

CHAPTER 1.12

GENERAL PENALTY

SECTION:

- 1.12.010: General Penalty - Misdemeanors
- 1.12.020: General Penalty - Gross Misdemeanor
- 1.12.030: General Penalty - Infraction
- 1.12.040: Continuing Offenses
- 1.12.050: Alternative to a Fine - Restitution
- 1.12.060: Disposition by Agreement
- 1.12.070: Penalties Differing from State Law
- 1.12.080: Civil Penalties for Vandalism or Maintaining a Public Nuisance

1.12.010: General Penalty - Misdemeanors: Any person violating any provision or failing to comply with any mandatory requirement of this Code which is designated a misdemeanor shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) and imprisonment not to exceed ninety (90) days or both such fine and imprisonment. Whenever any act is prohibited or compliance with a provision is required by this Code and no designation as to misdemeanor, gross misdemeanor or infraction is indicated, the act or omission is a misdemeanor. (Ord. 2944 Sec. 1, 1985: Ord. 2858 Sec. 1, 1984: Ord. 2089 Sec. 3, 1977: Ord. 1644 Sec. 1, 1972: Ord. 1519 Sec. 1, 1970)

1.12.020: General Penalty - Gross Misdemeanor: Any person violating any provision or failing to comply with any mandatory requirement of this Code which is designated a gross misdemeanor shall be punished by a fine not to exceed five thousand dollars (\$5,000.00) and imprisonment not to exceed one year in jail or both such fine and imprisonment. (Ord. 2858 Sec. 1, 1984)

1.12.030: General Penalty - Infraction: Any person violating any provision or failing to comply with any mandatory requirement of this Code which is designated an infraction shall be assessed the following monetary penalty unless another penalty is provided:

- (1) The maximum penalty and the default amount for a Class 1 civil infraction shall be two hundred fifty dollars (\$250.00), not including statutory assessments;
- (2) The maximum penalty and the default amount for a Class 2 civil infraction shall be one hundred twenty five dollars (\$125.00), not including statutory assessments;
- (3) The maximum penalty and the default amount for a Class 3 civil infraction shall be fifty dollars (\$50.00), not including statutory assessments; and
- (4) The maximum penalty and the default amount for a Class 4 civil infraction shall be twenty five dollars (\$25.00), not including statutory assessments.

Infractions are civil rather than criminal offenses and proof of the commission of an infraction is by a preponderance of the evidence. It is never necessary to demonstrate scienter or mens rea for the finding that an infraction has been committed. (Ord. 3631 Sec. 1, 1995: Ord. 3483 Sec. 1, 1993: Ord. 2858 Sec. 1, 1984)

1.12.040: Continuing Offenses: A person is guilty of a separate offense for each day or any portion thereof in which a violation of any provision of this Code is committed, continued or permitted and may be punished accordingly. (Ord. 2858 Sec. 1, 1984)

1.12.050: Alternative to a Fine - Restitution: If a person has gained money or property or caused a victim to lose money or property through the commission of a crime, upon conviction thereof the court, in lieu of or in addition thereto imposing the fine authorized for the offense under this Chapter, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the commission of a crime. Such amount may be used to provide restitution to the victim at the order of the court. In such case the court shall make a finding as to the amount of the defendant's gain or victim's loss from the crime, and if the record does not contain sufficient evidence to support such finding the court may conduct a hearing upon the issue. For purposes of this Section, the terms "gain" or "loss" refer to the amount of money or the value of property or services gained or lost. (Ord. 3370 Sec. 1, 1992)

1.12.060: Disposition by Agreement: The City and a defendant may agree to the disposition of any case and such agreement may include, but need not be limited to, payment of costs of prosecution, continuance of the case for a period not to exceed two (2) years, payment of restitution, payment of money to or for any specific purpose, dismissal of the case or its prosecution upon specific conditions or any other condition or term appropriate under the circumstances. If the court finds the agreed disposition to be fair and reasonable, it may enter the same upon the record and such agreement shall have the force and effect of any other judgment or order entered by the court. (Ord. 3370 Sec. 2, 1992)

1.12.070: Penalties Differing from State Law: In the event that a penalty is imposed for an ordinance which would constitute a crime under State law, the penalty for the violation of the ordinance shall be the same as the penalty for the State law, any other provision of this Code notwithstanding. (Ord. 3483 Sec. 2, 1993)

1.12.080: Civil Penalties for Vandalism or Maintaining a Public Nuisance: If it shall appear by a preponderance of the evidence that a person has committed a violation of Chapter 9.04, 9.40, 9.44, or 9.48, or has committed a violation of Chapter 10.10, or any other provision of this Code which has resulted in the damage or injury to property, the court shall order the defendant to pay a civil penalty of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), into the Nuisance Abatement Revolving Fund of the City of Kennewick, in addition to any restitution which may be warranted. Violation of any of the above-mentioned provisions necessarily includes a violation of this Section, which need not be separately charged. (Ord. 3516 Sec. 1, 1994)