

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 an Ordinance Providing for the Enforcement)
of County Solid Waste, Land Division and Land Use)
Ordinances, State Sewage Disposal Regulations and State and) ORDINANCE 755
County Building and Structural Codes and Ordinances; and)
Declaring an Emergency; Effective on Passage.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on March 9, 2005, commissioners Mary P. Stern, Leslie Lewis and Kathy George being present.

THE BOARD finds that it is appropriate to amend the County's "Citation Ordinance," no. 448 as amended, to provide additional protections for the public, and to conform with current law. NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

Section 1. Repeal of Citation Ordinance. The "Citation Ordinance," Ordinance 448 as modified by Ordinances 574, 619, and 663, is hereby repealed and replaced with the language contained herein.

Section 2. Severability. 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 3. Effective date; emergency clause. The first and second readings of this ordinance were made March 9, 2005. To carry out the intent of this ordinance an emergency is hereby declared to exist. In accordance with ORS 203.045(4) this ordinance shall take effect upon passage.

DONE at McMinnville, Oregon on March 9, 2005.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk

Mary P. Stern
Chair MARY P. STERN

By: *Anne Britt*
Deputy ANNE BRITT

Leslie Lewis
Commissioner LESLIE LEWIS



FORM APPROVED BY:

Rick Sanai
RICK SANAI
Assistant Yamhill County Counsel

Kathy George
Commissioner KATHY GEORGE
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Section 1. TITLE

This ordinance may be cited as the “Yamhill County 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.

Section 3. AUTHORITY

This ordinance is adopted under authority of ORS 203.035. The enforcement of county 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 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 Ordinance, 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 446.

- (6) Yamhill County Ordinance 763 (“General Provisions for Use, Construction and Installations in Yamhill County Public Road Rights of Way”) 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, No. 619.
- (9) 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

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 any deputy of the Yamhill County Sheriff’s Department, or any other person designated as an “enforcement officer” under ORS 153.005.

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

- (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.
- (1) 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.

Section 7. CITATION FORM AND CONTENT

- (1) Citations shall be in the form described by ORS 153.
- (2) 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. 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

An authorized official shall serve a person cited as follows:

- (1) Personally; or
- (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.
- (4) 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 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. 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 pursuant to ORS 153.992. The complaint or information may be accompanied by a warrant for the arrest of the defendant.

Section 12. 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 \$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. 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) All violations are designated Class "A" violations pursuant to ORS 153.025.
- (7) 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 circuit court. The clerk shall deduct the court costs in the proceedings and

pay the remainder to the treasurer of the county. The treasurer shall pay these sums to the Department of Planning and Development.

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 seek 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 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.
- (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 establish procedures to carry out this ordinance.