

**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON**

ORDINANCE NO. 2013-002

**AN ORDINANCE PROVIDING FOR THE ELIMINATION OF SOLID WASTE, HAZARDOUS AND  
NUISANCE CONDITIONS AND REPEALING ORDINANCE NO. 90-16**

THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY ORDAINS:

**SECTION 1. TITLE**

This Ordinance shall be known as the "Josephine County Solid Waste and Nuisance Abatement Ordinance" and shall be referred to herein as "this Ordinance."

**SECTION 2. PURPOSE**

The purpose of this Ordinance is to protect the health, safety and welfare of the people of Josephine County by providing a process for the management and disposal of accumulated solid wastes and other nuisances, for the abatement of certain nuisances and health hazards, and for the recovery of the costs of such abatement if undertaken by the County.

**SECTION 3. DEFINITIONS**

For the purpose of this Ordinance, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and the term "this Ordinance" shall be deemed to include all amendments hereafter made to this Ordinance.

- 3.1 "Abandoned vehicle" means any vehicle which reasonably appears to be inoperable, wrecked, discarded, abandoned or totally or partially dismantled.
- 3.2 "Board" means the Josephine County Board of Commissioners.
- 3.3 "County" means Josephine County, its officers, agents, and employees.
- 3.4 "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to the risk of disease-caused physical suffering or illness, including conditions such as:
  - A. Impure or inadequate domestic water;
  - B. Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste;
  - C. Inadequate improvements for the drainage of surface water and other fluid substances;  
or
  - D. Conditions conducive to the propagation of public health vectors.
- 3.5 "Disposal site" means any site authorized by the County and used by the public for the disposal of solid waste, including, but not limited to, dumps, landfills, sanitary landfills and composting plants.

- 3.6 "Environmental Health Officer" means the Environmental Health Officer of Josephine County or authorized agent or designee.
- 3.7 "Hazardous solid waste" means solid waste that may, by itself or in combination with other materials, be or become dangerous to human, plant or animal life.
- 3.8 "Hearings officer" means a person appointed by the Board of County Commissioners to hear proceedings under this Ordinance.
- 3.9 "Illegal drug manufacturing site" means any property on which there is a reasonably clear possibility of contamination with chemicals associated with the manufacturing of controlled substances, other than marijuana, and:
- A. Where activity involving the unauthorized manufacture of a controlled substance listed on Schedules I and II of the Controlled Substances Act or any precursor chemical for such substances occurs; or
  - B. Wherein are kept, stored or located any of the devices, equipment, things or substances used for the unauthorized manufacture of a controlled substance listed on Schedules I and II under the Controlled Substances Act.
- 3.10 "Infectious waste" means biological waste or medical waste, including but not limited to: blood and blood products, excretions, secretions, and other body fluids that cannot be lawfully directly discarded into a municipal sewer system; sharps that have been removed from their original sterile containers, needles, I.V. tubing with needles attached, and syringes; and pathological waste, human tissues, and animal carcasses, the bedding of animals, and other waste from animals.
- 3.11 "Inoperable vehicle" means a vehicle which is, or reasonably appears to be discarded, dismantled, partially dismantled, stripped, rusted, junked, wrecked, non-operating, not currently licensed for operation, or no longer safely usable for the purposes for which it was manufactured.
- 3.12 "Person" means any individual, corporation, association, partnership, firm, trust, estate, government unit, public agency, or any other form of legal entity.
- 3.13 "Public Health Director" or "Director" means the Director of the Josephine County Public Health Department, or authorized agent or designee.
- 3.14 "Public health vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases, including but not limited to flies, mosquitoes, and rats.
- 3.15 "Putrescible waste" means organic material that may decompose into foul-smelling or otherwise offensive products, or which is capable of attracting or providing food for public health vectors.
- 3.16 "Recyclable material" means any material that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material, including, but not limited to, newspaper, mixed paper, cardboard, glass containers, metal containers, scrap metal, used motor oil and aluminum.
- 3.17 "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original materials may lose their identity.
- 3.18 "Recycling center" means a center, depot, drop box, or other place for receiving recyclable materials with or without compensation, but not including a salvage, junk, or auto wrecking yard.

- 3.19 "Solid waste" means all putrescible and nonputrescible wastes, whether in solid or liquid form, except liquid-carried industrial wastes or sewage hauled as an incidental part of a septic tank or cesspool-cleaning service. "Solid waste" includes, but is not limited to, garbage, rubbish, ashes, sewage, sludge, infectious waste, street refuse, industrial wastes, swill, demolition and construction wastes, inoperable vehicles, abandoned vehicles or parts thereof, vehicle tires, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, dead animals and other discarded solid materials.
- 3.20 "Solid waste hauler" means a corporation or other entity that is franchised through the County to transfer solid waste to solid waste disposal sites.

#### **SECTION 4. ADMINISTRATION AND ENFORCEMENT**

The Environmental Health Department shall be responsible for the administration and enforcement of this Ordinance.

#### **SECTION 5. EXEMPTIONS**

- 5.1 This Ordinance shall not apply to:
- A. Areas within the incorporated limits of any city, unless that city enters into an intergovernmental agreement with the County for solid waste and nuisance abatement services under this Ordinance.
  - B. Private charitable organizations that regularly engage in the collection and reuse of reparable or cleanable discards, such as the Salvation Army, St. Vincent DePaul, Goodwill, and similar organizations.
  - C. Religious, charitable, benevolent or fraternal organizations which are not organized for solid waste management purposes, and which collect recyclable materials for fund raising or charitable purposes, or which collect and reuse or recycle materials, or operate a collection center for recyclable materials.
  - D. Disposal sites authorized by the Board of County Commissioners, provided that such disposal sites comply with all state and federal laws, rules, and regulations.
  - E. Wrecking yards, provided that the operator holds a valid license or certificate to operate a wrecking yard under ORS 822.100 through 822.150, and provided that the wrecking yard is in compliance with all applicable laws, rules, and regulations.
  - F. The outdoor storage of no more than four (4) inoperable vehicles on property outside an urban growth boundary of an incorporated city, provided that such storage is not in conflict with the Josephine County Rural Land Development Code or any other applicable laws, rules, or regulations.
  - G. Those persons who hold a valid waste tire storage or carrier permit pursuant to Chapter 340, Division 64 of the Oregon Administrative Rules.
  - H. Agricultural operations, the growing or harvesting of crops and the raising of fowl or animals, provided that such operators and operations comply with all applicable laws, rules, and regulations.

## **SECTION 6. SOLID WASTE ACCUMULATION PROHIBITED; DECLARATION OF NUISANCE**

- 6.1 No person shall maintain or allow to exist on any property the following:
- A. Any accumulation, collection, or storage of solid waste that is conducive to the propagation of mosquitoes, flies, rodents, or other public health vectors;
  - B. Any accumulation, collection, or storage of solid waste that is offensive or hazardous to the health and safety of the public;
  - C. Any abandoned, discarded or unattended refrigerator, freezer, icebox, or other container with a door or lid which locks or fastens automatically when closed and which door or lock has not been removed.
- 6.2 The conditions set forth in Section 6.1 constitute a nuisance and are prohibited.

## **SECTION 7. MAINTAINING ILLEGAL DRUG MANUFACTURING SITE PROHIBITED**

- 7.1 Owners of property that has been determined to be not fit for use due to drug manufacturing pursuant to ORS 453.855 to 453.912 shall remove or abate such contamination of property no later than sixty (60) calendar days after such property has been determined to be not fit for use by the Oregon Health Authority.
- 7.2 Failure to abate contaminated property pursuant to ORS 453.855 to 453.912 within sixty (60) calendar days shall constitute a nuisance and is prohibited.

## **SECTION 8. UNAUTHORIZED DUMPING PROHIBITED**

- 8.1 No person shall dispose of solid waste at any place other than at a disposal site approved by the Board of County Commissioners.
- 8.2 No person shall use or permit to be used any land within the County outside of incorporated cities as a public or private disposal site without approval of the Board of County Commissioners.

## **SECTION 9. OWNERSHIP OF SOLID WASTE**

- 9.1 Solid waste, including solid waste or recyclable materials set out for collection by an authorized solid waste hauler, shall remain the property and the responsibility of the person who produced or generated that solid waste or recyclable material until that solid waste or recyclable material is either:
- A. Collected by an authorized solid waste hauler; or
  - B. Properly disposed of in a disposal site recycling center.
- 9.2 The person who produces or generates any solid waste or recyclable material which is not disposed of at a disposal site or recycling center shall be responsible for the cleanup and proper disposal of such material, and shall be liable for all costs of such cleanup and disposal.

## **SECTION 10. COMPLAINT AND WARNING**

- 10.1 Complaint: All complaints of solid waste accumulation or violations of this Ordinance shall be in writing, signed by the person making the complaint, directed to the Environmental Health Officer

- 10.2 Warning: Upon receipt of the written, signed complaint, and upon investigation indicating reasonable grounds to believe that the complaint is valid, the Environmental Health Officer may send a warning letter to the owner of the property or the person who generated the solid waste and shall allow ten (10) days to abate the nuisance and properly dispose of the solid waste.
- A. The Warning shall be sent to the property owner or person who generated the solid waste by first class mail, and shall be posted at the site of the solid waste.
  - B. In case of hardship or extenuating circumstances, the Environmental Health Officer may negotiate an extension of time for compliance, provided that good faith efforts are being made to correct the violation.
  - C. If the violation does not cease by the time allowed, then the County may commence abatement proceedings or other legal remedies.

## **SECTION 11. ABATEMENT PROCEEDINGS**

- 11.1 If the solid waste has not been removed after ten (10) days or such other time as allowed under section 10.2 of this Ordinance, the Environmental Health Officer may commence proceedings to abate the nuisance.
- 11.2 Notice: The Environmental Health Officer shall first issue a Notice to the record owner of the real property where the nuisance is located or to the person who generated the solid waste at that person's last known address.
- A. Contents: The Notice shall contain:
    - 1. The street address and a legal description of the property where the nuisance is located.
    - 2. A description of the nuisance which constitutes a violation of this Ordinance.
    - 3. The action required to be taken to abate the nuisance.
    - 4. A specified time and date by which the nuisance must be abated.
    - 5. A statement that if the nuisance is not abated within the time specified, the County may abate the nuisance, and charge the costs of the abatement against the property or the property owner.
    - 6. A statement that any person having a legal interest in the property may appeal the Notice by filing a written appeal with the Public Health Director within ten (10) days from the date of service of the Notice. Appeals of Notices shall be conducted in accordance with Section 12 below.
  - B. Service:
    - 1. To Whom Served: The Notice shall be served upon the record owner of the real property and upon the holder of any mortgage or deed of trust or other lien or encumbrance of record, the owner or holder of any lease of record, and the holder of any other estate or legal interest of record in the land on which the nuisance is located, if known. In addition, the Notice shall be served upon the last known address of the person who produced or generated the solid waste, if known.

- a. If no address of any such person so appears or is known to the Environmental Health Officer, then the Notice shall be posted at the property and mailed to the address of the property.
  2. Manner of Service: Service of the Notice shall be made by posting at the site of the nuisance, and by either personal service, or by first class regular mail and by certified mail, return receipt requested, to each such person at the address as it appears on the last equalized assessment roll of the County or as known to the Environmental Health Officer. Service by first class regular mail and by certified mail shall be effective on the date of mailing.
    - a. The failure of any such person to receive such notice shall not affect the validity of any abatement proceedings.
  - C. Proof of Service: Proof of service of the Notice shall be made at the time of Service by a written affidavit or declaration under penalty of perjury, executed by the person effecting service, and shall declare the time, date, and manner in which service was made. This declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to a copy of the Notice and shall be retained by the Environmental Health Officer.
- 11.3 Abatement: If, after service of Notice, the property owner or other person receiving notice does not abate the nuisance within the time specified in the Notice, then the Environmental Health Officer, upon the consent of the Board of Commissioners, may direct County personnel to remove the solid waste causing the nuisance, or otherwise abate the nuisance, using County equipment or other resources.
  - A. The Environmental Health Officer may also contact a franchised solid waste hauler assigned to the area where the nuisance exists. If the solid waste hauler has the equipment and personnel available to remove the solid waste, the solid waste hauler shall be given the option of either removing the nuisance or refusing the job.
    1. If the solid waste hauler accepts the job, the property owner shall be charged the approved hourly rate for such service.
    2. If the solid waste hauler refuses the job, the Environmental Health Officer may contract with another person to abate the nuisance.
  - B. The cost of such abatement may be paid out of the Solid Waste Abatement Fund, or the Board of Commissioners may make the cost a special assessment against the property involved or a personal obligation of the person who generated the nuisance in accordance with Section 14.
- 11.4 Emergency Abatement: If the nuisance is a hazard that affects the immediate health and safety of the public, then the Environmental Health Officer, upon the consent of the Board of Commissioners may either:
  - A. Order the immediate abatement of the nuisance by the property owner, wherein the Environmental Health Officer shall give Notice of the requirement for immediate abatement to the owner as provided in Section 11.2; or
  - B. Proceed with immediate abatement of the nuisance in accordance with Section 11.3. In such case, the Environmental Health Officer shall then immediately send written notice of

the abatement to the owner of the property. The property owner shall retain all rights to appeal the abatement and imposition of costs as set forth in Section 12.

## **SECTION 12. APPEALS ON NOTICES OF ABATEMENT.**

- 12.1 Any person entitled to service of Notice under Section 11.2(B)(1) may appeal the Notice by filing at the office of the Public Health Director a written appeal. The person filing the appeal is the Appellant.
- A. Contents of Appeal: The appeal should contain the following:
1. A statement of the person's legal interest in the land involved in the Notice;
  2. A statement of the portion of the Notice being protested, together with any supporting material facts known to the person filing the appeal;
  3. A statement of the relief sought and the reasons why the Notice should be reversed, modified or otherwise set aside;
  4. The signature of the person filing the appeal, as well as the person's mailing address and telephone number;
  5. Verification by declaration under penalty of perjury as to the truth of the matters stated in the appeal.
- B. Time of Filing Appeal: The appeal shall be filed within ten (10) days from the date of Service of the Notice of abatement. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's right to a hearing and to appeal.
- 12.2 Appointment of Hearings Officer: Upon receipt of an Appeal, the Public Health Director shall promptly forward the Appeal to the Board of Commissioners' Office, who shall appoint a Hearings Officer. The Hearings Officer shall set a time and place for a hearing at the earliest possible time, and shall notify the person requesting the hearing as to the time and place of the hearing as required in Section 12.3.
- 12.3 Time and Notice of Hearing: The date of such hearing shall be not less than ten (10) days nor more than thirty (30) days from the date the appeal was filed with the Public Health Director. The Public Health Director shall send written notice of the time and place of the hearing at least ten (10) days prior to the date of the hearing by personal delivery or by first class mail to each appellant at the address shown on the appeal. Notice may also be given to such persons as the hearings officer determines to be interested persons.
- 12.4 Only those matters or issues specifically raised by the appellant in the written appeal shall be considered in the hearing of the appeal.
- 12.5 Enforcement of any Abatement Notice shall be stayed during the pendency of any appeal which has been properly and timely filed.

## **SECTION 13. HEARING ON APPEAL**

- 13.1 Except as set forth in Section 13.2 below, hearings on appeal shall be conducted in accordance with the Josephine County Hearings Officer Ordinance.

### 13.2 Decision and Order of Hearings Officer.

- A. A copy of the decision and order shall be delivered to the appellant personally or mailed to the appellant by certified mail, return receipt requested.
- B. The decision and order of the Hearings Officer shall be final. The effective date of the decision shall be that stated in the decision.
- C. After any order of the Hearings Officer becomes final, no person to whom any such order is directed shall fail, neglect or refuse to comply with or obey such order.
- D. Any such person who fails to comply with an order of the Hearings Officer is guilty of a class A misdemeanor, and may be punished by no more than one year in jail and a fine of no more than two thousand, five hundred dollars (\$2,500).
- E. If, after any order of the Hearings Officer becomes final, the person to whom such order is directed fails, neglects or refuses to obey such order, the Director of Public Health may, upon the consent of the Board of Commissioners:
  - 1. Cause such person to be prosecuted under Section 13.2(D) above; or
  - 2. Institute any appropriate legal action or proceeding to abate such public nuisance.

## SECTION 14. RECOVERY OF COSTS OF ABATEMENT.

14.1 Abatement Report with Itemized Costs. The Environmental Health Officer shall keep an itemized account of the costs and expenses incurred by the County or any contractors in the abatement of any nuisance. Upon the completion of the abatement, the Environmental Health Officer shall prepare and file with the Public Health Director a report specifying the work performed, the itemized and total costs of the work, a description of the real property upon which the nuisance was located, and the names and addresses of the interested persons entitled to notice of the Abatement Report pursuant to Section 11.2(B)(1).

- A. Upon receipt of the Abatement Report, the Director shall present the Report to the Board of County Commissioners for consideration of the recovery of the costs of the abatement.

14.2 Hearing on Recovery of Costs: The Board shall set a time, date and place for a hearing on the Abatement Report and the recovery of costs, and on any protests or objections to the report and costs.

- A. Notice of Hearing: The Board shall serve Notice of the hearing by:
  - 1. Posting the Notice of Hearing at the property involved;
  - 2. Publishing the Notice of Hearing at least once in a newspaper of general circulation in Josephine County; and
  - 3. Mailing the Notice of Hearing by first class and by certified mail, return receipt requested, to the owner of the property as shown on the last equalized assessment roll of the County, or as known to the Public Health Director.
- B. Time of Notice and Hearing: The Notice of Hearing shall be given at least ten (10) days prior to the date set for hearing, and shall specify the day, hour and place when the Board will hear and consider the Director's report.



- 14.3 Protests: Any person affected by the proposed charge for recovery of costs may file a written protest or objection with the Board at any time prior to or at the time set for the hearing on the Abatement Report. Each such protest or objection must contain a description of the property at issue, and the grounds of such protest.
- 14.4 Hearing on Abatement Report: At the hearing, the Board of Commissioners shall consider the Abatement Report, together with any protests or objections to the Abatement Report. The Board may make such revisions, corrections or modifications to the report or the charges of costs as it may deem just, and shall make a decision confirming, rejecting, or modifying the report and the costs. The decision of the Board on the report and the costs, and on all protests or objections, shall be final.
- A. The Board of Commissioners may then order that the costs of the abatement be made a personal obligation of the property owner or the person causing the nuisance, or may assess the costs against the property involved, or may do both.
1. Costs as Personal Obligation: If the Board orders that the costs be a personal obligation of the property owner or the person causing the nuisance, it shall direct County Counsel to collect the costs on behalf of the County by use of all appropriate legal remedies.
    - a. Installment Payments: The Board of Commissioners, in its discretion, may determine that assessments may be payable in installments. The Board's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof, shall be by Order adopted prior to the confirmation of the assessment.
  2. Costs Assessed Against Property: If the Board orders that the costs be assessed against the property, it shall confirm the assessment, and shall cause the costs of the abatement and the costs of recording to be recorded on the assessment roll. Thereafter, the assessment shall constitute a special assessment against and a lien upon the property.
- 14.5 Assessment Against Property: After confirmation of the abatement report by the Board of Commissioners, certified copies of the assessment shall be given to the Assessor and to the Tax Collector for Josephine County, who shall add the amount of the assessment to the next regular tax bill levied against the property. The descriptions of the parcels reported shall be the same as those used on the County Assessor's map books for the current year.
- A. Priority of Lien: Immediately upon being placed on the assessment roll, the assessment shall be deemed to be complete, the amount assessed shall be payable, and the assessment shall be a lien against the property assessed. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property, and shall be paramount to all other liens, except for State, County and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.
- B. Interest: All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate set forth in ORS 311.505(2).

- C. Collection: The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

## **SECTION 15. EQUITABLE REMEDIES; CITATIONS; PENDING ACTIONS**

- 15.1 The accumulation, storage, collection, transportation or disposal of solid waste by any person in violation of any of the provisions of this Ordinance is a nuisance, and the Board of Commissioners may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or other appropriate equitable proceedings to temporarily or permanently enjoin or abate such nuisance.
- 15.2 The provisions of this Ordinance are in addition to, and not in lieu of, any criminal prosecution or penalty provided by this chapter or by State law. A violation of any of the provisions of this Ordinance may be prosecuted by citation under the Josephine County Code Enforcement Ordinance.
- 13.3 The repeal of any other ordinance by the adoption of this Ordinance shall not be construed as abating any action or legal proceeding now pending under or by virtue of such ordinance so repealed, as discontinuing, abating or modifying any penalty accruing or to accrue, as affecting the liability of any person, or as waiving any right of the County to enforce any violation of this Ordinance.

## **SECTION 16. APPEALS**

All decisions of the Hearings Officer or the Board of Commissioners under this Ordinance shall be reviewable by the Circuit Court of the State of Oregon for Josephine County.

## **SECTION 17. PRE-EXISTING VIOLATIONS**

All nuisances or uses in violation of County ordinances which were existing on the effective date of this Ordinance shall be violations of this Ordinance.

## **SECTION 18. SEVERABILITY**

In the event that any part of this Ordinance shall be held by a court to be invalid or unenforceable, the remaining sections shall be unaffected and shall remain in full force and effect.

## **SECTION 19. REPEAL**

Ordinance No. 90-16 is hereby repealed in its entirety.

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## SECTION 20. EFFECTIVE DATE

First reading by the Board of County Commissioners this 20<sup>th</sup> day of March, 2013.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

### JOSEPHINE COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Simon G. Hare, Chair

\_\_\_\_\_  
Cherryl Walker, Vice Chair

\_\_\_\_\_  
K.O. Heck, Commissioner

ATTEST:

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven E. Rich, Legal Counsel

**BEFORE THE BOARD OF JOSEPHINE COUNTY COMMISSIONERS  
STATE OF OREGON**

ORDINANCE NO. 2013-003

**AN ORDINANCE PROVIDING FOR AN OFFICER TO ENFORCE COUNTY ORDINANCES**

THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY ORDAINS:

**SECTION 1. TITLE**

This Ordinance shall be known as the Josephine County Code Enforcement Ordinance.

**SECTION 2. PURPOSE**

The purpose of this ordinance is to provide a method and process for the enforcement of County ordinances.

**SECTION 3. DEFINITIONS**

- 3.1 "County" means Josephine County, Oregon.
- 3.2 "Hearings Officer" means the person established by the County Hearings Officer Ordinance with the authority to hear County Violation cases and impose penalties for County Violations.
- 3.3 "Law Enforcement Officer" means a duly sworn peace officer of the Oregon State Police, the Josephine County Sheriff's Office, Grants Pass Department of Public Safety.
- 3.4 "Offense" means any conduct for which a fine or other penalty is provided by any law or ordinance of the County or State.
- 3.5 "Ordinance" means any duly enacted Ordinance of the Board of County Commissioners.
- 3.6 "Person" means an individual, association, club, corporation, firm, partnership, political body, or any other legal entity.
- 3.7 "Property" includes real and personal property and any mixed and lesser estates or interests therein.
- 3.8 "State" means the State of Oregon.
- 3.9 "Violation" means any act or failure to act by any person which is contrary to the requirements of any County ordinance, code, rule, regulation, or other law applicable to Josephine County.

**SECTION 4. PROSECUTION**

The Board of County Commissioners authorizes the County Counsel and any Assistant County Counsel to act as prosecutor to prosecute violations of Josephine County Ordinances, except where otherwise specifically provided by law. In addition, the Board of County Commissioners authorizes Department Heads and Elected Officials, and their designees, to prosecute violations before Hearings Officers.

## **SECTION 5. CODE ENFORCEMENT OFFICERS**

- 5.1 Appointment: The Board of County Commissioners may appoint appropriate persons as Code Enforcement Officers to enforce Josephine County ordinances and codes in accordance with this Ordinance.
- 5.2 Identification: The Board of County Commissioners shall issue adequate identification of duly appointed Code Enforcement Officers. Code Enforcement Officers shall carry their identification and display it upon request or as appropriate in the performance of their duties.
- 5.3 Authority and Duties: Code Enforcement Officers shall have the authority to take such actions as may be lawful and reasonably necessary for the enforcement of Josephine County Ordinances and codes. Code Enforcement Officers shall have the authority to investigate violations, issue citations, serve notices, subpoenas, and orders, and perform all other acts reasonably necessary for the prosecution of violations of County Ordinances and codes.

## **SECTION 6. ANIMAL CONTROL OFFICERS**

- 6.1 Appointment: The Board of County Commissioners may appoint appropriate persons as County Animal Control Officers.
- 6.2 Identification: The Board of County Commissioners shall issue adequate identification of duly designated Animal Control Officers. Animal Control Officers shall carry their identification and display it upon request or as appropriate in the performance of their duties.
- 6.3 Duties: County Animal Control Officers shall have the same authority and duties as provided in Section 5 of this Ordinance. In addition, County Animal Control officers shall have all powers and duties authorized by State law and County ordinances to enforce laws related to animal control.

## **SECTION 7. WARNING NOTICES**

Before issuing a citation, a Code Enforcement Officer may issue a Warning Notice of an alleged ordinance violation. The Warning Notice shall provide a brief description of the alleged violation and shall be served upon the person accused of the offense. The Warning Notice shall identify the County department to contact regarding the violation, the date the Warning Notice was issued, and a statement that failure to correct the alleged violation or to contact the appropriate County department may result in the issuance of a formal citation to the County Circuit Court or to the County Hearings Officer. The lack of issuance of a Warning Notice prior to the issuance of a citation is no defense to a complaint, and the issuance of a Warning Notice does not limit the issuance of any subsequent citations charged on the same facts.

## **SECTION 8. CITATIONS REQUIRED; FORM AND CONTENT**

- 8.1 Except as otherwise provided by law, a Code Enforcement Officer or law enforcement officer may issue a Citation for violations of County ordinances, codes, rules and regulations, and for any other violations which may be charged by the County as crimes or violations of law. All Citations shall conform to the requirements of this Ordinance, and shall be on a form provided and printed by the County.
- 8.2 The Citation shall consist of a Complaint and a Summons.
- 8.3 Complaint: The Complaint shall provide the following information:

- A. The name of the court;
- B. The name of the public body in whose name the action is brought;
- C. The name of the person cited;
- D. The name of the Code Enforcement Officer or other person issuing the citation;
- E. The section of the ordinance, code, or law violated;
- F. A brief description of the alleged violation, written in such a manner as can be readily understood by a person making a reasonable effort to do so;
- G. The date, time and place at which the violation occurred;
- H. The date on which the citation was issued;
- I. The date, time and place at which the person cited is to appear in court;
- J. The amount of the fine, if any, fixed for the violation.
- K. A certificate signed by the Code Enforcement Officer or law enforcement officer certifying that he or she has reasonable grounds to believe, and does believe, that the person named in the Complaint committed the violation specified in the Complaint. A certificate conforming to this section shall be deemed equivalent to a sworn statement.

8.4 Summons: The Summons for cases to go before the Circuit Court of the State of Oregon shall be on the reverse side of the Complaint, and shall contain the following information in substantially similar form:

**A COMPLAINT ON THIS CITATION WILL BE FILED AGAINST YOU IN THE COURT  
INDICATED ON THE FRONT OF THIS SUMMONS.**

**READ CAREFULLY**

If the front of this ticket shows you are charged with a:

1. **CRIME**, YOU MUST APPEAR at the time and place set by this summons.
2. **VIOLATION**, You must do one (*and only one*) of the three violation options listed below:

**VIOLATION OPTIONS: TO RESPOND TO VIOLATIONS CHARGED ON THIS SUMMONS,  
YOUR THREE (3) OPTIONS ARE:**

**OPTION 1** **PERSONALLY APPEAR** at Court at the date and time indicated to enter a plea, **OR** before that time, orally request a trial. You have a right to a trial, and if you plead not guilty when you appear, the court will set a date and time for trial.

**OPTION 2** **ENTER A PLEA OF GUILTY OR NO CONTEST by written appearance.** To choose this option, do all the following before the time this Summons requires you to appear:

1. Check **AND** initial one (*and only one*) of the following pleas:

\_\_\_ I Plead **GUILTY** \_\_\_\_\_ (*initial*)

\_\_\_ I Plead **NO CONTEST** \_\_\_\_\_ (*initial*)

2. Sign and date here:

\_\_\_\_\_ (*signature*) \_\_\_\_\_ (*date*)

3. Deliver to the court this Summons with:

- A. **A check or money order for the full amount of the fine** as shown on this Summons (\$\_\_\_\_\_ *indicate amount enclosed*); and
- B. A written statement explaining or in mitigation of the violations charged.

If your plea is GUILTY, this written statement is optional.

You may mail this Summons, payment, and written statement to the court, but the mail **must** arrive at the court **before** your appearance date shown on this Summons.

**IMPORTANT:** If you choose this Option 2, you are making a written appearance to the Court and you are waiving or giving up your right to a trial. If you plead GUILTY, you agree to the penalties for your offense. If you plead NO CONTEST, you consent to any court judgment based on your plea and any written statement and the Officer's report. If the court finds you guilty, the court may keep all or part of the money you were required to pay. If you choose this option, the court will not fine you more than you were required to pay without serving you with a notice to come to a hearing.

**OPTION 3** **ENTER A PLEA OF NOT GUILTY by written appearance.** To choose this option, do all the following before the time this Summons requires you to appear:

1. Sign and date here:

\_\_\_\_\_ (signature) \_\_\_\_\_ (date)

2. Deliver to the court this Summons by itself or with a written request for trial. If you mail this Summons and any request to the Court, the mail **must** arrive at the Court **before** your appearance date shown on this Summons.

**IMPORTANT:** Choosing this Option 3 makes a written request for a hearing. The court will give you notice of the time and place when you **MUST** appear. The court may impose penalties if you do not appear at the time given in the notice of hearing. The court may require you to deposit money to assure your appearance if you have failed to appear on any offense charges in the past.

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### NOTICE

In any case, THE COURT, AFTER NOTICE, MAY REQUIRE YOU TO APPEAR FOR A HEARING.

For violations, if you are going to have an attorney represent you, you must notify the court and the County Counsel's office, in advance, at the following addresses:

Josephine County Courts  
500 NW 6<sup>th</sup> Street  
Grants Pass, OR 97526  
(541) 476-2309

Josephine County Counsel  
500 NW 6<sup>th</sup> Street, Dept. 13  
Grants Pass, OR 97526  
(541) 474-5226

YOU MAY MAIL WRITTEN APPEARANCES to the court under Violation Options 2 or 3 above, **but** the mail must arrive at the court **before** your appearance date shown on this Summons.

### WARNING

**IF YOU FAIL TO FOLLOW THESE INSTRUCTIONS, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.**

For violations, if you do not pay the full fine in advance **and** do not appear, the court, without further hearing, may enter a conviction and a judgment against you up to the maximum penalty allowed by law for the charged offenses, including the maximum fines, assessments and other costs (which may be substantially more than the fine ).

MAIL CORRESPONDENCE OR WRITTEN APPEARANCE AND MAKE CHECKS PAYABLE TO:

Josephine County Courts  
Josephine County Courthouse  
500 NW 6<sup>th</sup> Street  
Grants Pass, OR 97526  
(541) 476-2309

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- 8.5 The Summons for cases to go before the County Hearings Officer shall be on the reverse side of the Complaint, and shall contain the following information in substantially similar form:

**THIS CITATION WILL BE FILED AGAINST YOU IN THE HEARINGS OFFICE OF JOSEPHINE COUNTY.**

**READ CAREFULLY**

The Citation on the front of this form alleges that you have violated State or County law. READ IT CAREFULLY.

**YOU HAVE THREE (3) OPTIONS.** OREGON AND JOSEPHINE COUNTY LAW REQUIRES YOU TO RESPOND. YOU MUST DO ONE (AND ONLY ONE) OF THE FOLLOWING OPTIONS:

**OPTION 1**

**PERSONALLY APPEAR** at the Josephine County Hearings Office at \_\_\_\_\_ at the date and time indicated on the front of this Citation to enter a plea. You have a right to a hearing, and if you plead Not Guilty when you appear, you should be prepared and ready to present your case to the Hearings Officer. If you are found guilty, the Hearings Officer can impose a fine greater than the "Minimum Fine," up to the "Maximum Fine," and may impose conditions requiring you to comply with law. IF YOU FAIL TO APPEAR at the time set for hearing, the Hearings Officer can and will impose judgment, additional penalties, and conditions for compliance with law.

**OPTION 2**

**ENTER A PLEA OF GUILTY OR NO CONTEST by written appearance.** To choose this option, do all of the following before the date and time on the front of this Citation:

1. Sign and date this Statement of Understanding below:

**STATEMENT OF UNDERSTANDING:**

I, the undersigned, do hereby acknowledge that I understand the following:

1. My payment of this Citation is an admission of the existence of the violation alleged on this Citation, and an admission of my responsibility for it.
2. My payment of this Citation does not relieve me of my responsibility to correct the violation, and to comply with all applicable laws. I will comply with terms of the attached Compliance Agreement, if one is made. \_\_\_\_\_ (Officer's Initials.)
3. Additional citations may be issued to me if I fail to correct the violation, or violate other applicable laws.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

2. Deliver this Citation with **check, money order, or credit card payments for the "Total Minimum Fine"** to the DEPARTMENT address below, 11:00AM to 4:00PM Monday Through Friday, or call for appointment. You may also include a statement explaining the situation. (See NOTICE "2" below).

**IMPORTANT:** If you choose this Option 2, you are making a written appearance and you are waiving or giving up your right to a hearing. After accepting your plea under Option 2, the Hearings Officer may keep all or part of the money you pay. Also, the Hearings Officer's judgment can include Orders which require you to correct violations and comply with the law. This judgment would be mailed to you at the address on the front of this Citation.

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**OPTION 3** **ENTER A PLEA OF NOT GUILTY by written appearance.** To choose this option, do all of the following before the time the Summons requires you to appear:

1. Sign and date here:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

2. Deliver to the DEPARTMENT address below, a copy of this CITATION with:

A. A written request for a trial date if you require a different day for a hearing; and

B. The name of your attorney, if you are to be represented. The attorney must be licensed to practice law in the State of Oregon.

**IMPORTANT:** If you choose this Option 3, the Department will mail to you at the address on the front of this Citation the notice of the time and place when you **MUST** appear. IF YOU FAIL TO APPEAR at the time set for hearing, the hearings officer can impose judgment and penalties against you, and conditions for compliance.

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### NOTICE

In any case, THE HEARINGS OFFICER MAY REQUIRE YOU TO APPEAR FOR A HEARING TO DIRECT THE CORRECTION OF A VIOLATION.

YOU MAY MAIL WRITTEN APPEARANCES to the Hearings Office under Violation Options 2 or 3 above, **but** the mail must arrive at the Josephine County Hearings Office **before** the date shown on the front of this Citation.

### WARNING

THE HEARINGS OFFICER IS EMPOWERED TO LEVY PENALTIES UP TO \$10,000 PER VIOLATION. FAILURE TO PAY A PENALTY WILL BECOME A LIEN AGAINST YOUR PROPERTY, AND IT IS GROUNDS FOR ISSUANCE OF STOP WORK ORDER, WITHHOLDING ISSUANCE OR REQUESTED PERMITS OR LICENSES, OR REVOCATION OR SUSPENSION OF ANY ISSUED PERMITS OR LICENSES.

MAIL CORRESPONDENCE OR HAND DELIVER AND MAKE CHECKS PAYABLE TO:

DEPARTMENT NAME: \_\_\_\_\_  
JOSEPHINE COUNTY  
500 N.W. 6<sup>th</sup> Street, Dept. \_\_\_\_\_  
Grants Pass, Oregon 97526  
(541) 474-\_\_\_\_\_

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- 8.6 Any error in transcribing information into the blanks provided in the citation form, when determined by the Court or Hearings Officer to be nonprejudicial to the defendant's defense, may be corrected at the time of trial or hearing, or prior to the time of trial or hearing after notice to the defendant.
- 8.7 If a Complaint does not conform to the requirements of this Ordinance, the Court or Hearings Officer may set aside the Complaint upon motion before plea.

## **SECTION 9. COMMENCEMENT OF ACTION FOR VIOLATIONS**

A Code Enforcement Officer or a law enforcement officer may issue a Citation for a violation of a County ordinance or code committed at any location within the unincorporated area of the County, for which the officer has reasonable grounds to believe that such conduct constitutes a violation.

## **SECTION 10. SERVICE OF CITATIONS**

The Code Enforcement Officer or such other person authorized by Rule 7E of the Oregon Rules of Civil Procedure shall serve the Summons portion of the Citation personally on the person cited. The Summons may also be served in the same manner as prescribed for the service of summonses in Rule 7D of the Oregon Rules of Civil Procedure.

## **SECTION 11. APPEARANCE BY DEFENDANT**

- 11.1 Crimes: If the defendant is charged with a crime, the defendant must personally appear at the date, time and place set by the Summons.
- 11.2 Violations: If the defendant is charged with a violation, the defendant must either:
- A. Personally appear at the date, time and place set by the Summons; or,
  - B. Prior to the date and time set by the Summons, enter a plea of guilty or no contest by delivering the completed Summons to the Court or Hearings Officer as directed by the Summons, with appropriate payment and any written statement; or
  - C. Prior to the date and time set by the Summons, enter a plea of not guilty by delivering the completed Summons, as directed by the Summons, with a request for trial or hearing, prior to the date and time set by the Summons.

## **SECTION 12. EFFECT OF PLEA OF GUILTY OR NO CONTEST**

If the defendant has entered a plea of guilty or no contest in accordance with Section 11.2, the plea shall constitute a waiver of a trial or hearing and a consent to judgment by the Court or Hearings Officer, and shall constitute a forfeiture of all or any part of the fine amount as may be determined by the Court or Hearings Officer.

## **SECTION 13. NOTICE OF TRIAL OR HEARING**

- 13.1 Circuit Court: If the defendant requests a trial pursuant to Option 1 or 3 as set forth in Section 8.4, and the Court directs that a trial be held, the Court shall fix a date and time for the trial and shall, at least ten (10) days prior to the date of the trial, mail to the defendant a notice of the date and time so fixed.

- A. Notice of Trial: The notice of trial shall provide a warning that if the defendant fails to appear at the date and time set for trial, the Court may find the defendant in contempt of court, and may issue a warrant of arrest, or may enter a judgment and conviction against the defendant with the maximum penalty allowed by law, and may make such other orders as necessary for the defendant to correct violations and comply with the law.
- B. A defendant who requests a trial must post the fine amount required, unless such amount is expressly waived by the Court or Hearings Officer.

13.2 Hearings Officer: If the defendant requests a hearing pursuant to Option 1 or 3 as set forth in Section 8.5, the defendant is deemed to have received the Notice required under Section 9 of the Josephine County Hearings Officer Ordinance.

- A. If, at hearing, the defendant requests a new hearing date, and the Hearings Officer directs that a new date be set, the Hearings Officer shall fix a date and time for the new hearing and, unless notice is waived, shall mail to the defendant a notice of the date, time, and place so fixed at least ten (10) days prior to the date of the new hearing.
- B. The notice of hearing shall provide a warning that if the defendant fails to appear at the date and time set for hearing, the Hearings Officer may enter a judgment and conviction against the defendant with the maximum penalty allowed by law and may make such other orders as necessary for the defendant to correct violations and comply with the law.

13.3 If the defendant fails to appear in response to a Citation, the Court or Hearings Officer may, by order mailed to the defendant, require the defendant to appear before the Court or Hearings Officer at a time certain, or may enter a judgment and conviction against the defendant up to and including the maximum penalty allowed by law.

#### **SECTION 14. TRIAL DISCRETIONARY WITH COURT; HEARING DISCRETIONARY WITH HEARINGS OFFICER; FINES**

- 14.1 If the defendant appears in the Circuit Court and does not request a trial, the Court, at its discretion, may direct that a trial be held, or may enter the appropriate judgment.
- 14.2 If the defendant appears before the Hearings Officer and does not request a hearing, the Hearings Officer, at his or her discretion, may direct that a hearing be held, or may enter the appropriate judgment.
- 14.3 No fine shall be imposed which exceeds the amount required by the Citation, unless the defendant fails to appear pursuant to Section 15 below, or unless a trial or hearing is held.

#### **SECTION 15. FAILURE TO APPEAR**

- 15.1 If the defendant does not make a first appearance as required by Section 11 within the time allowed, and if a trial or hearing is not otherwise required by either the Court, the Hearings Officer, or by law, then the Court or Hearings Officer may enter a default judgment based upon the complaint and any other evidence the Court or Hearings Officer determines appropriate.
- 15.2 If the defendant makes a first appearance in the manner required by Section 11 within the time allowed and requests a trial or a hearing, and if the defendant subsequently fails to appear at the date, time and place set for any trial or hearing or any other appearance in the matter, and if a trial or a hearing is not otherwise required by either the Court, the Hearings Officer, or by law,

then the Court or the Hearings Officer may enter a judgment based on the complaint and any other evidence the Court or the Hearings Officer determines appropriate.

- 15.3 Intentional failure to appear in response to an order of the Court or Hearings Officer given pursuant to Section 13, or given in open Court or at a hearing in the defendant's presence, is punishable as contempt in the Circuit Court.
- 15.4 No person shall knowingly fail to appear, as required by Section 11, upon service of a duly issued Citation authorized by this Ordinance.
- 15.5 Any default judgment entered against a defendant in response to a failure to appear may include:
  - 1) Fines or penalties in the maximum amount allowed by law; 2) Orders requiring the defendant to correct violations and comply with law; and 3) Any other costs or orders allowed by law.

## **SECTION 16. PENDING ACTIONS AND PROCEEDINGS**

The adoption of this Ordinance shall not affect any proceeding pending in any court as of the date of the adoption of this Ordinance. The adoption of this Ordinance shall not be construed as discontinuing, abating, or modifying any claim or penalty, as affecting the liability of any person, or as waiving any right of the County.

## **SECTION 17. DECISION NOT TO TAKE ENFORCEMENT ACTION**

The initiation of enforcement proceedings by a Code Enforcement Officer is permissive and not mandatory. Decisions not to initiate prosecution or a civil action are discretionary in nature and shall be made upon consideration of the severity of the alleged violation, and the County staff, time, and resources necessary.

## **SECTION 18. GENERAL PENALTIES; FINES AND COURT COSTS; COMPLICITY; EQUITABLE REMEDIES**

- 18.1 General Penalty: Any person who violates or fails to comply with any provision of this Ordinance, for which no penalty is otherwise provided, shall be fined not more than that set forth in as a Class B Violation (ORS153.018(2)(b)) for each violation, and not more than two hundred dollars (\$200) per day for a continuing violation, not to exceed ten thousand dollars (\$10,000).
  - A. Any fine or penalty required herein shall be in addition to any fee, deposit, charge, surcharge, interest, insurance, bond requirement, or equitable remedy allowed by State or County ordinance, code, rule, regulation, or other law.
- 18.2 Failure to Appear: In addition to any other penalty allowed by law, any defendant who knowingly fails to appear after service of a duly issued Citation authorized by this Ordinance may be fined not more than that set forth in ORS153.018(2)(b) for each violation or, if the proceedings are in the Circuit Court, imprisoned not more than ten (10) days or both.
- 18.3 Continuing Violations: Unless otherwise provided, a separate violation shall be deemed committed each day during or on which a violation or noncompliance occurs or continues. Issuance of a second citation for the same violation shall constitute a continuing violation from the date of the first citation. Notwithstanding any other provision of law, a Court or Hearings Officer may not, without good cause, defer, waive, suspend or otherwise reduce the fine for a violation to an amount that is less than one hundred dollars (\$100).

- 18.4 Bond: A person accused of committing a violation enforceable under this Ordinance who requests a trial must post the fine amount required, unless such amount is expressly waived by the judge or by the hearings officer.
- 18.5 Corporations: A sentence to pay a fine for a violation committed by a corporation shall be in an amount not to exceed twice the fine established under this Ordinance (ORS 153.018).
- 18.6 Unlawful Profit: If a defendant has gained money or property through the commission of a violation, instead of sentencing the defendant to pay the fine under Section 18.2, the Court or Hearings Officer may sentence the defendant to pay an amount not to exceed twice the amount of the defendant's gain from the commission of the violation.
- A. For purposes of this subsection, the defendant's gain shall be the amount of money derived from or through the commission of the violation, or the value of the property on which the violation was committed at the time of citation. "Value of the property" means the fair market value of the property on which the violation was committed at the time of citation, or, if the fair market value cannot reasonably be ascertained, the value of such property as shown on the County's tax records.
- 18.7 Complicity: Any person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared by any County ordinance or code to be a violation, whether individually or in connection with another person, or as principal, agent or accessory, shall be guilty of such violation. Any person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of any County ordinance, code, rule or regulation shall likewise be guilty of such violation.
- 18.8 Costs and Assessments:
- A. Circuit Court: Any fine imposed by the Court shall be adjusted for costs and assessments pursuant to ORS Chapter 137. In accordance with ORS 203.065(4), fines and costs shall be paid to the clerk of the Circuit Court. The clerk shall deduct the Court costs in the proceedings and pay the remainder to the treasurer of the County.
- B. Hearings Officer: Any fine imposed by the Hearings Officer shall be adjusted for costs or assessments pursuant to County ordinance or order. Fines recovered shall be paid to the department which issued the Citation.
- 18.9 Payment of Fines: Any forfeiture or payment of any fine issued under this Ordinance does not relieve the defendant from the responsibility of remedying the violation of County ordinance or code.
- 18.10 Suspended Fines: A Court or Hearings Officer may suspend operation of any part of a judgment entered under this ordinance upon condition that the defendant pay the nonsuspended portion of a fine within a specified period of time. If the defendant fails to pay the nonsuspended portion of the fine within the specified period of time, the suspended portion of the judgment shall become operative without further proceeding by the Hearings Officer, and the suspended portion of the fine shall become immediately due and payable.
- 18.10 Nuisance Abatement: Any condition caused or permitted to exist in violation of any provision of any County ordinance, code, rule, regulation, order, or law, shall be deemed to be a public nuisance and may be abated by the County as provided by law. The County Counsel or his or her designee may, in addition to other remedies provided by law, institute injunction, mandamus

or other appropriate proceedings to prevent or temporarily or permanently enjoin or abate the violation or nuisance.

## **SECTION 19. SEVERABILITY OF PROVISIONS**

If any section, term, or provision of this Ordinance is found by a Court of competent jurisdiction to be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining sections, terms, or provisions of this Ordinance shall not be impaired.

## **SECTION 20. EFFECTIVE DATE**

First reading by the Board of County Commissioners this 20<sup>th</sup> day of March, 2013.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This Ordinance shall take effect ninety (90) days after its adoption by the Board of Commissioners.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
Simon G. Hare, Chair

\_\_\_\_\_  
Cherryl Walker, Vice Chair

\_\_\_\_\_  
K.O. Heck, Commissioner

ATTEST:

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven E. Rich, Legal Counsel

**BEFORE THE BOARD OF JOSEPHINE COUNTY COMMISSIONERS  
STATE OF OREGON**

ORDINANCE NO. 2013-004

**AN ORDINANCE ESTABLISHING AND PROVIDING RULES FOR A COUNTY HEARINGS OFFICER,  
AND RULES AND PROCEDURES FOR COUNTY HEARINGS**

THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY ORDAINS:

**SECTION 1. TITLE**

This Ordinance shall be known as the Josephine County Hearings Officer Ordinance.

**SECTION 2. PURPOSE**

The purpose of this Ordinance is to establish the position of the Josephine County Hearings Officer, to describe the duties of the Josephine County Hearings Officer, and to provide the procedures and rules for hearings before the Hearings Officer.

**SECTION 3. APPLICABILITY**

This Ordinance shall apply to all proceedings for violations of County ordinances, codes, and administrative rules. The remedies provided by this Ordinance are cumulative. Nothing in this Ordinance shall prevent the filing of any suit at law or equity in a court of proper jurisdiction.

**SECTION 4. DEFINITIONS**

- 4.1 "Code Enforcement Officer" means a person appointed to enforce Josephine County ordinances and codes pursuant to the Josephine County Code Enforcement Ordinance (Ordinance No. 2013-003).
- 4.2 "County" means Josephine County, a political subdivision of the State of Oregon, and its officers, agents, and employees.
- 4.3 "County violation" means any violation of any County ordinance, code or administrative rule.
- 4.4 "Department" means any entity or division of Josephine County designated as a department by the Board of County Commissioners.
- 4.5 "Hearings Officer" means the person established by this Ordinance with the authority to hear County violation cases and impose penalties for County violations. This definition includes a "Chief Hearings Officer" who will have authority to manage the Hearings Officer Panel, if one is established.
- 4.6 "Licensee" means a person who has obtained a license from the County as required by County ordinance, code, or rule.
- 4.7 "Party" means a Plaintiff, Defendant, Petitioner, Respondent, or other person or entity named in a County violation case.

**SECTION 5. APPOINTMENT OF HEARINGS OFFICER; JURISDICTION; AUTHORITY**

- 5.1 The Hearings Officer shall be appointed by the Board of Commissioners to serve at the pleasure



of the Board of Commissioners.

- 5.2 The Hearings Officer shall have jurisdiction over all matters of county concern arising from violation of any Josephine County ordinances, codes, or administrative rules.
- 5.3 The Hearings Officer shall have the authority to adjudicate all County violation cases, and shall have the power to impose civil and criminal fines and penalties for such violations as permitted under State law and Josephine County ordinances, codes, and administrative rules. The Hearings Officer's decision shall be the County's final determination of the issues decided.
- 5.4 The Hearings Officer shall have the authority to administer oaths; certify all official acts; subpoena and require the attendance of witnesses; require production of relevant documents; take testimony of any person by deposition; and, if deemed necessary or appropriate, enter upon or authorize County employees to enter upon the premises of a person or business found to be out of compliance or in violation of any provision of a County ordinance, code, rule, or order, for purposes of monitoring compliance, assessing status, or remedying violations, or abating nuisances.

#### **SECTION 6. HEARINGS OFFICER PANEL ESTABLISHED; QUALIFICATIONS AND DUTIES OF HEARINGS OFFICERS**

- 6.1 The Hearings Officer Panel is established within the Office of the Board of County Commissioners. The Panel shall be managed by the Chief Hearings Officer. The Chief Hearings Officer shall have a Hearings Officer available by appointment for County departments to resolve County violation cases.
- 6.2 Hearings Officers shall have demonstrated thorough knowledge of administrative law and procedure as a requirement of employment.
- 6.3 Hearings Officers shall remain fair and impartial in the performance of their duties.

#### **SECTION 7. ASSIGNMENT OF HEARINGS OFFICERS; REQUEST FOR CHANGE OF HEARINGS OFFICER**

- 7.1 Upon the request of a County Department, the Chief Hearings Officer shall assign a Hearings Officer to conduct a hearing.
- 7.2 After the assignment of a Hearings Officer, a party may request a different Hearings Officer to hear the matter by sending a written request, showing good cause, to the Chief Hearings Officer and to the other parties in the case. Such request must be made at or before the commencement of the hearing, and before the introduction of any evidence or testimony. Only one request for a change of Hearings Officer may be granted per proceeding. The request shall be granted at the discretion of the Chief Hearings Officer.

#### **SECTION 8. HEARINGS PROCEDURE; SUBJECT MATTER; STANDARD OF PROOF**

- 8.1 Unless otherwise required by state law, hearings before a Hearings Officer shall be conducted in accordance with the procedures provided in this Ordinance.
- 8.2 Hearings Officers shall have the authority to determine whether a County Violation has occurred.
- 8.3 The County must prove the violation by a preponderance of the evidence.

## **SECTION 9. NOTICE OF RIGHT TO HEARING; REQUEST FOR HEARING**

- 9.1 Parties to a County Violation case shall be afforded an opportunity for a hearing after reasonable Notice, served personally or in accordance with Section 8 of the Josephine County Code Enforcement Ordinance.
- 9.2 The Notice shall include:
- A. A statement of the party's right to a hearing, or a statement of the time and place of the hearing;
  - B. A statement of the authority and jurisdiction under which the hearing is to be held;
  - C. A reference to the particular sections of the ordinances, codes, rules, and statutes involved;
  - D. A short and plain statement of the matters asserted or charged;
  - E. A statement of the party's right to be represented by counsel; and
  - F. A statement of the potential consequences if a party fails to appear at the scheduled hearing.
- 9.3 If a party requests a hearing by means of a written appearance, notice of the time, date, and place of hearing must be mailed to the parties not less than ten (10) days prior to the date set for the hearing, unless otherwise waived by the defendant, or unless the County demonstrates imminent emergency conditions which require a prompt remedy to avert a health and safety issue.

## **SECTION 10. FILING AND SERVICE OF DOCUMENTS**

- 10.1 A request for hearing is considered filed when actually received by the County.
- 10.2 A party who files any pleading, motion, correspondence or other document with the Hearings Officer shall simultaneously provide copies of such documents to all other parties or their attorneys, if represented. Copies may be provided by hand delivery, by facsimile, by mail or as otherwise directed by the Hearings Officer with the agreement of the parties.
- 10.3 Each party shall notify all other parties and the Hearings Officer of any change in that party's address, or withdrawal or change of the party's attorney. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the Hearings Officer and to all other parties.
- 10.4 Motions, pleadings and other documents, except for Requests for Hearings, sent through the U.S. Postal Service to the Hearings Officer shall be considered filed on the date postmarked. Documents sent by fax or hand-delivered are considered filed when received.
- 10.5 Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.
- 10.6 In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

## **SECTION 11. INFORMAL DISPOSITION**

- 11.1 Unless precluded by law, informal disposition may be made of any County Violation case by stipulation, agreed settlement, consent order, or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties, consenting to a suspension, fine, or other form of intermediate sanction.
- 11.2 Any informal disposition of a County Violation case, other than an informal disposition by default, must be in writing and signed by the parties to the case. The Hearings Officer shall incorporate that disposition into a final order. Any order under this paragraph is not subject to Section 21 of this Ordinance.
- 11.3 The Hearings Officer shall deliver or mail a copy of the order to each party, or, if applicable, to the other party's attorney of record.
- 11.4 An order that incorporates an informal disposition is a final order in the County Violation case, but is not subject to judicial review. A party may petition the Hearings Officer to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

## **SECTION 12. DEFAULT**

- 12.1 An order adverse to a party may be issued upon default only upon a prima facie case made on the record before the Hearings Officer.
- 12.2 If a party fails to request a hearing within the time allowed, the Hearings Officer may enter an Order by default. In such event, the record may be made at the time of issuance of the order, and if the order is based only on material included in the citation, application, or other submissions of the party, the Hearings Officer may so certify and so notify the parties, and such material shall constitute the evidentiary record of the proceeding.

## **SECTION 13. NOTICE OF RIGHTS AND PROCEDURE; FAILURE TO PROVIDE NOTICE**

- 13.1 Prior to the commencement of the hearing, the Hearings Officer shall inform each party, either orally or in writing, of the following matters:
  - A. If a party is not represented by an attorney, a general description of the hearing procedure, including the standard or proof, the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens of going forward with the evidence.
  - B. Whether a record will be made of the proceedings, the manner of making the record, the purpose of making a record, its availability to the parties, and the importance of a record for appeal purposes.
  - C. Whether an attorney will be representing the County in the case, and the right of the parties to be represented by an attorney licensed to practice law in Oregon at their own expense, and, if a party is not represented by an attorney, whether the party may request a recess if that party determines that representation by an attorney is necessary.
  - D. The function and title of the Hearings Officer, the manner in which the testimony and evidence is reviewed, the authority of the Hearings Officer and the effect and authority of

the Hearings Officer's decision and order.

- E. Whether a party may request that additional evidence be brought before the Hearings Officer and the hearing reopened after the adjournment of the hearing.
- F. Whether the parties will have an opportunity, prior to the final order of the Hearings Officer, to review and object to any proposed findings of fact, conclusions of law, summary of evidence, or recommendations of the Hearings Officer.
- G. That the decision of the Hearings Officer may be appealed as provided in Section 25 of this Ordinance, and that the appellant shall pay all costs of the appeal, including costs for preparation of a transcript.

- 13.2 The failure of a Hearings Officer to give notice of any item specified above shall not invalidate any order of the Hearings Officer, unless upon appeal of the Hearing Officer's order, a Court finds that such failure affects a substantial right of the complaining party. In the event of such finding on appeal, the Court shall remand the matter to the Hearings Officer.

#### **SECTION 14. CONDUCTING THE HEARING; RECORD**

- 14.1 At the commencement of the hearing, the Hearings Officer shall explain the issues involved in the hearing and the matters that the parties must prove or disprove. The Hearings Officer shall advise the parties that any issue which may be the basis for an appeal must be raised during the proceedings, before the close of the case, in order to be considered on appeal.
- 14.2 Testimony shall be taken upon oath or affirmation of witnesses. The Hearings Officer shall administer oaths or affirmations to witnesses.
- 14.3 The Hearings Officer shall place on the record a statement of the substance of any written or oral ex parte communications on any fact in issue made during the pendency of the proceeding, and notify the parties of the communication and of their right to rebut such communication on the record.
- 14.4 The Hearings Officer shall ensure that the record of the hearing shows a full and fair inquiry into the facts necessary for a consideration of all issues properly before the Hearing Officer in the case.
- 14.5 The parties shall have the right to question witnesses. The parties may present evidence and argument on all relevant issues involved.
- 14.6 The hearing may be continued with recesses as determined by the Hearings Officer.
- 14.7 The Hearings Officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.
- 14.8 Exhibits shall be marked and maintained by the Hearings Officer as part of the record of the proceedings.
- 14.9 The Hearings Officer may request that any closing arguments be submitted in writing or orally.
- 14.10 The record shall include:
- A. All pleadings, motions, and intermediate rulings;
  - B. Evidence and arguments received or considered;

- C. All stipulations of the parties;
- D. A statement of any matters officially noticed;
- E. Questions and offers of proof, and objections and rulings thereon;
- F. A statement of any ex parte communications on a fact in issue made to the Hearings Officer, and any rebuttal;
- G. Proposed findings and exceptions;
- H. Any proposed, intermediate; or final orders of the Hearings Officer.

14.11 A simultaneous verbatim oral, written, mechanical or electronic record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested by a party for purposes of rehearing or appeal. The party requesting transcription shall be responsible for the costs of any copies of the record, or of any copies of the hearing transcript pursuant to a fee schedule set by the Board of Commissioners.

## **SECTION 15. SUBPOENAS**

- 15.1 Subpoenas for the attendance of witnesses or the production of documents at the hearing may be issued by:
- A. The County Code Enforcement Officer, or employee of the department charged with enforcing the ordinance in question, or County Legal Counsel on behalf of the County;
  - B. The Hearings Officer, upon the request of a party upon a showing of general relevance and reasonable scope of the evidence sought; or
  - C. An attorney representing a party on behalf of that party.
- 15.2 A motion to quash a subpoena must be presented in writing to the Hearings Officer, with service on the other parties in the manner required by Section 10 of this Ordinance. A party may respond to the motion to quash within seven (7) calendar days of receiving the motion. Any response must be in writing and served on the other party in the manner required by Section 10 of this Ordinance. The Hearings Officer shall rule on the motion to quash within fourteen (14) calendar days of receiving the motion.
- 15.3 Witnesses appearing pursuant to subpoena, other than the parties or officers, agents or employees of the County, shall receive fees and mileage as prescribed by law for witnesses under ORS 44.415(2). Each party shall be responsible for its own witnesses' fees.
- 15.4 If a person fails to comply with a lawfully issued subpoena, or if any witness refuses to testify on any matters in which the witness may be lawfully questioned, the Hearings Officer, the County or the party who issued the subpoena may apply to a judge of the Circuit Court to compel obedience with the requirements of the subpoena.

## **SECTION 16. EVIDENCE**

- 16.1 Hearings need not be conducted according to the technical rules relating to evidence and witnesses. Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but erroneous rulings on evidence shall not preclude County action on the record unless shown to have

substantially prejudiced the rights of a party. Privileges afforded by Oregon law shall be recognized by the Hearings Officer. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and Hearings Officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

- 16.2 All evidence shall be offered and made a part of the record in the case, and except for stipulated matters and except as provided in Section 17.4 of this Ordinance, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position.
- 16.3 Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.
- 16.4 The Hearings Officer and County may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the Hearings Officer or County. The parties shall be notified of any facts officially noticed prior to the Hearings Officer's final decision, and the parties shall be afforded an opportunity to contest the facts so noticed. The Hearings Officer and the County may utilize the Hearings Officer's or the County's experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.
- 16.5 No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.
- 16.6 The Hearings Officer may inspect any premises or property involved or related to the hearing, provided that:
  - A. Notice of such inspection is given to the parties before the inspection is made;
  - B. The parties are given an opportunity to be present during the inspection; and
  - C. The Hearings Officer shall state for the record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the findings from the inspection of the Hearings Officer.

## **SECTION 17. REPRESENTATION OF COUNTY AT HEARINGS**

- 17.1 The County may, at its discretion, be represented at County Violation case hearings by County Legal Counsel or an attorney licensed to practice law in the State of Oregon.
- 17.2 The County may be represented at hearings by a County enforcement officer or by an employee of the Department enforcing the ordinance that was violated.
- 17.3 The Hearings Officer presiding at a hearing in which a County Code Enforcement Officer or department employee appears may allow the County Code Enforcement Officer or department employee to present evidence, examine and cross-examine witnesses, and make arguments relating to the:
  - A. Application of statutes and rules to the facts in the County Violation case;
  - B. Actions taken by the county in the past in similar situations;

- C. Literal meaning of the statutes or rules at issue in the County Violation case;
- D. Admissibility of evidence; and
- E. Proper procedures to be used in the County Violation case hearing.

17.4 Upon judicial review, no limitation imposed under this section may be the basis for reversal or remand unless that limitation resulted in substantial prejudice to a party.

## **SECTION 18. REPRESENTATION OF PERSONS OTHER THAN COUNTY AT HEARINGS**

A defendant or party to a County Violation case hearing other than the County may be represented at County Violation case hearings by an attorney licensed to practice law in the State of Oregon at the defendant's or party's own expense.

## **SECTION 19. PUBLIC ATTENDANCE; EXCLUSION OF WITNESSES; REMOVAL OF DISRUPTIVE INDIVIDUALS**

- 19.1 Unless otherwise required by law, County Violation case hearings shall be open to the public.
- 19.2 The Hearings Officer may exclude witnesses from the hearing, except for a party, a party's attorney, expert witnesses, the County enforcement officer or employee of the department authorized to prosecute County violations cases, County Legal Counsel, and any other persons authorized by law to attend.
- 19.3 A Hearings Officer may expel any person from the County Violation case hearing if that person engages in conduct that disrupts the hearing.
- 19.4 Any party or attorney or representative of a party, having knowledge or reasonable belief that any person participating in the hearing may present a danger or may be a threat to anyone involved in the hearing, should immediately notify the assigned Hearings Officer, the County, and the parties or their representatives of the potential danger.
- 19.5 A Hearings Officer may take any other measures reasonably required to ensure the safety and security of the participants in the hearing.

## **SECTION 20. ENTRY OF PLEAS; NON-DEFAULT CASES**

- 20.1 If the defendant appears and enters a plea of no contest, and a hearing is not otherwise required by the Hearings Officer or by law, the Hearings Officer shall make a decision based on the citation, any statement filed by the defendant, and any other information or materials submitted to the Hearings Officer.
- 20.2 If the defendant enters a plea of guilty, and a hearing is not otherwise required by the Hearings Officer or by law, and the Hearings Officer accepts the plea of guilty, judgment shall be entered against the defendant based on the violation citation.

## **SECTION 21. DEFAULT CASES**

- 21.1 If the defendant does not request a hearing or make any appearance within the time allowed, and a hearing is not otherwise required by the Hearings Officer or by law, the Hearings Officer may enter a default judgment based on the citation and any other evidence the judge determines appropriate.

- 21.2 If the defendant requests a hearing or makes an appearance within the time allowed, and the defendant subsequently fails to appear at the date, time and place set for hearing or other appearance in the matter, and if a hearing is not otherwise required by the Hearings Officer or by law, the Hearings Officer shall enter a judgment based on the citation and any other evidence the judge determines appropriate.

## **SECTION 22. ORDERS IN COUNTY VIOLATION CASES**

- 22.1 Every order shall be in writing or stated in the record, and may be accompanied by an opinion. The Order shall become effective upon the signing of the Order, unless the Hearings Officer issues an Amended Order. The Order shall have the full effect and powers provided by law.
- 22.2 The Hearings Officer shall prepare and serve on all parties an final order and judgment, accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Hearings Officer's order.
- 22.3 The Hearings Officer shall notify the parties to a proceeding of a final order and judgment by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.
- 22.4 Every final order and judgment shall include a citation of the statutes under which the order may be appealed.

## **SECTION 23. ENFORCEMENT OF HEARINGS OFFICER ORDERS; CONTEMPT**

- 23.1 The Hearings Officer shall have the power to impose fines, fees, costs, and remedial sanctions for County Violations adjudged to have been committed by a defendant, as well as willful misconduct, or disobedience of or resistance to the Hearings Officer's authority, orders or judgment.
- 23.2 Fines and costs are payable ten (10) days after the mailing of the final order. Fines and costs owing to the County may be collected in the same manner as any other debt allowed by law, in addition to that specifically provided for under ORS 30.460 and related statutes.
- 23.3 Unless otherwise provided, abatement of a nuisance, forfeiture of property, or other specified performance of the Defendant ordered by the Hearings Officer shall be performed by the date so ordered, which will not be less than ten (10) days from the date of judgment. If the defendant fails to comply with the judgment within the time specified, the Hearings Officer or County may compel compliance by application for a writ from the Circuit Court to enforce such judgment or order. Subject to any conditions imposed by the Court, such order is deemed to authorize Josephine County to enter upon such property to perform the act specified, or to seize the property to be forfeited as required by the Hearings Officer order without penalty of trespass or conversion of real or personal property. Without further Hearings Officer action, the County is permitted to assess and to charge actual costs incurred by the County by any means under Oregon law.
- 23.4 If any person otherwise fails to comply with any order or judgment of the Hearings Officer, or if any party interferes with the execution of such order, the Hearings Officer or County may apply to the Circuit Court for an order to compel obedience by initiating proceedings for contempt. Such application shall include:
- A. The Complaint for contempt, and
  - B. The Judgment with Findings of Fact and Conclusions, or Order of the Hearings Officer.



23.5 Nothing in this Ordinance shall affect the ability of the County to institute an appropriate suit or legal action in law or in equity in any court of competent jurisdiction.

#### **SECTION 24. JUDICIAL REVIEW; APPEAL**

- 24.1 Judgments of Hearings Officers are subject to judicial review by the Circuit Court for Josephine County as provided under ORS 34.010 to 34.100. Unless otherwise provided by ordinance, filing a petition for review shall automatically stay execution of the judgment or order of the Hearings Officer.
- 24.2 The filing of any request for reconsideration of the Hearing Officer's order or judgment shall toll the time for filing a petition for judicial review.
- 24.3 In all judicial review proceedings the Hearings Officer shall retain discretion to order conditions and restrictions in addition to any fines or penalties.
- 24.4 Failure of a party to file a petition for review as provided in this section, or the non-excused failure of a party to appear at a duly scheduled hearing, shall constitute a waiver by that party of any further hearing under this section, and the last decision issued by the Hearings Officer shall become final.

#### **SECTION 25. SEVERABILITY OF PROVISIONS**

If any section, term, or provision of this Ordinance is found by a Court of competent jurisdiction to be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining sections, terms, or provisions of this Ordinance shall not be impaired.

#### **SECTION 26. EFFECTIVE DATE**

First reading by the Board of County Commissioners this 20<sup>th</sup> day of March, 2013.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the

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first reading this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This Ordinance shall take effect ninety (90) days after its adoption by the Board of Commissioners.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
Simon G. Hare, Chair

\_\_\_\_\_  
Cherryl Walker, Vice Chair

\_\_\_\_\_  
K.O. Heck, Commissioner

ATTEST:

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven E. Rich, Legal Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON**

ORDINANCE NO. 2013-005

**AN ORDINANCE PROVIDING FOR THE ENFORCEMENT OF ENVIRONMENTAL HEALTH LAWS**

THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY ORDAINS:

**SECTION 1. TITLE**

This Ordinance shall be known as the "Josephine County Environmental Health Enforcement Ordinance" and shall be referred to herein as "this Ordinance."

**SECTION 2. PURPOSE**

The purpose of this Ordinance is to protect the health, safety and welfare of the people of Josephine County by enforcing the environmental health programs delegated to the County by the State Health Authority under ORS 446.425, 448.100, and 624.510.

**SECTION 3. ADOPTION**

The County adopts the following state statutes and administrative rules, as they may be amended, as County Ordinances:

- 3.1 **Tourist Facilities** (including travelers' accommodations, hostels, picnic parks, recreation parks, and organizational camps): ORS 446.310 to 446.350, and administrative rules adopted by the State Health Authority thereunder, including OAR chapter 333, divisions 29, 30, and 31.
- 3.2 **Pool Facilities** (including public swimming pools, public spa pools, public wading pools, and bathhouses): ORS 448.005 to 448.100, and administrative rules adopted by the State Health Authority thereunder, including OAR chapter 333, divisions 60 and 62.
- 3.3 **Restaurants and Bed and Breakfast Facilities** (including limited service restaurants, and temporary restaurants): ORS 624.010 to 624.130, and 624.992, and administrative rules adopted by the State Health Authority thereunder, including OAR chapter 333, divisions 150, 157, 158, 160, 162, and 170.
- 3.4 **Commissaries, mobile units and vending machines** (including warehouses): ORS 624.310 to 624.430, and 624.992, and administrative rules adopted by the State Health Authority thereunder, including OAR chapter 333, division 162.
- 3.5 **Public Water Systems** (including domestic wells): ORS 448.115 to 448.290, and administrative rules adopted by the State Health Authority thereunder, including OAR chapter 333, division 61.
- 3.6 **Administrative Procedures**: ORS 183.310, 183.413 to 183.502, and 183.745 and OAR 137-003-0001 to 137-003-0092.

**SECTION 4. VIOLATION PROCEEDINGS**

- 4.1 The Public Health Director is delegated the authority to designate, from time to time, specific employees of the Environmental Health Division of the Josephine County Public Health Department (referred to hereinafter as the "Environmental Health Division") that are authorized to issue citations for the commission of violations of this ordinance. The employees so designated

shall be deemed to be "Enforcement Officers," within the meaning of ORS 153.005 to 153.145 and "Code Enforcement Officers" pursuant to the Josephine County Code Enforcement Ordinance, Ordinance No. 2013-003.

- 4.2 Violations of this ordinance shall be deemed to be "violations," within the meaning of ORS 153.008. Violations of this ordinance are punishable by fines as established by the State Court Administrator for unclassified violations.
- 4.3 The sentence to pay a fine for a violation committed by a corporation shall be in an amount twice the fine established for a violation by an individual (ORS 153.018(3)).
- 4.4 Violation proceedings shall follow the process set forth in ORS 153.005 to 153.145.
- 4.5 Pursuant to ORS 153.058(7), violation proceedings must be commenced by an Enforcement Officer.

## **SECTION 5. CONTESTED CASE PROCEEDINGS**

Enforcement officers of the Environmental Health Division may enforce violations of this ordinance through the contested case proceedings process set forth in ORS 183.310, and 183.413 to 183.502, and OAR 137-003-0001 to 137-003-0092 and in accordance with the Josephine County Hearings Officer Ordinance, Ordinance No. 2013-004.

## **SECTION 6. PUBLIC NUISANCE**

Any violation of this ordinance is a public nuisance and dangerous to health and may be abated or enjoined in any manner provided by law, including injunction, mandamus, abatement or other appropriate equitable proceedings to temporarily or permanently enjoin or abate such nuisance.

## **SECTION 7. AMENDMENTS**

All amendments to the Oregon Revised Statutes and Oregon Administrative Rules adopted herein shall automatically be adopted into this ordinance as well, with the same effective dates as that set forth in such amended statutes and rules.

## **SECTION 8. REMEDIES NOT EXCLUSIVE**

None of the remedies available to the County as set forth in this ordinance are exclusive. Nothing in this ordinance shall preclude any remedy otherwise available to the County, either in law or equity.

## **SECTION 9. ADMINISTRATION; CITATIONS**

- 9.1 The Environmental Health Department shall be responsible for the administration and enforcement of this Ordinance.
- 9.2 A violation of any of the provisions of this Ordinance may be prosecuted by citation under the Josephine County Code Enforcement Ordinance.

## **SECTION 10. SEVERABILITY**

In the event that any part of this Ordinance shall be held by a court to be invalid or unenforceable, the remaining sections shall be unaffected and shall remain in full force and effect.

## SECTION 11. EFFECTIVE DATE

First reading by the Board of County Commissioners this 20<sup>th</sup> day of March, 2013.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

### JOSEPHINE COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Simon G. Hare, Chair

\_\_\_\_\_  
Cherryl Walker, Vice Chair

\_\_\_\_\_  
K.O. Heck, Commissioner

ATTEST:

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven E. Rich, Legal Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON**

In the Matter of Authorization of	)	
Execution of a Sign Location Lease	)	
Agreement Addendum, with	)	Order No. 2013-015
CBS Outdoor, Inc., for Lease of Real	)	
Property at the Josephine County	)	
Fairgrounds	)	

WHEREAS, ORS 271.360 requires that every lease entered into by Josephine County of its real property, pursuant to ORS 271.310, shall be authorized by order of the governing body executing the lease;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Board of County Commissioners for Josephine County authorizes the execution of a Sign Location Lease Agreement Addendum, #901527, a copy of which is attached hereto as Exhibit "1," with Lessee, CBS Outdoor, Inc., for lease of county property at the Josephine County Fairgrounds.

DONE AND DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
Simon G. Hare, Chair

\_\_\_\_\_  
Cherryl Walker, Vice-Chair

\_\_\_\_\_  
K.O. Heck, Commissioner



LEASE NO. 901527

**ADDENDUM A**

AGREEMENT made this 20<sup>th</sup> day of **February, 2013**, between the undersigned, as LESSOR(S), and **CBS OUTDOOR INC., LESSEE.**

WHEREAS, for consideration of \$10.00 and other good and valuable consideration from LESSEE to LESSOR(S), the parties or their predecessors entered into a sign location lease agreement dated **07/01/1990** (the "Lease").

WHEREAS, the parties desire to amend the Lease to establish their respective rights and obligations.

NOW THEREFORE, in consideration of the promises set forth herein, and in the subject Lease, the parties agree as follows:

- 1) Lessor and Lessee acknowledge that CBS Outdoor Inc. is the successor in interest to National Advertising Company and is the LESSEE under that Lease dated 07/01/1990 (the "Lease").
- 2) The Lease dated July 1, 1990 shall be extended for One (1) year beginning on Jan. 1, 2013 and ending Dec. 31, 2013. Thereafter the Lease shall renew automatically for year-to-year terms unless cancelled by either Lessor or Lessee upon at least Sixty (60) days' written notice.
- 3) Lessor hereby relinquishes its privilege of use of the north face of Lessee's sign described in the Lease.
- 4) Lessee shall pay to Lessor \$1,781.92 in back rent for the unpaid rent period Oct. 10, 2010 through Dec. 31, 2012. This amount reflects an annual rental amount of \$800.00, which is twice the annual rent owed when Lessor's lease privilege was in effect under the original Lease. This payment shall satisfy any and all claims by Lessor for unpaid back rent.
- 5) Beginning Jan. 1, 2013, annual rent shall be \$2,100.00. Lessee shall ensure payment of rent for 2013 within thirty (30) days after execution of this Addendum.
- 6) Lessee shall have the right, only upon written approval from Lessor, to replace either or both faces of the sign with digital panels, if permits can be obtained from appropriate governmental authorities. If Lessee installs one or two such digital panels, the Lease term described in Paragraph 2 of this Addendum shall be further extended to end on Dec. 31, 2022, and annual rent described in Paragraph 5 of this Addendum shall change to an annual base rent of \$4,000.00 or 15% of the annual net revenue earned by Lessee's sign, whichever is greater. Annual base rent shall be changed on a pro rata basis for the remaining portion of the lease year during which the digital panel(s) were installed. ("Annual net revenue" is defined as the total revenue earned by the signs during a lease year, less any agency commissions paid, up to a maximum agency commission of 16 2/3 %.) Base rent shall be paid annually in advance. Within Sixty (60) days after the end of any lease year, Lessee shall present Lessor with a statement of the percentage rent for the preceding lease year, together with a payment of any amount by which such percentage rent exceeded the base rent for such lease year.
- 7) Paragraph 9 of the Lease is hereby rendered null and void.
- 8) All other terms and conditions of the Lease remain the same.

THE PARTIES further agree that this Addendum shall supersede any contrary or conflicting provisions of the Lease.

FOR LESSOR(S):  
**JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS**

BY: \_\_\_\_\_  
Simon G. Hare, Chair

BY: \_\_\_\_\_  
Cheryl Walker, Vice-Chair

BY: \_\_\_\_\_  
K.O. Heck, Commissioner

DATE: \_\_\_\_\_

FOR LESSEE:  
**CBS OUTDOOR, INC.**

BY: Chris Steinbacher  
**CHRIS STEINBACHER**  
**V.P. REAL ESTATE**  
**WEST COAST**  
\_\_\_\_\_  
Title

DATE: 2/20/13

EXECUTED by the LESSEE in the presence of

Simon M. Hare  
who is hereby requested to sign as witness.



LEASE NO. 901527

**ADDENDUM A**

AGREEMENT made this 20<sup>th</sup> day of **February, 2013**, between the undersigned, as LESSOR(S), and **CBS OUTDOOR INC., LESSEE.**

WHEREAS, for consideration of \$10.00 and other good and valuable consideration from LESSEE to LESSOR(S), the parties or their predecessors entered into a sign location lease agreement dated **07/01/1990** (the "Lease").

WHEREAS, the parties desire to amend the Lease to establish their respective rights and obligations.

NOW THEREFORE, in consideration of the promises set forth herein, and in the subject Lease, the parties agree as follows:

- 1) Lessor and Lessee acknowledge that CBS Outdoor Inc. is the successor in interest to National Advertising Company and is the LESSEE under that Lease dated 07/01/1990 (the "Lease").
- 2) The Lease dated July 1, 1990 shall be extended for One (1) year beginning on Jan. 1, 2013 and ending Dec. 31, 2013. Thereafter the Lease shall renew automatically for year-to-year terms unless cancelled by either Lessor or Lessee upon at least Sixty (60) days' written notice.
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- 7) Paragraph 9 of the Lease is hereby rendered null and void.
- 8) All other terms and conditions of the Lease remain the same.

THE PARTIES further agree that this Addendum shall supersede any contrary or conflicting provisions of the Lease.

FOR LESSOR(S):  
**JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS**

BY: \_\_\_\_\_  
Simon G. Hare, Chair

BY: \_\_\_\_\_  
Cherryl Walker, Vice-Chair

BY: \_\_\_\_\_  
K.O. Heck, Commissioner

DATE: \_\_\_\_\_

FOR LESSEE:  
**CBS OUTDOOR, INC.**

BY: Chris Steinbacher  
**CHRIS STEINBACHER  
V.P. REAL ESTATE  
WEST COAST**  
\_\_\_\_\_  
Title

DATE: 2/20/13

EXECUTED by the LESSEE in the presence of  
Amia M. Hides  
who is hereby requested to sign as witness.





**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON**

In the Matter of a Reappointment to )  
the **Local Alcohol and Drug** )  
**Planning Committee** )

**RESOLUTION 2013 – 021**

**WHEREAS**, it has come to the attention of the Board of County Commissioners that there is a vacancy on the Local Alcohol and Drug Planning Committee;

**WHEREAS**, it is both proper and necessary that the Board of County Commissioners fill said vacancy by making a reappointment as provided herein;

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, that the following person be reappointed to said Local Alcohol and Drug Planning Committee; with term expiring as hereinafter set forth.

**James Goodwin**

Reappointed to a 4-year term; said term to expire 03/20/17

**DONE and DATED this 20<sup>th</sup> day of March 2013**

**JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Simon G. Hare, Chair

\_\_\_\_\_  
Cherryl Walker, Vice Chair

\_\_\_\_\_  
K. O. Heck, Commissioner



**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON**

In the Matter of an Appointment to  
the **Local Alcohol and Drug  
Planning Committee**

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)  
)

**RESOLUTION 2013 – 022**

**WHEREAS**, it has come to the attention of the Board of County Commissioners that there is a vacancy on the Local Alcohol and Drug Planning Committee;

**WHEREAS**, it is both proper and necessary that the Board of County Commissioners fill said vacancy by making an Appointment as provided herein;

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, that the following person be appointed to said Local Alcohol and Drug Planning Committee; with term expiring as hereinafter set forth.

**Casey Black – At Large**

Appointed to a 4-year term; said term to expire 03/20/17

**DONE and DATED this 20<sup>th</sup> day of March 2013**

**JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS**

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Simon G. Hare, Chair

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Cherryl Walker, Vice Chair

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K. O. Heck, Commissioner



**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON**

In the Matter of an Appointment to the )  
Illinois Valley Airport Advisory Board )

**RESOLUTION NO. 2013-019**

**WHEREAS**, it has come to the attention of the Board of County Commissioners that there is a vacancy on the Illinois Valley Airport Advisory Board; and

**WHEREAS**, it is both proper and necessary that the Board of County Commissioners fill said vacancy by making an appointment as provided herein;

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, that the following person be appointed to said Illinois Valley Airport Advisory Board with term expiring as hereinafter set forth.

**Cameron Camp – Tenant / User**  
To fill the unexpired term of Gary Moseley – Term expires September 21, 2015

**DONE and DATED this 20th day of March 2013**

**JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS**

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Simon G. Hare, Chair

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Cherryl Walker, Vice Chair

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K. O. Heck, Commissioner