prosecutes this case in municipal court and the defendant enters a plea of not guilty, the municipal court must notify the defendant of their right to transfer the case to circuit court.⁷³

By contrast, defendants who are charged in municipal court with a local misdemeanor cannot transfer their case to circuit court under state law.⁷⁴ The statute in question, ORS 51.050, only creates this right for individuals charged with state misdemeanors because that is the only capacity in which a municipal court acts as a “justice court.”⁷⁵ Just as a city cannot create a right to transfer for municipal court cases arising under state law, a city also cannot create a right to transfer for cases of local offenses.⁷⁶ Doing so would impermissibly expand the jurisdiction of the circuit court.⁷⁷

state *civil* offense is likewise a justice court and thus subject to the jurisdictional limitations under ORS Chapter 51 and the right to transfer for defendants created under ORS Chapter 52.

⁶⁷ ORS 51.050(2).

⁶⁸ *Id.*

⁶⁹ *See City of Brookings v. Harmon*, 86 Or App 534, 535 (1987) (holding that “a city cannot enlarge the jurisdiction of a state court beyond that provided by state law.”).

⁷⁰ *Id.*

⁷¹ ORS 51.050(2).

⁷² ORS 813.010(4).

⁷³ ORS 51.050(2).

⁷⁴ *Id.*; *see also Harmon*, 86 Or App at 535.

⁷⁵ ORS 51.05(2); *see also City of Milton-Freewater v. Ashley*, 214 Or App 526, 531 (2007) (holding that “when a municipal court that has not become a court of record prosecutes state misdemeanor offenses ... the municipal court is exercising its authority as a justice court.”).

⁷⁶ *Harmon*, 86 Or App at 535.

⁷⁷ *Id.*

B. Criminal Proceedings

Whenever a municipal court hears a misdemeanor case, whether it is under state or local law, the municipal court must follow the process for a criminal case that is established by the Oregon Constitution and Oregon statutes. State law defines a misdemeanor as a “crime” because a misdemeanor carries a possible sentence of up to one year of imprisonment.⁷⁸ Under state law, any crime that is punishable with a term of imprisonment is a crime.⁷⁹ As such, any defendant who is charged with a misdemeanor in municipal court is entitled to the procedural rights of a criminal defendant.⁸⁰

Many of these rights are provided by Article 1, Sections 11 and 12, of the Oregon Constitution.⁸¹ This section grants every defendant of a criminal prosecution: **(1)** the right to a public trial in the county where the offense is alleged to have been committed; **(2)** the right to appear in court with counsel and know the charges against them; **(3)** the right to meet witnesses face to face; **(4)** the right to subpoena their own witnesses; **(5)** the freedom from self-incrimination; **(6)** and the freedom from being tried for a local or state offense if they already have been acquitted of the charge.⁸² This section also grants criminal defendants the right to choose a trial by court, with the judge as the trier of fact, instead of a trial by jury.⁸³

In addition to these protections, federal constitutional case law provides another layer of rights in a criminal proceeding in municipal court. The rights of criminal defendants under the U.S. Constitution are incorporated against the states under the 14th Amendment.⁸⁴ For cities, one of the most significant rights is the right of indigent defendants to court-appointed counsel.⁸⁵ If any defendant cannot afford to hire an attorney to represent them in municipal court on criminal charges, that court must provide the defendant with the option of selecting an attorney appointed to them by the court.⁸⁶ The rights of criminal defendants under the federal constitution, as well as the Oregon Constitution, make it all the more important for municipal courts to follow the right procedures when hearing a criminal case.

Beyond these constitutional provisions, the Oregon Criminal Code specifies procedures for how criminal cases are to be heard.⁸⁷ ORS Chapter 135, for example, addresses how courts

⁷⁸ ORS 161.545.

⁷⁹ ORS 161.515

⁸⁰ *See, e.g.*, Or Const, Art I, § 11-12.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See* *Argersinger v. Hamlin*, 407 U.S. 25, 27 (1972).

⁸⁵ *Id.* at 36.

⁸⁶ *Id.*

⁸⁷ *See, e.g.*, ORS Chapters 135 and 136.

are to proceed with arraignment, pleadings, and pretrial motions.⁸⁸ ORS Chapter 136 governs the criminal trial and covers jury selection, the conduct of the trial, and the process of seeking and obtaining witnesses by subpoena.⁸⁹

Finally, cities may establish local laws that pertain to their municipal court hearing criminal cases.⁹⁰ While these laws cannot conflict with statutory requirements, they can provide additional requirements.⁹¹ For example, in addition to the eligibility requirements for jurors under state law, the city of Salem requires that any juror in its municipal court must have been a resident of the city for no less than three months preceding their jury summons.⁹²

C. Civil Violation Proceedings

Whenever a municipal court hears a case that is not a misdemeanor but rather a violation, the judicial process is different.⁹³ Civil violations include traffic-related offenses, nuisances, and land use zoning offenses, among others. Unlike misdemeanors, defendants who are charged with violations are not seen as criminal defendants and so the constitutional safeguards mentioned in the preceding section generally do not apply.⁹⁴ Instead, municipal courts proceed under a set of civil trial standards that are found under ORS Chapter 153.⁹⁵

Violations must be enforced by a citation that includes information about the alleged violation and a summons that directs the person cited to appear in court.⁹⁶ If the person requests a trial, the trial must be conducted in the following way. First, the city must provide the defendant with the date, time, and place where the trial will occur and must do so at least **five days** before the date set for the trial. Second, the trial must be scheduled at least **seven days** from the date of the initial citation.⁹⁷ Third, state law prohibits a trial by jury for a violation; all violations, if they go to trial, must be tried by the court sitting without a jury.⁹⁸ Fourth, the burden of proof for the prosecutor is a preponderance of the evidence, which means that the court must find it is more likely than not that the defendant is guilty of the alleged violation.⁹⁹

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *See, e.g.*, SALEM, OR., CODE § 4.001 (2020).

⁹¹ *Id.*

⁹² *Id.* at § 4.

⁹³ ORS 153.030.

⁹⁴ *See*, Or Const, Art I, § 11-12 (providing that a defendant's rights apply in "*criminal* prosecutions.") (emphasis added).

⁹⁵ *Id.*

⁹⁶ ORS 153.045.

⁹⁷ ORS 153.073; *see also* ORS 153.076.

⁹⁸ ORS 153.076(1).

⁹⁹ ORS 153.076(2).

Fifth, state law prohibits a defendant from receiving court-appointed counsel in a case where only violations are charged.¹⁰⁰

On one hand, violation proceedings are clearly subject to a more lenient standard than criminal cases, as demonstrated by the lower burden of proof, the lack of a trial by jury, and the absence of court-appointed counsel.¹⁰¹ On the other hand, violation proceedings do encompass some of the rigor of criminal proceedings.¹⁰² For example, the defendant in a violation proceeding still may not be required to testify against themselves in a trial.¹⁰³ Moreover, pretrial discovery is governed by the same rules as a criminal case.¹⁰⁴

As with criminal cases, cities may adopt local procedures that change how municipal courts hear violations, as long as these local laws do not conflict with what is required under state law.¹⁰⁵ One common way for cities to expedite the violations process is by establishing a violations clerk within their court who can assist the municipal court in processing violations.¹⁰⁶ Violation clerks are optional under state law and generally have authority to accept the following from individuals who have been cited for a violation: (1) written appearances; (2) waivers of trial; (3) pleas of no contest; and (4) payment of fines, costs, and assessments.¹⁰⁷

i. ‘Criminal’ Civil Violations

Simply characterizing an offense as a “violation” under local law does not make it one. Oregon appellate courts have the authority to find, upon review, that criminal procedure should have been required in municipal court for a violation.¹⁰⁸ For courts, the most obvious factor in this analysis is identifying whether the purported violation carried a potential sentence of imprisonment.¹⁰⁹ If a violation is punishable by imprisonment, it falls within the statutory definition of a “crime” under state law and triggers the need for criminal process.¹¹⁰ With that aside, a court will also consider other factors when deciding whether criminal process should have been required.¹¹¹ These other factors are discussed in detail here.

¹⁰⁰ ORS 153.076(5).

¹⁰¹ ORS 153.076.

¹⁰² *Id.*

¹⁰³ ORS 153.076(4).

¹⁰⁴ ORS 153.076(3).

¹⁰⁵ *See, e.g.*, SALEM, OR., CODE § 4.070 (2020).

¹⁰⁶ ORS 153.800.

¹⁰⁷ *Id.*

¹⁰⁸ *See Brown v. Multnomah Cty. Dist. Ct.*, 280 Or 95, 102-108 (1977).

¹⁰⁹ *Id.*

¹¹⁰ ORS 161.515.

¹¹¹ *Brown*, 280 Or at 102-108.

Oregon courts rely on five factors when deciding whether an “ostensibly civil penalty proceeding” is a criminal proceeding for the purposes of the U.S. and Oregon Constitutions.¹¹² These factors originated in *Brown v. Multnomah County District Court* (1977). In *Brown*, a defendant accused of drunk driving was charged with a non-criminal “traffic infraction” that was subject only to “civil penalties,” namely a fine.¹¹³ The defendant petitioned for an order that would appoint him counsel and require a trial by jury with proof beyond a reasonable doubt.¹¹⁴ The district court refused to grant this order and the lawsuit ensued.¹¹⁵ The *Brown* court rejected the court’s argument that criminal process was unnecessary because imprisonment was not at stake; instead, the court held that “the absence of potential imprisonment does not conclusively prove a punishment non-criminal.”¹¹⁶ For such a conclusion, the court established five key factors: (1) type of offense; (2) penalty; (3) collateral consequences; (4) punitive significance; and (5) arrest and detention.¹¹⁷ Outlined below, these factors apply to municipal offenses in the following ways.

Five Factors of a Criminal Proceeding

- 1) The type of offense;
- 2) Whether the defendant was arrested or detained beyond the time needed to identify and cite the individual;
- 3) The severity of the penalty;
- 4) The punitive significance of the penalty; and
- 5) Collateral consequences of the penalty.

a. Nature of the Offense

A local offense that is a crime under state law, or otherwise resembles a crime, likely will require criminal process, regardless of whether it is classified as a misdemeanor or a violation. The *Brown* court identified this as a factor because it realized non-criminal offenses could be “procedural short-cuts” to punishing criminal conduct.¹¹⁸ Therefore, the court reasoned that a criminal proceeding might be warranted for offenses that exist as crimes at common law or are criminalized under the Oregon Criminal Code.¹¹⁹

Since *Brown*, Oregon courts have applied considerable weight to this factor, especially where the offense is defined as a crime under state law.¹²⁰ In *State v. Benoit* (2013), for instance,

¹¹² See *Brown v. Multnomah Cty. Dist. Ct.*, 280 Or 95, 102-108 (1977).

¹¹³ *Id.* at 97.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 103.

¹¹⁷ *Id.* at 102-108.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See *State v. Benoit*, 354 Or 302, 312-13 (2013).

the Oregon Supreme Court found that the type of offense was among “the most significant factors” as applied to those particular facts.¹²¹ That case involved a charge of criminal trespass stemming from an “Occupy” protest.¹²² Following the defendant’s arrest, the state chose under ORS 161.566¹²³ to prosecute the charge as a violation instead of a misdemeanor.¹²⁴ The court found this move unconstitutional; citing *Brown*, the court held that because the conduct was expressly criminal under state law, it remained “a criminal offense for constitutional purposes.”¹²⁵

Many offenses under local law duplicate existing crimes under Oregon law.¹²⁶ Other offenses have always been considered criminal and were crimes at common law well before the enactment of the Oregon Criminal Code.¹²⁷ For these types of offenses, cities should always prosecute them as crimes, i.e., misdemeanors, not as violations.

b. Arrest and Detention

Enforcement of a municipal offense, coupled with an arrest and search of the defendant, also will trigger criminal process requirements. In *Brown*, the court reasoned that any use of detention “beyond the needs of identifying, citing and protecting the individual or ‘grounding’ him ... comports with criminal rather than civil procedures.”¹²⁸ The court found this to be true especially where bail is required.¹²⁹ As applied to the facts, the court found it persuasive that “traffic offenses” under state law at the time retained pretrial practices, such as the arrest, search, and booking of a person, indicating that the traffic hearings provided for under the law were in truth criminal proceedings.¹³⁰

ORS Chapter 153 prohibits the arrest and search of individuals who are only cited for violations. For violations, officers may detain individuals only briefly to “establish the identity of the person,” “conduct any investigation reasonably related to the violation,” and “issue a citation.”¹³¹ If local police were to arrest, search, and book an individual for a violation, these actions would by definition be more affiliated with a criminal proceeding than the one outlined

¹²¹ *Id.*

¹²² *Id.* at 304.

¹²³ Theoretically, a city might use this provision when enforcing statutory misdemeanors. *See* ORS 221.339 (2017). This is a bad idea based on the Court’s ruling in *Benoit* and its companion case, *State v. Fuller*, 354 Or 295, 300 (2013). These cases appear to preclude its use, at least for misdemeanors that are based in common law.

¹²⁴ *Benoit*, 354 Or at 304.

¹²⁵ *Id.* at 308.

¹²⁶ *See, e.g.*, SALEM, OR., CODE § 95.040 (2020) (prohibiting assault).

¹²⁷ *See, e.g.*, PORTLAND, OR., CODE § 14A.40.050 (2020) (prohibiting unlawful prostitution).

¹²⁸ *See Brown v. Multnomah Cty. Dist. Ct.*, 280 Or 95, 108 (1977).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *See* ORS 153.039.

under ORS Chapter 153. It also is worth noting that such an arrest clearly would violate state law and likely would violate due process provisions in the U.S. and Oregon Constitutions.¹³²

c. Non-imprisonment Penalties and Punitive Significance

Where a penalty does not carry a sentence of imprisonment, the nature of the penalty in a civil proceeding often is not a decisive factor in determining whether the proceeding is truly a criminal proceeding. In *Brown*, the court noted that determining whether a particular judgment carries a stigmatizing effect is a test that “has been criticized for its difficulty.”¹³³ Decisions of later courts similarly have avoided deciding what proceedings are criminal proceedings based on the amount of the monetary penalty.¹³⁴

In the forty years since *Brown*, the Oregon Legislature enacted laws that restrict the ability of cities to impose certain penalties, particularly fines and civil forfeitures. Where statutes do not prohibit a type of penalty, the possibility remains that a non-imprisonment penalty could transform a proceeding into a criminal proceeding if it is “so strikingly severe as to carry the same punitive significance” as a crime.¹³⁵ In *Brown*, the court applied this analysis to a traffic violation and found that the “\$1,000 fine for driving under the influence [to] be at the margin of legislative discretion.”¹³⁶ The court went on to find that the “magnitude of the potential fine” and other sanctions indicated that the traffic violation proceeding constituted a criminal proceeding.¹³⁷ Obviously, a \$1,000 penalty in 1977 dollars is much more than \$1,000 in today’s dollars.

The following penalties are common alternatives to imprisonment for defendants found guilty of municipal offenses, including fines, forfeitures, and other penalties.

1. Fines.

State law today places a ceiling on the size of fines that cities can establish for municipal offenses.¹³⁸ Municipal penalties that stay within the maximum fines established for violations under state law will avoid triggering a criminal proceeding under *Brown* or violating state law.

¹³² Citizens are protected against unreasonable searches and seizures. *See generally* U.S. CONST. amend. IV. An arrest of an individual for a mere violation, a practice not authorized by state law, seems to qualify as unreasonable.

¹³³ *Brown*, 280 Or at 106.

¹³⁴ *See* State v. Benoit, 354 Or 302, 312-13 (2013); *see also* State v. Fuller, 354 Or 295, 300 (2013).

¹³⁵ *Brown*, 280 Or at 104-105.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ ORS 153.018.

The maximum fine for a class A violation in Oregon is \$2,000 for an individual and \$4,000 for a corporation.¹³⁹ Cities may impose any fine for an ordinance that is within these limits.

2. Civil Forfeitures

State law also limits the ability of municipalities to use civil forfeiture proceedings as a penalty for municipal violations.¹⁴⁰ Under ORS Chapter 131A, a city may forfeit real or personal property in connection with a municipal offense, but only where that offense “constitutes the commission of a crime” under state law and only where the person or an accomplice “has been convicted of a crime.”¹⁴¹ The conviction element is required under the Oregon Constitution as a result of a ballot measure titled the Oregon Property Protection Act of 2000.¹⁴² A common example of a civil forfeiture is the seizure of money that was gained as part of an illicit transaction. Whenever a municipal offense constitutes a crime and the defendant has been convicted of the crime, the city may proceed with a civil forfeiture proceeding without any need to provide the person court-appointed counsel.¹⁴³ Using the same factor analysis under *Brown*, the court found in *Selness* that a forfeiture proceeding is not a criminal proceeding for purposes of double jeopardy under the Fifth Amendment and the Oregon Constitution.¹⁴⁴ From this case, it is apparent that Oregon courts do not view civil forfeiture proceedings as tantamount to criminal proceedings under *Brown*.

3. Suspension or Revocation of a License

Unlike forfeitures, proceedings to suspend or revoke a local license are not subject to constitutional restrictions. Where a city is free to impose this as a penalty, the proceeding to enforce it likely will not trigger one’s rights to a criminal proceeding. The court consistently has held that revocation of a person’s license — either directly or indirectly as a result of a judgment — does not carry the same punitive significance as an excessive fine or jail sentence.¹⁴⁵ The *Brown* court reached this finding in a case that involved a person’s driver’s license.¹⁴⁶ The same conclusion has been reached for a professional license; the court held in *In re Conduct of Harris* that revocation of an attorney’s bar license did not amount to a criminal proceeding.¹⁴⁷ Based on

¹³⁹ See ORS 153.018. By comparison, the maximum fine for a misdemeanor is \$6,250. See ORS 161.635. Lower classes of violations carry even lower fines. For class B violations, the maximum fine is \$1,000. ORS 153.018. Class C and D violations carry fines of \$500 and \$250, respectively. *Id.*

¹⁴⁰ ORS 131A.010.

¹⁴¹ See ORS 131A.010, 131A.255.

¹⁴² Or Const Art. 15, § 10.

¹⁴³ See *State v. Selness*, 334 Or 515, 536 (2002).

¹⁴⁴ *Id.*

¹⁴⁵ See *Brown v. Multnomah Cty. Dist. Ct.*, 280 Or 95, 105 (1977); see also *In re Conduct of Harris*, 334 Or 353, 358 (2002).

¹⁴⁶ *Brown*, 280 Or 95 at 105.

¹⁴⁷ *Harris*, 334 Or at 358. The Court found the attorney did not possess a right to counsel as a result. *Id.*

these cases, it seems likely that a penalty impacting a locally issued license would not amount to a criminal proceeding either. It should be noted, of course, that an individual is entitled to due process prior to the suspension or revocation of their license. A licensed individual possesses a property interest in their license and the privileges associated with the license. As such, a license is property in the same way that money is property, and a civil license penalty entitles a person to due process in the same way that a monetary fine would.

4. Community Service

Finally, enforcement of an ordinance with a penalty of community service might constitute a criminal proceeding in extreme cases under the *Brown* factors. This outcome would on the amount and type of community service authorized by the local ordinance. Essentially, a court could at some point find that a particular sentence of community service resembles a criminal penalty because it “carries stigmatizing or condemnatory significance,” just as the nominally civil traffic offense did in *Brown*.¹⁴⁸

While courts have yet to address the punitive significance of community service, at least one court has found that service on a “work crew” is a stigmatizing penalty.¹⁴⁹ In *Langford*, a defendant who refused to serve on a work crew was found not to be in contempt of a court order requiring 10 days of community service.¹⁵⁰ In *Langford*, the state argued that the contempt conviction did not carry any “stigmatizing collateral consequence” because the defendant’s conduct was only punishable by hours on a work crew, not by a sentence of imprisonment. The Court of Appeals rejected this argument, finding in part that “assignment to a work crew arguably carries with it a social stigma even greater than confinement because work crew is served in view of the general public.”¹⁵¹ Based on this reasoning, it is at least possible that a future court could conclude that an order of community service is similar to a work crew order in that it requires a defendant to carry out the sentence requirements in public. Conversely, it is possible a court could find that community service is less stigmatizing than work crew, particularly where the individual is able to perform the work on their own and through an entity of their choice, rather than at an assigned location where only sentenced individuals work.

5. Collateral Consequences

Collateral consequences are the indirect and adverse results of a judgment on a person. In *Brown*, the collateral consequence at issue was the revocation of a driver’s license.¹⁵² While the

¹⁴⁸ *Brown*, 280 Or 95 at 105-106.

¹⁴⁹ See *State v. Langford*, 260 Or App 61, 66-68 (2013).

¹⁵⁰ *Id.* at 63.

¹⁵¹ *Id.* at 66-68.

¹⁵² *Brown*, 280 Or 95 at 105.

court found this was an indirect result of the traffic offense proceeding, the court also found that no punitive significance attached to this revocation.¹⁵³ Subsequent courts have refused, or simply not had the opportunity, to use this factor when analyzing cases.¹⁵⁴ For these reasons, no more information can be provided about this factor, other than to say that it appears to be much less significant than the factors mentioned above.

IV. APPEALS AND JUDGMENTS

Once a case is decided, a municipal court judgment may be challenged in an appeal. If a judgment is appealed, the process depends (1) on whether the municipal court that entered the judgment is a court of record and (2) on whether the case involved a state offense or a local offense.¹⁵⁵ If the municipal judgment is not appealed or the judgment ultimately is affirmed, then the city has several options to enforce the judgment, including judgment liens and a number of judgment proceedings under ORS Chapters 221 and 18.¹⁵⁶

A. Appeals

Under Oregon law, municipal court decisions are appealable either to the circuit court for the county in which the city is located or to the Oregon Court of Appeals, depending on whether the municipal court is a court of record.¹⁵⁷ If the municipal court is a court of record, any appeal proceeds directly to the Oregon Court of Appeals and the municipal judgment is treated essentially as if it were entered by a circuit court.¹⁵⁸ Significantly, the standard of review in the court of appeals is the standard for a criminal judgement, regardless of whether the defendant was charged with a misdemeanor or a violation.¹⁵⁹

On the other hand, if the municipal court is not a court of record, then a defendant who is convicted in that court of violating a local law or a state violation may appeal the case to the circuit court for the county in which the city is located.¹⁶⁰ Such an appeal must be made exactly according to rules laid out by statute for such appeals.¹⁶¹ For example, when making the appeal,

¹⁵³ This issue — specifically the “indirect” revocation of a license as a result of a judgement — is addressed above.

¹⁵⁴ See *State v. Benoit*, 354 Or 302, 312-13 (2013); see also *State v. Fuller*, 354 Or 295, 300 (2013).

¹⁵⁵ ORS 221.342(5); *see also* ORS 138.035.

¹⁵⁶ *See, e.g.*, ORS 221.351.

¹⁵⁷ ORS 138.035; ORS 221.359.

¹⁵⁸ ORS 221.342; *see also* ORS 138.035.

¹⁵⁹ ORS 138.057(1)(a).

¹⁶⁰ ORS 221.359; *see also* ORS 53.010 and ORS 157.020. While the later two chapters address appeals from justice courts, Oregon courts have held that municipal courts that are not courts of record act as “justice courts” when enforcing state violations and misdemeanors, and state law as such provides the defendants with a statutory right to appeal. *See City of Milton Freewater v. Ashley*, 214 Or App 526, 532-533 (2007).

¹⁶¹ ORS 138.057(1)(b); *see also* ORS 53.030.

the defendant must file with the municipal court the *original* notice of appeal that was served on the adverse party.¹⁶² Oregon courts have held that failure to file this original document deprives the circuit court of jurisdiction to hear the matter.¹⁶³ In addition to the requirements under ORS Chapter 138, the defendant must also comply with requirements under ORS Chapter 221, a chapter that applies generally to cities.¹⁶⁴ Unlike courts of record, when a municipal court case is appealed to the circuit court in this manner, the circuit court conducts the trial *de novo*.¹⁶⁵

Once this second trial is conducted and a judgment is reached by the circuit court, a further appeal to the Oregon Court of Appeals is often allowed, but it is not guaranteed for all defendants who are convicted under local law.¹⁶⁶ For state violations and misdemeanors, defendants have a statutory right to appeal to an appellate court under ORS Chapters 53 and 157, respectively.¹⁶⁷ Similarly, for local violations and misdemeanors, defendants have a statutory right to an appeal under ORS Chapter 221, provided the municipal court is a court of record.¹⁶⁸ However, if the municipal court is not a court of record, the question becomes much less clear if a defendant can appeal their case to the Oregon Court of Appeals from the circuit court.

For instance, if the defendant raised a constitutional claim during trial by arguing that the local charter provision or ordinance violates the Oregon Constitution, then the defendant has a clear right to appeal their case to the state's appellate courts.¹⁶⁹ But several Oregon courts have held that these are the only circumstances that a defendant can appeal their case from a municipal court that is not a court of record.¹⁷⁰ That said, recent case law casts doubt on these decisions.¹⁷¹ In *City of Eugene v. Hejazi*, the Oregon Court of Appeals stated in a footnote that other statutes appear to vest appellate courts with jurisdiction over municipal court cases based in local law, regardless of whether that municipal court is a court of record.¹⁷² Therefore, while the right to an appeal is not a guarantee for defendants who are convicted of a local offense in a municipal court that is not a court of record, it appears there could be a strong case for such a right going forward.

¹⁶² *Id.*

¹⁶³ *Ashley*, 214 Or App at 532-533.

¹⁶⁴ *See* ORS 221.359(1)-(3).

¹⁶⁵ *See* ORS 221.390(1); *see also* *City of Salem v. Bruner*, 299 Or 262, 264 (1985). A *de novo* trial is one that retries the case from the lower court. A circuit court hearing a municipal court case *de novo* will conduct its own trial on the alleged conduct and reach its own verdict.

¹⁶⁶ *See, e.g.,* *City of Lowell v. Wilson*, 197 Or App 291, 299 (2005).

¹⁶⁷ ORS 53.010; ORS 157.010.

¹⁶⁸ ORS 221.342(5).

¹⁶⁹ ORS 221.360.

¹⁷⁰ *See Wilson*, 197 Or App at 299; *see also Bruner*, 299 Or at 264.

¹⁷¹ *See City of Eugene v. Hejazi*, 296 Or App 204, 207 n.2 (2019).

¹⁷² *Id.*

B. Enforcing Judgments

Once a municipal court enters its judgment and any and all appeals have been resolved, the question often becomes how to enforce the court's judgment. For this, cities have two main avenues. First, a city may file a judgment lien against real property that is owned by the defendant or defendants.¹⁷³ Second, a city can file an enforcement proceeding against the defendant to collect the judgment through garnishment or a writ of execution to seize a defendant's personal property.¹⁷⁴ Note that these laws do not apply to parking violations.¹⁷⁵

As a prerequisite to enforcing any judgment, the municipal court first must register with the Oregon Department of Revenue (DOR).¹⁷⁶ The court does this by contacting the DOR and providing the agency with the name and address of a person who is authorized to act on behalf of the municipal court.¹⁷⁷ Once registered, municipal courts must then maintain an electronic court docket that tracks daily activity in the court.¹⁷⁸

As a registered municipal court, judgments are eligible to be enforced. First, judgment liens are able to be filed against defendants.¹⁷⁹ To create a lien, a judgment must exceed \$3,000, or else there must be two or more judgments against the same defendant that exceed \$3,000.¹⁸⁰ To file the lien, the judgment or judgments must be filed with the county clerk in the county in which the defendant's real property is located.¹⁸¹ In general, once a lien is filed on real property, it can be collected when the real property is sold or foreclosed.

Alternatively, a municipal court that is registered with the DOR can proceed with enforcement proceedings against a defendant.¹⁸² Depending on the circumstances, these might include writs of execution for real or personal property or proceedings to garnish the defendant's wages.¹⁸³ For more information on these options, cities should consult with their legal counsel.

¹⁷³ ORS 221.351.

¹⁷⁴ ORS 221.346.

¹⁷⁵ ORS 221.344(6).

¹⁷⁶ ORS 221.344.

¹⁷⁷ *Id.*

¹⁷⁸ ORS 221.252.

¹⁷⁹ ORS 221.351.

¹⁸⁰ ORS 221.351(1).

¹⁸¹ ORS 221.351(2).

¹⁸² ORS 221.346.

¹⁸³ *Id.*