

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Amending the Yamhill County Citation Ordinance; Renaming to the Yamhill County Code Enforcement Ordinance; Declaring an Emergency and Setting the Effective Date

ORDINANCE 923

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 2, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

THE BOARD ADOPTS THE FOLLOWING FINDINGS:

WHEREAS, The Board adopted the Yamhill County Citation Ordinance, Ordinance No. 755 (the "Citation Ordinance"), on March 9, 2005; and

WHEREAS, Certain amendments are required in order to ensure that the Citation Ordinance aligns with the procedures outlined in ORS 153;

WHEREAS, The amendments identified in the attached Exhibit A will codify certain statutory requirements and allow for improved procedures that will allow the County to more effectively and fairly enforce its code; and now, therefore

THE BOARD ORDAINS AS FOLLOWS:

Section 1. Amendment of Yamhill County Citation Ordinance. Ordinance 755 is hereby amended as provided in Exhibit A, attached here to and incorporated herein.

Section 2. Renaming. The Yamhill County Citation Ordinance is hereby renamed the Yamhill County Code Enforcement Ordinance.

Section 3. Severability. Invalidity of a section or part of a section of this Ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 4. Declaring an Emergency; Effective Date. This Ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DATED this 2 day of February 2023, at McMinnville, Oregon.



YAMHILL COUNTY BOARD OF COMMISSIONERS

ATTEST

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KERI HINTON
County Clerk

Chair LINDSAY BERSCHAUER

By: Handwritten signature of Carolina Rook in cursive.
Deputy CAROLINA ROOK

Handwritten signature of Kit Johnston in cursive.

Commissioner KIT JOHNSTON

FORM APPROVED BY:

Handwritten signature of Mary Starrett in cursive.

Handwritten signature of Jodi Gollehon in cursive.
JODI GOLLEHON
Assistant Yamhill County Counsel

Commissioner MARY STARRETT

EXHIBIT A

Section 1. TITLE

This ordinance may be cited as the “Yamhill County Code Enforcement Citation Ordinance-755”.

Section 2. DEFINITIONS

As used in this ordinance, unless the context requires otherwise:

- (1) ~~“Department” means the Yamhill County Planning and Development Department.~~
- (2) “Authorized Official” means a person authorized to issue citations under Section 5 of this ordinance.
- (3) “County” means Yamhill County.
- (4) “Department” means the Yamhill County Planning and Development Department.

Section 3. AUTHORITY

- (1) This ordinance is adopted under authority of ORS 203.035. The enforcement of eCounty ordinances is authorized by ORS 203.065, the establishment of violations classes is authorized by ORS 153.025, the creation and employment of a code enforcement officer with citation authority is authorized by ORS 153.005(1)(f), and the issuance of citations by ORS 153.042 et sequent. The eCounty is further and more specifically authorized as follows:
 - (a) To enforce solid waste management laws and ordinances by ORS 459.085;
 - (b) To enforce land division and land use ordinances by ORS Chapters 92, 197, and 215;
 - (c) To enforce Oregon Environmental Quality Commission and statutory subsurface sewage disposal regulations by ORS 454.640; and
 - (d) To enforce building codes and other structural codes by ORS 456.775 and 456.880.
 - (e) By other provisions of law not enumerated herein.
- (2) The provisions herein are intended to be supplemental to the statutory procedures of ORS Chapter 153 and are not, unless authorized by ORS Chapter 153 or other law, limitations upon ORS Chapter 153.

Section 4. LAWS ENFORCEABLE UNDER THIS ORDINANCE

The following ordinances, statutes and regulations shall be enforceable under the provisions of this ordinance:

- (1) Yamhill County Solid Waste Ordinance, as amended 1997.
- (2) Yamhill County Land Division Ordinance ~~No. 497~~, as amended.
- (3) Yamhill County Zoning Ordinance ~~No. 310~~, as amended.
- (4) ORS Chapter 454, as applicable, and Oregon Administrative Rules Chapter 340, Division 71.
- (5) Yamhill County Building, Mechanical, Plumbing and Electrical Ordinance, as amended 446.
- (6) Yamhill County ~~Ordinance 763~~ (“General Provisions for Use, Construction and Installations in Yamhill County Public Road Rights of Way Ordinance, including as amended,”) and all provisions of permits issued by the Department of Public Works.
- (7) State law pertaining to road rights of way (e.g. ORS 368.251, ORS 368.256, and ORS 368.942).
- (8) Yamhill County Parks Ordinance, including as amended No. 619.
- (9) Yamhill County Noise Ordinance, including as amended.
- (10) ~~All amendments to the ordinances listed in this section made subsequent to the adoption of this ordinance~~

Section 5. PERSONS AUTHORIZED TO ISSUE CITATIONS; INVESTIGATION; ADMINISTRATIVE INSPECTION WARRANTS

- (1) The following persons are authorized to issue citations under this ordinance:
 - (a) ~~The director of the Yamhill County Department of Planning and Development or the director’s designee; or~~
 - (b) The Yamhill County Sheriff or any deputy of the Yamhill County Sheriff’s Department; or
 - (c) Any other person designated as an “enforcement officer” under ORS

153.005; or

- (d) In relation to violations of the Yamhill County Solid Waste Ordinance, the Yamhill County Land Division Ordinance, the Yamhill County Zoning Ordinance, the Yamhill County Building, Mechanical, Plumbing and Electrical Ordinance, ORS Chapter 454, and Oregon Administrative Rules Chapter 340, Division 71, the director of the Yamhill County Department of Planning and Development, or a designee thereof.
- (2) An Authorized Official may enter into any buildings and upon all property within its jurisdiction to ascertain whether violations of County code are present only in accordance with state and federal law and consistent with the following limitations:
- (a) Entry may only be done at reasonable hours.
 - (b) Before entering into any buildings or property, an Authorized Official shall first make reasonable efforts to notify the owner or occupant and obtain consent to enter.
 - (c) In the event that consent to enter into buildings or upon property is not granted, or after reasonable efforts the officer or authorized employee is not able to contact the owner or occupant, the Authorized Official may seek an administrative inspection warrant as provided in the following subsection (3).
- (3) A judge may, upon application of an Authorized Official acting in the course of official duties, issue an administrative inspection warrant whenever an inspection or investigation of any place is required or authorized hereunder. Prior to seeking an administrative inspection warrant, an Authorized Official shall consult with County Counsel and obtain approval and assistance in preparing the affidavit and warrant documents.
- (a) An administrative inspection warrant shall be issued only upon cause, supported by an affidavit and motion which shall describe with particularity:
 - (i) The position and authority of the person applying for the administrative inspection warrant;
 - (ii) The statute, ordinance or rule requiring or authorizing the inspection or investigation;
 - (iii) The place, building or property to be inspected or investigated; and
 - (iv) The purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect or investigate.

- (b) Cause shall be deemed to exist when there is probable cause to believe that a violation exists.
- (c) Before issuing an administrative inspection warrant, the judge may examine under oath the person requesting the warrant or any other witness to be satisfied of the existence of the grounds to grant the administrative inspection warrant.
- (4) If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the administrative inspection warrant are satisfied, the judge shall issue the warrant, describing with particularity the name or title of the person or persons authorized to execute the warrant, the buildings or property to be entered, and the purpose of the inspection or investigation.
- (5) The administrative inspection warrant shall contain a direction that it be executed when the owner or occupant is present on any day of the week between 8:00 a.m. and 6:00 p.m., unless the court finds that there is cause to conclude that an urgent risk to the health or safety of a person or of damage to property exists.
- (6) An administrative inspection warrant must be executed and returned to the court by whom it was issued within ten (10) days from its date, unless such court before the expiration of the time, by endorsement thereon, extends the time for up to an additional five (5) days. After the expiration of the time prescribed by this subsection, the administrative inspection warrant is void unless executed.
- (7) In executing an administrative inspection warrant, the person authorized to execute the warrant, before entry, shall make a reasonable effort under the circumstances to contact the owner or occupant and arrange for execution of the administrative inspection warrant and to present the person's credentials, authority, and purpose to the owner or occupant. A copy of the administrative inspection warrant shall be provided to the owner or occupant upon execution.
- (8) Reasonable force may be used to execute an administrative inspection warrant. If reasonable force is to be used, reasonable force shall be undertaken by a certified peace officer. The person authorized to execute the warrant may be accompanied by a peace officer during the execution of the warrant to provide for the safety of the participants and to enforce the order of the court to investigate or inspect the building or property.
- ~~(9) — Authorized officials may interview complainants, witnesses, and possible violators, visit and photograph properties, request administrative inspection warrants from~~

~~Circuit Court, and/or take any other steps to investigate the validity of complaints and/or ascertain whether violations have occurred~~

Section 6. ISSUANCE OF WARNINGS; VOLUNTARY COMPLIANCE

- (1) The director of the Yamhill County Department of Planning and Development or the director's designee may issue a warning of an alleged violation of a provision enforceable under this ordinance. If issued, a warning notice shall be in writing and shall be delivered to the alleged violator in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail.
- (2) At the discretion of the Authorized Official, the County may delay further processing of a violation enforceable under this ordinance while seeking voluntary compliance from the owner or occupant. This process is to be considered only in those cases where voluntary compliance is likely and it is found to be in the best interests of the County, taking into consideration the nature and severity of the violation and the history of the property and the person responsible.

Section 7. CITATION AND SUMMONS FORM AND CONTENT

- (1) Citations and summons shall be in the form described by ORS 153.
- (2) An error in transcribing information into the blanks provided in the citation and summons form, when determined by the Court to be non-prejudicial to the defendant's defense, may be corrected at the time of trial or prior to time of trial. Except as provided in this subsection, a complaint that does not conform to the requirements of this section may only be set aside by the court upon motion of the defendant before entry of a plea.
- (3) The court may amend a citation at its discretion, in the interests of justice.

Section 8. SERVICE OF CITATION

- (1) An authorized official shall serve a person cited as follows:
 - (a) Personally; ~~or~~
 - ~~(b)~~ By delivery to a member of the person's family over 14 years of age residing at the person's abode if the person is not available at the abode for service; ~~or~~
 - (c) By certified mail, return receipt requested. Service by certified mail shall not be valid unless the return receipt is signed by the person to whom the citation is issued; or

- (d) Any method otherwise authorized by Oregon Rules of Civil Procedure.
- (2) If the person receiving the citation is a firm, corporation or other organization, the citation may be issued to any employee, agent or representative of the firm, corporation or organization.

Section 9. PROSECUTION

The Yamhill County Counsel, Yamhill County District Attorney, and the citing officer or deputy shall have authority to prosecute a person cited for committing a violation enforceable under this ordinance. All prosecutions shall be brought in Yamhill County Circuit Court.

Section 10. APPEARANCE BY DEFENDANT

- (1) The defendant shall ~~either appear in court at the time indicated in the citation and summons. If the defendant pleads guilty or no contest at the initial appearance, the defendant must describe to the court the defendant's plan on how and when the defendant will abate the violation, if it is a violation capable of abatement. The plan must be satisfactory to the County.~~

- (2) If the defendant does not appear in court at the time indicated in the summons, the court shall enter a judgment against the defendant in an amount equal to the maximum fine set forth in ORS 153.018, together with court costs, administrative fees, and any special costs.

~~or prior to the time of hearing shall deliver to the court the summons, a check or money order in the amount of bail set forth on the summons; and~~

- (a) ~~A request for hearing;~~
- (b) ~~A statement of explanation in mitigation of the offense charged; or~~
- (c) ~~The executed appearance, waiver of hearing and plea of guilty appearing on the summons.~~
- (3) ~~A written statement of explanation submitted by a defendant shall constitute a waiver of hearing and consent to judgment by the court and forfeiture of all or any part of the bail as determined by the court.~~
- (4) If the defendant requests a hearing trial, the court shall fix a date and time for a hearing trial in accordance with ORS 153. ~~Unless notice is waived, the court shall mail to defendant a notice of the date and time of the hearing. The notice shall:~~
 - (a) ~~Be in the form of a court "Notice to Appear" and contain a warning that if the defendant fails to appear, the defendant may be charged with failure to~~

~~appear, a criminal offense; and~~

~~(b) Be sent to the defendant at his last known address by regular mail~~

Section 11. TRIAL PROCEEDINGS

- (1) A trial on any violation shall be tried to the court sitting without jury.
- (2) The County shall have the burden of proof of the alleged violation by a preponderance of the evidence.
- (3) The pretrial discovery rules in ORS 135.805 to 135.873 shall apply.
- (4) The defendant may not be required to be a witness in the hearing.
- (5) Defense counsel shall not be provided at public expense.
- (6) Proof of a culpable mental state is not an element of a violation unless expressly provided in the ordinance alleged to have been violated.
- (7) The District Attorney or County Counsel may aid in preparing evidence and obtaining witnesses but, except upon good cause shown to the court, shall not appear in violation proceedings unless counsel for the defendant appears. The court shall ensure that the district attorney or county counsel is given timely notice if defense counsel is to appear at trial.
- (8) Notwithstanding any other provision of law, the court may admit as evidence in any trial in a violation proceeding the affidavit or declaration of a witness in lieu of taking the testimony of the witness orally and in court, subject to the limitations set forth in ORS 153.080.
- (9) In any trial in which the District Attorney or County Counsel does not appear, the Authorized Official who issued the citation for the offense may present evidence, examine and cross-examine witnesses, and make arguments relating to:
 - (a) The application of statutes and rules to the facts in the case;
 - (b) The literal meaning of the statutes or rules at issue in the case;
 - (c) The admissibility of evidence; and
 - (d) Proper procedures to be used in the trial.

Section 124. FAILURE OF DEFENDANT TO APPEAR

At the discretion of the County, if a person cited and notified of a court appearance as

provided in this ordinance fails to appear at either the original initial appearance noticed on the summons or at a subsequent hearing-trial scheduled by the court, a complaint or information may be filed charging the defendant with failure to appear on a citation, a Class "A" misdemeanor pursuant to ORS 153.992. The complaint or information may be accompanied by a warrant for the arrest of the defendant. :

- (1) ~~—The defendant shall forfeit any bail that has been posted on the citation. If no bail, or less than total bail has been posted, the amount of bail not posted shall be entered as a judgment against the defendant that can be collected by the court by any means specified in the Oregon Revised Statutes for collection of a judgment; and~~
- (2) ~~—A complaint or information may be filed, charging the defendant with failure to appear on a citation, a Class "A" misdemeanor pursuant to ORS 153.992. The complaint or information may be accompanied by a warrant for the arrest of the defendant.~~

Section 132. ~~BAIL SCHEDULE AND FINES~~

- (1) ~~—The Board of County Commissioners may by order establish and modify schedules of bail for violations enforceable under this ordinance.~~
- (2) ~~—Until modified by order of the Board, bail shall be \$150 for the first offense and \$250 for the second or any subsequent offense. A second or subsequent offense is a violation of any law enforceable under this ordinance when the defendant has previously forfeited bail or been found guilty of a provision of law enforceable under this ordinance.~~
- (3) ~~—A person accused of committing a violation enforceable under this ordinance who requests a trial must post bail unless bail is expressly waived by the judge.~~
- (4) Any individual, firm, or corporation, whether as principal, agent, or employee, who violates any provision enforceable under this ordinance, shall be punished upon conviction by a fine of not more than the maximum fine provided under ORS 153.018 \$720 for each separate violation. ~~Any individual, firm, or corporation, whether as principal, agent, or employee, who violates any provision enforceable under this ordinance, shall be punished upon conviction by a fine of not more than \$720 per day for a continuing violation.~~
- (5) Failure to comply with a provision enforceable under this ordinance may be counted as a separate violation offense for each day that non-compliance continues. At the discretion of the County, fines may be calculated cumulative for ongoing violations.
- (6) ~~—Forfeiture of bail or payment of a fine on a citation issued under this ordinance does not relieve a violator of the responsibility to remedy the violation.~~

- (7) All violations are designated Class “A” violations pursuant to ORS 153.025.
- (8) The court may impose reasonable court costs in addition to any fine levied by the court.
- (9) If a fine ordered by the court remains unpaid 60 days after the judgment becomes final, the defendant is personally liable to the County for the amount of the unpaid fines, and the total amount of fines, costs, and/or fees owed to the County pursuant to the court’s order shall be recorded as a lien in the County Clerk lien record as authorized by ORS 30.460.
- (10) A court’s order recorded in the County Clerk lien record shall have the same effect and may be enforced as provided in ORS 205.125 and ORS 205.126.

Section 14. ORDER OF ABATEMENT; INJUNCTIVE RELIEF

- (1) A court may on its own motion, and shall upon request of an Authorized Official, order a defendant to abate any violation of which the defendant is found guilty or enters a plea of guilty or no contest. The court shall set a time by which the defendant must abate the violation and may set other conditions on the order of abatement as necessary. Any abatement order shall include authorization for an Authorized Official to enter the property to determine compliance with the code and compliance with an order to abate. Any failure to abate the violation as ordered by the court shall be contempt of court.
- (2) A court shall, upon request of an Authorized Official, authorize the County to enter the property for the purposes of abating the violation using County resources. The County shall be entitled to recover all of its costs that are reasonable and necessary expenses incurred in its successful abatement of a violation, including, but not limited to, the costs, expenses, salaries, and overhead costs of officers, employees, and contractors.
- (3) An Authorized Official may file with the court, with a copy to the defendant, a signed and detailed statement identifying the costs associated with the County’s abatement actions. The court shall award the abatement costs as described unless the court finds the costs or disbursements unreasonable. If the court so finds, the court shall award an amount for the abatement costs that the court deems reasonable. All abatement costs so awarded shall be made a money judgment in favor of the County

- (4) An Authorized Official may record a money judgment as a lien on any affected property and may otherwise pursue recovery of a money judgment in accordance with applicable law. The Authorized Official shall be responsible for, in consultation with County Counsel, ensuring that a satisfaction of judgment and release of lien is executed and filed as appropriate, once any money judgment is paid in full.
- (5) If an Authorized Official has reason to believe that a violation may cause immediate harm to the public health, safety, or welfare, the Authorized Official may, with the assistance of County Counsel, institute a complaint in the Yamhill County Circuit Court for injunctive relief, a writ of assistance, a receivership order, or other appropriate proceedings to temporarily or permanently prevent and/or enjoin the violation.
- (6) The remedies provided in this section are in addition to all other remedies provided by law.

Section 153. ~~DISPOSITION OF FORFEITED BAIL AND FINE MONEY RECEIVED~~

In accordance with ORS 203:065(4), fines and costs recovered by the County and bail amounts forfeited shall be paid to the clerk of the circuit court. The clerk shall deduct the court costs in the proceedings and pay the remainder to the County Treasurer treasurer of the county. The Treasurer shall pay these sums to the Department of Planning and Development.

Section 164. OTHER REMEDIES PRESERVED

Nothing in this ordinance is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this ordinance. The Board, eCounty eCounsel, Ddistrict Aattorney, or any person whose interest is or maybe affected by violation of a provision enforceable under this ordinance may take whatever legal or equitable action is necessary to abate a nuisance or seek damages regardless of whether an action has been commenced under this ordinance.

Section 15 ~~HEARINGS PROCEDURE~~

- ~~(10) The criminal procedure laws of the State of Oregon relating to a violation as described in ORS 161.505 and 161.565 shall apply to violation of a provision enforceable under this ordinance unless provided otherwise in this ordinance.~~
- ~~(11) The hearing on any violation shall be by the court without a jury.~~
- ~~(12) The hearing shall not commence until the expiration of seven days from the date of citation for the violation unless the defendant waives the 7 day period.~~
- ~~(13) The county shall have the burden of proof of the alleged violation by a~~

~~preponderance of the evidence.~~

- ~~(14) The pretrial discovery rules in ORS 153 shall apply. As used in ORS 153, the terms “District Attorney” and “Prosecuting Attorney” shall include the Yamhill County Counsel and Assistant County Counsel for violations prosecuted under this ordinance.~~
- ~~(15) The defendant may not be required to be a witness in the hearing.~~
- ~~(16) Proof of a culpable mental state is not an element of a violation unless expressly provided in the ordinance alleged to have been violated.~~

Section 176. INTERGOVERNMENTAL AGREEMENTS

The Board of Commissioners may enter into intergovernmental agreement with a city or cities in Yamhill County to further the purposes of this ordinance. An agreement under this section shall be in accordance with ORS Chapter 190.

Section 187. ESTABLISHMENT OF RULES

The ~~Planning Director~~ County Administrator may establish procedures to carry out this ordinance.