

ORDINANCE NO. 3603

TITLE: AN ORDINANCE AMENDING PORTIONS OF TITLE VI AND VII OF THE ALBANY MUNICIPAL CODE SO AS TO MAKE CERTAIN OFFENSES CONFORM WITH THE PROVISIONS OF OREGON REVISED STATUTES, PARTICULARLY DISORDERLY CONDUCT, IMMORAL PRACTICES, VAGRANCY, THEFT, LODGING ACCOMMODATIONS, TRESPASSING, MINORS, LITTERING, INTERFERENCE WITH POLICE OR FIRE DEPARTMENTS AND MISCELLANEOUS REGULATIONS; REPEALING CERTAIN SECTIONS OF CHAPTER VII OF THE ALBANY MUNICIPAL CODE AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Section 7.08.010 Amended.

Section 7.08.010 of the Albany Municipal Code is amended to read as follows:

" Section 7.08.010 - DISORDERLY CONDUCT.

- (1) A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
  - (a) Engages in fighting or in violent, tumultuous or threatening behavior; or
  - (b) Makes unreasonable noise; or
  - (c) Uses abusive or obscene language, or makes an obscene gesture, in a public place; or
  - (d) Disturbs any lawful assembly of persons without lawful authority; or
  - (e) Obstructs vehicular or pedestrian traffic on a public way; or
  - (f) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
  - (g) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire explosion, crime, catastrophe or other emergency; or
  - (h) Creates a hazardous or physically offensive condition by any act which he is not licensed or privileged to do."
- (2) Public Intoxication. A person commits the crime of public intoxication if he creates, while in a state of intoxication, any disturbance of the public in any public or private business or place.

Section 2: Section 7.08.020 Amended.

Section 7.08.020 of the Albany Municipal Code is amended to read as follows:

- "(1) A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he:
- (a) Subjects another to offensive physical contact; or
  - (b) Publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response; or
  - (c) Communicates with a person, anonymously or otherwise, by telephone, mail or other form of written communication, in a manner likely to cause annoyance or alarm; or
  - (d) Engages in a course of conduct that alarms or seriously annoys another person and which serves no legitimate purpose."

Section 3: Section 7.08.030 Amended.

Section 7.08.030 of the Albany Municipal Code is amended to read as follows:

- "(1) A person commits the crime of loitering if he:
- (a) Loiters in or near a school building or grounds, not having any reason or relationship involving custody of or responsibility for a student, or, upon inquiry by a peace officer or school official, not having a specific, legitimate reason for being there; or
  - (b) Loiters or prowls in a public place without apparent reason and under circumstances which warrant justifiable alarm for the safety of persons or property in the vicinity and upon inquiry by a peace officer, refuses to identify himself and give a reasonably credible account of his presence and purposes."

Section 4: Section 7.12.010 Amended.

Section 7.12.010 of the Albany Municipal Code is amended

to read as follows:

"Section 7.12.010 - Place of Prostitution.

- (1) Definitions-- As used in these sections, unless the context requires otherwise:
  - (a) "PLACE OF PROSTITUTION" means any place where prostitution is practiced.
  - (b) "PROSTITUTE" means a male or female person who engages in sexual conduct for a fee.
  - (c) "PROSTITUTION ENTERPRISE" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.
  - (d) "SEXUAL CONDUCT" means sexual intercourse or deviate sexual intercourse.
- (2) PROSTITUTION
  - (a) A person commits the crime of prostitution if he engages in or offers or agrees to engage in sexual conduct in return for a fee.
- (3) PROMOTING PROSTITUTION.
  - (a) A person commits the crime of promoting prostitution if with the intent to promote prostitution he knowingly:
    - (aa) Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise;
    - (bb) Induces or causes a person to engage in prostitution or remain in a place of prostitution; or
    - (cc) Receives or agrees to receive money or other property, other than as a prostitute being compensated for personally rendered prostitution services, pursuant to an agreement or understanding that the money or the property is derived from a prostitution activity; or
    - (dd) Engages in any conduct that institutes, aides or facilitates an act or enterprise of prostitution."

Section 5: Section 7.12.080 Amended.

Section 7.12.080 of the Albany Municipal Code is amended to read as follows:

"PUBLIC INDECENCY. No person shall commit an act of public indecency while in any public place or in view of a public place by performing:

- (a) An act of sexual intercourse; or
- (b) An act of deviate sexual intercourse; or
- (c) An act exposing his genitals with the intent of arousing a sexual desire within himself or another person; or
- (d) By inviting or requesting another person to engage in deviate sexual intercourse.

Section 6: Section 7.20.010 Amended.

Section 7.20.010 of the Albany Municipal Code is amended to read as follows:

"POSSESSION OF BURGLAR'S TOOLS.

- (1) A person commits the crime of possession of burglar's tools if he possesses any burglar's tool with the intent to use the tools or knowing that some person intends to use the tools to commit or facilitate a forcible entry into premises or theft by physical taking.
- (2) "BURGLAR TOOL" means acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other explosive, tool, instrument or other article adapted, designed or commonly used for committing or facilitating a forcible entry into premises or theft by a physical taking.

Section 7: Section 7.32.010 Amended.

Section 7.32.010 is amended to read as follows:

"Section 7.32.010 DEFINITIONS. As used in this Code, unless context requires otherwise:

- (1) 'Appropriate property of another to oneself or a third person' or 'appropriate' means to:
  - (a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or
  - (b) Dispose of the property of another for the benefit of oneself or a third person.
- (2) 'Deprive another of property' or 'deprive' means to:
  - (a) Withhold property of another or cause property of another to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or
  - (b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.
- (3) 'Obtain' includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.
- (4) 'Owner of property taken, obtained or withheld' or 'owner' means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.
- (5) "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or of contract."

Section 8: Section 7.32.020 Amended.

Section 7.32.020 of the Albany Municipal Code is amended to read as follows:

"Section 7.32.020. THEFT: DEFINITION. A person commits theft when, with intent to deprive another of property or to appropriate property to himself or to a third person, he:

- (1) Takes, appropriates, obtains or withholds such property from an owner thereof; or

- (2) When the person knows or has good reason to know the property has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and said person has the intent to deprive the owner thereof and he fails to take reasonable measures to restore the property to the owner."
- (3) Shoplifting defined: Any person who willfully conceals or takes possession of any goods offered for sale by a wholesale or retail store or other mercantile establishment, without the knowledge or consent of the owner, and with the intent to convert the goods to his own use without paying the purchase price thereof, is guilty of shoplifting. It shall be prima facie evidence of an attempt to convert the goods to his own use if such goods are taken from the establishment without having paid for the same or without having paid for the same or without having made arrangements with the owner, manager, or one of his agents at the wholesale, retail or mercantile establishment to remove the goods. Any person found guilty of shoplifting as defined in this section shall, upon conviction, be punished as provided in Section 1.04.010 (Ord. 3462 S1, 1970).

Section 7.32.030 Added.

Chapter 7.32 of the Albany Municipal Code is amended by adding Section 7.32.030 to read as follows:

"Section 7.32.030. THEFT. A person commits the crime of theft if by other than extortion, he:

- (1) Commits theft as defined in Section 7.32.020 of this ordinance; and
- (2) The total value of the property in a single or aggregate transaction is under \$200.

Section 10: Section 7.36.010 Amended.

Section 7.36.010 of the Albany Municipal Code is amended to read as follows:

"Section 7.36.010. THEFT OF SERVICES.

- (1) A person commits a crime of theft of services if:
  - (a) With intent to avoid payment therefor, he obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment for the services; or
  - (b) Having control over the disposition of labor or of business, commercial or industrial equipment or facilities or another, he uses or diverts to the use of himself or a third person such labor, equipment or facilities with intent to derive a commercial benefit for himself or a third person not entitled thereto.
- (2) As used in this section, 'services' includes, but is not limited to, labor, professional services, toll facilities, transportation, telephone or other communications service, entertainment, the supplying of food, lodging or other accommodations in hotels,

restaurants or elsewhere, the supplying of equipment for use, and the supplying of commodities of a public nature such as gas, electricity, steam and water.

- (3) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception."

Section 11: Section 7.40.040 Amended.

Section 7.40.040 of the Albany Municipal Code is amended to read as follows:

"Section 7.40.040. CRIMINAL TRESPASS.

- (1) A person commits the crime of criminal trespass if he enters or remains unlawfully in or upon premises.
- (2) For the purpose of this section, the following definitions shall apply:
  - (a) 'Enter or Remain Unlawfully' means:
    - (aa) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when entrant is not otherwise licensed or privileged to do so; or
    - bb) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.
  - (b) "Open to the Public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain as required.
  - (c) 'Premises' includes any building and any real property, whether privately or publicly owned.
  - (d) 'Person in Charge' means a person, his representative or his employe who has lawful control of premises by ownership, tenancy, official position, or other legal relationship. It includes, but is not limited to the person, or holder of a position, designated as the person or position-holder in charge

by city council, board, commission or governing body of any political subdivision of the state."

Section 12: Section 7.44.010 Amended.

Section 7.44.010 of the Albany Municipal Code is amended to read as follows:

"Section 7.44.010. ENDANGERING WELFARE OF MINOR AND CHILD NEGLECT.

- (1) A person commits the crime of endangering the welfare of a minor if he knowingly:
  - (a) Induces, causes or permits an unmarried person under the age of 18 years to witness an act of sexual conduct or sado-masochistic abuse; or
  - (b) Permits a person under 21 years of age to enter or remain in a place where unlawful narcotic or dangerous drug activities are maintained or conducted; or
  - (c) Induces, causes or permits a person under 21 years of age to participate in gambling activities; or
  - (d) Sells or causes to be sold tobacco in any form to a person under the age of 18 years.
- (2) A person having custody or control of a child under 10 years of age commits the crime of child neglect if, with criminal negligence, he leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child."

Section 13: Section 7.44.060 Amended.

Section 7.44.060 of the Albany Municipal Code is amended to read as follows:

"Section 7.44.060. MISREPRESENTATION OF AGE BY MINOR.

A person commits the crime of misrepresentation of age by a minor if:

- (1) Being less than a certain, specified age, he knowingly represents himself to be of any age other than his true age with the intent of securing a right, benefit or privilege which by law is denied to persons



under that certain, specified age; or

- (2) Being unmarried, he knowingly represents that he is married with the intent of securing a right, benefit or privilege which by law is denied to unmarried persons.

Section 14: Section 7.52.030 Amended.

Section 7.52.030 of the Albany Municipal Code is amended to read as follows:

"Section 7.52.030 OFFENSIVE LITTERING.

- (1) A person commits the crime of offensive littering if he creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:
  - (a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way; or
  - (b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon public way; or
  - (c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which he is operating; except that this subsection shall not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Public Utility Commissioner of Oregon or a person operating a school bus subject to ORS 485.010 to 485.060.
- (2) As used in this section, 'public way' includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, county or a local municipality for use by the general public."

Section 15: Chapter 6.14 Added.

Chapter 6.14 of the Albany Municipal Code is amended by the addition of the following sections:

"Section 6.14.010. CRUELTY TO ANIMALS.

- (1) A person commits the crime of cruelty to animals if, except as otherwise authorized by law, he intentionally or recklessly:
  - (a) Subjects any animal under human custody or control to cruel mistreatment; or
  - (b) Subjects any animal under his custody or control to cruel neglect; or
  - (c) Kills without legal privilege any animal under the custody or control of another.
- (2) As used in this section, 'animal' includes birds."

Section 16: Section 6.14.020 Amended.

Section 6.14.020 of the Albany Municipal Code is amended to read as follows:

"Section 6.14.020. ABANDONMENT OF DOMESTIC ANIMALS.

It shall be unlawful for any person who willfully abandons or deserts a dog, cat or other domestic animal.

"Section 6.14.030. SALE OF BABY ANIMALS.

- (1) No person shall torture, abandon, mutilate or needlessly kill any animal or bird; nor shall any person transport or permit to be transported any animal in a cruel and inhumane manner.
- (2) No person shall fail to provide any animal in his custody with food, drink and protection from the elements.
- (3) No person shall place or distribute any poison or other substance with the intent of poisoning any animal, except those animals commonly recognized as pests or rodents.
- (4) No person shall keep any dangerous animal, wild or domesticated, within the city.

Section 17: Chapter 7.72 Amended

Chapter 7.72 of the Albany Municipal Code is amended by the addition of 7.72.030 to read as follows:

"Section 7.72.030. RESISTING ARREST.

- (1) A person commits the crime of resisting arrest if he

intentionally resists a person known by him to be a peace officer in making an arrest.

- (2) 'Resists,' as used in this section, means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person.
- (3) It is no defense to a prosecution under this section that the peace officer lacked legal authority to make the arrest, provided he was acting under the color of his official authority.

Section 18: Section 7.80.010 Amended.

Section 7.80.010 of the Albany Municipal Code is amended to read as follows:

"Section 7.80.010 ASSAULT.

- (1) A person commits the crime of assault if he:
  - (a) Intentionally, knowingly, or recklessly causes physical injury to another; or
  - (b) With criminal negligence causes physical injury to another by means of a deadly weapon.
- (2) MENACING. A person commits the crime of menacing if by word or conduct he intentionally attempts to place another person in fear of eminent serious physical injury.
- (3) RECKLESSLY ENDANGERING ANOTHER PERSON. A person commits the crime of recklessly endangering another person if he recklessly engages in conduct which creates substantial risk of serious physical injury to another person.

Section 19: Section 7.80.050 Amended.

Section 7.80.050 of the Albany Municipal Code is amended to read as follows:

"Section 7.80.050. "THEFT BY RECEIVING.

- (1) A person commits theft by receiving if he receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft.

- (2) 'Receiving' means acquiring possession, control or title, or lending on the security of the property."

Section 20: Section 7.84.060 Amended.

Section 7.84.060 of the Albany Municipal Code is amended to read as follows:

"Section 7.84.060. CREATING A HAZARD. A person commits the crime of creating a hazard if:

- (1) He intentionally maintains or leaves in a place accessible to children a container with a compartment of more than 1 1/2 cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside; or
- (2) Being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, excavation or other hole of a depth of 4 feet or more and a top width of 12 inches or more and he intentionally fails or refuses to cover or fence it with a suitable protective construction."

Section 21: Chapter 7.80 Amended.

Chapter 7.80 of the Albany Municipal Code is amended by the addition of the following section:

"Section 7.80.080. UNLAWFULLY USING SLUGS.

- (1) A person commits the crime of unlawfully using slugs if:
  - (a) With intent to defraud the supplier of property or a service sold or offered by means of a coin machine, he inserts, deposits or otherwise uses a slug in such machine; or
  - (b) He makes, possesses, offers for sale or disposes of a slug with intent to enable a person to use it fraudulently in a coin machine.
- (2) As used in this section:
  - (a) 'Coin machine' means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination or a token made for such purpose and in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition or use of some property or service.

(b) 'Slug' means an object, article or devise which, by virtue of its size, shape or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as a fraudulent substitute for a genuine coin, bill or token.

Section 22: Section 7.92.010 Amended.

Section 7.92.010 of the Albany Municipal Code is amended to read as follows:

"Section 7.92.010. FINES AND PAYMENT ENFORCED. If any person shall neglect or refuse to pay any fine imposed upon conviction of a violation of this title, he shall be confined to the city jail 1 day for each \$5.00 of such fine."

Section 23: Repeal of Certain Sections.

The following sections of the Albany Municipal Code are hereby repealed:

Section 7.12.030	
Section 7.12.050	Section 7.80.040
Section 7.44.140	Section 7.12.110
Section 7.44.070	Section 7.56.010
Section 7.56.020	Section 7.12.070

Section 24: EMERGENCY DECLARED.

Inasmuch as the provisions of the amendments contained herein are necessary for the peace, health, and safety of the citizens of the city of Albany that they shall become effective at the earliest possible date in that they shall contain the same provisions as presently in effect under state law of the state of Oregon, an emergency is hereby declared to exist and this ordinance shall become immediately effective upon its passage by the council and approval by the mayor.

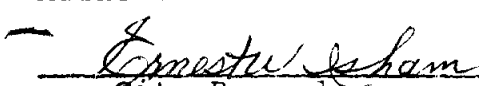
Passed by the Council: January 12, 1972

Approved by the Mayor: January 12, 1972

Effective Date: January 12, 1972

  
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Mayor

ATTEST:

  
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City Recorder