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YAMHILL COUNTY, OREGON
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CHARLES STERN
COUNTY CLERK
Deputy

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

87-377

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance)
 Providing for the Enforcement of)
 County Solid Waste, Land Divi-)
 sion and Land Use Ordinances,) ORDINANCE 448
 State Subsurface Sewage Disposal)
 Regulations and State and County)
 Building and Structural Codes and)
 Ordinances; and Declaring an)
 Emergency to Exist)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in regular session on July 1, 1987, Commissioners David E. Bishop, Ted Lopuszynski, and Donald D. Porter being present.

WHEREAS, violations of county solid waste, land division and land use ordinances, state subsurface sewage disposal regulations, and state and county building and structural codes and ordinances threaten the health, safety, and welfare of Yamhill County citizens; and

WHEREAS, the above mentioned ordinances and regulations are currently enforced through injunction and other procedures that are slow, cumbersome and expensive; and

WHEREAS, a citation ordinance would provide a more efficient method of notifying individuals of possible statutory violations and of preventing or insuring correction of dangerous or otherwise illegal conditions; and

WHEREAS, duly noticed hearing was held on this matter on July 1, 1987; NOW, THEREFORE,

The Board of Commissioners of Yamhill County ordains as follows:

Section 1. Title. This ordinance may be cited as the "Yamhill County Citation Ordinance 448".

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.

Section 3. Authority. This ordinance is adopted under authority of ORS 203.035. The enforcement of county ordinances is authorized by ORS 203.065, and the issuance of citations by ORS 133.045 to 133.080. The county is further and more specifically authorized as follows:

- (1) To enforce solid waste management laws and ordinances by ORS 459.085;
- (2) To enforce land division and land use ordinances by ORS Chapters 92, 197, and 215;
- (3) To enforce Oregon Environmental Quality Commission and statutory subsurface sewage disposal regulations by ORS 454.640;
- (4) To enforce building codes and other structural codes by ORS 456.775 and 456.880; and
- (5) By other provisions of law not enumerated herein.

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 Collection and Disposal Ordinance, as amended by Ordinances 154, 192, 259 and 350;
- (2) Yamhill County Land Division Ordinance, No. 205, 1979;
- (3) Yamhill County Zoning Ordinance, No. 310, 1982, as amended by Ordinances 331, 408, 409, 412, 426, 436, and 444;
- (4) ORS Chapter 454, as applicable, and Oregon Administrative Rules Chapter 340, Division 71;
- (5) Yamhill County Building, Mechanical, Plumbing and Electrical Ordinance 446; and

- (6) All amendments to the ordinances listed in this section made subsequent to the adoption of this ordinance.

Section 5. Persons Authorized to Issue Citations. The following persons are authorized to issue citations under this ordinance:

- (1) The director of the Yamhill County Department of Planning and Development or the director's designee; or
- (2) The Yamhill County Sheriff or a deputy of the Yamhill County Sheriff's Department.

Section 6. Issuance of Warnings.

- (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.
- (2) 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.
- (3) A warning notice shall include:
 - (a) A brief description of the nature of the violation;
 - (b) The legal provision or provisions alleged to be violated;
 - (c) The date and time at which the violation is alleged to have occurred, or if it is a continuing violation, a statement to that effect and the date the violation was first observed;
 - (d) The name of the person, department, or office to contact regarding the violation;
 - (e) The name of the person issuing the warning;
 - (f) The date the warning was issued;
 - (g) A statement that failure to correct the alleged violation or to contact the appropriate county office within a specified time may result in issuance of a citation to appear in district court;
 - (h) A statement that if a citation is issued, payment of a fine or bail does not relieve a violator of the responsibility to remedy the violation; and

- (i) The maximum penalty that may be assessed if a citation is issued for the violation and a finding of guilty is entered.

Section 7. Citation Form and Content.

- (1) A citation conforming to the requirements of this section shall be used for all violations enforceable under this ordinance committed in the presence of the complainant and occurring in the unincorporated areas of Yamhill County, or in any area covered by an intergovernmental agreement established under Section 16 of this ordinance.
- (2) The citation shall consist of the following four parts and any additional parts inserted for administrative use:
 - (a) The complaint;
 - (b) The department or Yamhill County Sheriff's record of violation;
 - (c) The county counsel or district attorney record of violation; and
 - (d) The summons.
- (3) Each part shall contain the following information or blanks for entry of information:
 - (a) Name of the court and the court's docket or file number;
 - (b) Name of the person cited;
 - (c) The ordinance, statute, or regulation violated;
 - (d) A brief description of the violation of which the person is charged in a manner that can be readily understood by a person making a reasonable effort to do so;
 - (e) The date and time at which the violation is alleged to have occurred, or if it is a continuing violation, a statement to that effect and the date the violation was first observed by the complainant.
 - (f) The place at which the violation is alleged to have occurred.
 - (g) The date on which the citation was issued;
 - (h) The name of the complainant;

- (i) The time and place where the person cited is to appear in court;
 - (j) The bail, if any, fixed for the violation; and
 - (k) The method of service and certification that service has been made. If service is made by certified mail, return receipt requested, it shall be so stated on the complaint and the required certification of service may be made upon receipt of the "return receipt" and after the filing of the complaint. Service by certified mail shall be as specified in Section 8 of this ordinance.
- (4) (a) The complaint shall contain a certification by the complainant that the complainant has reasonable grounds to believe, and does believe, that the person cited committed a violation enforceable under this ordinance. If made by a person not listed in Section 5 of this ordinance, the certification shall be made before a Yamhill County District or Circuit Court Judge, Clerk, or Deputy Court Clerk, and entered in the record.
 - (b) A certificate conforming to this subsection shall be deemed equivalent to a sworn complaint.
- (5) The reverse side of the complaint shall contain the court record and shall substantially conform to the reverse side of other uniform complaints used in district court, or shall be as directed by the district court.
 - (6) The summons shall notify the person cited that the complaint will be filed in the District Court of the State of Oregon for the County of Yamhill.
 - (7) The reverse side of the summons shall contain the following information:

READ CAREFULLY

You have been charged with a violation of a Yamhill County ordinance, state statute, or regulation as stated on the front of this summons. You MUST do ONE of the following:

- 1. Appear in Court at the time when this summons requires you to appear and request a hearing. The Court will then set a time for a hearing, OR

2. Mail to the Court this Summons, together with a check or money order in the amount of the bail indicated on the other side of this Summons and tell the Court you request a hearing. THIS SUMMONS AND THE BAIL MUST REACH THE COURT BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR IN COURT. If you don't want a hearing, but wish to explain your side, send your explanation with the Summons and bail. The Court will then consider your explanation and may forfeit your bail or part of it on the basis of your explanation and what the authorized official tells the Court, OR

3. Sign the plea of guilty below and send this Summons to the Court, together with check or money order in the amount of bail indicated on the other side of this Summons. THIS SUMMONS AND THE BAIL MUST REACH THE COURT BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR IN COURT. NOTE: If you have already given bail or other security for your appearance, proceed as mentioned above, but do not send in any additional sum as bail.

FORFEITURE OF BAIL OR PAYMENT OF A FINE FOR THIS CITATION DOES NOT RELIEVE A VIOLATOR OF THE RESPONSIBILITY TO REMEDY THE VIOLATION. FAILURE TO REMEDY A VIOLATION PRIOR TO THE COURT APPEARANCE DATE STATED IN THIS CITATION MAY CONSTITUTE A CONTINUING VIOLATION AND MAY GIVE RISE TO ISSUANCE OF ADDITIONAL CITATIONS.

APPEARANCE, PLEA OF GUILTY, AND WAIVER

I, the undersigned, do hereby enter my appearance on the complaint of the violation charged on the other side of this Summons. I have been informed of my right to a hearing, that my signature to this plea of guilty will have the same force and effect as a judgment of the court. I do hereby PLEAD GUILTY to the violation as charged, WAIVE my right to a HEARING by the court, and agree to pay the penalty prescribed for my violation. I understand that my agreement to pay a fine or forfeit bail does not relieve me of my responsibility to remedy the violation charged.

(Defendant's Name)

(Defendant's Address)

MAIL YOUR REMITTANCE TO:

Yamhill County District Court
 Yamhill County Courthouse
 5th and Evans Streets
 McMinnville, Oregon 97128

NOTICE

IF YOU FAIL TO MAKE AN APPEARANCE THROUGH ONE OF THE THREE FOREGOING PROCEDURES, OR FAIL TO APPEAR FOR A HEARING AT THE TIME SET BY THE COURT, THE COURT IS EMPOWERED TO DECLARE YOU IN DEFAULT ON THE COMPLAINT. IN THE EVENT OF A DEFAULT, OR FAILURE TO PAY A FINE PURSUANT TO COURT ORDER UPON CONVICTION OF A VIOLATION, THE COURT MAY AUTHORIZE THE FOLLOWING PROCEDURES TO SATISFY THE UNPAID FINE OR BAIL.

1. ATTACHMENT OF CHECKING OR SAVINGS ACCOUNT.
2. GARNISHMENT OF WAGES.
3. SEIZURE OF PERSONAL PROPERTY.
4. OTHER LEGAL OR EQUITABLE RELIEF AS PROVIDED BY LAW.

(8) An error in transcribing information into the blanks provided in the citation 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 with notice to the defendant. 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.

(9) The court may amend a citation in its discretion.

Section 8. Service of Citation. An authorized official shall serve a person cited as follows:

- (1) Personally;
- (2) 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
- (3) 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.

Section 9. Prosecution. The Yamhill County Counsel or Yamhill County District Attorney shall have authority to prosecute a person cited for committing a violation enforceable under this ordinance.

Section 10. Appearance by Defendant

- (1) The defendant shall either appear in court at the time indicated in the summons, 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.
- (2) 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.
- (3) If the defendant requests a hearing, the court shall fix a date and time for a hearing. Unless notice is waived, the court shall mail to defendant a notice of the date and time of the hearing at least five days in advance. 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. Failure of Defendant to Appear. If a person cited and notified of a court appearance as provided in this ordinance fails to appear at either the original appearance noticed on the summons or at a subsequent hearing scheduled by the court:

- (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. The complaint or information may be accompanied by a warrant for the arrest of the defendant.

Section 12. Bail Schedules 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 \$100 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 \$500 for each separate offense and of not more than \$1,000 for a continuing offense. Failure to comply with a provision enforceable under this ordinance may be counted as a separate offense for each day that non-compliance continues.
- (5) 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.
- (6) The court may impose reasonable court costs in addition to any fine levied by the court.

Section 13. Disposition of Forfeited Bail and Fine Money

Received. In accordance with ORS 203.065(4), fines and costs recovered and bail amounts forfeited shall be paid to the clerk of the district court. The clerk shall deduct the court costs in the proceedings and pay the remainder to the treasurer of the county for the county general fund.

Section 14. 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, county counsel, district attorney, or any person whose interest is or may be affected by violation of a provision enforceable under this ordinance may take whatever legal or equitable action is necessary to abate a nuisance or

remedy damages regardless of whether an action has been commenced under this ordinance.

Section 15. Hearings Procedure.

- (1) 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.
- (2) The hearing on any violation shall be by the court without a jury.
- (3) 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.
- (4) The county shall have the burden of proof of the alleged violation by a preponderance of the evidence.
- (5) The pretrial discovery rules in ORS 135.805 to 135.873 shall apply. As used in ORS 135.805 to 135.873, "District Attorney" shall include the Yamhill County Counsel for violations prosecuted by the county counsel under this ordinance.
- (6) The defendant may not be required to be a witness in the hearing.
- (7) 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 16. 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 17. Establishment of Rules. The planning director may by rule or policy statement establish procedures to carry out this ordinance.

Section 18. Separability Clause. If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this ordinance is found to be invalid or unconstitutional by a court of competent jurisdiction, that portion of the ordinance shall be deemed separate and distinct, and the remainder of this ordinance shall continue in full force and effect.

Section 19. Emergency Clause. This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, shall become effective on passage.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk



David E. Bishop
Chairman DAVID E. BISHOP

By: *Elaine Pearcey*
Deputy ELAINE PEARCEY

Ted Lopuszynski
Commissioner TED LOPUSZYNSKI

APPROVED AS TO FORM BY:

Timothy S. Sadlo
TIMOTHY S. SADLO
Assistant County Counsel

Donald D. Porter
Commissioner DONALD D. PORTER