

COPY

BEFORE THE BOARD OF COUNTY COMMISSIONERS

IN AND FOR THE COUNTY OF CURRY, OREGON

In the Matter of an Amendment)
to the Curry County Code) ORDINANCE NO. 09-03
Regarding Article Ten Division)
One-Enforcement)

The Board of Curry County Commissioners ordains as follows:

SECTION 1 TITLE

This ordinance shall be known as Ordinance 09-03, an ordinance amending the Curry County Code.

SECTION 2 AUTHORITY

This ordinance is enacted pursuant to ORS 203.035, ORS 153.042(1) and ORS 153.030.

SECTION 3 FINDINGS

- A. Section 10.01.090 of the Curry County Code (Ordinance 96-7 as amended) states that with a few exceptions specifically enumerated, the County will follow the violation procedures outlined in ORS 153.005 to ORS 153.145.
- B. ORS 153.042(1) provides that "Except ... as otherwise provided by law, an enforcement officer may issue a violation only if the conduct alleged to constitute a violation takes place in the presence of the enforcement officer and the enforcement officer has reasonable grounds to believe that the conduct constitutes a violation.
- C. ORS 153.030(8) states "Nothing in ORS 153.042 affects the authority of any political subdivision of this state to provide for issuance of citations for violation of offenses created by ordinance on the same basis as the political subdivision could under the law in effect immediately before January 1, 2000.

- D. Immediately before January 1, 2000, the law requiring that a citation can be issued only if the alleged violation takes place "in the presence of the officer" was not in existence.
- E. It has become very difficult to impossible to pursue some alleged County violations (for example, dog nuisance violations) because the alleged violations almost never occur in the presence of the enforcement officer.
- F. The County Code needs to be amended to allow more flexibility in the issuance of citations. This would have no bearing on the issuance of citations for violations of State Law which will continue to be governed strictly by ORS Chapter 153.
- G. The County Code also needs to be amended to streamline the process on decisions not to take enforcement action (Section 10.01.150(3)) by eliminating the need for extra and unnecessary paperwork.

SECTION IV REPEALER

The current subsection 10.01.150(3) is repealed.

SECTION V ADOPTION

Attachment "A", a new subsection 10.01.090(2)(d), and a new Subsection 10.01.150(3) is adopted as an amendment to the Curry County Code (Ordinance 96-7) as amended.

SECTION VI SEVERANCE CLAUSE

If any section, provision, clause or paragraph of the Ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of the Ordinance. It is expressly declared that every other section, subsection, provision, clause or paragraph of this Ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION VI EMERGENCY CLAUSE

The Board of Commissioners for the County of Curry deems this Ordinance necessary for the immediate preservation and protection of the public peace, health, safety and general welfare for Curry County and

declares an emergency exists, and this Ordinance shall be in full force and effect upon its passage.

DATED this 6th day of July, 2009.

BOARD OF CURRY COUNTY COMMISSIONERS

Bill Waddle

Bill Waddle, Chair

George Rhodes

George Rhodes, Vice Chair

Georgia Yee Nowlin

Georgia Yee Nowlin, Commissioner

Attest:

Ronda Eisman

Recording Secretary

Approved as to Form:

M. Gerard Herbage

**M. Gerard Herbage
Curry County Legal Counsel**

First Reading: 6/15/09
Second Reading: 7/6/09
Emergency Adoption: Yes
Effective Date: 7/6/09

ATTACHMENT "A"

SECTION 10.01.090(2)(d)

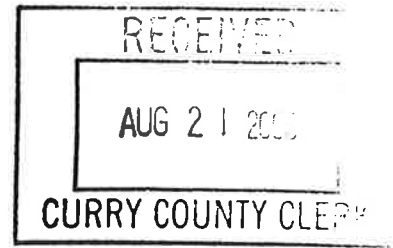
(2) The violation procedures contained in ORS 153.005 to 153.145, as subsequently amended are hereby incorporated into this division by reference and are adopted as a method for the enforcement of County ordinances and other laws subject to the following:

...

(d) The requirement that an enforcement officer may issue a violation only if the conduct alleged to constitute a violation takes place in the presence of the enforcement officer is removed and stricken.

SECTION 10.01.150(3)

(3) When any enforcement officer receives information from any source that leads the enforcement officer to believe an offense declared to be a violation by this division has occurred, or is occurring, or a violation of any other laws whatsoever has occurred, or is occurring, the enforcement officer or the County is authorized by law to enforce by any method. The enforcement officer shall make a determination, considering the severity of the alleged violation, the departmental and county staff, time and resources necessary, and the possibility of success, whether enforcement action is warranted and what type of enforcement action should be undertaken.



IN THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON

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In the Matter of An Amendment to the)
Curry County Code Repealing and)
Replacing Article Ten Division One)
Regarding Enforcement)

ORDINANCE NO. 00-04

SECTION 1 TITLE

This Ordinance shall be known as Ordinance 00-04, an ordinance amending the Curry County Code.

SECTION 2 PURPOSE

The purpose of this Ordinance is to amend Article Ten Division One of Ordinance 96-7 which is outdated and in need of revision.

SECTION 3 REPEALER

Article Ten Division One of the current Code is hereby repealed in its entirety.

SECTION 4 ADOPTION

Exhibit "A", attached hereto and incorporated herein by this reference, is adopted as an amendment to the Curry County Code.

SECTION 5 SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this Ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of this Ordinance; and it is hereby expressly declared that every other section, subsection, provision, clause or paragraph of this Ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 6 EMERGENCY CLAUSE: EFFECTIVE DATE

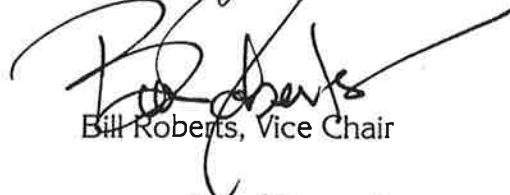
This Ordinance, being necessary for the health, safety and welfare of the residents of Curry County, and an emergency having been unanimously declared to exist, shall become

effective upon its passage.

ADOPTED this 21 day of August, 2000.

BOARD OF CURRY COUNTY COMMISSIONERS


Cheryl Thorp, Chair

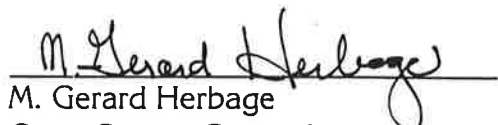

Bill Roberts, Vice Chair


Lloyd Olds, Commissioner

Attest:


Recording Secretary

Approved as to Form:


M. Gerard Herbage
Curry County Counsel

First Reading: 8-7-00
Second Reading: 8-21-00
Emergency Adoption: _____
Effective Date: 8-21-2000

EXHIBIT "A"

ARTICLE TEN - ENFORCEMENT

DIVISION ONE

ENFORCEMENT OF THE CURRY COUNTY CODE

SECTION 10.01.010 RESERVED

SECTION 10.01.020 APPLICATION

This division applies throughout Curry County, Oregon, except that it shall not apply within the limits of any incorporated city unless consent to its application is given by the city governing body or the electors of the city.

SECTION 10.01.030 FINDINGS

- (1) The Board finds that violations of County ordinances and other laws threaten the health, safety and welfare of Curry County citizens; and
- (2) The Board finds that County ordinances and other laws are currently enforced by the County through injunction and other procedures that are slow, cumbersome and expensive; and
- (3) The Board further finds that an enforcement ordinance would provide a more efficient method of notifying individuals of possible violations and of preventing or insuring correction of dangerous or otherwise illegal conditions.

SECTION 10.01.040 PURPOSE

The purpose of this division is to provide a procedure for enforcing certain statutes, administrative rules, ordinances, orders and resolutions, and provisions thereof. The enforcement procedures set forth in this division are permissive, not mandatory, and are within the discretion of the authorized persons designated herein and the Board of County Commissioners.

SECTION 10.01.050 AUTHORITY

This division is adopted generally under the authority granted to counties under ORS 203.035. The enforcement of county ordinances is authorized and governed generally by ORS 30.310, 30.315, 203.065, 203.145 and 203.810. Violation procedures and the issuance of citations for violations are authorized and governed generally by ORS 153.005 to 153.145. In addition, the County is further

and more specifically authorized as follows:

- (1) To adopt and enforce a comprehensive plan, zoning ordinance and a subdivision and partitioning ordinance pursuant to ORS Chapters 92, 197 and 215, particularly ORS 92.010 to 92.190, 92.990(1), 197.175, 215.050, 215.110, 215.130, 215.185, 215.190, 215.223 and 215.503.
- (2) To adopt and enforce a solid waste management ordinance pursuant to ORS 459.005 to 459.108, particularly 459.085, 459.205 to 459.385, 459.992 and 459.995.
- (3) To enforce Oregon Environmental Quality Commission and statutory subsurface sewage disposal regulations under ORS Chapter 454.
- (4) To exercise jurisdiction over County roads, local access roads and trails within the County pursuant to ORS Chapter 368, particularly ORS 368.016, 368.021 and 368.031, to abate road hazards pursuant to ORS 368.251 to 368.281, to penalize violations of road statutes pursuant to ORS 368.990 and to enact ordinances superseding certain of the road statutes pursuant to ORS 368.011.
- (5) To control, restrict or prevent the placement, building or construction on the right of way of any County road, any approach road, structure, pipeline, ditch, cable, wire or any other facility, thing or appurtenance or any change in the manner of using such approach road pursuant to ORS 374.305 to 374.330, 374.420 to 374.430 and 374.990 and to adopt reasonable rules and regulations related thereto pursuant to ORS 374.310.
- (6) To adopt and enforce ordinances and regulations relating to the control of dogs pursuant to ORS 609.015 and to enact a dog control program pursuant to ORS 609.010 to 609.190 and 609.990.
- (7) To adopt and enforce an ambulance service ordinance and an ambulance service plan pursuant to ORS 682.205 and 682.275 and OAR 333-260-0000 through 333-260-0070.
- (8) To enforce the Building Codes.
- (9) By other provisions of law not enumerated herein.

SECTION 10.01.060 DEFINITIONS

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

- (1) "Board" means the Board of County Commissioners for Curry County, Oregon.
- (2) "Enforcement Officer" means the County Sheriff or a deputy sheriff or a person designated by Board order to be an enforcement officer and to issue citations for violations under this division. Such authority may be revoked, by order, at any time and shall be automatically terminated when

the person ceases to hold a position for which the authority was granted.

- (3) "Laws" means statutes, administrative rules, ordinances, orders, resolutions and provisions thereof.
- (4) "Person" means the definition it has under ORS 161.015(5) or its successor provisions.

SECTION 10.01.070 STATUTES, ADMINISTRATIVE RULES, ORDINANCES, ORDERS AND RESOLUTIONS, AND PROVISIONS THEREOF, ENFORCEABLE UNDER THIS ORDINANCE

The following laws are enforceable under this division:

- (1) Any Curry County ordinance (whether in this code or not) for which specific conduct is either required or prohibited may be enforced by a citation issued under authority of this division.
- (2) The ordinances and laws referenced in Section 10.01.050.
- (3) All amendments to the laws listed in this section enacted subsequent to the adoption of this division, unless otherwise expressly stated in the amendment, or unless the context of the amendment clearly implies otherwise.
- (4) Any other County ordinance, order or resolution, or provision thereof, which specifically states it is enforceable under this division.
- (5) The Board of Commissioners may, by written order, designate other statutes, administrative rules, orders or resolutions to be enforceable under this division.

SECTION 10.01.080 NUISANCE AND VIOLATION DECLARED

Violation of any laws enforceable under this division is unlawful and an offense. Such an offense is hereby declared to be a nuisance and a violation, unless otherwise provided, and is subject to the penalties provided for in this division.

SECTION 10.01.090 VIOLATION PROCEDURE

- (1) Except as specifically provided otherwise by this division, including Section 10.01.140, enforcement of the laws declared to be violations under this division shall follow the procedure for the enforcement of violations set forth by ORS 153.005 to 153.145.
- (2) The violation procedures contained in ORS 153.005 to 153.145, as subsequently amended, are hereby incorporated into this division by reference and are adopted as a method for the enforcement of County ordinances and other laws subject to the following:

(a) Except as otherwise provided below, all violations under this division are Class A violations with corresponding maximum penalties as set forth in ORS 153.018. Where State Law or County Ordinance provides for a greater or lesser penalty for a specifically identified violation than the maximum penalty in ORS 153.018, that greater or lesser penalty shall apply.

(b) Initiation of violation procedures under this division by a private party (non enforcement officer) shall not be permitted pursuant to ORS 153.058(7)(8).

(c) Incorporation of ORS 153.005 to 153.145 shall not limit the use of such other enforcement procedures as provided by law.

SECTION 10.01.100 PERSONS AUTHORIZED TO ISSUE AND PROSECUTE CITATIONS

(1) Only enforcement officers may issue citations under this ordinance.

(2) Either the District Attorney (or deputy district attorney) or County Legal Counsel may appear in violations proceedings to the extent permitted by ORS 153.076(6).

SECTION 10.01.110 ISSUANCE OF WARNINGS

(1) An enforcement officer may, in lieu of issuing a citation, issue a written warning for the commission of any offense declared to be a violation under this division.

(2) If an enforcement officer issues a written warning, it shall be in writing and shall be delivered to the alleged offender in person or in any other manner reasonably calculated to give notice of the offense, including but not limited to regular mail.

(3) A written warning may include the following information:

(a) the name of the person warned

(b) the date on which the warning was issued

(c) the name of the person issuing the warning and the name of Curry County in whose name the warning was issued

(d) the division or other law alleged to be violated

(e) a statement or designation of the alleged violation in such a manner as can be readily understood by a person making a reasonable effort to do so

(f) the date, time and place 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

person issuing the warning

(g) the name of the person, department or office to contact for information concerning the warning

(h) a deadline for contacting the person, department or office noted

(i) a statement that failure to correct the alleged violation or to contact the noted person, department or office by the deadline may result in issuance of a citation to appear in court

(j) a statement that if a citation is issued, payment of a fine does not relieve a violator of the responsibility to remedy the violation

(k) the maximum fine that may be imposed for the violation if a citation is issued and the person cited is found guilty.

SECTION 10.01.120 DISPOSITION OF FINES

Fines received under this division shall be paid to the Clerk of the Court. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the Curry County Treasurer for the general fund of the County.

SECTION 10.01.130 RESPONSIBILITY TO REMEDY

Payment of a fine on a citation issued under this division does not relieve an offender of the responsibility to remedy the violation and such offender may be subject to additional enforcement as provided by this division.

SECTION 10.01.140 OTHER REMEDIES PRESERVED

In lieu of the violation procedure set forth in this division, or in addition to it, any and all other remedies provided by the laws listed in Sections 10.01.050 and 10.01.070 to abate or enjoin acts or conditions declared by this division to be nuisances, or to otherwise enforce the laws enforceable under this division are preserved and may be utilized by an enforcement officer, the Board of County Commissioners and any authorized prosecutor to seek compliance with the law and to remedy or penalize violations. The County also reserves the right to utilize remedies provided elsewhere in this county code or by other law.

SECTION 10.01.150 DECISIONS NOT TO TAKE ENFORCEMENT ACTION

(1) Enforcement of those offenses declared to be violations by this division utilizing the violation procedures set out in this division, by an enforcement officer as defined in Section 10.01.060(2) or by the County is permissive and not mandatory.

(2) Except to the extent specifically, clearly and expressly stated otherwise in the relevant laws the enforcement by any other means authorized by law including, but not limited to mandamus, injunctive and other equitable proceedings, is also permissive and not mandatory.

(3) When any enforcement officer receives information from any source that leads the enforcement officer to believe an offense declared to be a violation by this division has occurred, or is occurring, or a violation of any other laws, whatsoever has occurred, or is occurring, that the enforcement officer or the County is authorized by law to enforce by any method, the enforcement officer shall make a determination, considering the severity of the alleged violation, the departmental and county or city staff, time and resources necessary, and the possibility of success, whether enforcement action is warranted and what type of enforcement action should be undertaken. If that information is brought to the enforcement officer's attention by formal written complaint and the enforcement officer determines that enforcement is not warranted, the enforcement officer shall promptly mail or deliver written notice to the complainant of the decision not to take enforcement action.

(4) A decision made not to take enforcement action is declared to be an act of discretion as described by ORS 30.265(3)(c).

(5) Notwithstanding any decision by an enforcement officer or the County not to take enforcement action, any person adversely affected by an offense which is or may be a violation under this division shall retain any authority and jurisdiction given under state law or common law to pursue private civil remedies, whether legal or equitable, including nuisance abatement or injunctive relief, against the alleged offender.

SECTION 10.01.160 INTERGOVERNMENTAL AGREEMENTS

The Board may enter into intergovernmental agreements with any city or cities in Curry County and with any administrative agency of the State of Oregon to further the purposes of this division. An agreement under this section shall be in accordance with ORS Chapter 190. To the extent that a city consents to the application of this division within its limits, references in this division to the County shall be considered reference to the appropriate city.