



KLAMATH COUNTY CODE

Published May 21, 1998
Pursuant to Klamath County Code 1.001

by

REGINALD R. DAVIS

COUNTY COUNSEL
OF
KLAMATH COUNTY, OREGON

CERTIFICATE OF COUNTY COUNSEL

PURSUANT to Klamath County Code 1.001, I, Reginald R. Davis, County Counsel for Klamath County, do hereby certify that I have compared each section printed in this Code with the original section in the adopted Ordinance, and the sections in the Code are correct copies of the enacted Ordinances, with the exception of the changes in form permitted by KCC 1.020 and other changes specifically authorized by law.

DONE and DATED this 21st day of May, 1998 at Klamath Falls, Oregon.

/s/ _____
Reginald R. Davis
County Counsel

KLAMATH COUNTY CODE

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43 U.S.C. § 1901, *et seq.*, was adopted as County Ordinance
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**DIVISION 1
GOVERNMENT**

**CHAPTER 100
KLAMATH COUNTY CODE**

100.001 Klamath County Code.

(1) The County Counsel shall publish the Klamath County Code and shall be responsible for codifying any new Ordinances adopted.

(2) The County Counsel shall cause a certificate to be printed in the edition, part or supplement that the County Counsel has compared each section in the edition, part or supplement with the original Ordinance and that, with the exception of the changes in form permitted by KCC 100.020 and other changes specifically authorized by law, the sections in the published edition, part or supplement are correctly copied.

(3) Any edition, part or supplement so certified shall constitute prima facia evidence of the law in all courts and proceedings, and any section in such edition, part or supplement may be amended or repealed by amending or repealing such section of the edition, part or supplement without reference to the legislative act from which it was derived.

100.020 Powers and Duties of County Counsel in Preparing Editions for Publication. In preparing editions of the Klamath County Code for publication, the County Counsel shall not alter the sense, meaning, effect or substance of any act, but, within such limitations, may renumber sections and parts of sections of the acts, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or parts, substitute the proper subsection, section or chapter or other division numbers, strike out figures or words which are merely repetitious, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

100.030 Severability. It shall be considered that it is the legislative intent, in the enactment of any Ordinance, that if any part of the Ordinance is held unconstitutional, the remaining parts shall remain in force unless:

(1) The Ordinance provides otherwise;

(2) The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that the remaining parts would not have been enacted without the unconstitutional part; or

(3) The remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

100.040 Effect of Adoption by Reference. When one Ordinance refers to another or to any State Statute, rule, or regulation, either by general or specific reference or designation, the reference shall extend to and include, in addition to the matter to which the reference was made, amendments thereto and matters enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to the matter referred to is substantially different in the nature of its essential provisions from what the matter to which reference was made was when the Ordinance making the reference was enacted.

100.050 Singular or Plural Number; Masculine, Feminine or Neuter Gender. As used in this Code:

(1) The singular number may include the plural and the plural number, the singular.

(2) Words used in the masculine gender may include the feminine and the neuter.

100.060 Majority Can Exercise Authority Given Jointly. Any authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law.

100.100 Enactment of Repealed Statutes as Ordinances. Except as otherwise provided in this Code, the provisions of the former Oregon Revised Statutes described in this section (1979 replacement parts), are hereby made Ordinances of Klamath County:

(1) O.R.S. 203.120, the headnote of which reads "General powers of county court pertaining to county business."

(2) O.R.S. 206.230, the headnote of which reads "Duties and qualifications of undersheriffs."

(3) O.R.S. 214.520, the headnote of which reads "Duties of administrative aide."

(4) O.R.S. 206.240, the headnote of which reads "Consolidation of county cemeteries."

(5) O.R.S. 214.510, the headnote of which reads "Disinterments and removal of remains."

(6) O.R.S. 214.530, the headnote of which reads "Acquisition of fee simple title to vacated cemeteries."

(7) O.R.S. 275.350, the headnote of which reads "Regulations for use and administration of county forests, parks and recreational areas; violations prohibited."

(8) O.R.S. 275.400, the headnote of which reads "Use of public grounds for public markets; public market building."

(9) O.R.S. 275.420, the headnote of which reads "Restricted use of county lands for parking or operating motor vehicles."

(10) O.R.S. 275.430, the headnote of which reads "Parking rules and regulations."

(11) O.R.S. 358.110, the headnote of which reads "Use of delinquent tax land proceeds for county museum, meeting place or memorial."

100.200 Definitions and References. As used in this Code, unless the context requires otherwise:

(1) "Board of Commissioners" means the Board of County Commissioners of Klamath County.

(2) "Any county" or "the County" means Klamath County.

(3) In O.R.S. sections incorporated by reference into KCC 100.100, references to other O.R.S. sections are to 1979 Replacement Parts.

100.300 County Aid for Handicapped Persons and Rehabilitation Facilities. The Board of County Commissioners may budget to expend County funds for the aid of a handicapped person in the County and for financial assistance to rehabilitation facilities, as defined in O.R.S. 344.710, in the County.

100.400 Acceptance and Management of Gifts. The Board of County Commissioners may accept gifts, bequests or devises of money or property, either real or personal, for any purpose pertaining to County business, in accordance with the terms of the gift, bequest or devise or any limitation placed on it. The Board may invest and manage the corpus and income from it in accordance with its terms and applicable law.

100.500 Acquisition of Fee Simple Title to Vacated Cemeteries. Notwithstanding KCC 100.100(6), if the County acquires fee simple title to a vacated cemetery or burial ground by means of condemnation, it shall do so in the manner currently provided by law.

100.600 Cemetery Caretaker. The Board of County Commissioners may employ or contract with any person for purposes of maintaining a County cemetery. If the County has received any gift pursuant to KCC 100.400 for the purpose of maintaining a County cemetery, no part of the principal of the gift shall be used of the maintenance, but the interest on the principal may be used for that purpose.

100.700 Meetings of the Board of County Commissioners. The Board of County Commissioners shall meet for the transaction of County business on every Tuesday in each month unless otherwise scheduled by the Chairman of the Board and at such other times as may be called by the Chairman of the Board.

100.800 Rules and Regulations by Order, Violations. Rules and regulations that are adopted by the Board of County Commissioners pursuant to subsection (7) or (10) of KCC 100.100 may be adopted by order of the Board. Violations of any of those rules or regulations shall be considered a violation of the Klamath County Code.

100.900 Severability. The sections and subsections of this Chapter are severable. The invalidity of a section or subsection shall not affect the validity of the remainder of the Chapter.

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Ordinance No. 32 - 05/05/76

CHAPTER 101
CONTRACT REVIEW BOARD

101.010 Contract Review Board. The Klamath County Board of Commissioners is hereby designated as the Local Contract Review Board, and shall have all the powers of the State Public Contract Review Board and shall formulate and adopt Rules as provided in Chapter 279, Oregon Revised Statutes.

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CHAPTER 102
FEES GENERALLY

102.010 Statutory Fees. The County Clerk shall collect those fees set out in O.R.S. 205.320, 205.323 and 205.327.

102.020 Miscellaneous Fees. For any service which the Clerk may be required by law to perform and no fee is provided by law, such fees as may favorably compare with those established by this section for similar services and as may be established by order or rule of the Board of County Commissioners shall be collected.

102.030 Fee Schedule for Plats.

(1) For recording and indexing any plat, the County Clerk, in whose office the deed records of the County are kept, shall charge the fee as indicated in the fee schedule adopted by Order of the Klamath County Board of Commissioners.

(2) Recording of Vacations Pursuant to O.R.S. 271.230. For recording in the County deed records, the County Clerk shall collect the fee as for recording a deed. For the services of County Surveyor for marking the record on the original plat, the County Clerk shall collect \$6.00 to be paid to the County Surveyor.

102.040 Fee Schedule for Mining Claims.

(1) Recording Copy of Location, Pursuant to O.R.S. 517.030. The locator shall, within sixty (60) days from the posting of the location notices by him upon the lode or claim, file for record with the Clerk for the county where the claim is situated, who shall be the custodian of miners' records and miners' liens, a copy of the notice posted by him on the lode or claim and pay the Clerk a fee as for recording a deed, which sum the Clerk shall immediately pay over to the Treasurer of the County and shall take a receipt therefor, as in the case of other County funds coming into the possession of such officer.

(2) Recordation of Affidavit of Annual Labor Pursuant to O.R.S. 517.210. The fee for recording the affidavit is \$5.00.

(3) Certificate of Ownership Pursuant to O.R.S. 517.280. A Certificate of Ownership described in O.R.S. 517.280 shall not be issued until the co-owners entitled to it pay the Clerk a fee as for recording a deed.

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CHAPTER 103
ADVISORY BALLOT QUESTIONS

103.010 Authorization for Advisory Ballot Questions. At any regular public meeting of the Klamath County Board of Commissioners, and upon a majority vote of those members then present, the Board may adopt a Resolution or Order to place an advisory question or questions on the ballot to determine voter attitudes on matters of local concern, at any general or special election otherwise held.

103.020 Costs. Upon adoption of said Resolution or Order, said advisory question or question shall be placed on the ballot of the election therein designated, with all costs thereof to be born by Klamath County.

103.030 Applicable Law. The election laws of the State of Oregon then in effect shall be followed as nearly as possible when placing said advisory questions on the ballot.

103.040 Non-Binding Effect. The final determination of voter attitudes on the question or questions so presented shall not be binding upon the Board and no affirmative or negative action shall be required as a result thereof. However, the Board may use said results in any manner deemed by them to be in the best interest of Klamath County.

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Ordinance No. 52.02 - 03/23/88
Ordinance No. 52.03 - 01/29/92

CHAPTER 104
LAND CORNER PRESERVATION FUND

104.010 Account. There shall be established a dedicated fund and all monies collected pursuant to this Ordinance shall be credited to said fund which shall be known as the Public Land Corner Preservation Fund.

104.020 Use of Funds. All revenues credited to such fund, together with the interest thereon, shall be used only to pay the expenses incurred and authorized by the County Surveyor in the establishment, the re-establishment, and maintenance or corners of Government surveys as provided by State law.

104.030 Fees. The Klamath County Clerk shall collect a fee of Five Dollars (\$5.00) for recording any instrument under O.R.S. 205.130. This fee shall be in addition to any other fee and not in lieu of any other fee or tax imposed by County or State law for the recording of documents, survey services, or any other purpose. All such fees shall be deposited with the County Treasurer as least once a month, to be credited to the Public Land Corner Preservation Fund. These fees may be adjusted annually by Order of the Klamath County Board of Commissioners after January 1st of each new calendar year.

104.040 Documents to Which Fee Applies. The Klamath County Clerk shall collect the fee as mentioned in KCC 104.030 for the recording of the following instruments:

(1) Deeds and Mortgages of Real Property, Powers of Attorney, and Contracts affecting the title to Real Property, authorized by law to be recorded;

(2) Assignments thereof and any interest therein when properly acknowledged or proved and any other interest affecting the title to Real Property;

(3) Certificates of Sale of Real Property under execution or Order of Court, or assignments thereof and any interest therein when properly acknowledged or proved; and

(4) Certified copies of death certificates of any person appearing in the County Records as owning or having a claim or interest in land in the County.

This list shall not be an exclusive list and the County Surveyor shall prepare a document list to provide to the County Clerk, after consulting with the County Counsel, more specifically identifying the documents herein. Should any document not be contained in said list or if questions arise regarding said document, the party wishing to file said document may request a determination of the majority of the Board of County Commissioners regarding whether such document should be charged this fee.

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Ordinance No. 41 - 12/13/79

CHAPTER 105
WAYS OF NECESSITY

105.001 Removal of Jurisdiction. The Klamath County Board of County Commissioners, a county governing body under ORS 376.150 *et seq.*, hereby ordains to remove itself from jurisdiction over the establishment of ways of necessity, as defined by the Oregon Revised Statutes.

105.010 Circuit Court Jurisdiction. Pursuant to the foregoing, jurisdiction over statutory ways of necessity is vested in the Circuit Court for the County of Klamath as of the effective date of this Chapter.

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Ordinance No. 57.00A - 10/07/87
Ordinance No. 57.01A - 07/08/92
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CHAPTER 106
SELF INSURANCE

106.001 Purpose. The purpose of this Chapter is to establish a Klamath County Self-Insurance Program to provide protection against losses to Klamath County in the most economical manner possible.

106.100 Establishment of Self-Insured Program. Klamath County shall have a self-insurance program to be operated under rules and regulations established by the Board of County Commissioners. The self-insurance program shall provide for insurance for County liability, property, worker's compensation, unemployment compensation and any other insurance otherwise required by the Board of County Commissioners either through self-insurance funding or through the purchase of commercial insurance.

106.200 Self-Insurance Fund. A self-insurance fund has been created effective October 7, 1987. Said fund shall be segregated into accounts for General Liability, Workers' Compensation, Unemployment Compensation, Property Insurance, and any other items deemed necessary by the Board of County Commissioners.

106.300 Expenditure of Funds. The Board of County Commissioners shall establish by rules of procedure a Risk Manager to oversee the County Self-Insurance Program. The Risk Manager shall, with the consent of the Board of County Commissioners, expend such monies from the self-insurance funds created herein as are necessary to manage the self-insurance program and pay claims that are experienced.

106.400 Accumulation of Funds. Assessments for the Self-Insurance Program shall be based upon anticipated expenditures and shall be assessed against County Departments to maintain the General Liability Account, the Workers' Compensation Account, the Unemployment Compensation Account and the Property Insurance Account. Appropriate dollar levels shall be assessed for each Account to maintain the integrity of the Program in accordance with actuarially sound financial analysis. Monies deposited and accumulated, including interest on such monies, in the Self-Insurance fund for each Account set out herein shall be dedicated to the purposes established herein and shall not be available for any purpose other than set out herein.

106.500 Workers' Compensation Program. In the event the Board of County Commissioners determines it to be cost effective to maintain a self-insurance program for Workers' Compensation, Klamath County shall meet the requirements for self-insured employers as outlined in Chapter 656 of the Oregon Revised Statutes.

106.600 Validity. If any subsection, section, sentence, clause, phrase or word of this Ordinance shall for any reason be held invalid or unconstitutional by a Court of competent jurisdiction, it shall not affect the validity of the remainder of this Ordinance, but shall be confined to the section, subsection, sentence, clause, phrase or word, to which it applies, it being the intent of the Board of County Commissioners that this Ordinance should stand with such deletions.

106.700 Supersedes Previous Ordinance and/or Amendments. This Ordinance shall amend and supersede Ordinance No. 57.01A and any and all amendments establishing a Self-Insurance Program within Klamath County.

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Ordinance No. 55.00B - 08/14/86

CHAPTER 107
STATE VOTERS PAMPHLET

107.001 Appointment of Committee to Prepare Explanatory Statement. When an initiative or referendum measure is filed with the County Clerk by the people in accordance with the law of the State, a five-member committee to prepare an explanatory statement shall be appointed in the following manner:

(1) Two members of the committee shall be appointed by the chief petitioners.

(2) Two members shall be appointed by the County Clerk from the opponents to the measure, if an organization has been formed opposing the measure.

(3) These four members shall be appointed no later than the 100th day prior to the election.

(4) A fifth member shall be appointed by the four members previously appointed. If the fifth member has not been chosen by the 95th day prior to the election, the County Clerk shall appoint the fifth member.

(5) When a measure is referred to the voters by the Board of County Commissioners, the explanatory statement shall be prepared by County Counsel.

107.002 Preparation of Explanatory Statements. The explanatory statement shall be an impartial, simple, and understandable statement of not more than 500 words explaining the measure and its effect. The statement shall be filed with the County Clerk not later than the 80th day prior to the election.

107.003 Judicial Review of Ballot Titles and Explanatory Statements.

(1) If any person is dissatisfied with the ballot title, on the grounds that the title is not a concise and impartial statement of the purposes of the measure, that person may, within five (5) days after the ballot title is filed with the County Clerk, petition the Circuit Court of Klamath County to review the ballot title. Attached to the petition shall be a copy of the measure, the challenged ballot title and a statement why the title is not a concise and impartial statement of the purposes of the measure.

(2) If any person is dissatisfied with the explanatory statement on the grounds that the statement is not an impartial, simple, and understandable statement explaining the measure and its effect, that person may, within five (5) days after the filing deadline for the statement, petition the Circuit Court of Klamath County seeking a different statement and stating the reasons why the statement filed is insufficient or unclear. Attached to the petition shall be a copy of the measure and the challenged explanatory statement.

(3) The Court may solicit additional written information pertinent to the measure, the ballot title or the explanatory statement and shall afford the petitioner access to the information; the Court may hear oral argument about the title

and/or statement. The Court shall adjudicate the petition in an expeditious manner to insure the orderly and timely circulation of the petition, or conduct of the election at which the measure is to be submitted to the voters.

(4) If the Court finds that the ballot title is a concise and impartial statement of the purpose of the measure, the Court shall certify the title. If the Court finds to the contrary, it shall prepare another ballot title that is a concise and impartial statement of the purpose of the measure.

(5) If the Court finds that the explanatory statement is an impartial, simple, and understandable statement explaining the measure and its effect, the Court shall certify the statement. If the Court finds to the contrary, it shall prepare another explanatory statement of the measure that is an impartial, simple, and understandable statement explaining the measure and its effect.

(6) The Circuit Court of Klamath County shall be the first and final review of these matters.

107.004 Ballot Titles and Explanatory Statements - Submission to the Secretary of State. When filing the measure with the Secretary of State for inclusion in the State Voters Pamphlet, the County Clerk shall also file the ballot title originally prepared for the measure, or if that title has been subjected to judicial review, the ballot title certified by the Court. The County Clerk shall likewise file the explanatory statement originally prepared for the measure, or if that statement has been subjected to judicial review, the explanatory statement certified by the Court. Filing of the ballot title and explanatory statement with the Secretary of State shall be no later than the 70th day before the election.

107.005 Arguments Regarding Measures to be Published in the State Voters Pamphlet. The County Clerk shall accept from any person or group of persons, as specified in O.R.S. 251.285, argument(s) supporting or opposing the measure, provided:

(1) The argument is typewritten and can be printed in the Voters Pamphlet in 29.8 square inches; and

(2) The argument is filed with the County Clerk not later than the 75th day before the election; and

(3) The person or group, when filing the argument, either:

(a) Pays the County \$300.00 to apply to the cost of the printing, or

(b) Files with the County Clerk a petition signed by 1,000 voters in the County or 10% of the electors in the County, whichever is less; and

(4) The argument is accompanied by the name of the person who submitted the argument, the name of the organization the person represents, if any, and whether the argument supports or opposes the measure.

The County Clerk shall file the arguments, together with the measure, with the Secretary of State not later than the 70th day before the election.

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DIVISION 2
PUBLIC LANDS

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Ordinance No. 69 - 02/08/95

**DIVISION 2
PUBLIC LANDS**

**CHAPTER 200
PUBLIC RIGHTS-OF-WAY**

200.010 DEFINITIONS. Definitions as used in this Ordinance:

(1) "Acceptance", "acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses", or "accepted" means one or more of the following acts prior to October 21, 1976:

(a) by the County or person with the intention of creating a public highway over public lands;

(i) construction or maintenance of a highway;

(ii) inclusion of the right-of-way in a State, county, or municipal road system, plat, description, or map of County roads;

(iii) expenditure of any public funds on the highway;

(iv) execution of a memorandum of understanding or other agreement with any other public or private entity or an agency of the federal government that recognizes the right or obligation of the County to construct or maintain the highway or a portion of the highway; or

(b) use by the public for the period required by law or prior State law; or

(c) any other act consistent with State or Federal law indicating acceptance of a right-of-way.

(2) "Highway" means:

(a) any road, street, trail, or other access or way that is open to the public to come and go at will, without regard to how or by whom the way was constructed or maintained;

(b) appurtenant land and structures including road drainage ditches, back and front slopes, cut and fill slopes, turnouts, rest areas, and other areas that facilitate use of the highway by the public; and

(c) pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, water ways and water impoundments, and all other ways and their attendant accesses for maintenance.

(3) "Federally controlled lands not reserved for public uses" means any federal lands open to entry, location, appropriation or purchase, until such lands were lawfully reserved.

(4) "Right-of-way" means a right-of-way for a highway existing in this County on public lands not reserved for public uses and accepted by the County prior to October 21, 1976.

200.020 ACCEPTANCE.

(1) Klamath County, as trustee for the public users who were granted rights by R. S. 2477 and as a result of other laws implemented by the United States Congress consistent with the public policy of the United States of America to grant right-of-ways to the public, hereby accepts as Trustee for the public all of the public's right, title, and interest in these rights-of-way.

(2) Klamath County shall not be deemed to consent or have consented to the exchange of any right-of-way granted to Klamath County by virtue of U. S. Congressional action unless a formal written resolution specifically so stating has been passed at a duly called public meeting of the Board of County Commissioners. No employee or agent of Klamath County has been given authority to abandon, waive, or exchange any such right-of-way and any prior action by any employee or agent purporting to take any such action was void when taken, unless:

(a) in the case of exchange, later ratified by formal written resolution as provided herein; or

(b) in the case of abandonment or waiver, action has been taken in accordance with the procedures in O.R.S. 366.005 *et seq.*

(3) Where a right-of-way has been perfected through public use, the failure by the County to conduct mechanical maintenance of said right-of-way shall not affect in any way the status of said right-of-way as a highway accepted by the public in accordance with the policy of the Federal government.

(4) The omission of any right-of-way from any plat, description, or map of County roads or highways, whether required by State law or otherwise, shall not be deemed a failure to accept the grant offered prior to October 21, 1976 as a result of the policy of the United States of America.

200.030 ABANDONMENT.

(1) Abandonment of these rights-of-way shall take place only in accordance with the procedures in O.R.S. 366.005 *et seq.*

(2) If any right-of-way is abandoned by Klamath County, the right-of-way shall revert to the State.

200.040 SCOPE OF RIGHT-OF-WAY.

(1) The scope of these rights-of-way is that which is reasonable and necessary to ensure safe travel for all uses that occurred before October 21, 1976.

(2) The scope includes the right to widen the highway as necessary to accommodate the increased travel associated with all uses that occurred before October 21, 1976, up to, where applicable, improving a highway to two lanes so travelers can safely pass each other.

(3) Unless otherwise established by formal action taken by the Board of County Commissioners, the width of these rights-of-way used for vehicular travel may not be less than the setback standards for wilderness boundaries along existing roads as described in Bureau of Land Management Manual H-8560-1, Management of Designated Wilderness Areas, dated July 27, 1988, as follows:

(a) high standard paved highways shall be 300 feet from the centerline;

(b) high standard logging roads shall be 100 feet from the centerline;

(c) low standard logging, jeep, maintenance, dirt roads used for right-of-way, or similar roads shall be 30 feet from the centerline.

200.050 PUBLIC COMMENT.

(1) It is in the best interest of Klamath County and the public that facts and legal issues relevant to Klamath County's management of its rights-of-way be raised in a timely manner and it is a fundamental principle of due process and fairness that any person having knowledge relevant to such facts or issues bring them to the attention of the County.

(2) Inclusion of any proposed action on the agenda for a duly called public meeting of the Board of County Commissioners shall be deemed notice to the public for all purposes under this Ordinance.

(3) Any factual or legal issue not brought to the attention of Klamath County by presentation at the public meeting where action is proposed or authorized to be taken or by written comments filed within five (5) days of said meeting shall be deemed waived by any party in later proceedings, whether in a court of law or otherwise.

No action may be brought against Klamath County, its officers or employees for damage suffered by a person solely as a result of the unmaintained condition of a public right-of-way.

200.060 SEVERABILITY. The provisions of this Ordinance are severable, and any invalid section, subsection, sentence, clause, phrase or portion of this Ordinance if for any reason is held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not effect the validity of the remaining portions of the Ordinance.

DIVISION 3
LAND USE REGULATIONS

KLAMATH COUNTY LAND DEVELOPMENT CODE
AND URBAN GROWTH MANAGEMENT AGREEMENT
BETWEEN KLAMATH COUNTY AND MERRILL AND MALIN
(ORDINANCE NO. 50) PUBLISHED UNDER SEPARATE COVER

THE KLAMATH COUNTY LAND AND WATER MANAGEMENT PLAN
ADOPTED AS KLAMATH COUNTY ORDINANCE NO. 68 ON JUNE 29, 1994
IS PUBLISHED UNDER SEPARATE COVER

THE PUBLIC RANGELANDS IMPROVEMENT ACT (PRIA),
43 U.S.C. § 1901, *et seq.*, WAS ADOPTED AS
COUNTY ORDINANCE 68.01 BY THE COUNTY COMMISSIONERS
OF KLAMATH COUNTY, OREGON ON JULY 10, 1994 AND WAS
INCORPORATED AS PART OF THE KLAMATH COUNTY LAND AND WATER
MANAGEMENT PLAN WHICH IS PUBLISHED UNDER SEPARATE COVER

DIVISION 4
PUBLIC HEALTH AND SAFETY

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CHAPTER 400
SOLID WASTE MANAGEMENT

400.001 Purpose and Policy. To protect the health, safety and welfare of the people of Klamath County and to provide a coordinated program on accumulation, collection, and disposal of wastes and solid wastes, it is declared to be the public policy of Klamath County to regulate accumulation, collection, and disposal of wastes and solid wastes and the location and operation of disposal sites to:

- (1) Provide for safe and sanitary accumulation, storage, collection, transportation and disposal of solid wastes;
- (2) Prohibit and provide for abatement of accumulation of wastes or solid wastes on public or private property in such a manner so as to create a public nuisance, a hazard to health or a condition of unsightliness;
- (3) Develop a regional long-range plan to provide adequate disposal sites and disposal facilities to meet future demands;
- (4) Provide a coordinated County-wide program of control of solid wastes in cooperation with Federal, State and local agencies responsible for the prevention, control or abatement of air, water and ground pollution to preserve and enhance the beauty and quality of our environment;
- (5) Encourage research, studies, surveys and demonstration projects on developing more sanitary, efficient and economical solid waste disposal systems and programs;
- (6) Encourage a coordinated solid waste disposal program with cities within Klamath County and with other counties or cities, should regional programs be desirable; and
- (7) Provide appropriate standards for location and operation of disposal sites to protect adjacent or nearby residents and properties.

400.005 Definitions. For the purpose of this Chapter, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory.

- (1) "Board" means Board of County Commissioners of Klamath County.
- (2) "Collection vehicle" means any vehicle properly licensed and used to collect or transport solid waste.
- (3) "Compensation" means type of consideration paid for service including, but not limited to, direct or indirect compensation by tenants, licensees or similar persons.
- (4) "County Transfer Station" means any fixed or mobile facility owned and operated by Klamath County for the collection and transfer of solid waste to a disposal site or to a resource recovery site, or for the collection and transfer of recyclables.
- (5) "Director" means Director of the Community Development Department of Klamath County.
- (6) "Dispose" or "Disposal" means accumulation, storage, collection, transportation and disposal of solid wastes.

(7) "Disposal site" means any land used for the disposal of solid wastes, including, but not limited to, dumps, landfills, sanitary landfills, composting plants, convenience centers and transfer station(s) for transport and disposal of waste, but does not include a landfill site which is not used by the public either directly or through a service and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or non-putrescible industrial waste products resulting from the process of manufacturing.

(8) "Franchise" means a franchise to provide service issued by the Board pursuant to applicable sections of this Ordinance.

(9) "Franchise, Collection" means a franchise to store, collect or transport solid wastes.

(10) "Franchise, Disposal" means a franchise to create or maintain a disposal site.

(11) "Garbage" means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

(12) "Hazardous solid wastes" means solid waste that may, by itself or in combination with other solid wastes, be infectious, explosive, poisonous, caustic, toxic, or otherwise dangerous or injurious to human, plant or animal life.

(13) "Health Officer" means the duly appointed Health Officer of Klamath County, Oregon, or his authorized representative.

(14) "Incinerator" means a combustion device specifically designed for the reduction, by burning, of solid, semi-solid or liquid combustible wastes.

(15) "Landfill" means a disposal site operated by means of compacting and covering solid waste at specific designated intervals.

(16) "Liquid waste" means waste oil, septic tank pumpings, liquid industrial wastes and other similar materials.

(17) "Nuisance" means any annoying, unpleasant or obnoxious thing or practice causing a threat to the public health and safety as declared or intended by this Ordinance.

(18) "Owner" means a person as defined in this section, having legal title to property.

(19) "Person" means and includes individuals, corporations, associations, firms, partnerships and joint stock companies or legal entities.

(20) "Person in possession" means an agent, occupant, lessee, contract purchaser, or person, other than the owner, having possession or control of property.

(21) "Putrescible material" means organic material that can decompose, and may give rise to foul-smelling, offensive products.

(22) "Refuse" means all solid waste except body wastes and shall include garbage, ashes and rubbish.

(23) "Regulations" means regulations promulgated by the Board pursuant to this Ordinance.

(24) "Rubbish" means glass, metal, paper, wood, plastics, or nonputrescible solid waste.

(25) "Rules" means rules promulgated by federal, state or local agencies pursuant to applicable statutes.

(26) "Sanitary landfill" means a disposal site operated by means of compacting and covering solid waste at least once each operating day unless otherwise specified more frequently.

(27) "Service" means the collection, transportation or disposal by private persons of solid waste for compensation.

(28) "Service area" means the geographical area in which service, other than operation of a disposal site, is provided by any person pursuant to designation by the Board.

(29) "Sewage sludge" means residual waste of sewage treatment plants, consisting of digested organic waste and undigestible solids.

(30) "Solid waste" means all putrescible and non-putrescible wastes, whether in solid or liquid form, except liquid-carried industrial wastes or sewage or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable and animal solid and semi-solid wastes, dead animals and other discarded solid materials.

(31) "Vector" means an organism capable of bearing or carrying and/or transmitting micro-organisms.

(32) "Waste" means useless, unwanted or discarded materials.

400.030 Administration.

(1) The Director, under the supervision of the Board, shall be responsible for the administration and enforcement of this Chapter.

(2) In order to carry out the duties imposed by this Chapter, the Director and the County Health Officer and their authorized representatives shall conduct such inspection as they deem necessary to insure compliance with all provisions of this Chapter, and shall enter upon the premises of any person regulated by this Chapter at reasonable times to determine compliance with this Chapter and the regulations promulgated by the Board pursuant thereto.

400.040 Persons and Agencies Exempted. This Chapter shall not apply:

(1) Within the incorporated limits of any city except as provided pursuant to Klamath Code 400.700; nor to

(2) Federal or State agencies that collect, store, transport or dispose of wastes or solid wastes or those who contract with such agencies to perform the service, but only as to rates for collection, service and terms for service; nor to

(3) County Transfer Stations.

400.100 Solid Waste Accumulation Prohibited.

(1) Except as provided in this Chapter, no person shall store, collect, maintain or display on private property, waste or solid waste that is offensive or hazardous to the health and safety of the public or which creates offensive odors or a condition of unsightliness, which shall include, but not be limited to, the following:

(a) All artificially created or impounded ponds or pools of stagnant water within 300 feet of two or more separate residential units;

(b) Any animal carcass not buried or destroyed within 24 hours after death;

(c) The accumulation, collection, storage or disposal of solid waste, waste, garbage, liquid waste, refuse, rubbish, sewage sludge, demolition materials, or fill dirt;

(d) Any abandoned, unattended or discarded ice box, refrigerator or other container which has an airtight door or lid, snaplock or other locking device which may not be opened from the inside, without first removing said door or lid, snaplock or other locking device therefrom;

(e) The accumulation, collection, storage or disposal of wastes or solid wastes in any manner capable of providing vector harborage or infestation by flies, fleas, rodents, lice, larvae, or other vector and their hosts.

(2) The creation or maintenance of one or more of the conditions specified in subsection (1) of this Section shall be prima facie evidence of a violation of this Section.

(3) KCC 400.100 does not apply to:

(a) Areas within the limits of incorporated cities unless by special agreement entered into by the Board and the incorporated area which application is authorized;

(b) Disposal sites franchised under provisions of KCC 400.400 to 400.700 provided that such disposal sites comply with rules promulgated by any state agency under O.R.S. Chapter 459 and regulations adopted by Klamath County pursuant to this Chapter;

(c) Agricultural operations involving growing or harvesting of crops and the raising of fowl or animals; and

(d) The growing or harvesting of timber including silvicultural practices.

400.200 Unauthorized Dumping Prohibited.

(1) Except as provided in this Section, it shall be unlawful to dispose of solid waste at any place other than a disposal site approved by the Board.

(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. Persons desiring to bury or dispose in any other manner of his own solid waste on his own property may do so in accordance with rules promulgated pursuant to O.R.S. Chapter 459 and regulations promulgated by the Board pursuant to this Chapter.

(3) No person shall drive or move a truck, trailer or other vehicle transporting solid waste to a disposal site if said truck, trailer or other vehicle contains litter, other solid waste material or refuse of any sort, unless such person shall have secured the load in such a manner that a protective cover is provided or that the load is sufficiently bound with rope or other suitable material so that refuse or other solid waste shall not drop or be scattered from the trailer or vehicle.

400.300 Regional Solid Waste Committee. If agreement is reached with one or more counties pursuant to KCC 400.700 for regional or franchising of collection or disposal of solid wastes, the Board may appoint one of its own members, or in lieu thereof, any other designate, to serve on a regional committee established by such agreement to advise the Boards of Commissioners of the affected counties.

400.350 Regulations.

(1) The Board may promulgate reasonable regulations pertaining to the administration of this Chapter.

(2) Where necessary to meet special local conditions, the Board may promulgate reasonable rules governing storage, accumulation, collection, transportation and disposal of solid wastes including, but not limited to, the following:

(a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent:

- (i) Vector production and sustenance;
- (ii) Conditions for transmission of disease to man or animals;
- (iii) Air pollution by dust, fumes, gas, smoke, odors or particulate matter or any combination thereof;
- (iv) Pollution of surface or ground water;
- (v) Hazards to service or disposal workers or to the public; and
- (vi) Unsightly conditions.

(b) Storage of solid wastes at the point of origin to eliminate conditions conducive to the creation of vector nuisances or air or water pollution through proper container construction and design, and through waste and solid waste handling processes including, but not limited to, container maintenance.

(c) Collection of waste and solid wastes to prevent vector nuisances and air and water pollution through frequency and regularity of collection and by proper design, construction, operation and maintenance of collection and storage equipment.

(d) Construction, loading and operation of collection vehicles used in performing service to prevent the contents thereof from dropping, sifting, leaking or escaping onto public roads and highways.

(e) Disposition at disposal sites.

(3) As provided in Chapter 459, Oregon Revised Statutes, the Board may promulgate reasonable regulations with respect to service governing:

- (a) The quality and character of service provided by any person or to any area outside of an incorporated city;
- (b) Rates for service; and
- (c) Minimum requirements to guarantee service.

400.400 Franchising Solid Waste Collection and Disposal.

(1) It shall be unlawful for any person/agency to store, collect, transport or dispose of any solid waste for compensation unless such person/agency is exempt or franchised in accordance with this Chapter.

(2) It shall be unlawful for any person/agency to create or maintain a disposal site unless so authorized by this Chapter.

400.410 Applications. Applications for franchises shall be on forms provided by the Director. In addition to information required on the forms, the Director may require the filing of any additional information he deems necessary to insure compliance with this Chapter or confirmation of the capabilities and qualifications of the applicant seeking a franchise to perform such services.

(1) Applicants for collection franchises shall state the types of service to be provided, the area to be served, and shall supply all the information required to determine compliance with KCC 400.420.

(2) Applicants for disposal franchises shall file a duplicate copy of the information required by the Department of Environmental Quality and Control under O.R.S. Chapter 459.

400.420 Requirements for Collection Franchises.

(1) Persons who are providing collection services on the effective date of this Chapter must make application for a collection franchise within thirty (30) days thereafter and, upon filing an application and furnishing required information for such franchise, may continue to provide collection service until a final decision on the application is made by the Board.

(2) Persons providing service continuously for a period of not less than one hundred eighty days (180) prior to the adoption of this Chapter shall be granted a collection franchise for the area they are presently serving provided that such persons are providing adequate service and otherwise qualify for a franchise under this Section. If the Director recommends to the Board that an operator not be granted such franchise on the basis of inadequate existing service, the Board shall hold a public hearing prior to the allocation of the service area involved in the same manner as provided in KCC 400.460. The applicant must show to the satisfaction of the Board that he:

(a) Has a majority of the service accounts in the service area for which he has applied, which shall be evidenced by a certified list of customers served;

(b) Has available collection vehicles, equipment, facilities and personnel sufficient to meet the standards of equipment and service established by this Chapter and O.R.S. Chapter 459 and rules and regulations promulgated thereunder. If the applicant proposes to serve a service area or portion thereof which is under franchise to another person or to replace such person upon expiration of the existing franchise, he shall have available on the day beginning the proposed franchise term, collection vehicles, containers and

other equipment in accordance with applicable provisions of this Chapter;

(c) Has good moral character, or if the applicant is a firm or corporation, that the principal partners or officers are of good moral character;

(d) Will use disposal sites authorized by the Board and list such sites;

(e) Has sufficient experience in properly providing such service to insure compliance with this Chapter and any regulations promulgated thereunder. If the applicant does not have sufficient experience, the Board may require the applicant to submit a corporate surety bond in an amount not less than \$5,000 or not less than 1/12th the estimated gross revenue to be obtained from service annually, whichever is greater, guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchise holder under the provisions of this Chapter and applicable federal, state and local laws and rules and regulations.

(f) If the applicant is not already serving the area proposed to be serve, he shall show:

(i) The defined service area has not been franchised to another person; or

(ii) The defined service area is not being presently served by the holder of a franchise therefor pursuant to any schedule established as part of the franchise in accordance with KCC 400.500; or

(iii) The defined service area is not being adequately served by the holder of the franchise and there is a substantial demand for customers within the area for a change of service to the area;

(iv) Has in force public liability insurance in the amount of not less than \$500,000/1,000,000 and property damage insurance in the amount of not less than \$500,000, which shall be evidenced by certificate of insurance, which insurance shall be maintained in full force and effect for the term of the franchise or such other period designated by the Board.

400.430 Issuance of Collection Franchises.

(1) Applications for collection franchises shall be reviewed by the Director who shall make such investigation as deemed appropriate. The Director shall give written notice to any known person who holds a franchise which includes any part of the area contained in the application for franchise.

(2) Upon the basis of the application, evidence submitted and results of any investigation by the Director, the Board shall make a finding on the qualifications of the applicant and shall determine whether additional areas should be included or additional service or equipment should be provided.

(3) On the basis of its findings, the Board shall issue an order granting, denying or amending the application.

400.440 Disposal Franchise Requirements.

(1) Applicants for a disposal franchise shall provide sufficient information to determine compliance with the requirements of this Chapter, the regulations promulgated thereunder and rules of federal, state or local agencies having jurisdiction;

(2) Applicants shall specify the type of disposal site and the disposal method to be employed together with any proposed special regulations dealing with hazardous wastes or what wastes will be accepted or rejected at the disposal site;

(3) The applicant must show to the satisfaction of the Board that he:

(a) Has available land, equipment, facilities and personnel sufficient to meet the standards established by this Chapter and O.R.S. Chapter 459 and rules and regulations promulgated thereunder and has insurance equal to that required by KCC 400.420, and such other additional insurance as may be required by the Board, particularly with respect to the public liability for fire originating upon the premises. Land shall be by deed or by lease agreement as approved by the Board;

(b) Has good moral character, or if the applicant is a firm or corporation, that the principal partners or officers are of good moral character;

(c) Has sufficient experience in properly providing such service to insure compliance with this Chapter and any regulations promulgated thereunder. If the applicant does not have sufficient experience, the Board may require the applicant to submit a corporate surety bond in the minimum amount of \$5,000 but not more than \$25,000 guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchise holder under the provisions of this Chapter and applicable Federal, State and local laws and rules and regulations. In determining the amount of bond to be required, the Board shall give due consideration to the size of the sites, the method of disposal proposed, the population to be served, adjacent or nearby land uses and the potential danger of failure of service; and

(d) Where the applicant is providing disposal service on the effective date of this Chapter, and has filed his application within thirty (30) days thereafter, he may continue service until the final decision of the Board on his application.

400.450 Issuance of Disposal Franchises.

(1) Applications for disposal franchises shall be reviewed by the Director and the Klamath County Planning Commission who shall make such investigation as they deem appropriate. Written notice shall be given by the Director to any known person who holds a disposal franchise for service to all or part of the area that reasonably would be served under the application.

(2) Upon the basis of the application, evidence submitted and results of any investigation, the Board shall make a finding on the qualifications of the applicant and whether or not

additional service, land, equipment, and/or facilities should be provided and what conditions of service should be imposed including, but not limited to, whether the site should be opened to the public and under what conditions, whether or not certain types of wastes, solid wastes or hazardous wastes should be excluded from the site or should be required to be accepted at the site, and shall make a finding as to whether or not the site is economically feasible, whether or not the site may be integrated with existing private or County owned or operated sites and further, that the site complies with all rules and regulations adopted pursuant to O.R.S. Chapter 459 or this Chapter.

(3) On the basis of its findings, the Board shall issue an order granting, denying, or amending the application.

(4) These provisions are in addition to and not in lieu of any provisions of the Klamath County Building or Zoning Ordinances as may be in effect at the time of granting an application.

400.460 Appeal on a Franchise.

(1) If the order of the Board is adverse to the applicant or to the holder of an existing franchise, it shall not become effective until thirty (30) days after the date of said order unless the Board finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.

(2) The applicant or a franchise holder may request a hearing before the Board upon the Board's Order by filing a written request for the hearing with the Board within thirty (30) days after the date of said Order. On the filing of such request for hearing, the Board shall set a time and place for hearing upon its Order, which hearing shall be not more than thirty (30) days from the date of said request for hearing. The applicant or franchise holder may submit relevant evidence to the Board upon the Board's Order. Other interested persons or affected public or private agencies may appear and offer oral or written testimony. The Board may, following the hearing, affirm, modify or rescind its prior Order.

(3) Subject to provisions of KCC 400.990, the determination of the Board after conclusion of said hearing shall be final.

(4) If the Board makes a final order rejecting all or part of the application for a franchise, the applicant may not submit another application for the same service area or a portion thereof within a one-year period from the date of rejection unless the Board finds that the public interest requires reconsideration within a shorter period of time.

400.480 Exclusive or Joint Service under a Franchise.

(1) If the Board finds that an applicant for a collection franchise cannot provide service to a single customer, a group or type of customer, or for a particular type or unusually large quantity of solid waste, it may issue a franchise for joint service with another person who can provide that service; provided, however, that in all cases where the Board finds that the applicant is able to provide adequate service within the

defined service area, it may issue an exclusive franchise for that area to the applicant.

(2) If the holder of a franchise is unable to provide service for particular types or unusually large quantities of solid wastes, the Board may issue a temporary or permanent franchise to another person for the limited purpose of providing service to the customer or customers having such particular type or unusually large quantity of solid wastes.

(3) Upon recommendation of the Director, if the Board finds that the need for service justifies action before a complete investigation and final determination can be made, it may order the Director to issue a temporary certificate, valid for a stated period not to exceed six (6) months entitling a person to serve a defined service area or customers.

400.490 Transfer of Franchises.

(1) A franchise holder may upon written application, transfer his franchise or a portion thereof, to other persons only upon written approval by the Board.

(2) The Board shall approve the transfer if it finds that the transferee meets all applicable requirements met by the original franchise holder. The Board shall approve or disapprove any application for transfer of a franchise within thirty (30) days unless the Board finds there is a substantial question of public health or safety involved which requires additional time for investigation and decision.

(3) Upon written application the Board may permit a franchise to be pledged as security for purchase of land, equipment or facilities needed to provide service or to finance purchase of a business providing service under this Ordinance; however, the Board shall in so doing, assume no obligation nor shall such action on the part of the Board constitute a waiver of its rights to revoke a franchise.

400.500 Responsibilities of Franchise Holders.

(1) The holder of a collection franchise shall:

(a) Provide required service, equipment and facilities within one (1) month from the date of issuance of the franchise unless the Board extends the time upon showing of reasonable grounds by the applicant. Where an area is not receiving service on the date of the application for a franchise covering such area, the Board may order that service be provided at such time as it finds to be reasonable;

(b) Not voluntarily discontinue service thereof or any customer without giving ninety (90) days written notice of the proposed discontinuance of service to the Director and to his customers and shall not discontinue the service without receiving the written approval of the Board.

(c) Not contract with another person to provide service within a service area unless written approval of the Board is first obtained. The Board shall approve the contract unless it finds that the quality or extent of service would be jeopardized or that the person seeking to

provide the service pursuant to such contract is not qualified in all respects under this Chapter and all other applicable laws;

(d) Not refuse service to existing or potential customers except upon reasonable grounds where, confirmed by the Director, service at the particular location would jeopardize the safety of the driver of the collection vehicle other persons or person working in association with the driver upon the collection vehicle, or the motoring public, the customer has not provided reasonable access to the pickup point for the containers storing solid wastes without hazard or risk to the person providing service, or weather condition prevent service to the particular customer, or where the customer refuses to package such waste in accordance with requirements of the franchise.

(2) Nothing in this Section shall prohibit a franchise from refusing to provide service to a customer if the customer refuses to pay for the service in accordance with rates established pursuant to this Ordinance or for other reasons as may be established by the Board by regulation; provided, however, in no event shall the holder of any franchise terminate such service without seven (7) days prior written notice notifying his customers and the Director of the holder's intention to terminate service. A franchise holder who has discontinued service on the basis of refusal of a customer to pay for such service may demand that the customer pay in advance a reasonable deposit to guarantee payment for future services before reinstating such service.

(3) Nothing in this subsection shall apply to any order for a change, restriction or termination of service by any public agency, public body or court having jurisdiction;

(4) The holder of a disposal franchise shall:

(a) Not voluntarily discontinue service without giving at least ninety (90) days written notice of the proposed discontinuance of service to the Board and to any franchise using his disposal site and further receiving the approval of the Board prior to discontinuing said service. This paragraph shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.

(b) Not contract with another person to operate the disposal site unless written approval of the Board is first obtained. The Board shall approve the contract unless it finds that the quality or extent of service would be jeopardized, or that the person seeking to provide the service is not qualified in all respects under this Ordinance or other applicable laws.

(c) Refuse disposal service to any customer if the customer refuses to pay for the service in accordance with the rates established pursuant to this Chapter. A franchise holder who has discontinued service for refusal of a customer to pay for such service may demand that the customer provide a reasonable deposit in advance to guarantee payment for future service prior to reinstating such service.

(d) Not refuse service to any customer or prospective customer who has complied with all requirements of the franchise.

400.550 Enforcement of Franchise Provisions. The Director shall, upon reasonable cause, make an investigation to determine if there is sufficient reason and cause to suspend, modify, revoke or refuse to renew a franchise as provided in this Section. If, in the opinion of the Director, there is sufficient evidence to constitute a violation of this Chapter, or O.R.S. Chapter 459 or the rules or regulations promulgated under either, the Director shall notify the holder of the franchise in writing of the alleged violation and what steps must be taken to cure the violation and follow the requirements of the Director set forth in said notice. The Director shall notify the Board of such violation also.

400.560 Suspension, Modification, Revocation or Refusal to Renew a Franchise.

(1) The Board may suspend, modify, revoke or refuse to renew a franchise upon finding that the holder thereof has:

(a) Willfully violated this Chapter or O.R.S. Chapter 459 or the rules or regulations promulgated thereunder; or

(b) Materially misrepresented facts or information given in the application for the franchise; or

(c) Willfully refused to provide adequate service in a defined service area or at the franchised disposal site after written notification and an opportunity to do so; or

(d) Misrepresented the gross receipts from the franchised service area or, if required to report on such receipts, the gross receipts from operation of a franchised disposal site.

(2) In lieu of immediate suspension, modification, revocation or refusal to renew a franchise, the Board may order compliance and make the suspension, modification, revocation or refusal to renew a franchise contingent upon compliance with the order within the period of time stated in said order.

(3) If the Board suspends, modifies, revokes or refuses to renew the franchise, the action shall not become effective until thirty (30) days after the date of the Order unless the Board finds that there is a serious and immediate danger to the public health or that a public nuisance would be created. The holder of a franchise may request a hearing before the Board upon the Board's order by filing a written request for such hearing with the Board within thirty (30) days after the date of said order. Upon the filing of such request for hearing, the Board shall set a time and place for a hearing and upon its Order, which hearing shall be not more than thirty (30) days from the date of filing said request for hearing. The franchise holder and other interested persons or affected public agencies may submit oral or written evidence to the Board relevant to the Board's Order. Subject to provisions of KCC 400.990, the determination of the Board after conclusion of said hearing, shall be final.

400.570 Preventing Interruption of Service. The holder of any franchise agrees, and it is a condition of his obtaining and holding the franchise, that whenever the Board finds that the failure of service would result in creation of health hazards or public or private nuisance, the Board shall, after reasonable notice but not less than twenty-four (24) hours notice to the franchisee and a hearing if the franchisee requests such a hearing, have the right to authorize another franchise holder or other person to provide service or to use and operate the land, facilities or equipment of the franchise holder through leasing to provide emergency service in the event of a serious interruption of service to all or to a class or group of customers for so long as such interruption continues.

400.600 Term of Franchises.

(1) Franchises shall be renewable unless grounds exist for refusal to renew pursuant to KCC 400.550.

(2) The term for collection franchises shall be five (5) years unless the Board finds that a longer or shorter term is required in the public interest.

(3) The term for disposal franchises shall be determined by the Board upon the basis of the recommendation of the Director based on site longevity, immediate and projected population to be served, and probable use.

400.610 Franchise Fees.

(1) The Board shall collect, in the manner and at the time provided in this Section, from the holder of:

(a) Any collection franchise, an annual fee of three percent (3%) of the gross service charges for collection service provided to the service area included in the franchise;

(b) Any disposal franchise, an annual fee of \$10.00 per acre of the disposal site up to ten (10) acres and \$5.00 for each acre in excess of ten (10) acres;

(c) A disposal franchise may be granted for use and maintenance of County owned disposal site upon negotiation of a fee satisfactory to the Board.

(2) The franchise fee shall be computed on a calendar month basis and shall be due and payable not later than the fifteenth (15th) day of the next month by the franchise holder. There will be a one percent (1%) per day penalty for each day of delay in payment. For example, if the franchise fee for services provided in January is not paid until February 20th, there will be a 5% penalty due in addition to the franchise fee. The penalty may be waived by the Board.

(3) Every collection franchise holder shall maintain books and records disclosing the gross service charges from his service area, which books and records shall be open for audit by authorized personnel of Klamath County upon demand by the Board. Where reasonably required by the Board, the holder of a disposal site franchise shall maintain books and records disclosing gross service charges at the disposal site which books and records shall likewise be available for audit.

400.620 Use of Franchise Fees. Fees collected pursuant to KCC 400.610 shall be paid into the general fund of the County. Such funds shall be used to carry out the provisions of KCC 400.001.

400.630 Rates and Charges for Collection and Disposal Service.

(1) The Board may approve existing rates filed by applicants for franchises if it finds that such rates are not unreasonable and are not substantially higher than those charged generally in the County under similar service requirements and for the same or similar quality of service or it may establish a different rate schedule. In determining whether rates are reasonable under this subsection, the Board shall give due consideration to the rate guidelines established by this Section;

(2) The Board may establish uniform rates throughout the County, or may establish uniform rates within zones based upon the length of haul or other factors which may in the opinion of the Board, justify establishment of rate differentials;

(3) When establishing rates for disposal sites, in addition to other factors specified in this Section, the Board shall consider the type of site, the cost of operation of such site, whether or not the site is open to the public, the type of waste to be disposed of and cost of compliance with federal, state and local laws and regulations together with such other factors which may, in the opinion of the Board, affect the rates to be charged. The Board may establish uniform rates for all disposal sites or may establish different rates based upon the factors specified in this Section;

(4) Increases or decreases in rates approved under this Section shall not be made by the Board unless the Board finds that the increase or decrease is based upon increase in the cost of doing business or an increased cost of additional, better or more comprehensive service;

(5) In determination of rates or proposed rate changes, the Board may give due consideration to:

(a) The investment in facilities and equipment;

(b) The service of management, local wage scales, concentration of customers in the area serviced, methods of storage, collection, transportation and disposal;

(c) The length of haul to disposal facilities;

(d) The cost of disposal;

(e) A reasonable return to the owners of the business;

(f) The future service demands of the area site which must be anticipated in equipment, facilities, personnel and land;

(g) Extra charges for special pickups on days when service is not normally provided on a route;

(h) Extra charges where the type or character of solid waste, including but not limited to, wastes with peculiarly offensive odors, requires special handling or service; and

(i) Extra charges for providing janitorial services on the premises where service is provided.

(6) The Board may require an investigation by the Director of any proposed rate or rate increase or decrease. For the purpose of making this investigation, the Director is authorized to take and receive evidence and obtain other pertinent data relevant to the considerations to be made by the Board in establishing a rate or in allowing or denying the rate increases or decreases under this Chapter. Upon completion of his investigation, the Director shall make a report of his findings and shall make recommendations to the Board regarding the proposed rate.

(7) In establishing rates or in considering rate increases or decreases, the Board must find that the rates will be just, fair, reasonable and sufficient to provide proper service to the public. The Board may consider the rates charged by other persons performing the same or similar service in the same or other areas.

(8) Where no rate has been established for a particular type of service, the Director may establish an interim rate until the Board makes a final determination on the rate for that type of service. In establishing such a rate, the Director shall give due consideration to all of the factors established as guidelines for the Board in this Section.

400.640 Rate Preferences Prohibited.

(1) No franchise holder subject to rate regulations under this Chapter shall give any rate preference to any person, locality, or type of solid waste stored, collected, transported or disposed;

(2) Nothing in this Section is intended to prevent:

(a) The reasonable establishment of uniform classes of rates based upon length of haul, type of solid waste stored, collected, transported or disposed of or the number, type and location of customers served or upon other factors as long as such rates are reasonably based upon costs of the particular service and are approved by the Board in the same manner as other rates; and

(b) Any person from volunteering service at reduced costs for a charitable, community, civic or benevolent purpose.

400.650 Responsibility for Payment of Charges for Service.

Any person who receives service shall be responsible for payment for such service.

400.700 Regional Collection and Disposal.

(1) Agreements for Joint Franchising. The Board may enter into agreements with any city, county or other governmental subdivision or agency for joint or regional franchising of collection or disposal service.

(2) Agreements for Allocation of Franchise Fees. The Board may enter into agreements with any city, county or other governmental subdivision or agency providing for allocation of franchise fees where the franchise service areas cross city or county boundaries.

400.800 Recycling, Purpose. The purpose of this section is to carry out the purposes of O.R.S. 459.015; the requirements of O.R.S. 459A.005 to 459A.085, any applicable waste reduction plan and the State of Oregon's Solid Waste Management Plan.

400.805 Definitions. The definitions of O.R.S. 459.005 are hereby incorporated herein, however, insofar as said definitions shall conflict with this Chapter and the definitions contained therein, the definitions of this Chapter shall govern.

400.810 Opportunity to Recycle. The franchisee for solid waste collection and disposal as described in this Chapter shall provide for recycling collection service required under the state opportunity to recycle in O.R.S. Chapter 459A and the regulations promulgated thereunder as said regulations may be amended from time to time. The collection and disposal service franchisee shall provide the required notices for a promotion of the recycling collection service and shall cooperate in the area-wide local government, school and private person recycling education efforts.

400.820 Effect on Existing Collection Service. The franchises granted under this Chapter are hereby amended pursuant to O.R.S. 459A.085(5) and O.R.S. 459A.085(6) (a). The term of said franchises shall not be affected.

400.900 Enforcement and Penalties.

(1) Abatement.

(a) The accumulation, storage, collection, transportation or disposal of solid wastes or wastes by any person in violation of this Chapter or regulations promulgated thereunder is a nuisance and the Board or District Attorney may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or other appropriate legal proceedings to temporarily or permanently enjoin or abate such storage, accumulation, collection, transportation or disposal; and

(b) The provisions of this Section are in addition to and not in lieu of any criminal prosecution or penalties as provided by this Chapter or State law.

(2) Penalties. The violation of KCC 400.100, 400.200, 400.400, 400.610, or 400.630 shall be punishable upon conviction by a fine of not more than \$720.00.

400.990 Appeals.

(1) Court Appeal. All decisions of the Board under this Chapter shall be reviewable by the Circuit Court of the State of Oregon for the County of Klamath.

(2) Appeals from Decisions of the Director. The Board, upon its own motion, or upon the request of an interested person or affected public agency, shall review decisions of the Director made pursuant to this Chapter.

400.995 County Disposal Site and Transfer Station Rules.

(1) Establishment of Rules. Periodically as required, the Director of Public Works will propose to the Board of County Commissioners rules to be followed by the public at the transfer stations.

(2) Penalty. Violation of any provisions of the rules so established by Resolution by the Board of County Commissioners shall be subject to a fine of up to \$720 for a one time occurrence and a fine of \$1,000 for a continuing offense. This provision will be enforced in accordance with Chapter 800, Uniform Civil Violation Procedure of the Klamath County Code.

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CHAPTER 401
NUISANCE CONTROL

401.005 Definitions. As used in this Chapter, unless the context requires otherwise, the following terms are defined as follows:

(1) "Abandoned Vehicle" means any vehicle, as defined in this section, which reasonably appears to be in one or more of the following conditions: Inoperable, wrecked, discarded, unoccupied and unclaimed; or totally or partially dismantled upon the roads, streets, alleys, and/or unincorporated areas of Klamath County, Oregon.

(2) "Authorized Officer" means, unless the context requires otherwise, the Director of the Klamath County Community Development Department; the County Health Officer/Public Health Administrator of Klamath County, Oregon; Klamath County Public Works Director; the Solid Waste Director of Klamath County, Oregon; Weed Control Supervisor of Klamath County, Oregon; Klamath County Counsel; and any duly licensed law enforcement officer.

(3) "Chief Administrative Officer" means the Klamath County Director of the Community Development Department or his designee.

(4) "County Health Officer" means the individual responsible for the delivery of public health services in Klamath County, Oregon, his Sanitarian Supervisor or other designee.

(5) "Dangerous Building" means any building or structure, including any portion thereof of any dwelling unit, guest room or suite of rooms where conditions exist to the extent that life, limb, health, property safety or welfare of the public or the occupants shall be endangered; specifically:

(a) Any building or structure which has any of the conditions or defects listed in Section 302, Uniform Code for the Abatement of Dangerous Buildings, as adopted by the International Conference of Building Officials, Library of Congress Number 81-86616, copyrighted 1982 and any amendments thereto.

(b) Any building or structure which has any of the conditions or defects listed in Section 1001, Uniform Housing Code, as adopted by I.C.B.U., Library of Congress Number 81-86609, copyrighted 1982 and any amendments thereto.

(c) Any building or structure which has any of the conditions or defects listed in the Uniform Fire Code, as adopted by I.C.B.U., Library of Congress Number 81-86619, copyrighted 1982.

(6) "Inoperable Vehicle" means a vehicle designated for use on the highway which has been left on public or private property 10 days or more and is not currently licensed or has been extensively damaged, vandalized or stripped, including, but not limited to missing tires, wheels, motor or transmission.

(7) "Garbage" means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

(8) "Hazardous Waste" means the waste that may, by itself or in combination with other wastes, be infectious, explosive, poisonous, caustic, toxic or otherwise dangerous to human, animal

or plant life or which are defined as hazardous under O.R.S. 466.005.

(9) "Intersection" means the area embraced within the prolongation or connection of the lateral right-of-way lines of two or more streets or roads which join one another at an angle, whether or not one street or road crosses the other.

(10) "Liquid Waste" means waste oil, septic tank pumping or effluent, liquid industrial wastes or other similar material.

(11) "Noxious Weed" means any weed designated as noxious by the State of Oregon or the Board of County Commissioners.

(12) "Non-authorized Land Use" means any use of real property or improvements which use is expressly prohibited pursuant to the Klamath County Land Use Ordinance or Zoning Ordinance then in effect, or any use of land which fails to conform to conditions established by the governing body on Conditional Use Permits, variances, temporary permits or zone changes. Non-authorized land use does not include lawfully existing non-conforming uses.

(13) "Nuisance", where not otherwise specifically enumerated or described, means anything that works or causes injury, damage, hurt, inconvenience, annoyance, or discomfort to another and the legitimate enjoyment of a person's reasonable rights of person or property, or capable of causing an unreasonable threat to the public health, safety, and welfare under the circumstances.

(14) "Nuisance Abatement Fund" is a dedicated fund, subject to yearly budget proceedings, authorized and funded by the County for the abatement of court decreed nuisances within the Urban Growth Boundary.

(15) "Owner" means any person, as defined in this section, having a legal interest in the real or personal property.

(16) "Parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(17) "Person" means any natural person, association, trust, partnership, firm or corporation.

(18) "Person in Charge of Property" means an agent, occupant, lessee, contract purchaser or person other than the owner, having possession or control of property or the rights thereto.

(19) "Rodent" means mouse, rat or other animals commonly known as rodents, including, but not limited to, gophers, moles, shrews, and squirrels.

(20) "Refuse" means all solid wastes except body wastes and shall include garbage, ashes, and rubbish.

(21) "Rubbish" means glass, metal, paper, wood, plastics, or other nonputrescible solid waste.

(22) "Sewage Sludge" means residual waste or sewage treatment plants, consisting of digested organic waste and undigestible solids.

(23) "Sidewalk" means that portion of a public right-of-way, other than the roadway, set apart by curbs, barriers, marking or other delineation for pedestrian travel.

(24) "Solid Waste" means all putrescible and non-putrescible wastes, whether in solid or liquid form (except wastes produced by the human body, liquid-carried industrial waste or sewage, or sewage hauled as an incidental part of septic tank or cesspool cleaning service) and includes garbage, rubbish, refuse, ashes, fill material, sewage sludge, street refuse, industrial wastes, swill, demolition and used construction materials, abandoned vehicles, or parts thereof, discarded home or industrial appliances, vegetable or animal wastes not associated with agricultural or garden activities and semi-solid waste, dead animals and other discarded solid materials.

(25) "Urban Growth Boundary" means the boundary for Urban Growth acknowledged by the Oregon State Land Conservation and Development Commission surrounding the City of Klamath Falls.

(26) "Vector" means any insect organism, including but not limited to flies, fleas, lice, ticks, fly maggots and mosquito larvae, rodent or other animal capable of bearing or carrying disease transmittable to human beings.

(27) "Vehicle" means any self-propelled device which is designed or used for transporting people, goods, or property upon a public street or roadway, including, but not limited to a body, engine, transmission, frame or other major parts, but does not include a device propelled by human power, such as a bicycle, or a device operated exclusively upon fixed rails or tracks. "Vehicle" shall not include devices primarily designed for use in agricultural operations.

401.010 Policy. The Klamath County Board of County Commissioners has determined it necessary to establish and maintain a program for the effective control and abatement of nuisances which constitute a hazard or menace to the health, safety, and welfare of the people of Klamath County, and this Chapter shall be liberally construed to effectuate this purpose.

401.020 Specific Nuisances.

(1) It shall be unlawful for any person to maintain or allow to exist the following things, practices, or conditions on any property, or within public road rights-of-way adjacent thereto, which are hereby declared to be nuisances:

(a) Any small animal carcass not buried, destroyed or removed by an approved method within twenty-four (24) hours after death. A large animal carcass not buried, destroyed or removed by an approved method within three (3) business days after death. An approved method under this Section shall mean a method approved by the State of Oregon Health Department or Agricultural Department.

(b) Accumulation, collection or storage of solid waste, hazardous waste, garbage, sewage sludge, or liquid waste, without prior approval of the County Health Officer/Public Health Administrator, or Solid Waste Department, unless the person is licensed by lawful authority to operate a business specifically for those purposes, franchised or has been issued a permit by lawful authority, and storage or accumulation occurs on such property which

allows such use as a permitted use under the Klamath County Zoning and Land Use Ordinances.

(c) A well, septic system or cesspool that has not been safely or securely sealed or properly constructed and maintained, which may cause or have caused an injury to any person or contamination of potable water supply.

(d) An abandoned, discarded or unattended appliance, including but not limited to an icebox or refrigerator that is being stored outside for more than a period of seven (7) days.

(e) Any property, whether vacant or improved, building, residence, structure, or accumulation of any materials, which is infested or provides harborage for vector or rodents.

(f) Uncontrolled or uncultivated growth of weeds, brush, vine, or grasses, over eight inches (8") high which offer vector or rodent harborage, which constitute a fire hazard, or which unreasonably interfere with the use and enjoyment of public and private property within 500 feet of the external property lines on which the vegetation or growth is located.

(g) An open pit, well, quarry, cistern, excavation or other hole of depth of four feet or more and a top width of twelve (12) inches or more without reasonable safeguards or barriers to prevent such places from being accessible to children.

(h) Dead or decaying trees and tree limbs that present a safety hazard to the public or to abutting property owners shall be removed and/or maintained. Maintenance shall include pruning to remove dead, dangerous or hazardous branches; pruning to maintain a minimum height of sixteen (16) feet above all streets and a minimum of eight (8) feet above all sidewalks; pruning to allow line of sight for traffic signs and intersections; and pruning to avoid a nuisance or safety hazard onto abutting properties.

(i) Any abandoned, inoperable, or unlicensed vehicle, or parts thereof, legally or physically incapable of being operated must be completely enclosed within a building and/or carport unless the owner of the property is lawfully authorized to operate a business specifically for the purpose of storage of discarded vehicles.

(j) Signs, hedges, shrubbery, fences, walls, natural growth or other obstructions at or near intersections which hinder the view necessary for the safe operation of vehicles.

(k) Any excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks, or other public property.

(l) Obstruction to public sidewalks or roadways by trees, bushes, roots, other natural growth, soil, solid waste, or snow removed from adjoining properties.

(m) Any accumulation of discarded tire casings which is not demonstrably a part of short term storage for commercial tire recapping or tire retail business or

authorized land fill. Short term storage shall not exceed a period of ninety (90) days.

(n) Any dangerous building or structure as defined in KCC 401.005 (5), which from any cause endangers the life, limb, health, property, safety or welfare of the general public, their uses or occupants, which to correct said nuisance may require its repair, vacation or demolition.

(o) The burning of refuse, liquid waste, solid waste, or waste which emits an obnoxious odor and for which a fire permit has not been issued.

(p) Any noxious weeds or plants as determined by the Klamath County Board of Commissioners which are being permitted to grow and produce bloom or seed.

(q) The parking of trucks with 3 or more axles and a gross vehicle weight rating of 40,000 pounds or more on any County or public road right-of-way within the Urban Growth Boundary.

(r) The parking of trailers with 2 or more axles and a gross vehicle weight rating of 40,000 pounds or more on any County or public road right-of-way within the Urban Growth Boundary.

(s) The obstruction of public ways, i.e. streets, sidewalks, alleys, etc. with vehicles, personal property, snow, blockades, or any other material creating a public nuisance.

(t) Except as authorized by the appropriate governing body, the overflow, seepage or discharge of water from adjacent land onto a public road outside of an incorporated city, including but not limited to water that is passing over the land, diverted from the land by an obstruction on the land or discharged from an irrigation sprinkler or other device.

(u) Storage of non-trash items shall be removed except as authorized by the appropriate governing body. Non-trash items shall include accumulations of wood pallets; firewood that is not stacked and useable; construction materials except those that are stored in a manner to protect their utility and prevent deterioration, and is reasonably expected to be used at the site, indoor furniture which is not stored in a manner to protect its utility and prevent deterioration and is to be used at the property, all recycling materials except for reasonable accumulations (amounts consistent with a policy of regular removal) that are stored in a well maintained manner.

(2) Uniform civil violation citations, in accordance with KCC Chapter 800, for violations of Section 401.020(t), shall be issued by the Klamath County Natural Resource Manger, Klamath County Vegetative Manager, or other Klamath County Public Works employees as delegated by the Director of Public Works and appointed by the Klamath County Board of Commissioners Resolution or Order.

(3) The declaration of the above nuisances shall not be construed to limit the power of the Chief Administrative Officer or his authorized representative to investigate any other thing,

practice or condition appearing to be a nuisance which is a danger to public health and safety and to declare the same practice, thing or condition a nuisance when the facts appear that a thing, practice or condition exists which is the cause or a threat to public health and safety. Such nuisance shall become subject to the provisions of this Chapter upon the said declaration of the Chief Administrative Officer.

(4) Notwithstanding section 1(i) herein, an owner of property upon which any inoperable vehicle is kept may file an application for storage of a vehicle. Such application shall describe the vehicle, location, value, when the vehicle will be operable and any other information deemed relevant by the Chief Administrative Officer. The filing of such application shall be on a form prescribed by the Chief Administrative Officer. Upon the filing of such application, the owner shall have six (6) months within which to cause the vehicle to be operational. If it is not made operational, it shall be removed or placed in an enclosed garage. No more than two applications may be filed for one piece of property.

401.100 Administration and Enforcement.

(1) The Chief Administrative Officer, or in the matter of noxious weed control, the Weed Control Supervisor, under this Chapter shall be responsible for the administration and enforcement of this Chapter.

(2) The Chief Administrative Officer, Hearings Officer, or any authorized officer shall have the authority to administer oaths; certify to all official acts; subpoena; require the attendance of witnesses at public hearings before the Hearings Officer or Board of County Commissioners; require production of relevant documents at public hearings; and take the testimony of any person by depositions.

(3) The Board of County Commissioners hereby establishes two non-mutually exclusive methods for enforcement of this Chapter.

(a) Emergency abatement.

(b) Civil action to abate procedure.

The Board may direct the use of one or more of these enforcement methods or may enforce by any other remedy provided by Oregon law. No method shall be deemed exclusive. Any and all remedies may be pursued in the alternative.

401.110 Inspections.

(1) Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the Chief Administrative Officer or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the building official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code, provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such

building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

(2) Where an emergency exists, the Klamath County Chief Administrative Officer may enter any property or building at any reasonable time where he has reasonable cause to believe that a nuisance constitutes an immediate and active danger to the public health, safety, and welfare.

(3) An investigation shall be conducted by the Chief Administrative Officer or other authorized officer:

(a) Upon receiving a written nuisance complaint specifying the name of the owner or name of the person in charge of property, location of the property and the nature of the nuisance involved.

(b) Whenever it appears there is reasonable cause to believe that a nuisance exists.

(4) The Chief Administrative Officer may order immediate abatement if he finds that the existence of the nuisance poses an extreme hazard to the public health, safety and welfare.

401.130 Emergency Abatement.

(1) The Chief Administrative Officer may declare that an emergency exists where the County Health Officer/Public Health Administrator has reasonable cause to believe that a nuisance constitutes an immediate and active danger to public health, safety and welfare.

(2) In an emergency, the County Health Officer/Public Health Administrator or the Chief Administrative Officer may proceed with an immediate abatement of the nuisance if the owner or person in charge of the property is unwilling or unable to carry out the necessary action in a reasonable period of time under the circumstances, or cannot be located after diligent inquiry. The Chief Administrative Officer or the County Health Officer/Public Health Administrator shall forthwith thereunder send or serve written notice of abatement to the owner of the property. This notice shall be served upon the person and shall advise him that he may within ten (10) days from the date of service upon him request a hearing before the Board of County Commissioners. The request for hearing shall include the mailing address of the owner.

(3) Upon the receipt of the request for hearing, the Chief Administrative Officer shall promptly notify the Board of County Commissioners and they shall set a time and place for hearing at the earliest possible time and shall promptly notify the person requesting the hearing as to the time and place of the hearing, by certified mail, return receipt requested, to the last known mailing address. Notice may also be given to such persons as the Board may believe to be interested persons.

(4) The person or persons requesting the hearing and the Chief Administrative Officer may subpoena witnesses, submit testimony, give argument, cross-examine witnesses, and submit

rebuttal evidence on any pertinent issue. Any party may be represented by counsel.

(5) Failure of the person requesting the hearing to appear at the hearing shall constitute a waiver of the right to hearing.

(6) The Chief Administrative Officer shall cause all hearings to be recorded in a manner which will allow for the written transcription thereof and all material submitted at the hearing shall be retained by the Board for a period of two (2) years from the date of Order.

(7) Within ten (10) days following the hearing, the Board shall prepare an Order specifying the facts found to exist.

(8) If the Board determines that a nuisance no longer exists, it can order the return of any property removed by the Chief Administrative Officer upon such condition as the Board may prescribe which will eliminate the nuisance. The person requesting the hearing may claim it upon paying the expense incurred in its removal or storage. The Board may also direct the filing of a civil abatement action or specify steps the owner can take to prevent such action. No other issues shall be determined at said hearing.

(9) Review of any action of the Board taken pursuant to this Ordinance, and the rules and regulations adopted pursuant hereto, shall be taken solely and exclusively by writ of review.

401.150 Notice of Future Abatement Action. The Chief Administrative Officer or other authorized officer shall issue and serve written notice upon the owner, or the person in charge of the property prior to the filing of a civil abatement action. The notice provided herein shall describe with reasonable certainty the property, nature of the nuisance and require the person in charge of the property, or owner thereof, to abate the nuisance within the time specified in the notice or to sign a voluntary compliance with all the specifications of the notice within the time set forth in the notice. In the event it can be reasonably determined, written notice shall be served personally upon the owner, or person in charge of the property. Additionally, if the nuisance concerns the condition of real property, or improvement thereon including the existence of any noxious weeds, the notice shall be posted in a conspicuous place upon the real property or improvement. If the nuisance concerns a vehicle, the notice shall additionally be posted in a conspicuous place upon the vehicle, provided that the Chief Administrative Officer can legally obtain access to the vehicle without the necessity of securing a search warrant. If the owner or person in charge of the property cannot be reasonably determined, the notice provided for herein shall be mailed by prepaid, certified mail, return receipt requested, to the addressee's last known address. A mailed notice shall be presumed to have been received on the fourth mail delivery day after mailing.

401.160 Form of Notices. All notices required by this Ordinance shall be of a form authorized by the County Counsel.

401.200 Civil Action to Abate Nuisance.

(1) If an owner fails to abate a nuisance within ten (10) days after the expiration of the time period set out in the Notice of Violation, the Chief Administrative Officer may cause abatement of the nuisance by civil action. This action will be filed to seek judgment in favor of the County and a Decree to Abate. After the Judgment and Decree of Abatement is issued by the court providing for abatement by the County, the Chief Administrative Officer is authorized to abate the decreed nuisance by soliciting three (3) bids from licensed contractors and awarding the abatement project to the low bidder. If, in the opinion of the Chief Administrative Officer, abatement cost will not exceed \$500.00, the bid process is not required. If the decreed nuisance is within the Urban Growth Boundary, the Nuisance Abatement Fund shall be utilized. A 25% surcharge will be added to the actual cost of abatement for administrative costs and an invoice mailed via certified mail to the person responsible. Should payment not be received for abatement cost within thirty (30) days, the Board of County Commissioners shall order the filing of a lien against the real or personal property.

(2) After the Decree of Abatement is issued by the court providing for abatement by the County, should it reasonably appear to the Chief Administrative Officer that the property removed by Klamath County is of a value to be determined periodically by the Klamath County Board of Commissioners or more, the Chief Administrative Officer shall cause an appraisal to be made of the property.

(a) In the event that the property is valued at an amount to be determined periodically by the Klamath County Board of Commissioners or less, the Chief Administrative Officer may order the disposition of the property without notice or public auction. In the event that the personal property is a vehicle, the Chief Administrative Officer shall file with the Department of Motor Vehicles an Affidavit describing the vehicle, including license plate, if any, stating the location and appraised value of the vehicle and stating it will be junked or dismantled.

(b) In the event that the property is appraised at a value to be determined periodically by the Klamath County Board of Commissioners or more, the Chief Administrative Officer shall cause notice of sale to be published in a newspaper of general circulation within the County. The notice shall state:

(i) The sale is of discarded property under this Chapter.

(ii) A description of the property (and if a vehicle, the type, make, model, year, license number and I.D. number, if available) and any other information which will aid in identification;

(iii) The terms of the sale;

(iv) The date, time and place of the sale, and that Klamath County will bid in the amount claimed against the property for abatement costs;

(v) The location of the property and where it can be inspected;

(vi) Notice shall be published two times, once not less than fifteen (15) days prior to the sale, and the second not less than five (5) days prior to the sale.

(3) Any property abated under provisions of this Ordinance may be redeemed five (5) days prior to the sale by its owner, or by the person in charge of the property by applying to the Chief Administrative Officer with:

(a) Evidence of ownership or interest therein;

(b) Payments of the costs due and owing up to the time of application for redemption for abatement;

(c) Provide sufficient evidence that the nuisance will not be allowed to be resumed.

(4) The lien as provided for in Section 401.200 (1) above shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate.

(5) The lien provided for shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments for municipal corporations.

401.210 Civil Enforcement Procedures; Injunction; Voluntary Compliance.

(1) In addition to the abatement proceedings under KCC 401.200, the enforcement officer or his designee, if he or she has probable cause to believe that a person is maintaining or allowing a nuisance to exist within an unincorporated area of Klamath County, may bring suit in the name of Klamath County in the Circuit Court to restrain such person from allowing the alleged nuisance to continue.

(2) Before filing a suit under this section, the enforcement officer shall, in writing, notify the person charged with maintaining the alleged nuisance of its existence and the relief to be sought. Such notice shall be served in the manner set forth in KCC 401.150. The person charged thereupon shall have ten (10) days within which to execute and deliver to the enforcement officer or his designee an assurance of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged intends to take with respect to the abatement of the alleged nuisance. If the enforcement officer or his designee is satisfied with the assurance of voluntary compliance, it may be submitted to an appropriate court for approval and, if approved, shall thereafter be filed with the clerk of the court. The enforcement officer may reject as unsatisfactory any assurance which in his opinion will not abate the nuisance within a reasonable time.

(3) Violation of any of the terms of an assurance of voluntary compliance which has been approved by and filed with the Court may constitute a contempt of court upon cause being shown therefore.

(4) If the enforcement officer or his designee alleges that he or she has reason to believe that the delay caused by complying with the provisions of this Ordinance would cause immediate harm

to the public health, safety or welfare, enforcement officer or his designee may immediately institute a suit under this section.

(5) A temporary restraining order may be granted without prior notice (under the provisions of ORCP) to the person if the court finds there is a threat of immediate harm to the public health, safety or welfare. Such a temporary restraining order shall expire by its terms within such time after entry, not to exceed ten (10) days, as the court fixes, unless, within the time so fixed, the order for good cause shown is extended for a like period or unless the person restrained consents that it may be extended for a longer period.

(6) Any person who willfully violates the terms of an injunction issued under this section shall be punished pursuant to O.R.S. 33.015, *et seq.* For purposes of this section, the court issuing the injunction shall retain jurisdiction and the cause shall be continued and in such cases the enforcement officer acting in the name of the County may petition for enforcement of the decree.

(7) Any person who willfully violates any provision of an assurance of voluntary compliance approved and filed with an appropriate court under this section shall forfeit and pay to the County a civil penalty to be set by the court of not more than \$720 per violation, in addition to being subject to the provisions of O.R.S. 33.015, *et seq.* The enforcement officer may apply to the appropriate court for recovery of such civil penalty and other enforcement.

(8) The court may continue a hearing on contempt for a fixed or indefinite basis should it appear to the satisfaction of the court that the party is making reasonable progress in abating the nuisance per the court's original decree.

(9) The remedies provided in this section are in addition to all other remedies provided by this Chapter.

401.300 Receiver. In any proceeding commenced under this Chapter the County shall, upon application to the court and notice to all parties, be entitled to the appointment of a receiver, either before or after judgment, if it is established that the appointment is necessary to fulfill the purpose and intent of this Chapter. Such appointment shall be in addition to all other remedies available to the County.

401.310 Penalties. Any person, firm, corporation or other entity who has been found to have violated any of the provisions of this Chapter shall be subject to a fine not exceeding \$720; however, each and every day any violation is committed, continued or permitted by any such person, is a separate violation subject to a separate fine of \$720. County Counsel shall not appear unless Defendant is represented by an attorney. Defense counsel shall not be provided at public expense. Circuit Court or Justice Court shall have concurrent jurisdiction over violations of this Code. Imposition and collection of the money penalty shall be a civil judgment enforceable in any manner permitted by law including assignment to a private collections company.

401.400 Tire Definitions.

- (1) "New Tire" means any tire that has never been used.
- (2) "Used Tire" means any tire with a greater tread life than 4/32 of an inch as measured where the greatest amount of tread remains.
- (3) "Waste Tire" means any tire with less than 4/32 of an inch as measured where the greatest amount of tread remains.

401.410 New Tire Storage. Any business may store any amount of new tires inside buildings. Exterior storage is allowed if:

- (1) The tires are stored in a fenced area with fences being 6 feet or higher and which are secured for access by the public.
- (2) All tires stored in exterior areas shall be either vertically stacked, not to exceed six (6) feet in height, or placed in racks not more than six (6) feet high designed for the storage of such tires. Rows shall not exceed fifty (50) feet in length and ten (10) feet in depth. There shall be fifteen (15) feet of clear space between rows for fire protection.
- (3) No exterior storage shall be closer than twenty-five (25) feet from any building and no closer than ten (10) feet to any property line.
- (4) For purposes of this section, any container which is sealed shall be considered a building.

401.420 Used Tire Storage.

(1) The requirements for used tire storage shall be the same as for new tire storage as set out in KCC 401.410 for any business which sells or distributes new or used tires, including wrecking yards.

(2) Used tire storage at places other than those provided for in paragraph (1) of this section shall be limited to 100 square feet and any tires shall be stacked in the manner provided in KCC 401.410.

401.430 Waste Tire Storage.

(1) A business which sells new or used tires may store up to 3200 square feet of waste tires in interior storage. Interior storage shall include any vehicle which will be used to transport waste tires, including trailers, dumpsters or semi-truck trailers.

(2) A business which sells new or used tires may store up to 800 square feet of waste tires in exterior storage. Such storage shall be done in the same manner as that provided for new tires in KCC 401.410.

(3) All other storage of waste tires shall be limited to 350 square feet of interior or exterior storage. Such storage shall be done in the same manner as that provided for new tires in KCC 401.410 except that no stack may exceed 4 feet in height.

(4) No person shall store more than 100 waste tires without a DEQ permit unless exempt from the permit requirement established by ORS Chapter 459.

401.440 Schedule of Compliance. These provisions shall be effective and shall be complied with upon passage of this Chapter for any tire not stored at the time of passage of this Chapter. For tires that were stored on the date of passage of this Chapter the following schedule of compliance shall govern the removal of such tires:

(1) Any individual or business not in compliance with the terms of this Chapter shall notify the Fire District responsible for fire protection for that individual or business, or if the property is unprotected, then notification shall be given to the Klamath County Code Enforcement Officer, that such individual or business is not in compliance with the provisions of this Chapter.

(2) Within ninety (90) days of the date of passage of this Chapter, any individual or business not in compliance with this Chapter shall reduce the number of tires not in compliance by 50% of that amount present upon passage of this Chapter.

(3) Within 150 days of the date of passage of this Chapter, such individuals or business shall reduce the number of tires not in compliance to 25% of that amount present upon passage of this Chapter.

(4) Within 210 days of the passage of this Chapter, all individuals or business shall be in compliance with the provisions of this Chapter.

401.450 Enforcement. The provisions of KCC 401.400, 401.410, 401.420, and 401.430 shall be enforced by any police officer, any enforcement officer appointed by the Board of County Commissioners, and any fire official authorized by the governing body of that official's fire district to enforce these provisions.

401.470 Exemptions. Any Fire District, for property within its boundaries, or the Klamath County Building Official, may grant a permit to any business involved in the disposal of waste or used tires to exceed the limits provided by this Chapter. Nothing in this Chapter shall be deemed to limit or constrain the storage or disposal of used or waste tires by Klamath County in any facility operated or permitted by Klamath County for the disposal of such tires.

NOXIOUS WEED CONTROL

401.500 Noxious Weeds. The Board of County Commissioners may declare the County or any portion of the County a weed control district for the purpose of destroying and preventing the seeding and spread of noxious weeds **as defined in ORS 570.510 to 570.575.**

401.510 Administration and Duties for Enforcement of Noxious Weed Provisions.

(1) The Board of County Commissioners shall appoint a Weed Control Supervisor who shall be responsible for the administration and enforcement of noxious weed control.

(2) In the discretion of the Weed Control Supervisor he/she may:

(a) find out if any noxious weeds or plants are being permitted to grow and produce bloom or seed within a weed control district;

(b) serve notices;

(c) When necessary, to destroy or cut or to supervise the destruction or cutting of noxious weeds growing or seeding within the weed control district;

(d) Issue Uniform Civil Violation citations in accordance with KCC Chapter 800 for violations of Klamath County Code Section 401.530.

401.520 Notice of Future Abatement Action.

(1) The Weed Control supervisor shall have access to the land within the weed control district.

(2) When the provisions of the Oregon State Statutes and this code are not being complied with, the Weed Control Supervisor shall serve a written notice to the owner or occupant of the land. When unable to serve such notice personally, the Weed Control Supervisor or his designee shall post the notice and two copies thereof in three (3) conspicuous places on the land. Such notice shall contain:

(a) The date of service or posting of notice.

(b) The name of the weed or weeds growing on such land, and a statement setting forth that such weeds must be destroyed or must be prevented from producing seed within a specified time of not less than two (2) days or more than twenty (20) days, to be established by the Weed Control Supervisor, from the date of service of such notice.

(c) The service of such notice as provided in this section shall have the effect to require the owner or occupant of such land to destroy or prevent such weeds from seeding or spreading during the continuation of ownership or occupancy of the land or until the land is no longer part of a weed control district. A copy of such notice together with proof of service endorsed thereon, shall be filed with the Board of County Commissioners.

401.530 Owner or Occupant to Destroy Weeds.

(1) Each person, firm or corporation owning or occupying land within a weed control district shall destroy or prevent the seeding on such land of any noxious weeds by the use of the best means at hand and within the time required in the notice served under the provisions of KCC 401.520 (2), except that no noxious weed shall be permitted to produce seed.

(2) The State Highway Commission, Klamath County, Reclamation Districts and cities shall destroy or prevent the spread or seeding of any noxious weed on any land owned by them or constituting the right-of-way for any highway, county road, drainage or irrigation ditch, power or transmission line or other purposes under their respective jurisdictions.

401.540 Eradication of Weeds When Owner or Occupant Refuses to do so.

(1) If the owner or occupant of the land fails or refuses to immediately destroy or cut the noxious weed, the Weed Control Supervisor shall at once issue a Uniform Civil Violation Citation in accordance with KCC Chapter 800 for violation of KCC Section 401.530 or notify the District Attorney of the County who shall at once take necessary steps for enforcement of this code. The County Commissioners shall authorize the Weed Control Supervisor or such assistants as the Weed Control Supervisor may employ to go upon the land or premises and destroy the noxious weeds or control them in such manner as will destroy all seeds of such noxious weeds. In all cases where the Weed Control Supervisor undertakes to destroy or control noxious weeds, the most effective and practical method, in the judgment of the Weed Control Supervisor, and with least injury to the land or crops, may be used.

(2) Upon completion of such work the Weed Control Supervisor shall file with the County Clerk an itemized statement of the expenses necessarily incurred in the destruction of such weeds, verified by the oath of the Weed Control Supervisor.

(3) When the statement of expenses is filed, the County Clerk shall cause it to be entered upon a lien docket prepared for that purpose. The amount of the charges and expenses when so docketed shall constitute a first lien upon such lands or premises, except those for taxes and assessments and shall include interest at the legal rate.

(4) The lien provided for shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collections of assessments for municipal corporations.

401.560 Severability. The provisions of this Ordinance are severable, and any invalid section, subsection, sentence, clause, phrase or portion of this Ordinance if for any reason is held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions of the Ordinance.

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PUBLIC HEALTH DEPARTMENT

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Ordinance No. 30.00 - 03/11/76
Ordinance No. 30.01 - 10/10/83

CHAPTER 402
PUBLIC HEALTH DEPARTMENT

402.001 Purpose. To implement the delegation of authority by the Administrator of the Oregon Department of Human Resources, Health Division, of the powers of fee collection, licensing, inspection, enforcement of rules, and issuance and revocation of permits and certificates of compliance in regard to food service facilities, tourist accommodations, and public swimming facilities pursuant to Oregon Revised Statutes, Chapters 446, 448, and 624, together with the regulation of sub-surface sewage disposal pursuant to O.R.S. 454.640. To further assign to the Registered Sanitarian of the Klamath County Health Department and assistants thereunder the functions of fee collection, licensing, inspections, enforcement of rules, revocation of permits and certificates of compliance, and, in conjunction with the State Health Division, establish and publish rules thereunder. To establish administrative procedures to provide for review of any detail, suspension, revocation or failure to issue a license or certificate in regard to any of the above delegated functions.

402.005 Rules. The Public Health Administrator of the Klamath County Health Department shall enforce all rules and regulations of the Health Division of the Oregon State Department of Human Resources as now in effect or shall be hereinafter promulgated regarding food service facilities, tourist accommodations, public swimming facilities and sub-surface sewage disposal, and shall enforce all provisions of Oregon Revised Statutes as applicable thereto, specifically:

446.003;	446.066;	446.095;	446.105;	446.111;
446.115;	446.310;	446.320;	446.330;	446.335;
446.340;	446.345;	446.425;	446.990;	448.005;
448.020;	448.030;	448.035;	448.040;	448.051;
448.060;	454.635;	454.640;	454.655;	454.665;
454.695;	454.725;	624.010;	624.020;	624.025;
624.027;	624.028;	624.060;	624.065;	624.067;
624.070;	624.075;	624.080;	624.100;	624.310;
624.320;	624.330;	624.340;	624.370;	624.380;
624.390;	624.400;	624.410;	624.510;	624.990;

and all other subsequently enacted and/or delegated to Klamath County, Oregon.

402.100 Fees. The Board of County Commissioners shall, in conjunction with the Public Health Administrator of the Klamath County Health Department, establish by Resolution licensing, registration, and all applicable fees for facilities and services regulated under this Chapter.

402.200 Adoption of Rules. Except as otherwise provided in this Chapter, the Board adopts Division III of the "Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act," dated January 15, 2004, together with any provisions of O.R.S. Chapter 183 which are not embodied in said Model Rules and which set forth procedural requirements for contested cases, as the County's rules for hearings and other administrative procedures in connection with contested cases arising from the County's performance of the functions delegated to the County pursuant to Oregon Revised Statute 446.425, O.R.S. 448.100, O.R.S. 624.010, O.R.S. 624.310, O.R.S. 624.370, O.R.S. 624.510.

402.300 Definition. For purposes of this Ordinance, "Agency" means the Board of Commissioners of Klamath County, Oregon.

402.400 Judicial Review.

(1) Judicial Review of any final order of the agency shall be by Writ of Review to the Oregon Court of Appeals.

(2) Final orders of the Board of County Commissioners shall comply with the Attorney General's Model Rules of Procedure, Rule 137-003-0070 and shall bear the following:

NOTICE: If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.480 *et seq.*

402.500 Validity.

If any section, subsection, sentence, clause, phrase or word of this Chapter shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of this Chapter, but shall be confined to the section, subsection, sentence, clause, phrase or word to which it applies, it being the intent of the Board of County Commissioners that this Chapter should stand with such deletions.

402.600 Enactment.

This Chapter being necessary for the immediate preservation and protection of the public health, safety and general welfare, an emergency is hereby declared to exist and this Chapter shall be, and is hereby declared to be in full force and effect from the date of its passage.

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ANIMAL SERVICES AND DOG CONTROL

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- Ordinance No. 51.06 - 12/23/2013*

CHAPTER 403
ANIMAL SERVICES AND DOG CONTROL

GENERAL PROVISIONS

403.001 Purpose. To protect the health, safety, and welfare of the residents and citizens of Klamath County and to provide for control of dogs and the protection of animals; to prohibit tampering with law enforcement animals; to provide guidelines and information, and to give authority for enforcement and setting fees.

403.002 Scope. This ordinance does not limit nor supercede any provision established in O.R.S. 609.010 through O.R.S. 609.190, or in any other O.R.S. or O.A.R. dealing with animals, but does supplement those provisions. A dog in the performance of law enforcement duties shall not be considered a dangerous dog or a public nuisance.

403.003 Powers and Authority.

(1) The Dog Control Officer or his/her assistants, Code Enforcement Officers, the Sheriff, the Local Health Officer or their designees are required and shall have full power and authority to do any and all things necessary, incidental or proper, within the scope of their department's authority, in the enforcement of this Chapter, State Statutes, and Oregon Administrative Rules relating to animal control within the County.

(2) The Dog Control Office shall be the County office cognizant of state and county agency jurisdictions regarding animal issues and where appropriate, they shall provide coordination, referral and assistance to the public, other agencies and departments.

(3) No person shall hinder or attempt to prevent the enforcement of this Chapter.

(4) The power and authority of the Dog Control Officer and his/her assistants, Code Enforcement Officers or the Local Health Officer or their designee shall include the power to cite violators for court appearances pursuant to the criminal statutes governing the abuse and/or neglect of animals; ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 and the criminal statutes governing dangerous dogs, including but not limited to ORS 609.001 - 609.994. This authority shall not include the power to engage in the physical arrest of violators.

403.005 Definitions.

(1) "**Abandonment**" means leaving an animal at a location without providing for the animal's continued care.

(2) "**Abuse**" means inflicting or causing physical injury to an animal.

(3) "**Adequate Care**" means the provision of adequate food, adequate water, adequate shelter, adequate sanitary conditions, adequate exercise and keeping the animal in a state of good health.

(4) **"Adequate Food"** means the provision at suitable intervals, not to exceed 24 hours, of a quality of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal to allow for proper growth and weight. Such foodstuff shall be served in a receptacle, dish, or container that is physically clean and in which agents injurious to health have been removed or destroyed to a practical minimum.

(5) **"Adequate Sanitary Conditions"** means a space free from health hazards including excessive animal waste, inappropriate ventilation of air, overcrowding of animals, or other conditions that endanger the animal's health.

(6) **"Adequate Shelter"** means, for an animal other than a dog engaged in herding or protecting livestock, shelter which will keep an animal dry, out of the direct path of winds, sufficiently insulated and ventilated, and out of direct sun, at a temperature level that is healthful for the animal. The shelter shall be windproof and moisture proof. The structure shall be of suitable size to accommodate the breed and size of the animal and allow retention of body heat. The structure must include four walls, a roof and a solid floor raised up off the ground, with an opening entrance large enough to allow access to the animal, but placed in such a way as to keep the animal out of the direct path of winds.

Metal barrels do not provide adequate shelter for a dog, or other animals and are prohibited for that purpose. The structure shall be provided with sufficient quality of suitable bedding material such as hay, straw, cedar shavings, or the equivalent. For all animals, the containment area shall be free of accumulated waste and debris so that the animal shall be free to walk or lie down without coming in contact with any waste or debris, and a suitable method of draining shall be provided to rapidly eliminate excess water or moisture.

(7) **"Adequate Water"** means a constant access to supply of clean, fresh water provided in a sanitary manner that is suitable for the age and species of the animal unless otherwise directed by a veterinarian licensed to practice veterinary medicine.

(8) **"Animal"** means any domestic non-human mammal except livestock.

(9) **"Assistance Dog"** means a dog guide trained to assist a physically impaired person in one or more daily life activities as defined in ORS 346.610.

(10) **"Cruelty"** means to abuse, neglect, abandon, or to provide inadequate care, or to cause physical injury or death to an animal.

(11) **"Dangerous dog"** means any dog, which bites any human being or other domestic animal or which demonstrates menacing behavior towards any human beings or domestic animals. This does not include a dog that bites or attacks a domestic or wild animal on the property of its keeper or harms or menaces anyone who has tormented or abused it. A dog in the performance of law enforcement duties shall not be considered a dangerous dog or a public nuisance.

(12) **"Dog"** means any member of the canine family.

(13) **"Dog at Large"** means any dog off the premises or property of its keeper, and not restrained by a leash, tether, or other physical control device not to exceed eight (8) feet in length and under the physical control of a person; or which enters upon land of another person without authorization of that person or a lawful occupant. Excepted from this definition are dogs under the supervision of a person for the purpose of dog shows, obedience training or trial, hunting, chasing, or treeing predatory animals or game birds, protecting livestock, or in other related agricultural or law enforcement activities.

(14) **"Dog kept primarily in a kennel"** means a dog that is housed primarily in a kennel and not in the residence of its keeper and that is not allowed to run at large.

(15) **"Domestic Animal"** means any animal other than livestock that is owned or possessed by a person.

(16) **"Habitual Offender"** means any keeper that has been found/pled guilty of allowing a dog to do the same or similar offense more than two (2) times or any owner or keeper that has been found/pled guilty of more than 2 dogs to the same or similar offenses.

(17) **"Keeper"** means a person who owns, possesses, controls or otherwise has charge of a dog, with the exception of veterinary hospitals, humane societies, and commercial animal care facilities. According to O.R.S. 609.020, dogs are personal property. For the purpose of this Chapter, the owner or the keeper is responsible for licensing and also for the behavior of the dog regardless of whoever failed to prevent the dog to engage in the behavior that is the subject of the County Violation. If the keeper of a dog is a minor, the parents or guardian of that minor shall be responsible for compliance with the specifications of this Chapter.

(18) **"Kennel"** means a premises for the housing of dogs.

(19) **"Kenneled Dog"** means any premises where one or more dogs, at least six months of age, are kept primarily in a kennel in accordance with KCC 403.102(8).

(20) **"Livestock"** means ratites, psittacines, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl and any fur-bearing animal bred and maintained commercially or otherwise, within pens, cages and hutches.

(21) **"Menaces"** or **"Menacing"** means lunging, growling, snarling or other behavior by a dog that would cause a reasonable person to fear for the person's safety.

(22) **"Neglect"** means failing to provide adequate care for an animal in such person's custody or control.

(23) **"Physically impaired person"** means any person who is permanently physically impaired, whose physical impairment limits one or more of daily life activities and who has a record of impairment and is regarded by health care practitioners as having such an impairment, requiring the use of an assistance animal including but not limited to blindness, deafness and complete or partial paralysis.

(24) **"Public Nuisance"** is defined as follows:

(a) A domestic animal is a public nuisance if it is a danger to public health and safety or causes injury to a person or damage to property.

(b) A dog is a public nuisance as defined in ORS 609.095, except as provided in ORS 609.097 or if it bites or kills an animal trespassing upon premises occupied exclusively by the dog's keeper.

(25) "**State of Good Health**" means freedom from disease, illness, excessive matting and parasites that cause sores, and in a condition of proper body weight and temperature for the age and species of the animal, unless the animal is undergoing appropriate treatment with a licensed veterinarian.

(26) "**Wolf Hybrid**" means any wolf/dog mixed breed.

403.006 Animals in Parked Vehicles. No person or keeper shall leave an animal in any standing or parked vehicle in such a way as to endanger the animal's health, safety or welfare. After making a reasonable effort to locate the owner or keeper of the animal, a Dog Control Officer or Police Officer is authorized to use reasonable force to remove the animal from the vehicle whenever it appears that exigent circumstances exist that the animal is in imminent danger. This includes animals secured in vehicles impounded by law enforcement agencies if the animal is released by the impoundment agency.

403.007 Report of Animal Bites and Quarantine.

(1) In accordance with O.R.S. Chapter 433, any person having direct knowledge of a bite by any animal that causes a break in the skin of any human shall immediately report the facts to the Local Health Officer.

(2) The Local Health Officer will promptly contact the appropriate agency with authority to impound and quarantine the animal pursuant to the rules and regulations of the State Health Division. Impoundment and quarantine shall be:

(a) By a private veterinarian;

(b) At the County animal impound facility;

(c) At the designated County contracted animal care facility; or

(d) At a location or facility designated by the Local Health Officer.

(3) The keeper of any such animal shall be responsible for all costs and expenses incurred for such impoundment and quarantine. If impound and quarantine is at a county operated or contracted facility, all impoundment and quarantine fees must be paid before the animal will be returned or surrendered to the owner or keeper.

(4) Owners not wishing the return of their animal after the impound and quarantine period may arrange for the animal to be humanely destroyed upon expressed consent of the Local Health Officer. Owners or keepers choosing this option are still responsible for all impound, quarantine and other associated costs.

403.008 Public Nuisance.

(1) A dog or other domestic animal is a public nuisance as defined by 403.005 (24) of this Chapter. It is a violation for a keeper to maintain a dog or other domestic animal, that is a public nuisance.

(2) When livestock is a nuisance, the issue shall be resolved civilly between the complainant and the livestock owner in accordance with ORS Chapters 607 and 608.

DOG REGULATIONS AND VIOLATIONS

403.100 Dog Control Officer. The Board of County Commissioners shall appoint the Dog Control Officer whose salary shall be fixed by the Klamath County Board of Commissioners. The Dog Control Officer is responsible for efficiently managing all aspects of the Dog Control Department and shall report to the Board of County Commissioners. The Dog Control Officer may hire, such assistants and officers as may be necessary for the efficient handling of Dog Control functions and duties, as outlined in this Chapter and in the Dog Control Policies and Procedure Manual.

403.101 Rabies Vaccination.

(1) All dogs over six months of age or which have a set of permanent canine teeth, whichever comes first, must be inoculated against rabies and must thereafter remain current on rabies vaccinations.

(2) Veterinarians shall provide to the Dog Control Office copies of any rabies vaccination certificates within thirty (30) days of such vaccination.

403.102 Dog Licenses.

(1) Every keeper of a dog which is over six months old, has received a rabies vaccination, or which has a set of permanent canine teeth, whichever comes first, shall, within thirty (30) days after he/she becomes keeper of the dog, procure from the County a license for the dog by paying to the County a license fee.

(2) A Humane Society holding dogs for adoption is not required to license dogs, but is required to advise those adopting a dog, in writing, that they must license the dog within eight (8) days from the date of adoption. Humane Societies shall provide to the Dog Control Office the names and addresses of those adopting dogs within eight (8) days of such adoption. All dog owners must provide Dog Control with current address information. Failure to do so is a violation of this Chapter.

(3) Licenses shall only be issued for dogs that have been inoculated against rabies as shown by a current rabies inoculation certificate.

(4) Persons with dog(s) not qualifying for a kennel rate license or other special license as may be established by the Board of County Commissioners, shall license their dog(s) with a standard dog license as set forth in this Chapter.

(5) No license fee shall be required to be paid for any working assistance dog. A license shall be issued for such dog upon filing of an affidavit by the keeper and a certificate of assistance dog training from a recognized assistance dog training organization showing such dog to come within this exemption. The license shall include designation as an "Assistance Dog".

(6) Any dog that has been determined to be dangerous by a Judge or a Hearings Officer shall be properly licensed and vaccinated. The designation of dangerous shall be included in the licensing records of the dog. The Dog Control Officer shall charge an additional fee in addition to the regular licensing fee charged by Klamath County for a license following designation as a dangerous dog. Dangerous dogs must be controlled and confined as outlined in 403.200 of this Chapter. The confinement area is subject to inspection by Dog Control.

(7) If a dangerous dog dies, is sold, transferred, or is permanently removed from Klamath County, the owner shall notify the Dog Control Office in writing within two (2) working days.

(8) Kenneled Rate Licenses.

(a) Dogs kept primarily in a kennel and not allowed to run at large may qualify, upon making the showing required in this Chapter, to be licensed at the kenneled fee rate. A person requesting licensing at the kenneled rate shall establish by affidavit or signed statement that:

(i) if the keeper has five or more kenneled dogs, the keeper has complied with applicable land use laws and ordinances;

(ii) the keeper houses his or her dog(s) primarily in a kennel, as defined in the Application for Kenneled Dog License;

(iii) the keeper has not been convicted of animal abuse and/or neglect under County or state laws for failure to maintain adequate and minimum care standards; and

(iv) the keeper has not been convicted under County or state law for allowing his or her dogs to be at large.

(b) Any keeper that violates 403.412, Adequate Care, or 403.413, Cruelty to Animals, of this Chapter or that has been convicted of animal abuse and/or neglect under state or County law by virtue of the conditions under which dogs are kept in the keeper's kennel shall not be entitled to be licensed at the kenneled rate.

(c) Any keeper convicted of a dog at large violation more than twice, while having dogs licensed at the kenneled rate, shall thereafter not be entitled to license his or her dogs at the kenneled rate.

(d) The dog keeper applying for a kenneled rate license shall upon request grant permission to visit the premises at reasonable times to such County representatives as are necessary to verify that the qualifications set forth in the application are met and to conduct periodical inspections to ensure that adequate care standards are being met. An annual inspection fee may be required for a kenneled rated license.

(e) If County representatives, when verifying the qualifications set forth in the application and conducting periodical inspections, are refused access to the dogs or kennels, the keeper shall automatically be denied the ability to license any dogs at the kenneled rate and any existing kennel rate license will be revoked.

403.103 License Tag. The keeper shall keep the license tag fastened to a collar that shall be kept on the dog at all times. A tag may not be placed on a dog, which has not been issued for that dog.

403.104 Dog Waste. The keeper of a dog shall be responsible for immediately removing fecal or other visible solid waste of the keeper's dog from property other than the keeper's.

403.105 Control and Leashes.

(1) It is a violation of this Chapter to allow a dog to run at large. Once a dog leaves the keeper's property and is on public property or right of way, the dog must be kept under physical control on a leash not exceeding eight (8) feet in length.

(2) The keeper of any dog shall keep, restrain, and maintain it in such a manner as not to endanger, or be a nuisance to other persons or property. Failure of the keeper to so restrain the dog shall constitute a violation of this Chapter.

(3) Excepted from this section are dogs under the supervision of a person for the purpose of dog shows, obedience or agility training or trial, hunting, chasing, or treeing predatory animals or game birds, protecting livestock, or in other related agricultural activities. Though these dogs are exempt from the leash requirement, they are required to be under the keepers' immediate control.

(4) Female dogs in heat shall be restrained by the keeper in such a manner as not to create a nuisance by allowing male dogs access to such female dogs.

403.106 Tethering. A chain shall not be used as a collar when tethering a dog. A dog shall not be tethered and left unattended on public property. If a dog is tethered, the tether must be of material and weight that is appropriate for the size of the dog. The tether shall be a minimum of 3 times the length of the dog's body from the tip of the nose to the base of the tail.

403.107 Lost or Stray Dogs.

(1) If any dog becomes lost or strays from its home, it shall be the duty of any person finding the dog to notify the Dog Control Officer within two (2) business days of the name and address of the person finding the dog, together with a full description of the dog, and to surrender upon request the same to the Dog Control Officer or county contracted facility. The Dog Control Officer shall keep a record of such notices.

(2) It is a violation of this Chapter for a person to willfully make a false certification in a Stray Dog Declaration that he or she has no knowledge of the keeper of the dog or the location the dog lives.

(3) After a keeper is notified that their dog has been found, it is a violation if the keeper does not pickup their dog or release ownership of their dog and pay all applicable fees.

(4) Violations of this section shall result in a fine of not less than \$100.00 and not more than \$720.00.

403.108 Impoundment.

(1) Dog Control personnel and police officers are hereby authorized and directed to impound at the designated/County contracted facility any dog that is not controlled, that exhibits dangerous dog behavior, or whose conduct is not in accordance with this Chapter or O.R.S. 609.090. All impounded dogs shall be scanned for microchip identification immediately upon impoundment.

(2) Any dog impounded by a Court or Hearings Officer, that is not dangerous and does not pose a health or safety risk to the public by being released to the keeper, shall be released to the keeper or the keeper's authorized representative upon payment of all fees required and upon receipt of a written order of release from the court or the Hearings Officer. Should the Court or Hearings Officer choose to release to the keeper a dog that is determined to be dangerous, the release shall include specific instructions on confining and containment of the dog to protect public safety.

(3) Refusal of keeper to release dog.

(a) Whenever a person in possession of a dog which has been used in the commission of a violation of this Chapter and which is the subject of a lawful Order of Impoundment refuses to voluntarily release said dog to a Dog Control Officer upon timely and reasonable request, the Dog Control Office shall determine the need to procure the dog's immediate impoundment.

(b) A limited search warrant authorized under this section shall be sought by the Dog Control Office if it is determined that the dog's immediate impoundment is necessary based on one or more of the following factors:

(i) The public's health and safety is at risk by the subject dog remaining in the possession of the keeper.

(ii) The health and welfare of the subject dog is at risk by the dog remaining in the possession of the keeper.

(iii) The keeper has failed to comply with requirements specified in KCC 403.514, Order to Abate.

(c) The Dog Control Office shall request the assistance of the Sheriff to procure and execute the limited search warrant. The Dog Control Office shall prepare the application for the warrant including the affidavit in support thereof. The Dog Control Office shall coordinate with the County Counsel Office to review the affidavit for compliance with all of the provisions of law. The Dog Control Office shall obtain the warrant in compliance with the procedure and practices authorized

under state law for the seizure of property pursuant to a search warrant.

(4) Habitual Offender

(a) Any keeper having been found/pled guilty of allowing a dog to be a habitual offender and subsequently allows the dog to re-offend, may by order of the Court or Hearings Officer, have the dog permanently removed from said keeper.

(b) Any keeper found/pled guilty of allowing a dog to be a habitual offender may, by order of the Court or Hearings Officer, lose the right to own any dog(s) while living in Klamath County. And if so ordered, law enforcement personnel may make inquires or inspections and remove from the premises any dog being found, kept, or owned by said person(s). Any county in Oregon may request a copy of that court order and continue enforcement in their county.

403.109 Time and Notice. A dog impounded for running at large shall be held in accordance with O.R.S. 609.090 and 403.110 of this Chapter. The day of impoundment is excluded from the computation of time and the last day is included unless it falls on a Saturday or legal holiday. If the dog is licensed as a dangerous dog or if the dog is owned by a keeper that has been assigned, found/pled guilty of being a Habitual Offender, the dog shall not be released without a court order or an order from a Hearings Officer.

403.110 Redemption.

(1) Any impounded dog that is not dangerous or owned by a habitual offender shall be released to the keeper or the keeper's authorized representative upon payment of impoundment, care, rabies, microchip, and license fees made payable to the Klamath County Dog Control Office, unless there is a court order to the contrary. If at the discretion of the appointed Dog Control Officer, the dog is determined to be a danger to the public's safety, the dog shall be held until such time and if the Hearings Officer or a Court determines otherwise.

(2) Upon the third impound of the same dog running at large, in addition to paying the fees, care and fines, the dog shall be spayed or neutered at the keeper's expense, prior to release. The microchip, from the first impound, shall be used for positive identification of the dog. The keeper shall be assigned Habitual Offender status by the Dog Control Office and the keeper shall be required to sign a statement acknowledging and accepting the assignment of Habitual Offender prior to release of the dog.

(3) A dog held for the prescribed period and not redeemed by its keeper and which is neither dangerous or of questionable temperament, nor in a dangerous condition of health will be released for disposition to the county contracted facility.

(4) Any dog impounded for running at large, that is owned by a keeper that has been assigned or found/pled guilty of being a Habitual Offender, is considered to be a public safety hazard and shall remain impounded awaiting determination from the Court or Hearings Officer as to the confinement requirements or the disposition of the dog. The keeper shall be responsible for all

finer, fees, costs and expenses incurred by the County while the dog is impounded. A minimum of 10 days of care at the current boarding rate at the County contracted facility must be paid in advance by the keeper to Klamath County Dog Control. When the actual number of days of care is determined, the cost will be calculated and the keeper shall be required to pay all additional amounts to the County. Releasing ownership of the dog does not eliminate the keeper's responsibility to pay fines, fees, and care costs. Should the care be less than 10 days, the keeper may receive a partial refund from the County after deducting any fines or fees still owing.

403.200 Dangerous Dog.

(1) In addition to the requirements of this Chapter, dangerous dogs must be physically restrained by their keeper to ensure public safety. The keeper must prevent the dog from interfering with the public's legal access to the owner's property or from reaching any public areas, including but not limited to sidewalks, roads, or adjoining property. Failure of the keeper to so restrain and control the dog shall constitute a violation of this Chapter, which will result in the impoundment of the dog, citation, and may result in the loss of ownership of the dog.

(2) A Dog Control Officer, a law enforcement officer, or a private citizen has the right to use reasonable force to protect themselves, another person, or an animal from a dangerous dog running at large or that trespasses on the property of another if the dog is exhibiting dangerous behaviors and if serious physical injury or death to a person or an animal is imminent.

(3) A dog that has been determined to be dangerous by a Hearings Officer or the Court shall at all times be kept indoors, or in a secure enclosure or kennel from which the dog cannot escape and into which children cannot trespass. Warning signs notifying the public that a dangerous dog is on the premises must be posted in a conspicuous place visible from the public sidewalk or road adjoining the location the dog is kept or if there is no such public sidewalk or road then at the boundary lines of the property where access is provided. A dangerous dog may be off the keeper's premises only if it is restrained by a substantial leash not longer than four (4) feet in length, is humanely muzzled, and if it is under the control of a responsible adult.

(4) Any secure enclosure or kennel used to confine a dangerous dog must meet the following requirements and are subject to inspection by a Dog Control Officer. Should the enclosure fail to meet the requirements of this section, the dangerous dog shall immediately be impounded by Dog Control:

(a) All outdoor and indoor facilities shall be constructed and maintained to allow sufficient space for the dog to make normal postural and social adjustments with freedom of movement and space for exercise.

(b) All pens must have a floor constructed of concrete or shall have a heavy buried wire barrier sufficient to prevent escape by digging. All pens shall be of sufficient height or be covered with sufficient materials to prevent escape.

(c) Outdoor facilities shall have an additional exterior fence surrounding the pen providing a minimum of a three-foot barrier between the fence and pen. It shall be constructed of sufficient materials and height to prevent entry from the public.

(5) The requirements of this section shall apply to any person who is transferred ownership or who keeps a dangerous dog.

(6) Following a violation of this section the Hearings Officer or the Court may order relief that it deems appropriate for the protection of the public, including that the dangerous dog be destroyed.

403.300 Regulation and licensing of Wolf Hybrids.

(1) A wolf hybrid is considered a specialty animal in the Klamath County Land Use Development Code. A Keeper of a wolf hybrid must comply with applicable land use laws and ordinances.

(2) Except as otherwise provided in this Section, all other regulations contained within this Chapter apply to wolf hybrids in the same manner as they apply to dogs and/or other animals.

(3) Animals declared by a Keeper to be a wolf hybrid shall license their wolf hybrid, under a special wolf hybrid license, which shall include an electronic microchip implant. The microchip number shall be kept on file with Dog Control, registered with a national registry by the keeper, and shall be used as a means of permanent identification. Licensing shall apply to all wolf hybrids age six weeks or more and shall be renewed annually, subject to inspection of the containment area. Multi-year licensing and kennel rate licensing for wolf hybrids is not available. Failure to license shall result in the immediate confiscation of the wolf hybrid.

(4) It shall be presumed, through a newspaper advertisement or flyer indicating that a Keeper is selling or giving away wolf hybrids, that the Keeper is declaring they own a wolf hybrid and shall comply with this Chapter and other applicable laws and regulations.

(5) Rabies vaccinations shall be at the discretion of the keeper and veterinarian until a rabies vaccine labeled by the United States Department of Agriculture for use in wolf hybrids becomes available, at which time it will become mandatory to give rabies vaccinations to wolf hybrids in Klamath County.

(6) Keepers shall ensure that their wolf hybrid shall not become a public safety or public nuisance problem.

(7) A wolf hybrid shall be confined in a secure enclosure or kennel.

(8) Chaining or tethering is not an acceptable method of confinement.

(9) When outside of a secure enclosure or kennel, all wolf hybrids must be harnessed and on a strong, secure lead constructed of such material as to prevent its escape, and must be under the direct control of a capable adult.

(a) A wolf hybrid must be kept under control on a lead not to exceed 6 feet in length;

(b) A wolf hybrid must not be left unattended or tethered.

(10) Enclosures or kennels must securely confine the hybrid sufficiently to not allow escape and must be located as to not interfere with the public's legal access to the keeper's property.

(11) Any secure enclosure or kennel used to confine a wolf hybrid must meet the following requirements:

(a) All outdoor and indoor facilities shall be constructed and maintained to allow sufficient space for each animal to make normal postural and social adjustments with freedom of movement and space for exercise.

(b) All pens must have a floor constructed of concrete or shall have a heavy buried wire barrier sufficient to prevent escape by digging. All pens shall be of sufficient height or be covered with sufficient materials to prevent escape.

(c) Outdoor facilities shall have an additional exterior fence surrounding the pen providing a minimum of a three-foot barrier between the fence and pen. It shall be constructed of sufficient materials and height to prevent entry from the public.

(12) Penalties for escape wolf hybrids:

(a) First Offense - \$100.00 fine in addition to impound fees and other applicable licenses and fees.

(b) Second Offense - confiscation and euthanasia of the hybrid.

(13) Bite of Humans. A wolf hybrid, which bites a human, will be dealt with under rules of the Oregon Health Division Acute and Communicable Diseases Program and as recommended by the Compendium of Animal Rabies Control. Wolf hybrids are currently classified as wild animals and treated as such.

(14) Period of responsibility for licensed wolf hybrid.

(a) The keeper shall maintain ownership and control for the natural life of the wolf hybrid; or

(b) Notify Klamath County Dog Control of any intended transfer of ownership so that license can be transferred to the new owner; or

(c) Dispose of the wolf hybrid by euthanasia.

(d) A wolf hybrid may not be abandoned or released into the wild.

ISSUES INVOLVING DOGS AND OTHER ANIMALS

403.400 Enforcement of Animal Issues. If a person violates sections 403.410, 403.411, 403.412, 403.413 and/or 403.414 a Dog Control Officer, Code Enforcement Officer, the Sheriff or law enforcement officer may issue a citation or other written notice upon the keeper. The notice shall contain detailed instructions on how the keeper can correct the violation. Steps to correct the violation must be taken immediately and the issuing agency shall return within 2 working days to ensure that the violation has been corrected.

403.410 Poisoning of Domestic Animals. No person shall knowingly with intent to harm place or cause to be placed any

toxic substance where the same is liable to be eaten by any domestic animal.

403.411 Animal Abandonment. It is a violation of this Chapter to leave a domesticated animal at a location without providing for the animal's continued care. If there is sufficient evidence, animal abandonment is a violation of ORS 167.340 and is a Class B Misdemeanor.

403.412 Adequate Care. The keeper of any animal shall provide adequate care, adequate food, adequate water, adequate shelter, adequate sanitary conditions, and shall keep the animal in a state of good health.

403.413 Cruelty to Animals. No person shall intentionally or recklessly:

- (1) Subject any animal to abusive or cruel treatment;
- (2) Subject any animal to inadequate care or neglect;
- (3) Kill, without legal privilege, any animal under the custody or control of another.

403.414 Tampering with Law Enforcement Animal. No person shall torture, torment, tease, beat, kick, strike, choke, cut, stab, stone, shoot, mutilate, injure, disable, kill, or tamper with any law enforcement animal while it is in the custody of a law enforcement officer or while it is being caged, kenneled, transported, exhibited, exercised, or used in discharging or attempting to discharge any lawful duty or function or power of office by any law enforcement officer or his/her representative for any law enforcement agency. In accordance with ORS 167.339, it is a crime to tamper with law enforcement animals.

ENFORCEMENT PROCEDURES

403.510 Violations; Notice of Violation; Requirements.

(1) Except as provided in KCC 403.520 or violations classified as a crime, all enforcement actions under this Chapter shall be brought before a Hearings Officer or the Justice Court. The Klamath County Board of Commissioners may adopt a schedule of presumptive penalties for violations of this Chapter.

(2) Hearings Officer Designated. The Klamath County Board of Commissioners may designate one or more Hearings Officers to adjudicate violations under this Chapter. The Hearings Officer shall be a member of the Oregon State Bar.

(3) Initiating Enforcement Action. Enforcement of a violation of this Chapter may be instituted by the Dog Control Officer or his authorized designee, a duly authorized peace officer or a private citizen. The enforcement action shall be initiated by serving the alleged violator with a Notice of Violation. No enforcement action initiated by a private citizen may be brought without prior review, investigation and approval of the Dog Control Officer. Upon receipt of a complaint by a private citizen, the complaint is sufficient cause for the County to

investigate whether the keeper is indeed in violation of this Chapter.

(4) Notice of Violation; Form.

(a) The Notice of Violation shall be an original and three copies and contain wording as designated by the Klamath County Counsel.

(b) The Notice of Violation shall be a multi-part form consisting of at least three parts. Additional parts may be inserted for administrative use. The required parts are:

- (i) Notice of Violation;
- (ii) Dog Control's record of civil violation; and
- (iii) Summons.

(c) The Notice of Violation shall contain the following information or blanks in which such information shall be entered:

- (i) The civil violation number;
- (ii) Name of the person alleged to have committed the violation;
- (iii) Section(s) of the code allegedly violated;
- (iv) Brief description of the alleged civil violation in such a manner as can be readily understood by a person making a reasonable effort to investigate or make a determination;
- (v) The date, time and place at which the violation allegedly occurred;
- (vi) The date on which the Notice of Violation was issued;
- (vii) The minimum requirements for appearance.
- (viii) The amount of the maximum monetary penalty.

(d) The Notice of Violation shall contain a form of certificate by the complainant to the effect that he or she certifies, under oath and upon penalties of law, that he or she has reasonable grounds to believe, and does believe, that the person cited committed a violation contrary to this Chapter. The certification, if made by the Dog Control Officer or law enforcement officer, need not be made under oath.

(e) The Notice of Violation shall state that failure to follow the minimum requirements for appearance constitutes admission that the allegations are true and that the person consents to whatever penalty the Hearings Officer or the Court imposes, notwithstanding payment of the presumptive penalty. This may include, but is not limited to, a monetary judgment entered against the person up to the maximum amount of civil penalties, restitution and other costs allowed by this Chapter for the violation. It shall also state that failure to appear at any scheduled hearing on the violation may result in a default determination and judgment.

(f) Any error in the Notice of Violation or in entering information into the blanks in the form may be corrected at the hearing or prior to the hearing with notice being given to the person cited. The notice shall be set aside by the Hearings Officer or the Court only upon a request by the person cited made before the close of the hearing and upon a determination that the error is prejudicial to the person's defense. Failure to make a

request to set aside the Notice of Violation before the conclusion of the hearing shall constitute a waiver and will be an absolute bar to raising this issue at the hearing, or subsequent appeal. Nothing prohibits the Hearings Officer or the Court from amending the Notice of Violation in his or her discretion.

(g) The notice shall contain a provision informing the person alleged to have committed the civil violation that, if the person is going to be represented by counsel, he or she must provide notice to the County Counsel at least five days prior to the hearing, or an automatic continuance of at least five days will be granted.

403.511 Service of Notice of Violation.

(1) A Notice of Violation initiated by a private citizen shall be provided to the Dog Control Office for review, investigation, approval and service.

(2) The Dog Control Office shall serve the notice by personal service on the person alleged to have committed the violation, or by certified mail, return receipt requested, to the person's last known address, together with a first-class mailing of a copy. There shall be a rebuttable presumption that any notice sent by mail was served on the third business day following deposit in the mail.

403.512 Notice of Violation; Minimum Requirements for Appearance.

(1) Any person who has received a Notice of Violation shall choose and follow at least one of the options listed on the back of the Notice of Violation form.

(2) Failure to meet the minimum requirements for appearance before the time and date specified in the summons shall be deemed a waiver, confession of judgment and consent to imposition of a civil penalty as determined by the Hearings Officer or the Court.

403.513 Fixing Hearing Dates; Notice of Defendant; Failure to Appear; Hearing on Violation.

(1) Hearings may be rescheduled upon timely receipt of a request and if the Hearings Officer or Court concludes that it will not prejudice the interests of either the person alleged to have committed the violation or the County.

(2) A party may be represented by counsel at his or her own expense and must provide notice to County Counsel at least 5 days prior to the hearing. Failure to provide the County with at least 5 days notice that counsel will appear shall entitle the County to an automatic set-over of at least 5 days unless waived by the County.

(3) Justice Court rules and procedures will be followed when the person cited is cited into Justice Court.

(4) If the person cited is cited to appear before the Hearings Officer, the following procedures shall be followed:

(a) All testimony shall be under oath. The Hearings Officer has the authority to administer oaths, issue subpoenas if permitted by law, and take the testimony of witnesses, and will be

responsible for ensuring that a tape—recording of the proceeding is maintained. The Hearings Officer is authorized to adopt in writing such rules of procedure as are reasonably necessary for the conduct of the hearings. These rules shall be available to all persons in attendance.

(b) The Dog Control Officer or County Counsel shall proceed first and have the burden of demonstrating that the person cited committed the violation by a preponderance of the evidence.

(c) The defendant shall be allowed to present argument and relevant testimony, witnesses, and evidence at the hearing. The Hearings Officer may permit rebuttal by the Dog Control Officer or County Counsel.

(d) The rules of evidence do not apply, but the Hearings Officer may discount or exclude any evidence that the Hearings Officer deems to be irrelevant, immaterial, cumulative, or not reasonably credible.

(e) After consideration of the arguments and evidence, the Hearings Officer shall determine whether the violation alleged has been proven by a preponderance of the evidence.

(f) If the violation has been established, or an answer admitting the violation has been received, or the person has otherwise failed to respond or appear, the Hearings Officer shall order the person cited to pay a civil penalty of not more than \$500 per violation, and may impose any additional monetary obligations, conditions or restrictions permitted by this Chapter. The Hearings Officer shall have the discretion to reduce the presumptive penalty based on mitigating circumstances.

(g) The Hearings Officer shall issue a written decision containing findings of fact and conclusions addressing the allegations contained in the Notice of Violation.

(h) If the person accused of committing a violation fails to appear at a hearing for good cause, the person may file a petition to void any penalty and reset the hearing with the Hearings Officer, setting forth the reasons for the failure to appear. The person shall at the same time serve the Office of County Counsel with a copy of the petition by personal delivery or first-class mail. If the Hearings Officer finds that good cause exists for the failure, the Hearings Officer shall suspend imposition of any penalty and reschedule the hearing. Good cause means circumstances that would prevent a reasonable person from appearing, such as the death, hospitalization or serious illness of the person or an immediate family member. The Hearings Officer may condition suspension of the penalty on the person agreeing to take reasonable interim steps to address the alleged violation as required by the Hearings Officer. Unless the County stipulates otherwise, a petition must be filed no later than 5 days after the date of the hearing at which the person failed to appear.

(5) For purposes of this Chapter, in addition to a monetary judgment, the term "civil penalties" includes any additional conditions and restrictions imposed by the Hearings Officer or the Court, and reasonably calculated to remedy the violation including, but not limited to:

(a) Physical alterations to property or training.

(b) Requiring payment to the County of any reasonable expenses incurred in dealing with the violation, other than the violation process. Requiring the person to make restitution to any person who has suffered economic loss in connection with the violation.

(c) Requiring that the violation or condition which is the subject of the civil violation be abated, corrected, removed or otherwise brought into compliance as directed by the Hearings Officer or the Court.

(d) If a person is found to have committed a violation, and the Hearings Officer or the Court has ordered conditions or restrictions, the person may be cited for a new violation for failing to comply with the conditions or restrictions.

(e) The Hearings Officer or the Court may schedule a compliance hearing to determine if the person is failing to comply with the requirements imposed. If the Hearings Officer or the Court determines upon a preponderance of the evidence that the person has failed to follow the requirements imposed, the Hearings Officer or the Court may impose additional civil penalties, suspended civil penalties, modify or add additional conditions or restrictions, or order other steps designed to remedy the violation.

403.514 Order to Abate.

(1) If, the time given to comply with an Order to Abate the nuisance has expired without abatement, the Hearings Officer or the Court may summarily abate the nuisance by ordering impoundment of the dog in accordance with KCC 403.108 and assess the cost of such abatement against the keeper of the dog, in addition to the penalties for the violation.

(2) Any party served a written order to abate a nuisance, may appeal the order as provided in KCC 403.516 (1). The appeal under this section may be consolidated with any underlying violation still pending and eligible for appeal under this Chapter. Provided, any challenge relating to the validity of the order to abate the nuisance, shall be joined in one state court proceeding, and there shall be no further administrative review or appeal except as directed by the Court.

(3) Any dog impounded pursuant to the order to abate shall not be released until such time as the Hearings Officer or a Court of competent jurisdiction orders such release.

403.515 Stay of Enforcement; Exceptions.

(1) Enforcement of any Notice of Violation shall be stayed during the pendency of an appeal, except:

(a) Restrictions or conditions placed on the dog's keeper by the Hearings Officer or the Court or

(b) The impoundment of a dog as required under this Chapter or because it was necessary for the protection of the dog.

(2) In any case wherein the subject dog has been impounded and is to be euthanized pursuant to a Hearings Officer's or Court's decision, a party seeking to appeal the decision may obtain a stay of the destruction of the dog pending the resolution

of the appeal. The party shall submit a written notice to the Dog Control Office and the County Counsel's Office, within 15 days of the date of the decision of the party's intent to begin the appeal process. The written notice shall be submitted with a deposit as required under KCC 403.517.

403.516 Appeals.

(1) Appeal of the Justice Court's Decision. The sole method for appeal of the Court's decision is in accordance with O.R.S. Chapter 53. If the appeal is not filed within 30 days of the date of the Court's decision, the decision of the Court shall be final.

(2) Appeal of Hearings Officer's Decision. The sole method for appeal of a Hearings Officer's decision is by filing a writ of review in accordance with O.R.S. Chapter 34. If a writ of review is not filed within 60 days of the date of the decision, the decision of the Hearings Officer shall be final.

(3) Wrongful Impoundment. Any keeper who believes his dog to have been wrongfully impounded may, within the impoundment period, appeal to the Circuit Court of Oregon for Klamath County which shall have full power to determine whether the dog has been wrongfully impounded; and, if so, shall determine whether it shall be returned to the keeper and under what terms.

403.517 Impoundment Pending Appeal.

(1) In any appeal wherein the subject dog has been impounded pending appeal of the Hearings Officer's or the Court's decision the keeper of the dog shall be required to post a deposit with the Dog Control Office, in an amount set by the Board of County Commissioners.

(2) If a dog not previously impounded under this Chapter is subsequently ordered to be impounded by a Hearings Officer or the Court and the keeper appeals the decision, the keeper of the dog shall be required to post a deposit with the Dog Control Office at the time the notice of intent to file an appeal is submitted, to apply towards the expense of sheltering the dog during the pendency of the appeal proceeding. Unless ordered by the Court, the dog may be killed during the appeal period if the Keeper fails to maintain advance payment of the cost of the dog impounded.

(3) In either situation described above, if the finding of a violation is upheld on appeal, the dog's keeper shall be liable for the cost of the dog's impoundment and shall pay all fees incurred for sheltering and caring for the dog. If the decision is reversed on appeal, the deposit shall be refunded.

403.520 Second Violation of Chasing, Menacing, or Biting a Person; Citation and Summons; Service; Failure to Appear. In the event there is an allegation of chasing, menacing or biting subsequent to an initial determination of such a violation, it will be cited under O.R.S. 609.990(3) and not this Chapter. In accordance with O.R.S. 609.990(3), it is a Class C Misdemeanor if a keeper's dog is a public nuisance because the dog chases, menaces or bites a person on premises other than its keeper's and

the dog keeper has previously been convicted of a violation or crime for any dog chasing, menacing or biting a person on premises other than its keeper or on the keepers premises where legal public access is permitted.

403.530 Other Enforcement Procedures. Enforcement under O.R.S. Chapter 609 shall not prevent the filing of a complaint in any other lawful form alleging violation of this Chapter.

403.540 Penalties; Civil Penalties; Collection of Penalties; Administrative Fee.

(1) Any person who violates any of the provisions of this Chapter is guilty of a violation, and upon determination thereof is punishable for a first offense by a fine of not less than \$50.00 nor more than \$500.00; for a second offense of not less than \$100.00 nor more than \$500.00; and \$500.00 for any additional offense.

(2) For the first violation of menacing or dangerous dog behavior the maximum fine shall be no more than \$500.00. The keeper must take steps to control the dangerous dog as defined in KCC 403.200 and must also manage the dog's behavior to ensure public safety. The Hearings Officer or the Court may require basic obedience training and behavior management classes for dangerous dogs.

(3) Each day a person shall be in violation of this Chapter shall be deemed a separate offense.

(4) Any person who, in connection with the issuance of a Notice of Violation, citation or the filing of a complaint for a violation of this Chapter or rules or regulations adopted pursuant thereto, willfully certifies falsely to the matters set forth therein is punishable by a fine of not more than \$500 for a non-continuing offense.

(5) Upon conviction of any person for a violation of failure to appear without due and good cause, he shall be punished by a fine in addition to the fine and court costs of the violation for which he failed to appear; and such additional fine shall not be less than \$1,000.

(6) The provisions of this Section are in addition to and not in lieu of other procedures and remedies provided by this Chapter or state law.

(7) The penalties in this Section are not in lieu of civil proceedings or criminal remedies otherwise provided by law.

(8) In addition to any penalty imposed as provided by KCC 403.540 (1), a Hearings Officer or court may order the impoundment and destruction of any dog found to be vicious or a nuisance.

(9) A violation under this Chapter shall be subject to a civil penalty of up to \$500 per day the violation is found to have occurred, plus costs and restitution if awarded.

(10) Imposition of a monetary penalty, including fees and restitution, shall be a civil judgment enforceable in any manner permitted by law and may be placed as a lien in the Klamath County Clerk's Lien Record and may be turned over to a private collections company for collection.

(11) Failure to comply with conditions imposed in the time specified hereby is deemed a public nuisance and may be abated as provide in KCC 403.514.

ESTABLISHMENT OF FEES AND SEVERABILITY

403.600 Disposition of Penalties for Violations. All penalties imposed for violations of this Chapter shall be remitted to the Klamath County Treasurer for deposit into a designated Dog Control fund. Surplus funds may be kept in this fund and used for improvements to the department, pet overpopulation control programs and education, removing nuisance animals, caring for animals involved in court cases within Klamath County, helping with public health issues involving animals, and other animal related areas as determined by the Board of County Commissioners.

403.610 Fees. The Board of County Commissioners shall, in conjunction with the Dog Control Officer of Klamath County, establish by resolution any license, registration, impoundment, hearing penalties, or other applicable fees regulated under this Chapter.

403.700 Severability. If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Chapter.

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Ordinance No. 58.00 - 11/12/87

CHAPTER 404
INDIGENT BURIALS

404.001 Policy and Purpose. The Board of County Commissioners finds that it is necessary to provide for the burial of indigent persons to protect the health, safety and welfare of the citizens.

404.100 Payment of Cremation Costs When There Is No Next Of Kin. Klamath County shall pay for the cremation of the body of an indigent person without the consent of next of kin, if no relatives, friends, or interested persons claim the body after notification is attempted as provided for in the law.

404.110 Payment of Other Services; Burden of Proof. Klamath County will pay for services other than cremation only when proof is furnished to the Board of County Commissioners by the funeral home or funeral home director that the deceased does not have any family members or heirs with the ability to pay for the services selected. The burden of this proof is the responsibility of the funeral home requesting reimbursement of funds.

404.200 Amount of Reimbursement. The amount to be allowed will be established by the Board of County Commissioners by Resolution and the total amount reimbursed during any fiscal year shall not exceed the amount established by the Budget Committee.

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CHAPTER 405
AMBULANCE REGULATION

405.001 Policy and Purpose. The Board of Commissioners finds:

(1) That O.R.S. 682.205 and 682.335 requires Klamath County to develop a plan for the County relating to the need for and coordination of ambulance services and to establish Ambulance Service Areas consistent with the plan to provide efficient and effective ambulance service areas;

(2) That this Chapter, which establishes ambulance providers for each service area, together with Exhibit "A" attached hereto and incorporated herein by this reference, establishes the Klamath County Ambulance Advisory Committee and creates the Klamath County Ambulance Service Area Plan.

(3) This Chapter and the Klamath County Ambulance Service Area Plan apply to all organizations or persons who provide pre-hospital emergency care within the County except for those who are exempt by O.R.S. 682.035.

405.005 Definitions. The words and phrases in this Chapter shall have the meaning provided in O.R.S. Chapter 682 and OAR Chapter 333, Divisions 250, 255, 260, and 265, unless specifically defined herein to have a different meaning.

(1) "Mutual Aid" means aid provided by one party to another as defined by the Klamath County Ambulance Mutual Aid Agreement.

(2) "Supplemental Assistance" means assistance provided by one party to another through contractual agreement between the parties for the express purpose of recovering some of the cost for providing said service.

405.050 Ambulance Service Areas. For the efficient and effective provision of ambulance services in accordance with the Klamath County Ambulance Service Area Plan, the ambulance service areas shown on the map as Appendix A* are hereby adopted as the Ambulance Service Areas for Klamath County. The Board of Commissioners, by the adoption of an Order, may adjust the boundaries of the Ambulance Service Areas from time to time as necessary to provide efficient and effective ambulance services.

405.060 Assignment of an Ambulance Service Area.

(1) Effective July 1, 1992, no entity shall be assigned an Ambulance Service Area in Klamath County without submitting a proposal to the Board of Commissioners. The Board of Commissioners will assign the Ambulance Service Areas based on the protocols of this ordinance.

* Ambulance Service Area map and legal descriptions are available at the office of the Klamath County Counsel, 305 Main Street, 2nd Floor, Klamath Falls, Oregon 97601.

(2) Public notice shall be given at the time a Request for Proposal is solicited for the assignment of the Ambulance Service Area.

405.100 Licensing of Ambulance Service.

No entity shall provide ambulance service, offer to provide ambulance service, or advertise for the performance of ambulance service in Klamath County unless awarded the Ambulance Service Area (ASA) by the Board of Commissioners. In addition, that ambulance service will meet the requirements of the State of Oregon for Ambulance Vehicle licenses.

405.110 Application for Ambulance Service Area.

(1) Any person desiring to obtain or renew an Ambulance Service Area to engage in the business of operating an ambulance or ambulances within Klamath County shall submit an application to the Klamath County Ambulance Advisory Committee. The applications shall be reviewed by the Ambulance Advisory Committee created by this ordinance which shall recommend the issuance of Ambulance Service Areas to the Board of Commissioners. The assignment of Ambulance Service Areas shall be made by an Order of the Board of Commissioners.

(2) An application shall include the information required in the Proposal to Provide Ambulance Service and this information shall be updated on an annual basis:

(a) The name and address of the person applying for the Ambulance Service Area;

(b) A list of vehicles used in providing ambulance services including year of manufacture, make and model, mileage, and verification that each vehicle is licensed as an ambulance by the State of Oregon and proof of insurance;

(c) A list of personnel to be used in providing ambulance service, a general description of their duties, and their current Emergency Medical Technician certification number.

405.120 Review of Application. Each application shall be reviewed for the applicant's conformity with the requirements of Oregon law for providing ambulance service, in accordance with the initial proposal to provide ambulance service, the Klamath County Ambulance Service Area Plan and the need for efficient and effective ambulance services within Klamath County. The Board of Commissioners shall fix a time and place for a public review of the application. Any interested person may appear and/or file with the Ambulance Advisory Committee a memorandum in support of or opposition to the issuance of a Letter of Recommendation.

405.130 Ambulance Inspection. All ambulance service vehicles and equipment used in patient care and transport in Klamath County will be inspected as required by O.R.S. 682.085.

If a vehicle and/or its equipment is found to not meet standards and is out of compliance, it can no longer be used for

patient care or transport. The burden is then on the provider to correct deficiencies and demonstrate compliance.

405.140 Term of Ambulance Service Area. The assignments of the Ambulance Service Areas shall be issued for a period of seven (7) years and shall be valid from the date of issuance until the June 30th prior to the seventh anniversary. Thereafter, assignments may be renewed commencing on the first day of July for a period of seven (7) years subject to the provisions for suspension or revocation as set forth in Section 405.500.

405.150 Renewal of Ambulance Service Area. Not less than forty-five (45) days prior to the expiration of the assignment of an Ambulance Service Area, any person desiring the renewal of the assignment of an Ambulance Service Area shall submit an application in the form of a letter of intent to continue as an EMS service provider for the assigned ASA to the Ambulance Advisory Committee. The application shall include the information required by Section 405.110 and in accordance with the Request for Proposal issued by the Board of Commissioners. Applications for renewal need only provide such information necessary to bring the original application up to date.

405.160 Discontinued Service. In the event that an entity assigned an Ambulance Service Area discontinues service before the expiration of the assignment, the Board of Commissioners shall set a time by which applications must be submitted for reassignment of the Ambulance Service Area. The application shall be in accordance with the Request for Proposal issued by the Board of Commissioners. Assignment of the Ambulance Service Area shall be for the remainder of the term unless otherwise specified by the Board of Commissioners.

405.200 Duties of Ambulance Service Provider. Upon assignment of an Ambulance Service Area to a provider in accordance with the proposal, the provider:

(1) Shall conduct its operations in strict compliance with all applicable State and Federal laws and the terms of this Chapter and the Klamath County Ambulance Service Area Plan;

(2) Shall not fail or refuse to respond to an emergency call for service if an ambulance is available for service;

(3) Shall not respond to a medical emergency located outside its assigned Ambulance Service Area or to another's assigned Ambulance Service Area except:

(a) When the ambulance provider assigned to the Ambulance Service Area is unavailable to respond and is requested by the other provider or the appropriate dispatch to respond; or

(b) When the response is for a supplemental assistance or mutual aid;

(4) Shall not transfer the assignment of an Ambulance Service Area without written notice to and recommended approval by the Ambulance Advisory Committee to the Board of Commissioners.

The written notice shall include application for assignment of the Ambulance Service Area submitted by the transferee. The application shall be reviewed in accordance with Section 405.110, and the transfer shall become effective with the Board of Commissioners' approval.

(5) Shall not voluntarily discontinue service to the assigned Ambulance Service Area without giving ninety (90) days written notice to the Board of Commissioners.

405.300 Ambulance Advisory Committee. There is hereby created a Klamath County Ambulance Advisory Committee.

(1) Membership. The Ambulance Advisory Committee shall consist of:

(a) All physician supervisors of the ambulance services and quick response teams providing service in Klamath County;

(b) An EMT representative from each Ambulance Service Area or medical response provider, with no more than one (1) representative from each provider;

(c) One representative from the Emergency Department of Merle West Medical Center;

(d) The Klamath County Emergency Services Director;

(e) The Administrator of the Klamath County Division of Health Services shall be an Ex-Officio member;

(f) One representative from 9-1-1 as an Ex-Officio member;

(g) Members of the Ambulance Advisory Committee shall be electors of the County and shall be appointed by the Board of Commissioners.

(h) Members of the Ambulance Advisory Committee may designate an individual to act on his or her behalf, with all rights of the regular member. This privilege shall be limited to two occurrences per year.

405.310 Meetings. The Ambulance Advisory Committee after its appointment shall hold an organizational meeting to adopt internal rules of procedure to aid in the administration of this Chapter and the Klamath County Ambulance Service Area Plan and to determine its regular meeting dates.

405.320 Term of Appointment. With respect to the initial appointments to the Ambulance Advisory Committee, one third of its membership shall be appointed for a one-year term, one third to a two-year term and one third to a three-year term. Thereafter, all appointments shall be for three-year terms.

405.330 Duties of the Committee. The Ambulance Advisory Committee shall be charged with:

(1) Periodically reviewing the Klamath County Ambulance Service Area Plan and making recommendations to the Board of Commissioners including, but not limited to: reviewing standards established in the plan and making recommendations regarding improvement and/or new standards as required by OAR 333-260-0000

through 333-260-0070; monitoring coordination between emergency medical service resources; reviewing dispatch procedures and compliance; and reviewing the effectiveness and efficiency of the Ambulance Service Area boundaries.

(2) Reviewing and monitoring the quality assurance programs, including but not limited to training, to insure compliance with the Klamath County Ambulance Service Area Plan;

(3) Providing for on-going input to the County from pre-hospital care consumers, providers and the medical community;

(4) Periodically reviewing the performance of ambulance service providers within the County; and

(5) Performing the responsibilities further enumerated by this Chapter.

405.400 Initial Response. Nothing in this Chapter prohibits an agency responsible for the dispatching of emergency services from dispatching an initial medical responder to the scene of a medical emergency in addition to dispatching an ambulance service provider. Such initial response shall only be in accordance with Sections 405.410 and 405.420.

405.410 Initial Responders. The initial responder shall respond with Oregon Certified Emergency Medical Technicians and/or first responders and who are employed by or volunteer with the initial responder, if available.

405.420 Ambulance Service Provider. Upon the arrival of the ambulance service provider at the location of the medical emergency, the ambulance service provider shall be in charge of, and responsible for, the continuation of emergency medical services. The initial responder shall continue to provide emergency medical services at the direction of the ambulance service provider.

405.500 Revocation, Suspension or Denial of Ambulance Service Area. Any Ambulance Service Area assigned pursuant to this Chapter shall be subject to revocation, suspension or denial by the Board of Commissioners, when, upon its own motion, a provider is found to have:

(1) Willfully violated provisions of this Chapter, the Klamath County Ambulance Service Area Plan or provisions of State or Federal laws and regulations; or

(2) Materially misrepresented facts or information given in the application for assignment of an Ambulance Service Area or as part of the review of the performance of the service furnished by the provider.

405.510 Procedure. Prior to initiation of revocation, suspension, or denial, the Board of Commissioners will provide an Ambulance Service Area holder with thirty (30) days notice of any alleged failure to meet the requirements of this Chapter and the Klamath County Ambulance Service Area Plan. However, such action shall not proceed if, within thirty (30) days, the Ambulance

Service Area holder has corrected the said identified failure to the satisfaction of the Board of Commissioners.

405.520 Charges to be filed with Board of Commissioners. No such assignment shall be revoked or suspended without charges in writing first being filed with or by the Board of Commissioners setting forth with reasonable certainty the nature of such charges against said Ambulance Service Area holder. Upon the filing of charges aforesaid, the Board of Commissioners shall fix a time and place for the hearing of said charges by the Board of Commissioners.

405.530 Notice. The holder of the Ambulance Service Area shall be provided a copy of the charges as filed and the time and place for the hearing of said charges at least thirty (30) days prior to the date fixed by the Board of Commissioners for the hearing. The Ambulance Service Area holder shall have the right to appear and defend against the charges, and, if they so desire, to be represented by counsel.

405.540 Emergency Revocation Procedure. In an emergency, the Board of Commissioners shall proceed with immediate action to suspend an Ambulance Service Area, provided that the Board of Commissioners finds that it is a danger to the public health and safety to allow the Ambulance Service Area holder to continue doing business. The Board of Commissioners, having made such finding, shall serve written notice of suspension to the Ambulance Service Area holder and to the State Health Division. This notice shall advise the Ambulance Service Area holder that it shall, within ten (10) days of the date of service upon said Ambulance Service Area holder, request a hearing before the Board of Commissioners.

(1) Upon receipt of the request for hearing, the Board of Commissioners shall set a time and a place for a hearing at the earliest possible time and shall promptly notify the Ambulance Service Area holder as to the time and place of hearing by certified mail, return receipt requested, to the last known mailing address of the Ambulance Service Area holder. Notice may also be given to such persons as the Board of Commissioners may believe to be interested persons.

(2) At the hearing the Ambulance Service Area holder shall have the same rights as set forth in Section 405.530.

405.550 Appeal. Any entity whose Ambulance Service Area is revoked, denied or suspended may, within sixty (60) days from the date of the Order, appeal the decision to the Circuit Court. All appeals to Circuit Court shall be by Writ of Review.

405.600 Obedience to Law. In addition to the provisions of this Chapter and the Klamath County Ambulance Service Area Plan, all ambulance providers shall comply with all applicable laws, ordinances and regulations now in force, or hereinafter enacted,

governing the operation of motor vehicles upon highways, streets, alleys and other public ways.

405.700 Penalties. Violation of this Chapter shall be punishable, upon conviction, by a fine of not more than \$360 for each day that an Ambulance Service Area holder conducts business in violation of this Chapter and the Klamath County Service Area Plan.

405.900 Repealer. Ordinance No. 39.2, Ordinance No. 39.3, Ordinance No. 39.4, and Ordinance No. 39.5 are hereby repealed in their entirety.

405.910 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions hereof.

405.920 Conflict of Interest. Members of the Ambulance Advisory Committee shall avoid acting in any matters where a conflict of interest may arise. Any Committee member having a direct or indirect financial or pecuniary interest in any matter before the Committee for consideration shall withdraw from participation in any action taken by the Committee in said matter. Nothing in this section shall limit the ability of any person to provide testimony to the Committee.

The Klamath County Ambulance Service Plan can be obtained from the County Counsel Office, 305 Main Street, 2nd Floor, Klamath Falls, OR 97601.

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CHAPTER 406
KLAMATH COUNTY CLEAN AIR ORDINANCE

406.001 Policy and Purpose. To control and address air quality problems and identify the Air Quality Zone, so that Klamath County will have clean air for the benefit of its citizens' health and welfare; to be in compliance with requirements of the Federal Clean Air Act of 1990 and applicable revisions or updates, and not exceed the National Ambient Air Quality Standard for particulate matter; and to improve economic development opportunities.

406.005 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter.

(1) AIR QUALITY ADVISORY - A means, declared and provided by the Klamath County Environmental Health Division based on the Air Quality Forecast, to inform area residents of what the air quality is or potentially will be. The advisories shall be:

(a) Red Advisory Period - A period of time when an Air Quality Forecast predicts that particulate matter concentrations have the potential to exceed or are exceeding an estimate of 150 $\mu\text{g}/\text{m}^3$ of PM-10 or 30 $\mu\text{g}/\text{m}^3$ for PM-2.5 for a 24-hour average. Such pollution concentrations have a high probability of being unhealthy.

(b) Yellow Advisory Period - A period of time when the Air Quality Forecast predicts that particulate matter concentrations are less than what would be considered for the Red Advisory Period, but would likely exceed estimates of 80 $\mu\text{g}/\text{m}^3$ of PM-10 or 16 $\mu\text{g}/\text{m}^3$ of PM-2.5 for a 24-hour average. Such pollution concentrations have a high probability of impacting public health.

(c) Green Advisory Period - A period of time when an Air Quality Forecast predicts daily particulate matter concentrations for a 24-hour average will not exceed 80 $\mu\text{g}/\text{m}^3$ of PM-10; or 16 $\mu\text{g}/\text{m}^3$ of PM-2.5.

(2) AIR QUALITY FORECAST - A method of using available data including, but not limited to, local weather conditions, current and anticipated particulate levels, and weather forecasts to determine the PM-10 and PM-2.5 particulate matter concentrations.

(3) AIR QUALITY INSPECTOR - Air Quality Inspectors may be staff of the Klamath County Environmental Health Division, the Klamath County Code Compliance Office, the Code

Enforcement Office of the City of Klamath Falls, or the County Fire Districts who will act within their scope of authority. The primary role of an Air Quality Inspector is to observe and document violations of Chapter 406 and to educate the public with respect to this Chapter and the documented violation.

(4) AIR QUALITY ZONE - An area within the County as depicted on the map and legal description in Exhibit A.

(5) AGRICULTURAL OPERATION - An activity including an irrigation operation on land currently used, or intended to be used primarily for the purpose of obtaining a profit by raising, harvesting and selling crops, or by raising and selling livestock and/or poultry, or the products thereof. Agricultural operation also means activities conducted by not-for-profit agricultural research organizations, which activities are necessary to serve that purpose. It does not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.

(6) BUILDING - All residential or commercial structures including manufactured homes.

(7) BURN-DOWN TIME - A period of time allowed for fires in solid fuel-fired appliances and open/outdoor burning, to die down prior to the beginning of enforcement activities. Such burn-down time applies to Red or Yellow Advisory Period.

(8) CERTIFICATE OF EXEMPTION - A written approval issued by the Klamath County Environmental Health Division to use a solid fuel-fired appliance or open outdoor burning in a manner normally in violation of the requirements of this Chapter.

(9) CERTIFICATE OF VARIANCE - A written approval issued to a person by the Klamath County Environmental Health Division to open or outdoor burn in a manner normally in violation of the requirements of this Chapter.

(10) CERTIFIED WOODSTOVE OR FIREPLACE INSERT - A solid fuel-fired space heating appliance that has been certified by the Oregon Department of Environmental Quality (DEQ) or bears an Environmental Protection Agency certification label indicating that the model is built in accordance with EPA emission certification.

(11) COOK STOVE - A wood burning stove installed in the kitchen, which is primarily designed for cooking and has a stovetop and an oven. It may also be equipped with gas burners or electric heat elements.

(12) EXEMPT SOLID-FUEL FIRED APPLIANCE - A solid fuel-fired appliance that is exempt from the Oregon Department of Environmental Quality (DEQ) or the United States Environmental Protection Agency (EPA) requirements for certification for its installation. Exempt stoves are pellet stoves, antique stoves (built before 1940 with ornate construction and a substantially higher current market value), open masonry fireplaces, cook stoves, or other stoves that have a valid letter of exemption from DEQ, or do not meet the definition of a "woodstove" or "wood heater" as defined in DEQ's Oregon Administrative Rules for Residential Wood Heating.

(13) FIRE DEPARTMENT - The unit of municipal government or county approved Local Fire District having the authority and responsibility to extinguish unintended fires and to promote fire safety.

(14) FIREPLACE - A framed opening made in a chimney to hold an open fire. Also known as an open fireplace or structurally integrated fireplace which could be made of metal or masonry construction.

(15) FIREPLACE ASTM STANDARDS - All fireplaces that meet the ASTM international standard test method E2558, and meet 5.1 grams per kilogram specifications, or current federal EPA NSPS standards for structurally integrated fireplaces, whichever is less.

(16) KLAMATH COUNTY AIR QUALITY ADVISORY COMMITTEE - A volunteer committee appointed by the Klamath County Board of Commissioners. The purpose of the Air Quality Advisory Committee is to evaluate relevant air quality data, identify significant contributing emission sources, recommend appropriate emission reduction strategies and recommend action to the Board of County Commissioners.

(17) LOW INCOME PERSON - A person or family who demonstrates economic need by certifying through proof that their total household income is less than the very low-income guidelines established by the United States Department of Housing and Urban Development.

(18) NON-CERTIFIED WOOD STOVE OR FIREPLACE INSERT - A solid fuel-fired residential space heating device that has not been certified by either the Oregon Department of Environmental Quality or the Environmental Protection Agency (EPA) as complying with smoke emission standards. "Non-certified wood stove or fireplace insert" does not include fireplaces, nor devices exempt from certification requirements as defined in Section 406.005(13).

(19) NOTICE OF NONCOMPLIANCE - A letter notifying a violator of this Chapter of the specific violation and the corrective action necessary.

(20) NONATTAINMENT AREA - The federally designated area within the County that is depicted on the map and legal description in Exhibit A. Normally thought of as synonymous with the Air Quality Zone unless contingency measures are implemented.

(21) OPEN/OUTDOOR BURNING - This section refers to all open or outdoor fires intended for heating or the combustion of waste, and those included in the definition of "Open Burning" in Oregon Administrative Rule Chapter 340 Division 264. Outdoor cooking fires are not included.

(22) PARTICULATE MATTER TEN MICRONS AND LESS (PM-10) - Airborne particulate matter with an aerodynamic diameter of ten (10) microns in size or less. PM-10 is normally measured by weight per unit volume of air in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). The National Ambient Air Quality Standard is 150 $\mu\text{g}/\text{m}^3$ for a 24-hour period beginning at 12:01 AM.

(23) PARTICULATE MATTER TWO AND ONE-HALF MICRONS OR LESS (PM-2.5) - Airborne particulate matter with an aerodynamic diameter of two-point-five (2.5) microns in size or less. PM-2.5 is normally measured by weight per unit volume of air in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). The National Ambient Air Quality Standards are 35 $\mu\text{g}/\text{m}^3$ for a 24-hour period beginning at 12:01 AM, with a 15 $\mu\text{g}/\text{m}^3$ annual average.

(24) PELLET STOVE - A wood burning heating appliance which uses wood pellets as its primary source of fuel.

(25) PERSON - Any individual, partnership, corporation, company or other association.

(26) PROHIBITED MATERIALS - Any combustible material as defined by the State's prohibited materials open burning rule which include wet garbage, plastic, wire insulation, automobile parts, asphalt, petroleum product, petroleum treated material, rubber products, or animal or vegetable matter resulting from the handling, preparation, cooking or service of food that normally results in dense or noxious smoke when burned. Also included are coal and any open burned materials that cause a public or private nuisance or a hazard to public safety.

(27) RESPONSIBLE PERSON - A person eighteen (18) years of age or older, authorized by the property owner to attend an open burning event and who is capable of and has the necessary equipment to extinguish the fire.

(28) SALE OF REAL PROPERTY - Any transaction whereby the ownership of a building as defined by the Klamath County Development Code, or the real property upon which a building is located, is transferred by an agreement for the sale and purchase of the building or the real property.

(29) SOLE SOURCE OF HEAT - One or more residential solid fuel-fired appliances that constitute the only source of space heat in a private residence. No residential solid fuel-fired appliance or devices shall be considered to be the sole source of heat if the private residence is equipped with a permanently installed working system such as: oil, natural gas, electric, geothermal, solar or propane heating system, whether connected or disconnected from its source.

(30) SOLID FUEL-FIRED APPLIANCE - A device designed for solid fuel combustion, including cordwood stoves (wood stoves and fireplace stove inserts), fireplaces, solid fuel-fired cook stoves and combination fuel furnaces or boilers, which burn solid fuels.

(31) URBAN GROWTH BOUNDARY (UGB) - An area of the county surrounding and including the City of Klamath Falls which has been designated by the Klamath County Board of Commissioners and the City of Klamath Falls as an area of potential growth which may impact both governmental bodies.

(32) WASTE

(a) Agricultural Waste - Any waste materials generated or used by an agricultural operation.

(b) Commercial Waste - Waste Materials from offices, warehouses, restaurants, mobile home parks, dwellings (apartments) containing more than four (4) family units, hotels, motels, schools, or wholesale or retail yards.

(c) Construction Waste - Any waste material produced by a building or construction project. Examples of construction waste are wood, lumber, paper, wood pallets, crating and packing materials used during construction, materials left after completion of construction and materials collected during cleanup of a construction site.

(d) Demolition Waste - Any material produced by the complete or partial destruction, or tearing down, of any man-made structure the clearing of any site for land improvement; or cleanup such as the removal of trees, brush or stumps, excluding agricultural waste, Section 406.005(31)(a), or domestic waste, Section 406.005(31)(e).

(e) Domestic Waste - Household materials including paper, cardboard, clothing, yard debris, Section 406.005(31)(h), or other material generated in or around a dwelling of four (4) or less family units, or on the real property adjacent to the dwelling. Once domestic waste is removed from the property of origin it becomes commercial waste.

(f) Forest Slash - Forest debris or woody vegetation related to the management of forestlands, used for the growing and harvesting of timber.

(g) Industrial Waste - Any materials (including process wastes) produced as a direct result of any manufacturing or industrial process.

(h) Yard Debris - Wood, needle or leaf material from trees, shrubs, or plants on real property adjacent to a dwelling of not more than four (4) family dwelling units. Once yard debris is removed from the property of origin, it becomes commercial waste, Section 406.005(31)(b).

(33) WOODSTOVE/WOODHEATER - An enclosed, wood burning appliance capable of and intended for space heating or domestic water heating that meets all of the following:

(a) An air-to-fuel ratio in combustion chamber averaging less than 35-1 as determined by the test procedure prescribed in federal regulations, 40 CFR Part 60, Subpart AAA, Section 60.534 performed at an accredited laboratory;

(b) A usable firebox volume of less than 20 cubic feet;

(c) A minimum burn rate less than 5 kg/hr as determined by the test procedure prescribed in federal regulation, 40 CFR, Part 60, Subpart AAA, Section 60.534 performed at an accredited laboratory; and

(d) A maximum weight of 800 kg (1,760 lb). In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, heat distribution ducting, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.

406.100 County Wide Air Quality Pollution Control Requirements.

(1) AIR QUALITY ADVISORIES - The Klamath County Environmental Health Division shall determine and issue Air Quality Advisories at least daily during the winter heating

season and at other times of the year as needed according to the definitions provided in Section 406.005(1). Air Quality Advisories will be provided to the public.

(2) PUBLIC RESPONSIBILITIES - Each person that burns outdoors or in a solid fuel-fired-appliance in Klamath County is required to comply with the requirements of this Chapter.

(3) SOLID FUEL-FIRED APPLIANCES

(a) Appliance Resale and Installation:

(i) The resale or installation of a non-certified solid fuel-fired appliance or any appliance not meeting the requirements of Section 406.005(33) is prohibited.

(ii) The resale, or installation of an exempt solid fuel-fired appliance, is allowed in accordance with state and local requirements.

(iii) A Klamath County Building Division permit is required for the installation of a solid fuel-fired appliance.

(b) Disclosure of Solid Fuel-Fired Appliances upon the Sale of Real Property - The presence of all solid fuel-fired appliances including wood stoves, fireplace inserts, fireplaces, and pellet stoves in the building shall be disclosed by the seller to the buyer as part of the sale and purchase of any building. The disclosure shall state whether any solid fuel-fired appliances are certified, non-certified, exempt or pellet.

(c) Removal of Non-Certified Woodstoves and Fireplace Inserts upon the Sale of Real Property - Non-certified wood stoves and fireplace inserts must be removed from building upon sale of any building containing them. The removal shall be accomplished prior to the closing of any real estate transaction involving the building containing the non-certified wood stove(s) or fireplace insert(s).

(d) Sole Heating Source - It shall be unlawful for a solid fuel-fired appliance to be the sole source of heat in any non-owner (tenant) occupied dwelling unit within Klamath County.

(e) Solid Fuel-fired Appliance Fuel - Only dry, seasoned cordwood, pressed sawdust logs, organic charcoal or pellets specifically manufactured for the appliance may be burned in a solid fuel-fired appliance.

- (f) Any newly constructed fireplaces must comply with fireplaces ASTM standards. Any retrofitted fireplace must meet fireplace ASTM standards.
 - (g) Prohibited Materials - Prohibited materials as defined in Section 406.005(25) and Oregon Administrative Rule 340-264-0060(3), shall not be burned in fireplaces, solid fuel-fired appliances, pellet stoves or cook stoves within Klamath County. An exception is the burning of re-refined used oil in an approved oil-burning device.
- (4) OPEN/OUTDOOR BURNING REQUIREMENTS - This section pertains to burning as defined in Section 406.005(20).
- (a) All open burning is prohibited during Red or Yellow Advisory Periods within Klamath County unless a Certificate of Variance has been issued by the Klamath County Environmental Health Division in accordance with Section 406.250.
 - (b) Open Burning Hours:
 - (i) Open burning fires are not to be started until one hour after sunrise and must be completely out one hour before sunset, unless otherwise directed by the local fire department.
 - (ii) Burning conducted for forest or ecosystem management, for example slash fires, are not required to be out by sunset.
 - (c) Local Fire Permit Required - Persons burning, shall adhere to all municipal, local Fire Department, State Fire Marshal or Oregon Department of Forestry or DEQ rules, ordinances, or restrictions.
 - (d) Responsible Person:
 - (i) A responsible person, as defined in Section 406.005(26), must constantly attend all open burning.
 - (ii) This person must also completely extinguish the fire before leaving it.
 - (e) Prohibited Materials - Burning of Prohibited materials as defined in Section 406.005(25) and Oregon Administrative Rule 340-264-0060(3), in outdoor or open fires is prohibited.

406.150 Air Quality Pollution Requirements Applying Within the Air Quality Zone. In addition to the requirements in Section 406.100 the following requirements apply:

(1) SOLID FUEL-FIRED APPLIANCES - This section applies to the use of solid fuel-fired appliances for residential and commercial heating **within the Air Quality Zone.**

- (a) During a Red Advisory Period, no person shall operate any solid fuel-fired appliance except a pellet stove.
- (b) During a Yellow Advisory Period, no person shall operate a non-certified wood stove, non-certified wood stove insert, or fireplace. Only certified solid fuel-fired appliances and pellet stoves may be operated.
- (c) During a Green Advisory Period, non-certified wood stoves, non-certified wood stove inserts, fireplaces, certified wood stoves, certified wood stove inserts and pellet stoves may be used for indoor heating.
- (d) Visible Air Contaminant Emissions. No person operating a solid fuel-fired appliance within the Air Quality Zone shall allow smoke of an opacity of greater than 20%, or comparable to that described in the Ringelmann Smoke Chart (Exhibit B), to be vented to the atmosphere for more than three (3) minutes in any one (1) hour period. Emissions created during a ten (10) minute start-up period are exempt.
- (e) Burn-down time. A Burn-down time, not to exceed three (3) hours, will be given on Red or Yellow Advisory Periods. No enforcement action described in Section 406.300 will take place for visible air contaminant emissions emitted during the burn-down time.
- (f) Emergency Conditions. An exemption to Section 406.150 may be issued by the Klamath County Environmental Health Division to allow the use of normally prohibited solid fuel-burning appliances within the Air Quality Zone, during periods when:
 - (i) utility suppliers declare energy shortages;
 - (ii) electric power or outages occur;
 - (iii) interruptions occur of natural gas supplies; or
 - (iv) temporary failure occurs of a resident's heating system when there is an immediate need to operate a solid fuel space-heating device to protect family/individual health and welfare.

(2) OPEN BURNING - Except as specified in this section or allowed by Section 406.250, open burning is prohibited within the Air Quality Zone.

- (a) Open Burning Window: The Klamath County Environmental Health Division Manager, in consultation with the Board of

County Commissioners, the City of Klamath Falls Code Compliance Officer and Fire Districts No. 1 and No. 4 may declare two specific fifteen (15) day periods a year during which times the open burning of residential yard debris, as defined in Section 406.005(32)(h), will be allowed within the Air Quality Zone. Open Burning Windows within the Air Quality Zone will occur in Spring and Fall. Each window will include three (3) weekends.

(i) During the Open Burning Window, the Klamath County Environmental Health Division may temporarily prohibit open burning should poor ventilation episodes occur, or be forecast.

(ii) The Klamath County Environmental Health Division Manager in consultation with the Board of County Commissioners, the City of Klamath Falls Code Compliance Officer, and Fire Districts No. 1 and No. 4 may extend the Open Burning Window one day for every day in which open burning has been prohibited during the Open Burning Window due to poor ventilation or weather conditions.

(b) All agricultural open burning is prohibited at all times in the Air Quality Zone unless unless issued a variance in accordance with Section 406.250.

(c) The use of burn barrels and other outdoor burning devices is prohibited.

(d) A Certificate of Variance, as defined in Section 406.250(1), to allow Open Burning outside the Spring or Fall Open Burning Windows, may be issued on a case by case basis within the Air Quality Zone when an emergency, or substantial need, is documented.

406.200 Certificates of Exemption.

(1) ISSUANCE - The Klamath County Environmental Health Division Manager or designee may issue a Certificate of Exemption to allow the use of solid fuel-fired appliances within the Air Quality Zone for residential space heating purposes during Red, ~~or~~ Yellow **or Green** Advisory Periods.

(a) All applications for Certificates of Exemption shall be on forms provided by the Klamath County Environmental Health Division.

(b) Within five (5) working days of receiving a completed application, the Klamath County Environmental Health Division shall review and: 1) approve the application; 2) approve the application with conditions; or 3) deny the application.

- (c) Klamath County Environmental Health Division shall not charge a fee for processing an application or issuing a Certificate of Exemption.
 - (d) All Certificates of Exemption expire on May 15 of each year.
 - (e) Applying for the renewal of all Certificates of Exemption is the responsibility of the registrant.
- (2) LOW INCOME EXEMPTION - A low-income person, either tenant or owner, after submitting adequate documentation, may be granted a Certificate of Exemption to use a solid fuel-fired appliance, for residential heating, during Red and Yellow Advisory Periods.

406.250 Certificates of Variance. Certificates of Variance issued by Klamath County Environmental Health Division are required for all Open Burning not conforming to the requirements of Section 406.100(4) and Section 406.150(2).

- (1) CERTIFICATE OF VARIANCE.
 - (a) All applications for Certificates of Variance shall be on forms provided by the Klamath County Environmental Health Division and submitted at least five (5) working days prior to the proposed or desired starting date of the variance.
 - (b) Within five(5) working days of receiving a completed application, the Klamath County Environmental Health Division shall review and: 1) approve the application; 2) approve the application with conditions; or 3) deny the application.
 - (c) Klamath County Environmental Health Division shall not charge a fee for processing an application or issuing a Certificate of Variance.
 - (d) Inside the Air Quality Zone, Klamath County Fire Districts No.1 and No.4, the City of Klamath Falls, and the Klamath County Environmental Health Division may develop an interagency agreement to expedite the processing of applications.
 - (e) The Klamath County Environmental Health Division Manager, or designate, may issue a Certificate of Variance for an area of the county when the meteorological conditions are expected to be different from those forecast for other parts of the county.

406.300 Enforcement.

(1) Klamath County Environmental Health Division Staff will monitor and enforce compliance with this Chapter countywide. Minor violations of this Chapter will result in a Notice of Noncompliance being sent to the violator. Repeated or major violations will result in the issuance of a Citation and Summons to the violator to appear in court.

(2) When a Klamath County Air Quality Inspector has observed a violation of this Chapter, he or she shall transmit this information, along with the documentation, to the Klamath County Environmental Health Division Manager. The Environmental Health Manager will review the submitted documentation and:

(a) If the documentation is complete, the Environmental Health Manager will issue a Notice of Noncompliance, a Citation and Summons to the violator to appear in court, or other legal action depending on the severity and frequency of the violation.

(b) If the documentation is not complete, the Environmental Health Manager will issue a Notice of Noncompliance to the alleged violator, and send a copy of the documents to the Air Quality Inspector who observed the violation.

(3) NOTICE OF NONCOMPLIANCE - A Notice of Noncompliance as defined in Section 406.005(19) may be issued to the violator as the sole enforcement action, or in addition to a citation.

(a) The notice shall contain the date, time and street name and number and the violation observed.

(b) The notice shall specify the corrective action that must be taken and the time in which it must be accomplished.

(c) The notice may require that within ten (10) days of correcting the violation, the violator shall in writing notify the Klamath County Air Quality Inspector that the corrective action has been taken.

(4) AIR QUALITY CITATIONS - An appropriate law enforcement officer or a Klamath County Environmental Health Division Manager may issue a Citation and Summons to appear in court for a violation of this Chapter.

406.400 Penalties. Failure to comply with the provisions of this Chapter shall be subject to fines of up to \$720.00 for a one-time occurrence, and fines of not more than \$1,000.00 for a continuing, or repeated offense. This provision will be enforced

in accordance with Chapter 800, Uniform Civil Violation Procedure of the Klamath County Code.

406.450 Severability. If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and shall not affect the validity of the remaining portion thereof.

406.500 Air Quality Advisory Committee and Contingency Strategies.

(1) COMMITTEE. Klamath County Board of Commissioners hereby establishes the Klamath County Air Quality Advisory Committee. The purpose of the Committee is to evaluate relevant air quality data; identify significant contributing emission sources; develop appropriate emission reduction strategies such as the expansion of the Air Quality Zone and will recommend action to the Board of County Commissioners. The committee will meet semi-annually, once in the spring and again in the fall, and at other times as deemed necessary. The Committee will be composed of interested persons representing industry, the general public and governmental agencies.

(2) CONTINGENCY MEASURES. If the Klamath Falls Nonattainment Area does not meet the federal deadline (December 2014) for compliance with PM2.5 (2006) standard by the Department of Environmental Quality, Klamath County automatically requires the following Best Available Control Measures to become additions to Sections 406.100 and 406.150:

(a) Beginning March 1, 2015, within the air quality zone, the use of fireplaces, without certified inserts or not meeting fireplace ASTM standards, shall be prohibited between November 1 and February 28 of each winter heating season. On a case by case basis, the Environmental Health Program may grant a limited short term exemption for holidays or special occasions on green advisory days only in accordance with Section 406.200.

The Exhibits can be obtained from the County Counsel Office, 305 Main Street, 2nd Floor, Klamath Falls, OR 97601; the Klamath County Library; or the Klamath County Law Library. They can also be accessed at the following links:

Exhibit A - Air Quality Zone:
<http://www.co.klamath.or.us/EH/index.html>

Exhibit B - Ringlemann Smoke Chart:
<http://www.cdc.gov/niosh/mining/pubs/pdfs/ic8333.pdf>

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CHAPTER 407
KLAMATH COUNTY PARK REGULATIONS

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Ordinance No. 46.04 - 11/28/2000
Ordinance No. 46.05 - 10/05/2004

CHAPTER 407
KLAMATH COUNTY PARK REGULATIONS

407.001 Title. This Ordinance shall be known as the Klamath County Park Regulation Ordinance.

407.002 Definitions. As used in this Ordinance, unless the context requires otherwise, the following terms are defined as follows:

(1) "County Park" means an area owned by Klamath County or owned by some other entity and designated by Klamath County for public park purposes.

(2) "County" means Klamath County.

(3) "Park" means County Park.

(4) "Parks Department" means Klamath County Parks Department and its officers, agents, and employees.

(5) "Vehicle" means every device in, upon, or by which any person or property is or may be transported.

407.003 County Park Rules.

(1) General Regulations.

(a) The Parks Department is authorized to enforce compliance of the public with County Park rules and to order any person violating these rules to leave the park area.

(b) The Parks Department is authorized to close to public use any County Park or portion thereof, or restrict the times when the same shall be open to such use or limit or prohibit any recreational use whenever such action is necessary to protect the health or safety of the public, or the safety of the park or its facilities.

(2) Penalties.

Any person who shall violate or fail to comply with any provisions of this Ordinance is subject to a fine of not more than \$720.00 for a non-continuing offense and a fine of not more than \$1,000.00 for a continuing offense. This Chapter may be enforced in accordance with Chapter 800, Uniform Civil Violation Procedure.

(3) Vehicles and Watercraft.

(a) Motorists must comply with motor vehicle regulatory signs posted in County Parks.

(b) Vehicles other than Parks Department maintenance vehicles shall be operated only on established roads, parking areas, and boat ramps.

(c) Vehicles shall not be operated within any park at speeds in excess of 15 miles per hour except in those park areas specifically designated otherwise and only during the times so designated.

(d) Vehicles shall not be operated carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.

(e) Vehicles shall not be parked in a manner that will hinder or impede the use of park roadways, pathways, parking areas and boat ramps.

(f) Vehicles shall not be left unattended within a County Park for more than 24 hours.

(g) The Parks Department is authorized to move or have removed, at the owners expense, any vehicle which has been parked in violation of this Ordinance.

(h) No boat or watercraft shall be launched or docked at Stevenson Park.

(4) Animals.

(a) Any dog, cat, or other animal brought into a park shall be confined in a vehicle or on a leash of not more than six (6) feet long, and shall be kept under control at all times.

(b) The owner is responsible for the animal's behavior and containment and for the removal of the animal wastes while in a County Park.

(c) No horse or other animal shall be hitched or confined in a manner that may cause damage to any tree, shrub, improvement, or structure in a County Park.

(5) Wildlife.

(a) Hunting is not permitted in any County Park except those parks especially designated for such purpose and during such times as may be established by Oregon State Fish and Wildlife Commission or other appropriate agency.

(b) No person shall pursue, trap, kill, injure, or molest any wildlife or domestic animals within a park, except as may be ordered by the Park Department.

(6) Firearms.

(a) No person shall possess any loaded firearm or discharge any firearm, pellet gun, bow and arrow, sling shot, or missile launching devices within a County Park, except those parks or park areas especially designated for such purpose.

(b) Subsection (a) of this section does not apply to a person acting in defense of his or her person or protection of his or her property.

(7) Vandalism or Litter.

(a) Plant life or natural resources of any type shall not be picked, cut, mutilated, or removed from any park without written permission from the Parks Department.

(b) No person shall mutilate, deface, damage, or remove any structure of any kind in a park.

(c) Garbage, sewage, refuse, or waste, including fish parts and wildfowl parts, shall be left only in the approved containers provided by the Parks Department.

(d) Waste containers provided in parks are solely for the benefit of the park user and shall not be used for the deposit of waste or refuse generated in the home, business, or by commercial activities.

(e) Waste water or other materials shall not be deposited into waters of any lake, pond, stream, or banks thereof within a County Park.

(8) Public Disturbance.

No person shall within a County Park:

(a) Set up or use a public address system in such a manner as to disturb others and create disturbing noise;

(b) Operate a radio or musical instrument in such a manner as to disturb others and create disturbing noise;

(c) Use abusive, threatening, boisterous, vile, obscene, or indecent language or gestures; nor shall any person cause, attempt to cause, or participate in any public disturbance nor in any way create a public nuisance.

(9) Overnight Camping.

(a) Camping shall not be permitted in any park not designated for camping.

(b) In parks with designated camping areas, no person shall camp except in those areas designated for camping.

(c) No person shall camp in any County Park for more than fourteen (14) days out of any twenty-eight (28) day period.

(d) Quiet hours shall be observed in all camping areas between the hours of 10:00 p.m. and 7:00 a.m., and campers shall respect the right of others to peace and quiet.

(10) Fires.

(a) Fires in County Parks shall be confined to:

(i) Park camp stoves or fireplaces provided for such purpose.

(ii) Portions of lake shore or stream bank designated as permissible for fires.

(iii) Portable stoves in established campsites, park picnic areas, and designated lake shore or stream bank areas where fires are permitted.

(b) No fires shall be left unattended or be permitted to cause damage to park facilities or areas. Every fire shall be extinguished before its users leave the park.

(c) Every person shall be responsible for damage caused by fires built by such person and for the cost of suppression of fires caused by the negligence of such individual.

(d) At the discretion of the Parks Department, fires normally permitted in parks may be restricted or prohibited due to high fire hazard conditions.

(11) Signs and Concessions.

The following activities are prohibited within a County Park without written permission from the Parks Department:

(a) Operating a concession, either fixed or mobile, or engaging in the business of soliciting, selling, or peddling any goods, ware, merchandise, liquids, or edibles for human consumption.

(b) Erection of any sign, marker, or inscription.

(12) Enforcement.

Subsections 2 through 11 do not apply to peace officers or officers, agents, and employees of the Parks Department acting in the course of their duties.

407.004 Severability. If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions of this Ordinance.

407.005 Repealer. Ordinance No. 46 of Klamath County, Oregon, is hereby repealed in its entirety on the effective date of this Ordinance.

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CHAPTER 408
ENTERTAINMENT ASSEMBLIES

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Ordinance No. 16.00 - 08/17/71
Ordinance No. 16.01 - 06/25/97
Ordinance No. 16.02 - 11/28/2000
Ordinance No. 16.03 - 10/05/2004

CHAPTER 408
ENTERTAINMENT ASSEMBLIES

408.001 Definitions.

(1) "Entertainment Assembly" means all assemblies of the public gathered either indoors or outdoors for musical festivals, concerts, and other musical entertainment; automobile racing; motorcycle racing; horse racing; dog racing; boat racing; other racing events; and for other entertainment purposes when such events last in excess of 18 consecutive hours or when it is reasonably foreseeable that participants at said events will stay overnight at the assembly site.

(2) "Sheriff" means and refers to the Klamath County Sheriff, his duly authorized deputies and representatives.

(3) "Health Department" means and refers to the Klamath County Health Department and employees and representatives thereof.

408.002 Basic Clause. It shall be unlawful for any person, persons, corporation, organization, landowner, or lessor to allow, promote, conduct, permit or cause to be advertised, an entertainment assembly when said person, persons, corporation, organization, landowner, or lessor believes or has reason to believe that such assembly will attract 500 or more persons, whether or not charge or contribution is required for admission, unless a valid County permit has been obtained for the operation of said entertainment assembly. One such permit shall be required for each entertainment assembly, except that, if two or more assemblies are to be held at the same site during any twelve-month period, one permit may be issued for the entire period, provided all terms and conditions of this Ordinance are met on each occasion. Criminal or civil liability for failure to comply with the provisions of this Ordinance shall rest in all persons, corporations, organizations, landowners, or lessors who are responsible for obtaining permits under this provision.

408.003 Permit Required - Fee. No entertainment assembly shall be held in Klamath County outside the limits of incorporated cities and towns unless the person, persons, or corporation sponsoring said entertainment assembly shall first obtain a permit as hereinafter provided, and shall comply with all regulations herein provided. The fee for said permit to cover the cost of inspecting facilities and issuing and administering the same prior to the event shall be in accordance with the following schedule:

(1) 500 to 2,500 persons reasonably anticipated to attend - \$300.00

(2) 2,500 and more persons reasonably anticipated to attend - \$350.00

Written application for each entertainment assembly permit shall be made to the Board of County Commissioners for Klamath County, Oregon, thirty (30) or more days prior to the first day upon which such entertainment assembly is to be or may be held by

filing the same with the Klamath County Clerk, and shall be accompanied by a deposit of the fee herein required. It shall be signed by the person or persons organizing and sponsoring said assembly and verified upon oath. Each application shall state the location to be utilized for said assembly, and shall also include an agreement that the applicant or applicants will abide by all rules and regulations of this Ordinance and other regulations and laws for the protection of the health, morals, and safety of the persons employed therein, and for the patrons or participants thereof, and for the public. Each application shall be accompanied by the fingerprints and a three-inch by five-inch photograph of each and every organizer, promoter, and sponsor of said assembly. Said fingerprints and photographs may be taken by the Sheriff at the request of the applicant.

Any permit issued as herein provided shall be kept posted in a conspicuous place upon the premises of said assembly. No permit shall be transferable or assignable without the consent of the Board of County Commissioners. No rebate or refund of money paid for a permit shall be made.

408.004 Application Procedure - Approval. Within ten (10) days after the application for said permit is made, the applicant must obtain written approval and assurance from each of the various appropriate agencies or departments that satisfactory arrangements have been made by the applicant to comply with all of the conditions hereinafter enumerated. No permit shall be issued unless the appropriate agencies or departments have approved as to each condition.

When any type of physical facility is required or subject to approval hereunder, preliminary approval may be granted based upon specific plans proposed and submitted by the applicant. All such facilities shall be in existence five (5) or more days before the event for which an application is submitted and shall be subject to inspection by the approving agencies or departments. Should the actual facility or construction fail to meet the standards approved in the proposed plans, such preliminary approval shall be withdrawn and any and all permits granted subject to such approval shall be withdrawn. Said approval shall be on forms provided and shall be filed with the County Clerk.

(1) Condition No. 1 - Sanitary Facilities

The Health Department shall have the responsibility for approving all sanitation and related facilities to ensure that reasonable minimum standards have been or will be met by the applicant, in accordance with the procedures outlined below. The applicant must provide the Health Department with a sketch, and other detailed information, showing the type, number, and location of all toilets, washing facilities, water supply, food preparation, food service facilities and solid waste collection locations.

Health Department approval is based upon, but not limited to, the following minimum guideline requirements:

(a) TOILETS: A contractual agreement, with a reliable firm, shall accompany any application with provisions for providing CHEMICAL TOILETS and the sanitary maintenance of

these toilets, on a continual basis if necessary, based upon the ratio of:

(i) one toilet for each 100 persons of each sex; and

(ii) one urinal for each 100 male persons. Such facilities shall be conveniently located and indicated on the sketch plan.

(b) HAND WASHING FACILITIES: In the absence of running water and normal hand washing facilities, pre-packaged sanitary wet towels, provided in adequate numbers and conveniently located, may be substituted.

(c) WATER: An adequate supply of bacteriologically safe drinking water shall be provided in a convenient location with adequate sanitary dispensing equipment (paper cups, fountains, etc.).

(d) WASTE COLLECTION AND REMOVAL: A contractual agreement with the area's franchised collector providing for an adequate number of containers, routine collection (including litter) and removal to an authorized disposal site shall accompany the application.

(e) FOOD SERVICE FACILITIES: These facilities shall comply with the Oregon State Board of Health regulations that pertain to the operation of "Temporary Restaurants" should such operation not exceed thirty (30) days.

Said approval by the Health Department shall indicate the number, type, and location (when appropriate) of the various facilities. Approval shall include a description of the specific type of food preparation and food service facilities to be provided.

(2) Condition No. 2 - Fire Protection Standards

No permit shall be granted hereunder unless the applicant has shown that the appropriate Fire Protection District Officer has approved the type, size, number, and location of fire protection devices and equipment available at, in, or near any location (including outdoor sites, buildings, tents, stadium or enclosure) wherein or whereupon more than ten (10) persons may be expected to congregate at any time during the course of such entertainment, amusement, or assembly for which a permit is hereunder required. If the site for which the permit is applied for is located outside a Fire Protection District, the applicant must show approval from the office of the State Fire Marshall.

(3) Condition No. 3 - Medical Services

The Health Department shall have responsibility for approving plans as to medical service required for the entertainment assembly. Each entertainment assembly shall have as a minimum one ambulance and a first aid station staffed by two adult individuals trained in first aid techniques.

All motorized racing events must have an ambulance with attendants present on standby at the start of all races and during all races and time trials or the race or time trial must stop until the ambulance and attendants are present.

(4) Condition No. 4 - Public Safety

The applicant must submit his plans for public safety at the entertainment assembly to the Sheriff for his approval.

(a) Adequate traffic control and crowd protection policing must have been contracted for or otherwise provided by the applicant. There shall be provided one traffic control person for each 250 persons expected or reasonably expected to be in attendance at any time during the event. Further, there shall be provided one crowd control person for each 100 persons expected or reasonably expected to be in attendance at any time during the event.

(b) The applicant shall submit the names and necessary background information, on forms provided by the Sheriff, for all traffic control and crowd control personnel to be utilized during the entertainment assembly for investigation by the Sheriff as to fitness. All such personnel must meet the following minimum standards in order to be approved as suitable by the Sheriff:

- (i) Be 21 through 65 years of age;
- (ii) Be in good physical health;
- (iii) Never have been convicted of a felony or misdemeanor involving moral turpitude;
- (iv) Either have received reasonable minimum training in law enforcement or have on-the-job experience in law enforcement.

All of said policing personnel must wear an appropriate identifying uniform and must be on duty during the entire entertainment assembly unless a relief schedule has been planned and approved. A relief schedule will be approved by the Sheriff only when sufficient policing strength on duty has been maintained to meet the above-described minimum strength standards.

It shall be the duty of said policing personnel to report any violations of the law to the Sheriff, his deputies, or representatives and to take whatever action as can reasonably be expected of them to enforce the law.

(5) Condition No. 5 - Parking Facilities

The applicant shall provide the Sheriff with a scale drawing showing adequate parking facilities have been made available within or adjacent to the location for which the permit is requested. Such parking facilities shall provide parking space for one vehicle for every four persons expected or reasonably to be expected to attend said event. Adequate ingress and egress shall be provided from such parking area to facilitate the movement of any vehicle at any time to or from the parking area. Should busses be used to transport the public to said event, it shall be shown that public parking or parking as described above is available at any site from which busses are scheduled to pick up persons to transport them to said event.

408.005 Bond of Indemnity and Insurance.

(1) Bond of Indemnity: No permit shall be issued hereunder unless the applicant has on deposit with the Klamath County Treasurer the following sum of cash or appropriate bond as an indemnity to save and protect the streets, pavements, bridges, road signs and other property of the County from any and all damages that may be caused by vehicles, employees, participants in or patrons of such entertainment assembly and to be used, if

necessary, to restore the grounds where such entertainment assembly is held to a sanitary condition and pay all charges and losses to the County for damages to the streets, bridges, and other property.

(a) \$25,000.00 when attendance of 500 to 2,500 is reasonably anticipated.

(b) \$50,000.00 when attendance over 2,500 persons is reasonably anticipated.

When a dispute arises between the parties as to the number of persons anticipated to attend, the decision of the Board of Commissioners thereon establishing the amount of bond required and the permit fee shall be final and controlling.

Provided further, that should the licensed event necessitate the incurring of any expenses or the deployment of additional personnel by the County, or at the request of the County, such added expense shall be recoverable from the principal and its surety out of the cash on deposit and/or the bond. The deposit or its balance to be returned when the Board of County Commissioners certifies to the Treasurer that no damage has been done and that the County did not incur additional expenses due to said licensed event or that the cost of the above has been paid by the permittee.

The indemnity bond shall be in such form and with such sureties as approved by the Board of Commissioners. The Board of Commissioners may waive the requirement of the performance bond upon other satisfactory assurance of performance.

(2) Insurance: The permit applicants shall be required to furnish evidence of liability insurance providing for a minimum of \$500,000.00 bodily injury coverage per person, \$1,000,000.00 bodily injury insurance per occurrence, and \$500,000.00 property damage coverage, naming Klamath County as an additional insured. Said liability insurance shall apply to, and provide coverage for, any and all claims for bodily injury and property damage arising from or caused by the entertainment assembly for which the permit is granted. In the event that all participants in any racing event, in the judgment of the Board of Commissioners, have adequate liability insurance, this requirement may be waived.

408.006 Inspection. No application shall be granted hereunder unless the applicant shall in writing upon the application for such permit consent to allow law enforcement, public health, and fire control officers to come upon the premises for which the permit has been granted for the purpose of inspection and enforcement of the terms and conditions of the permit and this Ordinance, and any other application laws or ordinances.

408.007 Hours of Operation. No entertainment assembly shall be conducted in the unincorporated areas of Klamath County within 1,000 feet of any residence between the hours of 12:01 a.m. and 9:00 a.m. and in all other areas between the hours of 2:00 a.m. and 9:00 a.m.

408.008 Intoxicating Liquor Prohibited. No firm, person, society, association, or corporation conducting any entertainment assembly, nor any person having charge or control thereof at any time when an entertainment assembly is being conducted shall permit any person to bring into said entertainment assembly, or upon the premises thereof, any intoxicating liquor, nor permit intoxicating liquor to be consumed on the premises, and no person during said time shall take or carry onto said premises or drink thereon intoxicating liquor. This provision shall not apply to the sale and consumption of intoxicating liquor from a facility located on the premises of an entertainment assembly when licensed by the State of Oregon.

408.009 Crowd Limitation. If at any time during said entertainment assembly the size of the crowd exceeds by 10 percent or more the number of persons expected to be in attendance, the Sheriff or any of his deputies shall require the permittee or sponsor to limit further admissions until sanitation, parking, fire, health, medical, traffic, and crowd control requirements have been brought into conformity with the standards herein.

All entertainment assemblies operating without a permit under the terms of this Ordinance due to the fact that less than 500 persons were reasonably anticipated to attend shall limit attendance therein to 499 persons.

408.100 Duty of Preserving Order Placed on Operator. It is the intention of this Ordinance to put the burden of preserving order upon the operator of the entertainment assembly, and if any entertainment assembly in Klamath County is not being operated in accordance with the rules and regulations prescribed in this Ordinance and set forth in the State laws, the permittee shall be subject to revocation of his permit, and the permittee or other individual responsible subject to such other punishment as the law and this Ordinance provides.

408.110 Compliance. Compliance with the terms and conditions of this Ordinance shall constitute minimum health, sanitation, and safety provisions; and failure to comply with the terms and conditions of this Ordinance or State laws shall constitute a public nuisance and shall be subject to all criminal, civil, and equitable remedies as such.

408.120 Penalties. Any person who shall violate or fail to comply with any provision of this Ordinance or who having obtained a permit hereunder willfully fails to continue to comply with the terms and conditions thereunder, or who shall counsel, aid, or abet such a violation or failure to comply is subject to a fine of not more than \$720.00 for a non-continuing violation and a fine of not more than \$1,000.00 for a continuing violation. This Chapter may be enforced in accordance with Chapter 800, Uniform Civil Violation Procedure.

408.130 Exclusion. This Ordinance shall not apply to any regularly organized and supervised school district activity or program that takes place on school property, nor to any activity of a municipal corporation or government agency.

408.140 Review of Board's Action. All decisions of the Board of County Commissioners under this Ordinance shall be reviewable by the Circuit Court of the State of Oregon for the County of Klamath only by writ of review under the provisions of O.R.S. 34.010 through 34.100.

408.150 Severability. If any provision of this Ordinance, or its application to any person or circumstances is held invalid, the remainder of this Ordinance, or the application of the provision to other persons or circumstances is not affected.

CHAPTER 409 CONTENTS

**CHAPTER 409
ON-SITE DIVISION OF
COMMUNITY DEVELOPMENT DEPARTMENT**

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Ordinance No. 53.01 - 10/05/2004

**CHAPTER 409
ON-SITE DIVISION OF
COMMUNITY DEVELOPMENT DEPARTMENT**

409.001 Purpose. Notwithstanding Chapter 402, the purpose of this chapter is to implement the delegation of authority, to the On-Site Division of the Community Development Department, by the contract with the Oregon Department of Environmental Quality, of the powers of fee collection, inspection, enforcement of rules, and issuance and revocation of permits and certificates of compliance in regard to the regulation of sub-surface sewage disposal pursuant to O.R.S. 454.640. To further assign to the Registered Environmental Health Specialist of the Klamath County Community Development On-Site division, and assistants thereunder, the functions of fee collection, inspections, enforcement of rules, and the revocation of permits and certificates of compliance. To establish administrative procedures to provide for review of any detail, revocation, or failure to issue a permit or certificate in regard to any of the above delegated functions.

409.005 Rules. The On-Site Division of the Klamath County Community Development Department shall enforce all rules and regulations of the Oregon Department of Environmental Quality now in effect or shall be hereinafter promulgated regarding subsurface sewage disposal, and shall enforce all provisions of Oregon Revised Statutes as applicable thereto, specifically 454.635; 454.635; 454.640; 454.655; 454.665; 454.725; 454.695 and all other subsequently enacted and/or delegated to Klamath County, Oregon.

409.100 Fees. The Board of County Commissioners shall, in conjunction with the Klamath County Community Development Department Director, establish by Resolution, all applicable fees for permits and services regulated under this Chapter.

409.200 Adoption of Rules. Except as otherwise provided in this Chapter, the Board adopts Division III of the "Attorney General's Model Rules of Procedure Under the Administrative Procedure Act," dated January 15, 2004, together with any provisions of O.R.S. Chapter 183 which are not embodied in said Model Rules and which set forth procedural requirements for contested cases, as the County's rules for hearings and other administrative procedures in connection with contested cases arising from the County's performance of the functions delegated to the County pursuant to Oregon Revised Statutes 454.635, 454.655, and 454.665.

409.300 Definition. For purposes of this Ordinance, "Agency" means the Board of Commissioners of Klamath County, Oregon.

409.400 Judicial Review.

(1) Judicial Review of any final order of the agency shall be by Writ of Review to the Oregon Court of Appeals.

(2) Final orders of the Board of County Commissioners shall comply with the Attorney General's Model Rules of Procedure, Rule 137-003-0070 and shall bear the following:

NOTICE: If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.480 *et seq.*

409.500 Validity.

If any section, subsection, sentence, clause, phrase or word of this Chapter shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of this Chapter, but shall be confined to the section, subsection, sentence, clause, phrase or word to which it applies, it being the intent of the Board of County Commissioners that this Chapter should stand with such deletions.

409.600 Enactment.

This Chapter being necessary for the immediate preservation and protection of the public health, safety and general welfare, an emergency is hereby declared to exist and this Chapter shall be, and is hereby declared to be in full force and effect from the date of its passage.

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CHAPTER 410
SCHOOL ATTENDANCE - TRUANCY

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Ordinance No. 54.02 - 08/30/05

CHAPTER 410
SCHOOL ATTENDANCE - TRUANCY

410.001 Purpose. To protect the health, safety and welfare of Klamath County children 7 to 18 years of age by compelling the regular attendance of said children at a public full-time school.

410.005 Scope. This Chapter does not limit or supercede any provision of O.R.S. 339.010, *et seq.*, which exempts certain children from compulsory school attendance, nor does this ordinance limit the duties, powers or responsibilities of public school officials.

410.100 Powers and Authority.

(1) Any enforcement officer as defined in O.R.S. 153.005 or any employee(s) officially designated by the Klamath Falls City School District or the Klamath County School District may issue a citation to any child 7 to 18 years of age for failing to regularly attend public school as required by Oregon law. The citation shall direct the child to appear in Klamath County Circuit Court at a designated time and date.

(2) No citation shall issue under this Chapter until all the procedural notices required under O.R.S. 339.055, O.R.S. 339.065, O.R.S. 339.080 and O.R.S. 339.090 have been sent to the child's parents and school district superintendent.

410.200 Definition. Compulsory attendance violation means that a child has eight (8) unexcused one-half (1/2) day absences in any four (4) week period during which the school is in session as defined in O.R.S. 339.065(3).

410.300 Sanctions.

(1) The Klamath County Circuit Court shall have the authority to determine whether the child has violated this Chapter relating to compulsory attendance. The Court may order the child to attend school following a review by the Court.

(2) In the event the child fails to follow the Court order to attend school, the Court may use all necessary lawful action, including the Court's contempt authority, to compel the child's attendance.

410.400 Validity.

If any section, subsection, sentence, clause, phrase or word of this Chapter shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of this Chapter, but shall be confined to the section, subsection, sentence, clause, phrase or word to which it applies, it being the intent of the Board of County Commissioners that this Chapter should stand with such deletions.

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CHAPTER 411
CRIMINAL HISTORY RECORD CHECK POLICY

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Ordinance No. 89.00 - 10/25/2016

CHAPTER 411
CRIMINAL HISTORY RECORD CHECK POLICY

411.001 Purpose.

In order for Klamath County government to operate effectively, persons selected for employment or as a public service volunteer with Klamath County must have the highest degree of citizen and public trust and confidence.

411.005 Scope.

All Klamath County employees and public service volunteers represent the county to its citizens. Many County employees and volunteers have responsibilities to regulate and maintain public health and safety. Some county employees have the ability and authority to bind the County contractually, have access to public funds and property, and possess access to privileged and proprietary information submitted to the County in confidence.

All applicants for employment and appointed volunteers with Klamath County will be required to authorize the County to conduct a criminal offender information check through the OSP LEDS system.

411.100 Powers and Authority.

The criminal history authorization form will be maintained by the Human Resources Department who will request that the check be conducted by the Sheriff's Office.

A member of the Sheriff's Office trained and authorized to perform criminal history checks through the LEDS system will conduct the check on the prospective employee or volunteer and orally report to the Human Resources Department that the applicant's records indicates "no criminal record" or "criminal record". If the applicant's record is reported as "criminal record", the Human Resources Department will, under OAR 257-010-0025(1)(c) request written criminal history report from the OSP Identification Services Section and pay the applicable fee for this service. Human Resources staff will make the written criminal history record available to the employment or volunteer selecting official for his or her consideration in making the selection.

The written criminal history record on persons that are not hired or appointed as a volunteer will be retained in accordance with the requirements of OAR 166-150-0160(10) for a period of three years and thereafter will be destroyed by shredding. The criminal history record of applicants and volunteers with a criminal history that are hired or appointed, will become a part of the confidential personnel files of that employee or volunteer. Access to confidential personnel files is limited to

only authorized persons who have an official need to access such files that is sanctioned by law or regulation.

Liquor license applicants are required to apply to the County for recommendation to the Oregon Liquor Control Commission (OLCC) as part of its licensing process. It is necessary and appropriate that such applicants' criminal record histories are reviewed in conjunction with the County's recommendation process.

411.200 Validity.

If any section, subsection, sentence, clause, phrase or word of this Chapter shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of this Chapter, but shall be confined to the section, subsection, sentence, clause, phrase or word to which it applies, it being the intent of the Board of County Commissioners that this Chapter should stand with such deletions.

DIVISION 5

(RESERVED FOR FUTURE USE)

DIVISION 6
BUSINESS

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CHAPTER 600
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Ordinance No. 55.00A - 09/12/89
Ordinance No. 55.01A - 11/28/2000

CHAPTER 600
ACCELERATION OF TAX FORECLOSED PROPERTY

600.005 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter.

(1) "Foreclosed Property" means real property that has been foreclosed upon pursuant to O.R.S. 312.090 but for which the redemption period provided for in O.R.S. 312.120 has not run.

(2) "Redemption Period" means that period of time provided for in O.R.S. 312.120 during which an owner or person with an interest in foreclosed property may redeem the property by paying all taxes, interest and penalties due and owing.

(3) "Interested Party" means any person, corporation or entity which has a recorded legal interest in a particular piece of real property, including judgment lien holders.

(4) "Waste" means any action which reduces the value of the foreclosed property, including, but not limited to physical damage to any or all of the foreclosed property or the failure to protect the foreclosed property from the elements or from trespassers, irrespective of whether the action is done with or without the knowledge of the owner or possessor of the property.

(5) "Owner" means that person or persons last reflected in the County tax roll.

600.100 Forfeiture of Redemption Period.

(1) The Board of County Commissioners may, after providing the notice required in KCC 600.200 and having the hearing provided for in KCC 600.300, enter an order requiring the Tax Collector of Klamath County to deed to the County, pursuant to O.R.S. 312.200 any real property sold to the County under O.R.S. 312.100 after the expiration of a period of thirty (30) days from the date of the forfeiture action unless it is sooner redeemed by the owner or any person or entity that then appears in the records of the County to have a lien or other interest in the property if:

(a) The property is subjected to waste which results in a forfeiture to the County of the right to possession under O.R.S. 312.180; or

(b) The property is not occupied by the owner or any person or entity that appears in the records of the County to have a lien or other interest in the property for a period of six (6) consecutive months, and the property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.

(2) No forfeiture of the redemption period for any real property currently being used as a residence shall be declared unless it is established that the residential real property has been subjected to such damage or deterioration in value so as to reduce the value of the property to less than three (3) times the amount of taxes, interest, and penalties then owing on said property.

600.200 Notice.

(1) Upon determining that real property sold to the County under O.R.S. 312.100 may be subject to waste or abandonment as provided in KCC 600.100 (1)(b), the Board of County Commissioners shall set a date, time and place for a hearing for the purpose of determining whether the property should be deeded to the County pursuant to KCC 600.100.

(2) Not less than thirty (30) days prior to the hearing provided for in subsection (1) of this section, the County shall notify the owner and any person or entity that then appears in the records of the County to have a lien or other interest in the property of the hearing. The notice shall contain:

(a) The date, time and place of the hearing;

(b) The date of the Judgment and Decree;

(c) The normal date of expiration of the period of redemption under O.R.S. 312.120;

(d) A warning to the effect that if the County determines that the property is subject to waste or abandonment as provided in this Chapter, that the property will be deeded to the County immediately after the expiration of thirty (30) days from the date of the Board of County Commissioners' action so determining and that every right or interest of any person in the property will be forfeited forever to the County unless the property is redeemed within that thirty (30) day period;

(e) A legal description of the property and a tax account number; and

(f) The name of the owner as it appears on the latest tax roll.

(3) The notice provided for in subsection (2) of this section shall be given by both certified mail and by regular first class mail.

(a) Notice given to an owner shall be addressed to the owner or owners, as reflected in the County records of deeds, at the true and correct address of the owner as appearing on the instrument of conveyance under O.R.S. 93.260 or as furnished under O.R.S. 311.555 or as otherwise ascertained by the Tax Collector of the County pursuant to O.R.S. 311.560.

(b) Notice given to a lien holder, or person or entity other than the owner, having or appearing to have a lien or other interest in the property, shall be addressed to the lien holder, person or entity at the address which the County knows or after reasonable inquiry, has reason to believe to be the address at which the lien holder, person or entity will most likely receive actual notice.

600.300 Hearing. At the time and place of the hearing as set out in KCC 600.200, the Board of County Commissioners shall hold a public hearing for the purpose of determining if the property is subject to waste or abandonment. The following procedures shall apply to that hearing:

(1) The Board of County Commissioners shall first hear from any Klamath County staff member with knowledge of the circumstances relating to the property.

(2) Persons wishing to testify in favor of the forfeiture of the redemption rights shall then be allowed to testify.

(3) The owner or owners of record may then testify.

(4) Any lien holder or person with an interest in the property that then appears in the records of the County may then testify.

(5) Any person otherwise opposing the forfeiture may then testify.

(6) Any person testifying shall be subject to cross-examination by either the Board of County Commissioners or the owner, lien holder, or other person with an interest in the property.

(7) Written testimony will be accepted if submitted to the Board of County Commissioners at least five (5) business days prior to the date of the hearing. Copies of written testimony shall be provided free of charge to an owner, lien holder, or interested party who has notified the Board of County Commissioners, in writing, of their desire to be provided with copies of any written submission.

(8) An owner, lien holder, or interested person may be represented by an attorney or other person of their choice.

(9) There shall be no rebuttal allowed except that the Board of County Commissioners may recall any witness for further testimony.

(10) The Board of County Commissioners may, by resolution, establish such rules relating to the conduct of a hearing in order to promote the efficiency of the hearing; provided that such rules are consistent with this section.

(11) The Board of County Commissioners may continue the hearing from time to time upon verbal notice at the time set out in the notice, giving a set date, time, and place for the continued hearing.

600.450 Order. Any Order entered by the Board of County Commissioners shall be served by first class mail upon the Tax Collector and any person who has appeared in the hearing provided for in this Chapter within two (2) working days of entry of such Order. The forfeiture shall be effective after the expiration of thirty (30) days from the date of the Order, at which time the Tax Collector shall deed the property to Klamath County.

600.800 Appeal. An appeal from the Order entered pursuant to KCC 600.450 shall be taken through the Writ of Review process as set out in O.R.S. 34.010 et seq.

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- Ordinance No. 21.04 - 11/28/2000*
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- Ordinance No. 21.06 - 02/15/2005*
- Ordinance No. 21.07 - 07/25/2006*

CHAPTER 601
SOCIAL GAMES

601.005 Definitions. As used in this Ordinance, except where the context indicates otherwise, the following shall mean:

(1) "Gaming Room" means any space, room, or enclosure furnished or equipped with a table or tables intended to be used as a card table for the playing of cards or equipped for Bingo, the use of which is available to the public.

(2) "Social Games" means:

(a) A game involving the playing of cards and/or Bingo only, which does not include lotteries, between players in a private home where no house player, house bank, or house odds exist, and there is no house income from the operation of the social game; and

(b) a game involving the playing of cards and/or Bingo only, which does not include lotteries, between players in a private business, private club, or a place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(c) in accordance with ORS 167.117(7)(c) "gambling" does not include social games.

(3) "Financially interested" persons means:

(a) those persons or entities who have a financial interest in the premises to include an ownership interest or controlling investment interest or

(b) those persons who have any management control, to include part-time managers, shift managers, and assistant managers, over the premises.

601.100 Social Gaming License.

(1) It shall be unlawful for any person, firm, or business entity to engage in, carry on, maintain or conduct, or to cause to be engaged in, carried on, maintained or conducted, any card room or any space, room or enclosure where social games are conducted as defined in this Ordinance without having a valid license from said County.

(2) There shall be a license fee collected for each card table and each location where Bingo is played, including a reduced license fee as provided in Section 601.150 of this Ordinance. Said fee shall be determined periodically by Order of the Board of County Commissioners and shall be effective thirty (30) days after passage of the Order by the Board of County Commissioners. The annual fee, for new applicants for the period from July 1 to December 31, shall be reduced by one-half for the first annual license.

(3) Such Social Gaming license shall be issued in the name of the owner, proprietor or lessee of the premises for which the permit is sought, and is applicable only to those premises and is not transferable to any other person or premises.

(4) Such licenses shall be granted only upon the approval of the Board of County Commissioners of Klamath County.

(5) Such license shall not be granted if:

(a) Any person financially interested in the premises to be licensed has been previously convicted of a felony within the last 10 years; or

(b) Any person financially interested in the premises to be licensed has been convicted of or forfeited bail for any crime involving gambling within the last five years; or

(c) The applicant has knowingly or willfully supplied false or misleading information in the application; or

(d) Any person financially interested in the premises to be licensed has had a license which was in his name revoked or suspended three (3) or more times by the Oregon Liquor Control Commission, the last of which was in the last three years; or

(e) Any person financially interested in the premises to be licensed has violated any section of this Ordinance; or

(f) Any person financially interested in the premises to be licensed has been convicted of any offense involving moral turpitude within the last five years.

(6) No license issued pursuant to this Ordinance shall be assignable or transferable. The addition or the substitution of a person financially interested in a licensed premises shall be reported immediately to the Board of Commissioners of Klamath County.

(7) Licenses may only be granted to individuals, firms, or business entities who have successfully applied for and received a license from the Oregon Liquor Control Commission to sell alcoholic beverages on the premises, as long as said license remains unrevoked.

(8) The Board of County Commissioners may, in their discretion, obtain and consider the recommendations of the Sheriff of Klamath County, Oregon, with respect to the granting or denial of licenses.

601.120 Supervisor. Each business granted a social gaming license shall assign a person whose duty shall be to supervise the games and see that they are played strictly in accordance with this Ordinance and the provisions of Oregon State Law.

601.150 Reduced License Fees.

(1) A nonprofit society, club, or fraternal organization having adopted bylaws and duly elected directors and members may be granted a social gaming license at an annual fee to be determined periodically by Order of the Board of County Commissioners and to be effective thirty (30) days after passage of the Order by the Board of County Commissioners when it appears that the social game is for the exclusive use of members of the society, club or fraternal organization, no charge is made for participation, and the conduct of social games is not the primary reason for existence of the society, club, or fraternal organization. The society, club, or fraternal organization shall have been in continuous existence, actively conducting its affairs in the County of Klamath for a period of two years immediately preceding application for a license. The annual fee is payable on

or before January 1 of each year, and shall be prorated for new applicants for the period of July 1 to December 31 to one-half the annual fee.

(2) Organizations conducting a one-time per calendar year promotional event may qualify for a reduced license fee as determined periodically by Order of the Board of County Commissioners.

601.200 Regulations.

(1) All areas where social games are played shall be open to police inspection during all hours of operation. Doors leading into rooms must remain unlocked during all hours of operation. Social Game licenses shall be posted in a conspicuous place during all hours of operation.

(2) The playing of all social games, except those conducted in organizations as defined in KCC 601.150 herein, shall be so arranged as to provide equal access and visibility to any interested party.

(3) No person under the age of 21 shall be permitted to participate in any card game.

(4) No charge shall be collected from any player for the privilege of participating in any card game. All fees collected for Bingo shall be returned as prizes to winning players.

(5) The limit on social games shall be determined periodically at the will of the Board of County Commissioners by order of the Board of County Commissioners.

(6) No participant in any social game shall be charged a price for any consumer goods which is higher or lower than the price charged non-participants.

(7) A copy of the regulations and rules set out in this Ordinance and the limits established by the Board of County Commissioners shall be posted in a conspicuous place by the card room license in all areas where social games are played.

601.210 Suspension and Revocation of Licenses.

(1) The Sheriff of Klamath County shall temporarily suspend any Social Game license issued hereunder if any person granted a license hereunder violates any provision of this Chapter.

(2) Any temporary suspension shall be for a period of thirty (30) days and shall be effective ten (10) days after notice is mailed to the licensee's last address on the application. Such suspension shall be subject to appeal to the Board of County Commissioners. Notice of such appeal or request for hearing shall be filed with the County Clerk within ten (10) days of the action or it shall be deemed final and conclusive.

(3) Permanent revocation may be made only by the Board of County Commissioners and such revocation shall only take place at a public hearing by that body sitting in regular session, upon application of the District Attorney and only after the licensee has been served with written notice at least twenty (20) days prior to the public hearing by the Board of County Commissioners. Such notice shall include the time and date of the public hearing and the grounds upon which the permanent revocation is sought. Such notice shall be deemed to have been received by the licensee

or permitted if the notice is mailed to the address listed by the licensee on his application for such license.

601.400 Penalties.

(1) Whoever violates or fails to comply with any provision of this Chapter shall be fined not more than seven hundred twenty dollars (\$720.00) for the first offense.

(2) For a second or subsequent offenses within a year of a previous offense a person shall be fined not more than one thousand dollars (\$1,000.00).

(3) The Board of County Commissioners shall have the discretion to recommend disapproval of any Oregon Liquor Control Commission license renewal if the licensee under this Chapter is guilty of two (2) violations of this Chapter in any calendar year.

601.500 Severability. The provisions of this Ordinance are severable and any invalid section, subsection, sentence, clause, phrase, or portion of this ordinance if, for any reason is held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not effect the validity of the remaining portions of the Ordinance.

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Ordinance No. 62.00 - 05/22/91
Ordinance No. 62.01 - 10/23/91
Ordinance No. 62.02 - 11/28/2000
Ordinance No. 62.03 - 10/05/2004

CHAPTER 602
SECONDHAND DEALERS

602.001 Application of Chapter. This Chapter shall apply to those secondhand dealers within the unincorporated areas of the County and within the incorporated area of any city upon consent of the governing body or the electors of the city.

602.002 Purpose; Intent. The purpose of this Chapter is to provide regulations for certain business activities which the Board of County Commissioners finds present an extraordinary risk in concealing criminal behavior involving the theft of property and its possible resale. The risk is present despite the best efforts of legitimate dealers in the secondhand market because of the large volume of goods and materials that are processed in such businesses without systematic identification of the goods and/or persons subject to criminal prosecution. Therefore, this Chapter is intended to reduce this type of criminal activity by providing more timely police awareness of such business transactions and by imposing certain restrictions. The Board finds that the regulations provided in this Chapter are necessary to provide for the protection of the residents of the County and their property.

602.003 Definitions. As used in this Chapter:

(1) "Detailed Description" means the following: birthdate, height, weight, color of eyes, color of hair, and sex.

(2) "Merchandise" means the following: guns, jewelry; serialized and marked items; silverware, silver or silver-plated items; goldware, gold or gold-plated items; cameras or camera equipment; bicycles; coins; musical instruments; chainsaws; tools; and electronic equipment of any kind, including, but not limited to, tape recorders, stereos, stereo components, computers and computer software. Excluded from the definition of merchandise shall be gold or silver bullion coins, and gold, silver or platinum bullion that has been assayed and is properly marked as to its weight and fineness. Also excluded from the definition of merchandise shall be serialized and marked appliances and electronic equipment taken in as a trade-in on a new like appliance or electronic equipment by a dealer who is in the business of selling new appliances and electronic equipment.

(3) "Peace officer" means a member of the State Police, the Sheriff, a marshal, a municipal police officer, or an investigator of the Criminal Justice Division of the Department of Justice of the State.

(4) "Proper identification" means a motor vehicle operator's license or a State issued identification card.

(5) "Secondhand business" means a business engaged in conducting, managing, or carrying on the business of buying, selling, or otherwise dealing in specified secondhand merchandise.

(6) "Secondhand dealer" means a person, on his or her own account or as an agent of another, including employees, partnerships, associations, and corporations, engaged in conducting, managing, or carrying on the business of buying,

selling, or otherwise dealing in specified secondhand merchandise, and all persons listed as owners of the secondhand business on the business license applications. Excluded from this definition are isolated sales not in the regular course of any business, occasional garage sales and flea markets held at the same location on no more than five (5) days during any thirty-day (30 day) period, and auctions. All secondhand dealers shall be responsible for the acts of their employees, and any violation of this Chapter by any employee shall be imputed to the employer and/or secondhand business. The employer and/or the secondhand business may suffer any of the penalties provided in this Chapter as the result of a violation by an employee.

(7) "Sheriff" means the County Sheriff, his or her Deputy, or his or her duly authorized representative.

602.100 Records Required.

(1) All forms, for the purpose of making reports to the Sheriff as required by this Chapter, shall be furnished by the Sheriff, free of charge upon request. These forms will be no carbon required duplicate forms. The form shall be printed and subdivided, as directed by the Sheriff, and will contain space with proper captions for the furnishing of all information required by this Chapter.

(2) Secondhand dealers shall complete the form at the time of purchasing or accepting consignment of specified merchandise. The form shall be filled out in clear, legible printing. All specified merchandise must be listed in detailed description thereof. Specified merchandise regulated pursuant to this section shall only be purchased or consignment accepted by the dealer after the seller has presented proper identification or after the buyer has obtained a detailed description of the seller. The seller must sign the completed form.

(3) The secondhand dealer shall complete each form by listing the merchandise tag number for the specified merchandise; the hour and day when such articles were purchased or consigned; the number of articles of specified merchandise purchased or consigned; the description of such specified merchandise including any brand names, model number, serial number, and inscriptions; complete name, address, and either the identification number on the seller's motor vehicle operator's license or a state issued identification card, or the detailed description of the seller; the signature of the seller, and the name of the authorized buyer/clerk.

(4) The dealer's copy of all such forms shall be retained on the premises of the secondhand dealer's business for not less than one year, and shall be available for inspection upon request by the Sheriff or his or her representative.

(5) The secondhand dealer shall turn over a copy of the completed form to any peace officer as defined in Section 602.003 (2) upon request of that peace officer.

(6) No secondhand dealer shall be required to furnish reports in connection with the purchases or consignments of specified merchandise acquired from manufacturers, wholesalers, or other distributors or dealers having established businesses;

provided, however, that such secondhand dealer shall keep and maintain bills of sale, receipts, or other evidence of such purchases for a period of one year and make them available for inspection upon request of the Sheriff.

602.200 Holding Period. All specified merchandise acquired by any secondhand dealer shall be held in possession of the secondhand dealer for a period of not less than forty-eight (48) hours, not including Saturdays, Sundays, and holidays, prior to any sale, transfer, or other disposition. Such specified merchandise shall be maintained in substantially the same form as purchased or consigned and shall not be changed so as to preclude identification during the forty-eight (48) hour holding period.

602.300 Merchandise Tags Required. A secondhand dealer receiving specified merchandise shall affix to the specified merchandise a tag, upon which shall be written a number in clear, legible characters, which number shall correspond with the number on the form required to be kept, as provided in Section 602.100.

602.400 Enforcement. The Sheriff and his or her representatives are hereby authorized and directed to enforce this Chapter. Any peace officer as defined in Section 602.003 (3) is hereby authorized to enforce this Chapter.

602.500 Penalty.

(1) Whoever violates or fails to comply with any of the provisions of this Chapter shall be fined not more than seven hundred twenty dollars (\$720).

(2) A person shall be fined not more than \$720 a day for a continuing offense.

602.600 Severability. The provisions of this Ordinance are severable, and any invalid section, subsection, sentence, clause, phrase or portion of this Ordinance if for any reason is held invalid or unconstitutional in a Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not effect the validity of the remaining portions of the Ordinance.

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Ordinance No. 38.03B - 11/28/2000
Ordinance No. 38.05 - 10/05/2004
Ordinance No. 38.06 - 01/01/2007
Ordinance No. 38.07 - 10/24/2011

CHAPTER 603
TRANSIENT ROOM TAX

603.005 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter.

(1) "Accrual Accounting" means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.

(2) "Board" means the Klamath County Board of County Commissioners.

(3) "Cash Accounting" means the operator does not enter the rent due from a transient on his records until rent is paid.

(4) "County" means Klamath County.

(5) "Hotel" means any structure or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home, condominium, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied.

(6) "Occupancy" means the use or possession or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home or trailer park or portion thereof.

(7) "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent or any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall be considered to be compliance by both.

(8) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(9) "Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction; but does not include the sale of any goods, services and commodities other than the furnishing of room accommodations and parking space in mobile home parks or trailer parks.

(10) "Rent Package Plan" means the consideration charged for both food and rent where a single rate is made for the total of

both. The amount applicable to rent for determination of transient room tax under this Ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

(11) "Tax Administrator" means the Klamath County Tax Collector.

(12) "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(13) "Transient" mean any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

603.100 Tax Imposed. For the privilege of occupancy in any hotel, on and after the effective date of this Chapter, each transient shall pay a tax in the amount of eight percent (8%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis and when earned if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment.

603.110 Limitation of Tax Imposed. The tax imposed by this Chapter shall apply to all hotels located within Klamath County both inside and outside of all incorporated cities within said County.

603.200 Collection of Tax by Operator; Rules for Collection.

(1) Every operator renting rooms in this County, the occupancy of which is not exempted under the terms of this Chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the County.

(2) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid; and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

603.210 Operator's Duties. Each operator shall collect the tax imposed by this Chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt

rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator or that it will not be added to the rent or that when added, any part will be refunded, except in the manner provided by this Chapter.

603.220 Exemptions. No tax imposed under this Chapter shall be imposed upon:

(1) Any occupant for more than thirty (30) successive calendar days; (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);

(2) Any occupant whose rent is of a value less than \$4.00 per day;

(3) Any person who rents a private home, vacation cabin, or like facility from any owner who personally rents such facilities incidentally to his own use thereof;

(4) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people.

(5) The United States Government when a federal employee is on federal government business and the lodging for the employee is directly paid for by the government or employee with a government issued check, credit card, purchase order or other form of procurement document.

(6) Any Federally Chartered organization when an organization employee is on organization business and the lodging for the employee is directly paid for by the organization or employee with an organization-issued check, credit card, purchase order or other form of procurement document.

603.230 Registration of Operator: Form and Contents: Execution: Certification of Authority.

(1) Every person engaging or about to engage in business as an operator of a hotel in this County shall register with the Tax Administrator on a form provided by him. Operators engaged in business at the time this Chapter is adopted must register not later than thirty (30) calendar days after passage of this Ordinance. Operators starting business after this Ordinance is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the operator. The Tax Administrator shall within ten (10) days after registration issue without charge from the occupant a Certificate of Authority to the registrant to collect the tax from the occupant of the hotel together with a duplicate thereof for each additional place of business for each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the

cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

(2) Said certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued;
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the face thereof has fulfilled the requirements of the Transient Room Tax Ordinance of the County of Klamath by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said County and remitting said tax to the Tax Administrator".

603.300 Due Date, Returns and Payments.

(1) The tax imposed by this Chapter shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a monthly basis on the fifteenth (15th) day of the month for the preceding month and are delinquent on the last day of the month in which they are due.

(2) On or before the fifteenth (15th) day of the month following each month of collection a return for the preceding month's tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.

(3) Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(4) The person required to file the return shall deliver the return together with the remittance of the amount of the tax due to the Tax Administrator at his office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(5) For good cause, the Tax Administrator may extend but not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the Board. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this Chapter.

(6) If the operator has complied with the terms of this Chapter and particularly the provisions of this section relating to prompt payment of taxes due and payable to the Tax

Administrator, he shall be permitted to deduct as a personal collection expense 7% of the amount of the taxes collected as shown by the return mentioned in paragraph 3 of this section.

603.400 Penalties and Interest.

(1) Original Delinquency. Any operator who has been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Chapter prior to delinquency shall pay a penalty of ten percent (10%) of the amount of tax due in addition to the amount of the tax.

(2) Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due plus the amount of the tax and the ten percent (10%) penalty first imposed.

(3) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs 1 and 2 of this section.

(4) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, for the date on which the remittance first became delinquent until paid.

(5) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this Chapter shall be merged with and become a part of the tax herein required to be paid.

(6) Petition for Waiver. Any operator who fails to remit the tax herein levied within the time stated shall pay the penalties herein stated provided; however, the operator may petition the Board for waiver and refund of the penalty or any portion thereof, and the Board may if a good and sufficient reason is shown waive and direct a refund of the penalty or any portion thereof.

603.500 Deficiency Determinations, Fraud, Evasion, Operator Delay.

(1) Deficiency Determination. If the Tax Administrator determines that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in KCC 603.400.

(a) In making a determination, the Tax Administrator may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods or against penalties and interest on the underpayment. The interest on underpayment shall be computed in the manner set forth in KCC 603.400.

(b) The Tax Administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by certified mail. In the case of service by mail of any notice required by this Chapter, the service is complete upon receipt by the operator or his agent or employee, or if refused, the date of its refusal as shown by the United States Postal Department return receipt.

(c) Except in the case of fraud, intent to evade this Chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later.

(d) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the Tax Administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(2) Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this Chapter any report and remittance of said tax or any portion thereof required by this Chapter or makes a fraudulent return or otherwise willfully attempts to evade this Chapter, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this Chapter from any operator who has failed or refused to collect the same and to report and remit said tax, he/she shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this Chapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect said tax or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(3) Operator Delay. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the County will be jeopardized by delay or

if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the Tax Administrator after service of notice thereof; provided, however, the operator may petition after payment has been made for redemption and refund of such determination if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.

603.510 Redeterminations.

(1) Any person against whom a determination is made under KCC 603.500 or any person directly interested may petition for a redetermination and redemption and refund within the time required in KCC 603.500. If a petition for redetermination and refund is not filed within the time required in KCC 603.500, the determination becomes final at the expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination; and if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

(3) The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing; and if an increase is determined, such increase shall be payable immediately after the hearing.

(4) The order or decision of the Tax Administrator upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof unless appeal of such order or a decision is filed with the Board within ten (10) days after service of such notice.

(5) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

603.520 Security for Collection of Tax.

(1) The Tax Administrator after delinquency and when he deems it necessary to insure compliance with this Chapter may require any operator subject thereto to deposit with him such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or Five Thousand Dollars (\$5,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.

(2) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any State, or of the United States in the name of the County to collect the amount delinquent together with penalties and interest.

603.530 Lien.

(1) The tax imposed by this Chapter together with the interest and penalties herein provided and the filing fees paid to the Clerk of Klamath County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this Chapter shall be and until paid remain a lien from the date of its recording with the Clerk of Klamath County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator and may be foreclosed on and sold as may be necessary to discharge said lien if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his deputy whenever the operator is in default in the payment of said tax, interest, and penalty and shall be recorded and a copy sent by certified mail to the delinquent operator.

(2) The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing the same at public auction after twenty (20) days notice given by two publications of a notice to such effect in a newspaper of general circulation within the County. The notices required hereunder shall be published not less than seven (7) days apart.

(3) Any lien for taxes as shown on the records of the proper County official shall upon the payment of all taxes, penalties, and interest thereon be released by the Tax Administrator when the full amount determined to be due has been paid to the County, and the operator or person making such payment shall receive a receipt therefore stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

603.550 Refunds.

(1) Operators' Refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, it may be refunded provided a verified claim in writing therefor stating the specific reason upon which the claim is founded is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balances may be refunded to each operator, his administrator, executors or assignees.

(2) Transient Refunds. Whenever the tax required by this Chapter has been collected by the operator and deposited by the operator with the Tax Administrator and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient provided a verified claim in writing therefore, stating the specific reason on which the claim is founded is filed with the Tax Administrator within three years from the date of payment.

603.600 Administration.

(1) Transient Room Tax Fund. The Tax Administrator shall place all monies received pursuant to this Chapter in the Transient Room Tax Fund.

(2) Records Required from Operators, etc., Form. Every operator shall keep guest records of room sales and accounting books and records of room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

(3) Examination of Records; Investigations. For the purpose of enforcing KCC 603.500, if the Tax Administrator has reason to believe that the returns are incorrect or that fraud, refusal to remit, evasion or operator delay has occurred as set forth in KCC 603.500, then the Tax Administrator or any person authorized in writing by him/her may examine during normal business hours the books, papers, and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made; or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(4) Confidential Character of Information Obtained - Disclosure Unlawful. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this Chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount of source of income, profits, losses, expenditures, or any particular thereof set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:

(a) The disclosure of the examination of records and equipment by another County official, employee, or agent for collection to taxes for the sole purpose of administering or enforcing any provisions of this Chapter or collecting taxes imposed hereunder.

(b) The disclosure after the filing of a written request to that effect to the taxpayer himself, receivers, trustees, executors, administrators, assignees, and

guarantors if directly interested of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the Klamath County Counsel approves each such disclosure and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby.

(c) The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued.

(d) The disclosure of general statistics regarding taxes collected or business done in the County.

603.610 Tax Revenue Sharing.

(1) Seventy-five percent (75%) of the total net transient room tax after collection and other administrative costs have been deducted, which administrative costs shall not exceed 1% of the gross Transient Room Tax Collection, shall be distributed by the Tax Administrator quarterly as follows:

(a) One-sixth (1/6) to Klamath County for use in the promotion of tourism and conventions in Klamath County.

(b) Fifty percent (50%) of the balance to participating incorporated cities located in whole or in part within Klamath County. This percentage shall be adjusted as set out in paragraph (e) herein.

(i) The administration and enforcement of such tax shall remain with the Tax Administrator.

(c) The amount to be distributed to a city shall be as follows:

(i) Each fifty percent (50%) of net collections of the Transient Room Tax shall be allocated to the cities by the Tax Administrator under a formula where the amount payable to each city shall be determined by the ratio the total transient room tax collections of each city bears to the total tax collections of all such cities times the distributive amount allocated to all such cities.

$$\begin{array}{l}
 \text{TOTAL TAX COLLECTION} \\
 \text{OF INDIVIDUAL CITY} \\
 \text{FORMULA: CITY'S SHARE} = \frac{\text{-----}}{\text{TOTAL TAX COLLECTION OF ALL INCORPORATED CITIES IN KLAMATH COUNTY}} \times \frac{\text{TOTAL NET COLLECTION OF COUNTY}}{\text{TOTAL TAX COLLECTION OF COUNTY}} \times 50\%
 \end{array}$$

(d) The balance remaining of the seventy-five percent of the Transient Room Tax deducting the sums allocated as provided in paragraphs 1 (a) and (b) shall be retained by Klamath County for purposes of construction, operation, and maintenance of the Klamath County Fairgrounds.

(e) At the start of each fiscal year, the foregoing distribution formula shall be readjusted. Said readjustment shall be made to reflect the proportion which the total collection of the tax imposed from the operators within the

corporate limits of the respective cities bears to the total revenue collected from all sources within the County pursuant to this Chapter. This percentage figure shall be substituted for the figure of 50 percent shown in the formula set out in Subsection (1)(c) of this Section and shall be used in computing the distribution share of the various governmental entities. The readjustment shall be based upon the four quarters of receipts prior to the readjustment which shall be calculated no later than March 31 of each year. The Tax Administrator shall notify each participating city and the County of the adjustment at that time.

(f) Any incorporated city desiring to obtain the revenue to which they may be entitled under this Chapter shall enter into an agreement with the Board of County Commissioners of Klamath County, agreeing that this Chapter shall be effective within the city limits of said city and shall be in lieu of enacting a separate transient room tax. Such agreement shall also provide for the distribution of the hotel/motel receipts as specified in this section.

(2) Twenty five percent (25%) of the net transient room tax shall be distributed by the Tax Administrator as follows:

(a) Thirty percent (30%) to the Klamath County Museums;

(b) Thirty-five percent (35%) to Klamath County to fund tourism and convention promotion or tourism-related facilities in Klamath County; and

(c) Thirty-five percent (35%) to Klamath County for deposit into a special revenue fund within Klamath County. The fund will be used for the Tourism Promotion Grants Program, which will establish a competitive grants program for the promotion of tourism and conventions in Klamath County. The grants will be solicited competitively and the Board of County Commissioners will decide by application the disbursement of the grant funds.

603.700 Appeals to the Board. Any person aggrieved by any provisions of the Tax Administrator may appeal to the Board by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Board who shall fix a time and place for hearing such appeal. The Board shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter.

603.800 Violations. It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due required by this Chapter.

Any person willfully violating any of the provisions of this Chapter shall be subject to a fine of not more than three hundred sixty dollars (\$360.00).

CHAPTER 604 CONTENTS

CHAPTER 604
CABLE COMMUNICATION SYSTEMS

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Ordinance No. 67.00 - 06/01/94
Ordinance No. 67.01 - 11/28/2000
Ordinance No. 67.02 - 10/05/2004

CHAPTER 604
CABLE COMMUNICATION SYSTEMS

604.001 Purpose and Intent. It is in the public interest and necessary for the promotion of the safety, convenience, comfort, prosperity and general welfare of the citizens of Klamath County to have an ordinance which identifies the conditions upon which the County will grant a franchise or franchises to construct, maintain, and operate a cable communications system within public rights-of-way located outside of incorporated cities within the County.

604.005 Definitions. For the purpose of this ordinance, unless the context requires otherwise:

(1) "Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the County and its designees, of the cable communications system to acquire, create, and distribute programming not under the Franchisee's editorial control, including, but not limited to public, educational and government programming.

(2) "Cable Communications Systems" means a system of antennas, cables, amplifiers, towers, microwave links, cable-casting studios, and any other conductor, converters, equipment or facilities designed and constructed for the purpose of producing receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic or electrical signals.

(3) "Franchise" means the privilege conferred upon a person, firm or organization by the County to operate a cable communications system under the terms and provisions of this Ordinance.

(4) "Franchisee" means the person, firm or organization to which a franchise is granted to operate a cable communications system pursuant to the authority of this Ordinance.

(5) "Lease Access Channel" means any channel or portion of a channel commercially available for programming for a fee or charge by persons other than the Franchisee.

604.100 Authority. The Board of County Commissioners of Klamath County recognizes, declares, and establishes the authority to regulate the construction, operation, and maintenance of cable communications systems (hereinafter "Systems") for the unincorporated areas of the County and to exercise all powers necessary for that purpose, including but not limited to, the following:

- (1) Consumer complaints;
- (2) Disputes among the County, franchisees, and consumers;
- (3) The development, management and control of a government access channel as well as development of other access channels;
- (4) Rates and review of finances for rate adjustments;
- (5) Construction timetables and standards;
- (6) Modernization of technical aspects;

- (7) Ensuring adherence to federal and state regulations;
- (8) Franchise transfer and transfer of control of ownership;
- (9) Franchise renewal and/or franchise revocation;
- (10) Enforcement of buy-back, lease-back or option-to-purchase provisions;
- (11) Receivership and foreclosure procedures;
- (12) Compliance with County standards for public rights-of-way;
- (13) Regulate direct broadcast satellite service.

604.200 Grant of Franchise, Renewal.

In the event that the Board finds it in the best interest of the County to consider granting a franchise for a system, the procedures set forth in this Ordinance shall be followed.

(1) By order of the Board, the Contract Specialist shall be directed to prepare a request for proposal (hereafter referred to as an "RFP") containing at least the following:

(a) Information and instructions relating to the preparation and filing of bid proposals;

(b) Requirements regarding the development, operation and regulations of a system, including but not limited to the following:

(i) The length, renewal and transfer or assignment of the franchise, including foreclosure and receivership provisions;

(ii) A description of the franchise territory and the extension of service;

(iii) Access requirements;

(iv) Fees, records and reporting;

(v) Indemnification, insurance, and liability for damages; and

(vi) Provision of an option for the County to acquire the system upon revocation or expiration of the franchise.

(c) Criteria to be used in evaluating applicant proposals.

(2) When a person is operating an existing system without a franchise, by order of the Board, the Contract Specialist shall be directed to prepare a proposed franchise, containing at least the requirements listed in (1)(b) above, for presentation to the operator.

(3) The Board, by order, may:

(a) Approve the RFP, or proposed franchise, as proposed, or modify or otherwise make amendments thereto as it deems necessary;

(b) Authorize the Contract Specialist to seek bids for a system pursuant to the RFP, or enter discussions with a current operator on the award of a franchise.

(4) The Board may award a franchise only after a public hearing on the proposed franchise, notice of which shall be published in a local newspaper of general circulation in the County at least ten (10) days prior to the date of the hearing. The potential Franchisee shall be notified by mail of the public

hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded. The Board may award the franchise, modify the proposed franchise and award, or take no action.

(5) No franchise or award thereof shall be deemed final until adoption of an order containing the terms and conditions thereof. The franchisee shall bear the costs of all publications and notices given in connection with the award of the franchise, and the costs incurred by the County in evaluating the proposed franchise.

(6) A request for renewal of a franchise will be considered and processed in conformance with Federal Law.

604.300 Administration of Cable Communications Ordinance.

The Board shall have the power to carry out any or all of the following functions:

(1) Employ the service of a technical consultant to assist in the analysis of any matter related to any franchise, RFP or proposed franchise under this Ordinance;

(2) Act on applications for franchises;

(3) Act on matters which might constitute grounds for revocation or termination of a franchise pursuant to its terms;

(4) Resolve disagreements among franchisees and public and private users of the system;

(5) Consider requests for rate settings or adjustments;

(6) Coordinate and facilitate the use of access channels;

(7) Act in intergovernmental matters relating to systems, cooperate with regulators and operators of other systems, and supervise interconnection of systems;

(8) Review all franchisee records required by the franchise and, at the Board's discretion, require the preparation and filing of information additional to that required by the franchise;

(9) Conduct evaluations of the system and the franchisee's compliance with franchise requirements at least every three years;

(10) Adopt and amend regulations and procedures necessary to enforce franchises and to clarify terms thereof; and

(11) Any other actions the Board deems necessary to carry out the purpose of this Ordinance.

604.400 Intergovernmental Agreements. The Board may enter into intergovernmental agreements as authorized by Oregon law, with any other jurisdiction to provide for the cooperative regulation and control of any aspect of a cable communications system. Such agreements may provide for the delegation of any and all powers of the Board to an entity provided for in the intergovernmental agreement, except for the powers to enter into or revoke a franchise agreement.

604.500 Violation, Penalties and Remedies. Any person, firm or organization violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine not to exceed seven hundred twenty dollars (\$720.00). Each day that a violation of this Chapter is committed or permitted to continue shall constitute a separate offense.

The penalties imposed by this section are in addition to and not in lieu of any remedies available to the County under this Chapter or the laws of the State.

The rights, remedies and penalties provided in this Section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the County under any other ordinance or law.

Upon authorization by the Board, the County Counsel may commence an action in the Circuit Court or other appropriate court to enjoin the continued violation of any provision of this Ordinance.

604.600 Franchise Fee. The franchise fee shall be as determined by the Board of County Commissioners but not to exceed the amount allowed by the Federal law as stated in 47 U.S.C. § 542.

604.700 Severability. The provisions of this Ordinance are severable, and any invalid section, subsection, sentence, clause, phrase or portion of this Ordinance if for any reason is held invalid or unconstitutional in a Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not effect the validity of the remaining portions of the Ordinance.

DIVISION 7
BUILDING

CHAPTER 700 CONTENTS

CHAPTER 700
BUILDING CODE REGULATIONS

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- Ordinance No. 28.10 - 04/05/2005*
- Ordinance No. 28.11 - 10/25/2016*

CHAPTER 700
BUILDING CODE REGULATIONS

ADMINISTRATION

700.001 Building Program. The County shall provide a program of building codes administration, including plan review, permit issuing, and inspection for structural, electrical, mechanical and plumbing work. The Building Official, under the supervision of the Community Development Director, or Board of County Commissioners in absence of Director, shall administer the program.

700.010 Designation of Building Official. In accordance with ORS 455.150, there is hereby appointed a Building Official for Klamath County to administer and enforce the building program.

700.020 Compliance Hearings Officer. In accordance with Oregon Senate Bill 915, enacted by the People of the State of Oregon and added to ORS Chapter 455, Klamath County may not assess a civil penalty for a violation under a building inspection program unless the County provides an administrative process other than a judicial proceeding in a court of law, that affords the party an opportunity to challenge the civil penalty assessment before an individual, department or body that is other than the municipality's building inspector or building official.

APPOINTMENT AND DUTIES

- A. The Board of County Commissioners may appoint the Compliance Hearings Officer to serve at the pleasure of the Board (ORS 215.406).
- B. The Compliance Hearings Officer shall be appointed solely with regard to their qualifications for the duties of the position and shall have such training and experience as will qualify him or her to conduct hearings on the building inspection program matters and other duties conferred upon him or her.
- C. The Compliance Hearings Officer may act on behalf of the Board of County Commissioners to adjudicate civil penalty proceedings under this chapter.
- D. In the absence of a Compliance Hearings Officer the hearing must be rescheduled to the next available time and date.

BUILDING CODES

700.030 Codes Adopted. Except as otherwise provided in this chapter, the following codes, standards and rules are adopted

and shall be in force and effect as part of the Klamath County Code:

- (1) Under the authority of ORS 455.153, those specialty codes and building requirements adopted by the state which the County is granted authority to administer, including:
 - a. The Oregon Structural Specialty Code;
 - b. The Oregon Mechanical Specialty Code;
 - c. The Oregon Plumbing Specialty Code;
 - d. The Oregon Electrical Specialty Code;
 - e. The Oregon Residential Specialty Code;.
 - f. The Oregon Manufactured Dwelling and Park Specialty Code;
 - g. The recreational park and organization camp rules;
 - h. The Oregon Energy Efficiency Specialty Code;
 - i. The Oregon Solar Installation Specialty Code and Commentary;
 - j. The Oregon Reach Code;
 - k. The Oregon Fire Code.

- (2) Uniform codes as published by the International Conference of Building Officials including:
 - a. Uniform Housing Code - 1997;
 - b. Uniform Code for the Abatement of Dangerous Buildings - 1997;
 - c. Uniform Code for Building Conservation - 1997.

- (3) At least one copy of each of these codes shall be kept by the Building Official and be available for inspection upon request.

700.040 Maintenance. All buildings and structures, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards that are required by this Code shall be maintained in conformance with the

code edition under which installed. The owner or his designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the Building Official may cause any structure to be re-inspected.

PERMIT ISSUANCE

700.050 Permits Issuance. The Building Official shall check the application, plans, and specifications filed by an applicant for a permit. Prior to the issuance of any building permit, the Building Official shall require the applicant to obtain the approval of the County Planning Department and, where the building is to be served by a septic tank or similar system, by the On-Site Sanitation Department. The Building Official may also require the approval of such other County Departments or other agencies, as he deems appropriate.

If the Building Official is satisfied that the work described in an application for permit and the plans filed therewith conform to the requirements of this Code, sanitation and health requirements as stipulated by the controlling agencies, and other pertinent laws and ordinances then in effect, and that the fee requirements have been met, he shall issue a permit therefore to the applicant.

700.060 City Certification. Plans submitted for County review for building within a city shall contain a certificate or written approval showing they have been reviewed by the city for compliance with zoning and other land use or development regulations, including subdivision, partitioning and sanitary regulations. The certification shall identify building requirement factors used by the city including occupancy.

FEES AND REFUNDS

700.070 Fees. Fees for plan review, permits, and inspections shall be determined periodically by Order of the Board of County Commissioners. The Building Official may from time to time recommend to the Board of Commissioners, reasonable permit surcharges for administration, operation, and technology expenses incurred by the Building Division. The Board of Commissioners may, after notice and public hearing, adopt reasonable fees to be charged, based upon costs of Building Division operations. The order setting such new fees shall specify the effective date of such charge. All fees and forms must follow the Consistent Forms and Fee Methodology set by the Consistent Forms and Fees Committee within the Oregon State Building Codes Division; in OAR 918-050.

700.080 Refunds. All fees are nonrefundable, except in cases when the processing of an application was terminated prior to the incurring of any substantial administrative expenses. The

amount of refund shall be determined by the Building Official and shall be based upon the proportion of staff time allotted to processing the permit relative to complete processing of a permit.

VIOLATIONS

700.090 Violation-Penalty-Remedy. It is unlawful and a civil infraction for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy or maintain any building, structure or mobile home in the areas of the County under the jurisdiction of the County, or cause the same to be done, contrary to or in violation of any of the provisions of KCC 700 or any specialty code or building requirements administered by the County pursuant to ORS 455.153.

Violation of any provision of KCC 700 or any specialty code or building requirement administered by the County pursuant to ORS 455.153 shall be subject to an administrative civil penalty as a Class A violation.

A civil penalty imposed under this chapter shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the Compliance Hearings Officer pursuant to and within the time limits established by KCC 700.092.

The civil administrative penalty authorized by this section shall be in addition to:

- a. Assessments or fees for any costs incurred by the County in remediation, cleanup, or abatement;
- b. Any hourly investigative fees charged for initial investigation during site visit;

Failure to pay an administrative penalty imposed under this code within 15 days after the penalty becomes final is a violation of this code. The building official has authorization to assign the unpaid penalty to the collection agency as outline in 700.093 by proceeding authorized by KCC 700.090, other provisions of this code, or state statutes.

In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed under this code shall be grounds for withholding issuance of requested permits, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

700.091 Building Official: Authority to Impose Administrative Civil Penalty. Upon a determination by the building official that a person, firm, or corporation has violated a

provision of this chapter or a rule adopted under this chapter, the building official may issue a notice of civil violation and impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections of this section. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property where the violation occurs, may include the owner.

Prior to issuing an order to correct a violation under this section, the building official may pursue reasonable attempts to secure voluntary correction.

Prior to issuing a notice of civil violation and imposing an administrative civil penalty under this section, the building official shall issue an order to correct a violation to one or more of the responsible persons. Except where the building official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five calendar days.

Following the date or time by which the correction must be completed as required by an order to correct a violation, the building official shall determine whether such correction has been completed. If the required actions have not been completed by the date or time specified in the order, the building official may issue a notice of civil violation and impose an administrative civil penalty to each responsible persons to whom an order to correct was issued.

Notwithstanding subsections in paragraph (1) and (2), the building official may issue a notice of civil violation and impose an administrative civil penalty without having issued an order to correct violation or made attempts to secure voluntary correction where the building official determines that the violation was knowing or intentional or a repeat of a similar violation.

In imposing an administrative civil penalty authorized by this section, the building official shall consider:

- (A) The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
- (B) Any prior violations of statutes, rules, orders, and permits;
- (C) The gravity and magnitude of the violation;
- (D) Whether the violation was repeated or continuous;
- (E) Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
- (F) The violator's cooperativeness and efforts to correct the violation; and
- (G) Any relevant rule of the building official.

A notice of a civil violation that imposes an administrative civil penalty under this section shall either be served by personal service or shall be sent by registered or certified mail. Every notice shall include:

- (A) Reference to the particular code provision, ordinance number, or rule involved;
- (B) A short and plain statement of the matters asserted or charged;
- (C) A statement of the amount of the penalty or penalties imposed;
- (D) The date on which the order to correct was issued and time by which correction was to be made, or
- (E) If the penalty is imposed under KCC 700.091 paragraph 6(E), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
- (F) A statement of the party's right to appeal the civil penalty to the Compliance Hearings Officer; a description of the process the party may use to appeal the civil penalty; and the deadline by which such an appeal must be filed.

700.092 Appeal Procedures. The purpose of the Compliance Hearings Officer Review Procedure is to conduct impartial administrative hearings and render decisions in the Building Inspection program under ORS Chapter 455. The Compliance Hearings Officer works through the dispute resolution process between the Building Department and the public. The Compliance Hearings Officer review procedure allows for an impartial tribunal, the opportunity to present evidence, assurance against ex parte contacts, and the means to create a record of hearings providing findings of fact and conclusions of law.

Any person, firm, or corporation who is issued a notice of civil penalty may appeal the penalty to the Compliance Hearings Officer. KCC 700.090 of this code shall govern any requested appeal.

- (A) A person, firm, or corporation aggrieved by an administrative action of the building official taken under any section of this code that authorizes an appeal under this section may, within 15 days after the date of notice of the action, appeal in writing to the building official. The written appeal shall include:

1. The name and address of the appellant;
2. The nature of the determination being appealed;
3. The reason the determination is incorrect; and
4. What the correct determination of the appeal should be.

If a person, firm, or corporation appeals a civil penalty to the Compliance Hearings Officer, and the civil penalty is upheld, the penalty shall become final upon issuance of the Compliance Hearings Officer's decision.

Unless the appellant and the County agree to a longer period, an appeal shall be heard by the Compliance Hearing's Officer within 45 days of the receipt of the notice of intent to appeal. At least 10 days prior to the hearing, the County shall mail notice of the time and location of the hearing to the appellant. The appellant may waive the 10-day notice by signing a waiver choosing to waive the ten-day-written notice of appeals hearing date, time and place.

The Compliance Hearings Officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Compliance Hearing's Officer deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The Compliance Hearings Officer will ask the appellant to come forward, be sworn in, and then testify. The building official may appear with or without counsel or through the building official's designee. The burden of proof shall be on the building official. The Rules of Evidence as used by courts of law do not apply.

The Compliance Hearings Officer will then provide an opportunity for appellant rebuttal. Generally, rebuttal to the appellant or appellant's rebuttal is allowed, at the discretion of the Compliance Hearings Officer, provided a final rebuttal opportunity is provided to the appellant in accordance with ORS 197.763.

The Compliance Hearings Officer shall issue a written decision within 30 days of the hearing date. All orders of the Compliance Hearings Officer shall contain findings of fact and conclusions of law addressing the allegations contained in a notice of civil penalty. Orders may also include findings of fact supporting the penalty, restrictions, conditions or other remedies as required by the Compliance Hearings Officer. The written decision of the Compliance Hearings Officer is final.

Failure to pay a penalty under this chapter within 30 days after the penalty becomes final is a violation of this code. The building official has authorization to assign the unpaid penalty to the collection agency as outline in 700.093 by proceeding authorized by KCC 700.090, other provisions of this code, or state statutes.

Review of an order of a Compliance Hearings Officer decision under this chapter by any aggrieved party, including Klamath County, shall be by writ of review before the Klamath County Circuit Court as provided in ORS 34.010-34.100.

700.093 Unpaid Penalties. If an administrative civil penalty is imposed on a responsible person because of a violation of this code resulting from prohibited use or activity on real property, and the penalty remains unpaid for 30 days after such penalty becomes final, the building official will assign the unpaid penalty, to the contracted, and duly registered collection agency. When such assignment is made, the building official shall notify the responsible person that the unpaid penalty will have an additional 35% collection fee added to the penalty, plus interest at 9% per annum at the time of assignment.

In addition, the building official shall withhold issuance of requested permits, or revocation or suspension of any issued permits or certificates of occupancy until the penalty, investigation fee, and related collection fee, including interest are paid in full.

The County may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any order of a Compliance Hearings Officer, including an action to obtain judgment for any civil penalty imposed by an order of the Compliance Hearings Officer.

SEVERABILITY

700.100 Severability. The provisions of this Ordinance are severable, and any invalid section, subsection, sentence, clause, phrase or portion of this Ordinance if for any reason is held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions of the Ordinance.

DIVISION 8
ENFORCEMENT

CHAPTER 800 CONTENTS

CHAPTER 800
UNIFORM CIVIL VIOLATION PROCEDURE

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CHAPTER 800
UNIFORM CIVIL VIOLATION PROCEDURE

800.001 Purpose. A civil violation procedure has been established for the purpose of decriminalizing penalties for violations of certain civil ordinances and for the purpose of providing a convenient and practical forum for the civil hearing and determination of cases arising out of said violations.

800.005 Definitions. For the purpose of this Ordinance the following mean:

(1) "Civil violation" means commission of an act or omission to act in a manner prescribed by this Ordinance or other County ordinance constituting breach or infringement of a section of a County ordinance or of this Ordinance constitutes a civil violation and shall be handled in accordance with the procedures established by this Ordinance.

(2) "Enforcement Officer" means the County Commissioners or any designee or designees whom the County Commissioners appoints by Resolution or Order to enforce the Code.

(3) "Penalty; Penalty schedule" means the only penalty to be imposed for a violation is a monetary penalty. The penalty to be assessed for a specific violation will be determined pursuant to specific provisions within the ordinance defining the violation or the penalty schedule found in KCC 800.900. The procedure prescribed by this Ordinance shall be the exclusive procedure for imposing a penalty; however, this section shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statute or state law which are intended to abate or alleviate ordinance violations, nor shall the County be prohibited from recovering, in a manner prescribed by law, any expense incurred by it in abating or removing ordinance violations pursuant to any ordinance.

(4) "Person" means any natural person or persons, firm, partnership, association or corporation.

(5) "Prior contact" means:

(a) Any prior contact between the Enforcement Officer and the responsible party regarding the alleged violation, including, but not limited to phone calls, personal oral communication at any location, letters or other forms of written communication, or a prior citation issued for the same or similar violation.

(b) Prior contact shall be deemed to occur without actual contact between the Enforcement Officer and a responsible party if the alleged violation is related to regulated activity for which the County has issued any permit, license, agreement, or written directive required by law or policy of the County in conjunction with the regulated activity. No time limit shall restrict prior contact which is deemed to have occurred under the terms of this section.

(6) "Responsible party" means the person responsible for curing or remedying a violation and includes:

(a) The owner of the property or the owner's manager or agent or other person in control of the property on behalf of the owner;

(b) The person occupying the property including bailee, lessee, tenant or other person having possession;

(c) The person who is alleged to have committed or authorized the commission of the violation.

800.100 Violation Procedure.

(1) Reporting. All reports or complaints of violations covered by this Ordinance shall be made to the Enforcement Officer.

(2) Review of Facts By Enforcement Officer. When a violation covered by this procedure is reported to the Enforcement Officer, the Enforcement Officer may refuse to proceed further with the matter after a review of the facts and circumstances surrounding the alleged violation, and upon making a determination that sufficient evidence does not exist to support the allegation that a violation has occurred or if the Enforcement Officer deems it in the best interest of the County.

(3) Prior Contact. Before a uniform violation citation and complaint is issued for a civil violation the Enforcement Officer may make a prior contact with the responsible party. Whether a prior contact is made prior to issuance of a uniform violation citation and complaint for a civil violation, is solely within the sound discretion of the Enforcement Officer while enforcing the best interests of the County.

In making the prior contact, the following information shall be communicated to the responsible party:

(a) a description or identification of the activity constituting the alleged violation and identification of the recipient as being the responsible party for the violation;

(b) a statement that the Enforcement Officer has determined the activity to be a violation;

(c) a statement of the action required to remedy or cure the violation and the time and/or date by which the remedy must be completed or begun;

(d) a statement advising that, if the required abatement is not completed or commenced within the time specified, a uniform violation citation and complaint will be issued and that a penalty in the maximum amount provided by Section 800.900 of this Ordinance for that particular violation could be imposed.

(4) When the Enforcement Officer considers it advisable, the Enforcement Officer may enter into a written agreement resolving the problems which gave rise to the complaint. The agreement shall be known as a voluntary compliance agreement and shall be binding on the responsible party. The fact that a person alleged to have committed a civil violation enters into such an agreement shall not be considered an admission of having committed a violation for any purpose.

(5) During the time allowed in the voluntary compliance agreement for the completion of necessary correction action, the County shall hold in abeyance further processing of the alleged violation. If all terms of the voluntary compliance agreement are satisfied, the County shall take no further action concerning the alleged violation other than those steps necessary to terminate the matter.

(6) The failure to comply with any term of the voluntary compliance agreement constitutes a separate Class A Civil Violation and shall be handled in accordance with the procedures established in this Chapter. The County may also proceed with processing the alleged violation giving rise to the voluntary compliance agreement.

800.110 Issuance of Uniform Violation Citation and Complaint.

(1) If the responsible party with whom prior contact was made fails to cure or remedy the alleged violation or if the Enforcement Officer does not make a prior contact, a uniform violation citation and complaint signed by the Enforcement Officer or any citizen may be filed with the Klamath County Justice Court or the Klamath County Circuit Court charging the responsible party with the civil violation and setting a date for the responsible party to appear before the court to answer said complaint. The violator may be prosecuted by the County in the name of the County or be made a defendant in a civil proceeding as prescribed by O.R.S. 203.065.

(2) The Enforcement Officer shall prescribe the form of the uniform violation citation and complaint, but it shall consist of an original and three copies. The required copies are to be distributed as follows:

- (a) One to the Enforcement Officer;
- (b) One to the person being cited;
- (c) The original and one copy to the Court.

(3) Each of the three pages shall contain the following information:

- (a) the name of the court and the court's file number, if available;
- (b) the name of the person cited;
- (c) the violation with which the person is charged;
- (d) the date, time and place the violation occurred, or if the violation is of a continuing nature, the date, time and place the violation was observed by the enforcement officer, or the citizen signing the complaint;
- (e) the date on which the citation was issued;
- (f) the scheduled penalty for the alleged violation;
- (g) the time and place at which the person cited is to appear in court to answer the complaint.

(4) The complaint shall contain a form of verification that the person signing the complaint swears that the person has reasonable grounds to believe, and does so believe, that the person cited committed the violation.

800.120 Service. Service of the uniform violation citation and complaint shall be made by personal service upon the responsible party. If personal service cannot be made then service of the uniform violation citation and complaint shall be in accordance with the Oregon Rules of Civil Procedure.

800.130 Answer.

(1) A person who receives a summons and complaint alleging a violation shall answer such complaint by personally appearing to answer at the time and place specified therein; except an answer may be made by mail or personal delivery if received by the County within ten (10) days of the date of the receipt of the summons as provided in subsection 2 and 3 below.

(2) If the person alleged to have committed a violation admits the violation, the person may complete the appropriate answer on the back of each summons and forward the summons to the appropriate court. Cash, check or money order in the amount of the penalty for the violation alleged as shown on the face of the summons shall be submitted with the answer. Upon receipt of the penalty, an appropriate order shall be entered in the court records.

(3) If the person alleged to have committed the violation denies part or all of the violation, the person may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for court fees. Upon receipt, the answer shall be entered and a hearing date established by the court. The court shall notify the person alleged to have committed the violation by return mail of the date of the hearing. The security received shall be returned upon appearance by the person alleged to have committed the violation for the hearing, except as otherwise provided in this Chapter. The security deposit may be waived in whole or in part at the discretion of the court for good cause shown and upon written application of the person alleged to have committed the violation setting forth the reason for requesting the waiver and certifying that the person alleged to have committed the violation will attend the hearing when scheduled.

800.140 Hearing.

(1) Every hearing to determine whether a violation has been committed shall be held before the circuit court without a jury.

(2) The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense. If legal counsel is to appear, written notice shall be provided to the court at least ten days prior to the hearing date.

(3) Klamath County may be represented by legal counsel or the designated Klamath County Code Enforcement Officer.

(4) The defendant shall have the right to present evidence and witnesses in the defendant's favor, to cross-examine witnesses who testify against the defendant and to submit rebuttal evidence.

(5) The hearing shall be limited to production of evidence only on the violation alleged in the complaint.

(6) The complainant or, if the County is the complainant, the Enforcement Officer, shall have the burden of proving the alleged ordinance violation by a preponderance of the evidence.

(7) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the violation as alleged in the complaint was committed. When the violation has not been proven, an order dismissing the complaint shall be entered in the court records. A copy of the order shall be delivered to the person named in the order personally or by mail. When the court finds that the violation was committed, and upon written request by a party to the hearing, the order shall include a brief statement of the necessary findings of fact to establish the violation alleged.

(8) Upon a finding that a violation has occurred, the court shall assess a penalty pursuant to the schedule established in accordance with this Chapter, plus court costs and witness fees. The circuit court judge is authorized to set reasonable court costs including security for court fees by court order.

800.200 Enforcement.

(1) If a cited person fails to answer the summons and complaint or appear at a scheduled hearing as provided herein, a default judgment shall be noted for the scheduled penalty applicable to the charged violation. In addition, when a person fails to appear for a hearing, the security posted, or an amount equal to the security waived, shall be ordered forfeited. Nothing in this subsection shall be construed to limit in any way the contempt powers of the circuit judge granted by State law, and the judge may exercise those powers as the judge considers necessary and advisable in conjunction with any matter arising under the procedures set forth in this Chapter.

(2) Any penalty assessed is to be paid no later than ten (10) days after the receipt of the final order declaring that penalty. Such period may be extended upon order of the circuit judge.

(3) Delinquent penalties and those brought to default judgment which were assessed for violations may in addition to any other method be collected or enforced pursuant to O.R.S. 30.310 or 30.315.

800.210 Lien Filing and Docketing.

(1) When a judgment is given in circuit court in favor of the County and includes a money award, such judgment shall become a lien upon all the judgment debtor's real property as set out in O.R.S. 18.150.

800.300 Effect of Citation on Nuisance. The requirement to abate a nuisance is not a penalty for violating nuisance ordinances, but is an additional remedy. The imposition of a civil violation penalty does not relieve a person of the duty to abate a nuisance.

800.400 No Mental State Required. Acts or omissions to act which are processed pursuant to the provisions of this Ordinance or are designated a violation by a County ordinance, do not require a culpable mental state as an element of the violation.

800.450 Non-Exclusive Remedy. The procedures and remedies contained in this Ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or State statues or State law which are intended to alleviate ordinance violations or abate nuisances, and the procedures set forth in this Chapter shall not be prerequisites for utilizing any of said alternative remedies.

800.900 Schedule of Penalties.

(1) Violations are classified for the purpose of determining penalties in the following categories:

- (a) Class A violations.
- (b) Class B violations.

(2) An assessment of a penalty for a violation shall be an assessment to pay an amount not exceeding:

- (a) \$ 720.00 for Class A violations;
- (b) \$ 360.00 for Class B violations;

(3) For a continuing offense where only one citation is used, a fine of not more than \$1,000.00 may be assessed.

(4) Violations of specific Klamath County Ordinances are classified as follows:

CODE PROVISION	CLASS
KCC Chapter 400	A
KCC Chapter 401	A
KCC Chapter 402	A
KCC Chapter 405	B
KCC Chapter 406	A
KCC Chapter 407	A
KCC Chapter 408	A
KCC Chapter 601	A
KCC Chapter 602	A
*KCC Chapter 603	A
KCC Chapter 604	A
KCC Chapter 700	A
Land Development Code	A

* This Chapter is also applicable to KCC Chapter 603, however, the penalties for KCC Chapter 603 are outlined at KCC Chapter 603, Section 603.400.

Ordinances enacted after the effective date of this Ordinance which provide a penalty provision for their enforcement shall expressly incorporate the violation procedure set out herein and classify violations thereof in accordance with this Section of this Ordinance.

800.920 Severability. The provisions of this Chapter are severable. If a portion of this Chapter is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter.

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CHAPTER 801

TO PROTECT THE PUBLIC PEACE, GENERAL WELFARE, HEALTH AND SAFETY OF THE CITIZENS OF KLAMATH COUNTY FROM VIOLATIONS OF THE CONSTITUTIONAL AND CIVIL RIGHTS OF THE CITIZENS, AND PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE

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Ordinance No. 65 - 08/05/92

CHAPTER 801

TO PROTECT THE PUBLIC PEACE, GENERAL WELFARE, HEALTH AND SAFETY OF THE CITIZENS OF KLAMATH COUNTY FROM VIOLATIONS OF THE CONSTITUTIONAL AND CIVIL RIGHTS OF THE CITIZENS, AND PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE

801.001 Adoption. That the Civil Rights Act, 18 U.S.C. §§241 *et seq.* shall be adopted as a County Ordinance.

801.002 Violations Shall Be Filed with the District Attorney. That all violations of this Ordinance and the rights or privileges that this Ordinance protects shall be filed with the District Attorney. Once a petition regarding such violation of a right or privilege protected by this Ordinance is filed, an investigation of such violation must occur, including a determination of the identification of the person(s), including but not limited to any employee of the federal, state or county government responsible for such violation.

801.003 Investigation of Potential Violations. That nothing in this Ordinance shall be construed to prohibit County officers or a grand jury from investigating any potential violation of this Ordinance.

801.004 Penalty. That all violations of this Ordinance shall be punishable by the maximum punishment allowed by the State Law of Oregon.

801.005 Liability for Deprivation of Rights, Privileges or Immunities Secured by the Constitution and Laws. That in addition to any actions that may occur through the enforcement of this Ordinance, that every person, who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (This language has been taken from 42 U.S.C. §1983.) In any such action at law, suit in equity, or other proceeding, the injured party may include a request for and offer evidence that punitive and/or other monetary damages should be assessed upon the offending party.

801.006 Severability. That if any provision of this Ordinance or the application thereof is held invalid, such invalidity does not affect any other provision of this Ordinance which can be given effect without the invalid provision of application, and to those ends the provisions of this Ordinance are severable.

801.007 Emergency Measure. This Ordinance is an emergency measure necessary to protect the health, welfare, and safety of the citizens of Klamath County.

CHAPTER 802 CONTENTS

AN EMERGENCY ORDINANCE TO PROTECT THE PUBLIC PEACE, GENERAL WELFARE, HEALTH AND SAFETY OF THE CITIZENS OF KLAMATH COUNTY FROM VIOLATIONS OF THE CONSTITUTIONAL RIGHTS OF THE CITIZENS REAFFIRMING THE PROTECTIONS FOR PRIVATE PROPERTY AS PROVIDED IN THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND THE CIVIL RIGHTS ACT, AND (3) REESTABLISHING THE DEFINITION OF PRIVATE PROPERTY PROTECTED BY THE CONSTITUTION AND THE CIVIL RIGHTS ACT AS DEFINED IN CURRENT FEDERAL CASE LAW AND REGULATION.

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Ordinance No. 66 - 08/05/92

CHAPTER 802

AN EMERGENCY ORDINANCE TO PROTECT THE PUBLIC PEACE, GENERAL WELFARE, HEALTH AND SAFETY OF THE CITIZENS OF KLAMATH COUNTY FROM VIOLATIONS OF THE CONSTITUTIONAL RIGHTS OF THE CITIZENS REAFFIRMING THE PROTECTIONS FOR PRIVATE PROPERTY AS PROVIDED IN THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND THE CIVIL RIGHTS ACT, AND (3) REESTABLISHING THE DEFINITION OF PRIVATE PROPERTY PROTECTED BY THE CONSTITUTION AND THE CIVIL RIGHTS ACT AS DEFINED IN CURRENT FEDERAL CASE LAW AND REGULATION.

802.001 Definition of Private Property. That the following definition of private property as taken from the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, dated June 30, 1988, (Guidelines adopted pursuant to Executive Order 12630) shall be adopted within Klamath County:

(1) Private property includes all property protected by the Fifth and Fourteenth Amendments to the United States Constitution, including but not limited to, real and personal property and tangible and intangible property.

(2) Private property protections shall also include protection for "investment backed expectations."

802.002 Protection of Private Property and Private Property Rights. That all private property and private property rights within Klamath County as herein defined shall be fully protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, under Article XI, Section 4 of the Oregon Constitution, and under the Civil Rights Act.

802.003 Violations. That violations of this ordinance by state and federal agencies shall be deemed to be a violation of Klamath County Ordinance Number 65. Liability under this Ordinance shall be placed upon the federal official or officials responsible for making and implementing any decision which fails to comply with this Ordinance.

802.004 Severability. That if any provision of this Ordinance or the application thereof is held invalid, such invalidity does not affect any other provision of this Ordinance which can be given effect without the invalid provision or application, and to those ends the provisions of this Ordinance are severable.

802.005 Emergency Measure. This Ordinance is an emergency measure necessary to protect the health, welfare, and safety of the citizens of Klamath County.