

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 Adopting the “Yamhill County Septic System Enforcement Code”; Amending the “Yamhill County Code Enforcement Code”; Declaring an Emergency and Setting the Effective Date

ORDINANCE NO. 940

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 6, 2025, Commissioners Kit Johnston, Mary Starrett, and David “Bubba” King being present.

THE BOARD ADOPTS THE FOLLOWING FINDINGS:

WHEREAS, Pursuant to authority granted under ORS 454.725, the County entered into an agreement with the Oregon Department of Environmental Quality to enforce statewide standards and laws of on-site (subsurface or alternative) sewage disposal systems (the “standards & laws”), as provided in the attached Exhibit A; and

WHEREAS, The Board now seeks to adopt a standard set of procedures for enforcing the standards and laws via a public hearing in compliance with ORS 454.605 through 454.775; and

WHEREAS, YCC 1.10, the *Yamhill County Code Enforcement Code*, requires amending to clarify that the standards and laws will be enforced via the new *Yamhill County Septic System Enforcement Code*; and now, therefore

THE BOARD ORDAINS AS FOLLOWS:

Section 1. Adoption of the “Yamhill County Septic System Enforcement Code”. The Yamhill County Septic System Enforcement Code as set forth in Exhibit B, attached hereto and incorporated herein, is hereby approved and adopted.

Section 2. Amendments to the “Yamhill County Code Enforcement Code”. The amendments to the Yamhill County Code Enforcement Code, as provided in Exhibit C, attached hereto and incorporated herein, are hereby approved and adopted.

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 thereto.

Section 4. Emergency Clause; Effective Date. Pursuant to the provisions of ORS 203.045(4)-(9), an emergency has been declared to exist. This Ordinance shall therefore become effective upon passage.

DATED this 6 day of February, 2025, at McMinnville, Oregon.

YAMHILL COUNTY BOARD OF COMMISSIONERS

ATTEST



KERI HINTON
County Clerk

By: Carolina Rook
Deputy CAROLINA ROOK

FORM APPROVED BY:

Jodi Gollehon
JODI GOLLEHON
Assistant Yamhill County Counsel

KIT JOHNSTON
Chair KIT JOHNSTON

AYE NAY
X _____

MARY STARRETT
Commissioner MARY STARRETT

X _____

DAVID KING
Commissioner DAVID "BUBBA" KING

X _____

Approved by the Yamhill County Board of
Commissioners on 02/06/2025
via Board Order 25-036

Amendment to
Memorandum of Agreement
Between

The OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

and the

COUNTY OF YAMHILL

The Memorandum of Agreement between the Department of Environmental Quality and the County of Yamhill, dated May 18, 1981, is hereby amended as follows:

Section 12 of the agreement is deleted in its entirety and the following substituted.

"In accordance with provisions of Chapter 147, Oregon Laws 1981, the County may, consistent with state enforcement and County enabling legislation, enforce Environmental Quality Commission rules for on-site sewage disposal, (presently being OAR 340-71-100 to 340-71-600).

The County shall require that within the County, no person shall construct, alter, repair, extend or connect an on-site sewage disposal system without first obtaining a permit from the County and no person shall operate a new, altered, repaired, extended or reconnected on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion or an Authorization Notice, as appropriate, except that existing systems for which a permit is issued to repair, alter or extend may be allowed to operate pending receipt of the Certificate. Whenever a complaint is received or there are reasonable grounds for believing that any on-site sewage disposal system or part thereof is being constructed, operated or maintained in violation of any EQC rule, the County shall make an inspection. The County shall notify each violator verbally and/or in writing of the violation and shall use its best efforts to persuade the violator to make corrections. After the above actions have been exhausted by the County and if the violator has not complied, the County shall initiate formal enforcement action."

This amendment becomes effective upon signing by Yamhill County.

Department of Environmental Quality

Yamhill County:

William H. Young
William H. Young, Director

Date: NOV 6 1981

Colin Armstrong
Teal Loguszynski
Robin J. Dent

Date: 11-10-81

MEMORANDUM OF AGREEMENT

BETWEEN

THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE
COUNTY OF YAMHILL

Pursuant to authority granted by Oregon Revised Statutes 454.725, this Memorandum of Agreement is made and entered into as of the 18th day of MAY, 19 81, by and between the Department of Environmental Quality of the State of Oregon, acting by and through its Director, hereinafter called the "Department", and the County of Yamhill, acting by and through its County Board of Commissioners, hereinafter called the "County". This Memorandum of Agreement supercedes one entered into by the same parties on JAN. 1st, 19 76.

WITNESSETH:

WHEREAS, the Department and the County are mutually desirous of maintaining a high quality environment and of cooperating with each other for that purpose; and

WHEREAS, the laws of the State of Oregon specify that any person may request an evaluation report on any proposed on-site (subsurface or alternative) sewage disposal system for a single lot, partitioning or subdivision, or on any proposed repair, alteration or extension to an existing on-site sewage disposal system or part thereof; and

WHEREAS, the laws of the State of Oregon specify that no person, without first obtaining a permit therefor, shall construct an on-site sewage disposal system or part thereof, or without first obtaining a Certificate of Satisfactory Completion, shall operate or use an on-site sewage disposal system or part thereof; and

WHEREAS, in order to provide service to applicants as close to home as possible and utilize effectively and efficiently the resources of the Department and County:

NOW THEREFORE, the Department and County agree as follows:

1. The County shall maintain adequate personnel and resources to, and shall, receive and process applications for evaluation reports and permits for all on-site sewage disposal systems proposed for construction, alteration, repair, or connection within the County in accordance with the provisions of ORS 454.605 through ORS 454.780, and OAR 340-71-100 to 71-600, as now or hereafter amended, utilizing procedures approved by the Department. The Department shall maintain adequate personnel and resources to carry out its commitments under this contract. The Department shall supply the County with copies of each revision of the rules and all administrative forms required by the Department, copies of internal management directives, procedural memoranda and recommended administrative forms. The County may print additional copies or order them from the Department.
2. Designated County personnel shall serve as the Agent of the Department, except where the involvement of Department staff is expressly specified in Environmental Quality Commission (hereinafter called "EQC") rules or this Agreement. The Department shall upon request provide interpretive assistance to the County. Any unresolved differences of interpretation of EQC rules or this Agreement between the County and the Department shall be transmitted to the Director of the Department whose decision shall be final.

3. The Department shall issue evaluation reports and permits for experimental systems. The County shall assist applicants for experimental systems and shall assist the Department upon request in evaluation of experimental systems applications. As negotiated outside the scope of this agreement, the County shall assist the Department in monitoring experimental systems.

4. The County shall adopt fee schedules in accordance with ORS 454.745, not to exceed costs for efficiently conducted minimum services. All fees for services provided by the County for on-site systems shall be collected by and shall remain with the County to defray program expenses. All fees for services provided by the Department shall be collected and retained by the Department, to defray program expenses.

In the event the legislature, in the Department's budget process, approves a surcharge for certain on-site systems activities, the County shall collect that surcharge in accordance with the Department's fee surcharge schedule and forward to the Department quarterly.

5. The County shall collect from applicants the required fees pursuant to the County's fee schedule. The County shall keep a complete and accurate record of activities performed and of the fees collected, and quarterly, by the 15th of the succeeding month shall forward to the Department a copy of the record on forms provided by the Department.

6. If the County becomes unable to perform the responsibilities set forth in this Memorandum of Agreement, and the Department assumes all or a portion of these responsibilities, all or an appropriate proportion, as determined between the County and the Department, of the fees collected shall be forwarded to the Department quarterly.
7. Following the receipt of a completed evaluation report application and specified fee, the County shall conduct a site evaluation and issue a report, pursuant to ORS 454-655(6) and 454.755(1)(b) and (3) and OAR 340-71-150, as now or hereafter amended.
8. Following the receipt of a completed application for a permit, the County shall determine if the proposed construction will be in accordance with the rules of the EQC. The County shall issue a permit only if it finds that the proposed construction will be in accordance with the rules of the EQC.
9. The County, following receipt of notification from a permit holder that construction has commenced, shall inspect it in accordance with rules of the EQC.
10. The County shall accept and process applications for evaluations reports on the adequacy of sewage disposal methods for proposed and existing subdivisions within its jurisdiction, and shall prepare such evaluation reports pursuant to ORS 454.755(1)(c) and 92.090(5)(c). The reports shall be made on forms provided by the Department.

11. The County shall evaluate and prepare a report on existing on-site sewage disposal systems in response to appropriate applications for Authorization Notices, pursuant to OAR 340-71-205, as now or hereafter amended.

12. The County shall cooperate with and assist the Department in enforcing compliance with the provisions of ORS 454.605 through ORS 454.755. The County shall require that within the County, no person shall construct, alter, repair, extend or connect an on-site sewage disposal system without first obtaining a permit from the County and no person shall operate a new, altered, repaired, extended or reconnected on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion or an Authorization Notice, as appropriate, except that existing systems for which a permit is issued to repair, alter or extend may be allowed to operate pending receipt of the Certificate. Whenever a complaint is received or there are reasonable grounds for believing that any on-site sewage disposal system or part thereof is being constructed, operated or maintained in violation of any EQC rule, the County shall make an inspection. The County shall notify each violator verbally and/or in writing of the violation and shall use its best efforts to persuade the violator to make corrections. After the above actions have been exhausted by the County and if the violator has not complied, the County shall transmit the entire file and evidence of the violation to the appropriate regional office of the Department. The County shall cooperate in assisting the Department in reinforcing the local effort with formal and legal

enforcement action by making all inspections, reports, hand delivery of notices and other actions which are requested by the Department.

For clarification, DEQ will accept enforcement referrals for installer violations, improper construction methods or materials, and failure of existing systems. DEQ will not accept enforcement referrals for situations which also violate local land use, planning, zoning, and/or building ordinances until such violations have been resolved by the County.

In the event future legislation provides for county administration of enforcement activities, this agreement may be amended to reflect negotiated county enforcement options.

13. The County shall maintain documentation of noncompliance of persons performing Sewage Disposal Services and shall transmit said documentation to the Department.
14. The County shall inspect upon request of the Department or Licensee, pumping equipment of persons licensed, or proposed to be licensed, to perform Sewage Disposal Services under ORS 454.695, and engaged, or to be engaged, in pumping out septic tanks, other treatment facilities or nonwater-carried waste disposal facilities.
15. The County and the Department shall negotiate appropriate Rural Area zoning designations, pursuant to EQC rules for County administration of rural area variances.

If in the negotiations the County does not to the Director's satisfaction:

- a. Designate appropriate rural areas or
 - b. Have available manpower or staff meeting minimum educational and experience standards to conduct the program;
- then the Rural Areas variance program will not be an option for the County.

16. The County shall assist those making application and upon request by the Department shall review and make recommendation on applications for variances from the on-site sewage disposal rules, and shall participate in inspections and hearings as requested by the Department.

If the Department grants the variance, the County shall issue the permit and shall conduct the construction completion inspection and issue the Certificate of Satisfactory Completion. The Department shall reimburse the County on a quarterly basis the fee for a construction permit contained in OAR 340-71-140 per granted variance to assist the County with defraying County costs in performing the duties required by these provisions.

17. Program entry level personnel hired by the County after July 1, 1981, to perform services under this contract shall meet the minimum educational qualifications for the State of Oregon, Personnel Division classification "Waste Management Specialist" No. C6408; except those personnel employed to do pre-cover inspections only shall meet minimum qualifications agreed to by the Department and the County.

In the event the County is unable to hire personnel with the qualifications of Waste Management Specialist, the Director may authorize hiring of someone who qualifies for registration as a Sanitarian or Sanitarian Trainee under ORS 700, if the County provides a training program to qualify that person for Waste Management Specialist.

18. The County shall notify persons whose application for a site evaluation or construction permit has been denied of the opportunity for Department review of the denial, provided the denial was not based on local land use, zoning, planning, or building ordinances.

Following receipt of a completed application for review, the Department shall conduct the review within 30 days.

19. The Department shall provide required training programs to include at least one (1) annual field workshop in each region of the state; one (1) annual program conference for all personnel in the state to give opportunity to learn from each other and hear from selected speakers; other training programs the Department determines to be necessary. All County program personnel shall attend the annual field workshop and at least one person shall attend the annual program conference.

In addition, the Department shall seek to assure independent training opportunities are available for program personnel to include geology and soils courses at Oregon State University and other institutions of higher learning. The Department encourages the County to establish a budget, to assist County employes in acquiring the above training.

20. The Department shall provide the following program support services to counties, upon request:
- a. Rule interpretation.
 - b. System Plan Review.
 - c. Technical assistance.
21. The Department shall perform County program evaluations and provide reports as follows:
- a. Periodically - annually, during the month of April the Willamette Valley Regional Office shall conduct a program evaluation and provide Yamhill County with a written report within 30 days. In the event significant improvements or program modifications are needed to comply with Oregon Administrative Rules, Chapter 340, Division 71 or this memorandum of agreement, the County shall provide a written response within 30 days upon notification from the Department and provide a time schedule to implement such improvements or modifications.
 - b. Formal program audit on a biennial basis.
22. The Department shall evaluate materials used in on-site systems within the State of Oregon, and provide a list of approved materials to the County.
23. Except for those activities delegated below to the County under OAR 340-71-120, as now or hereafter amended, the Department shall accept and process applications for large systems site evaluations

and construction permits for sites within the County. The following activities involving large systems are hereby delegated to the County:

- a. Site evaluation
- b. Construction Permits

24. The Department and County shall cooperate in sanitary surveys intended to document and eliminate health hazards caused by failing on-site systems. During the annual program evaluation, problem areas shall be evaluated and ranked. If manpower allows, priority surveys shall be scheduled.
25. The Department shall license sewage disposal service applicants and provide to the County a list of licensees on an annual basis. The annual list shall be updated by addendum quarterly.
26. The Health Department within Yamhill County is designated as the Agent for purposes of administering the provisions of this Agreement.

This Memorandum of Agreement may be modified in writing by both parties, or it may be terminated by either party upon 30 days written notice to the other party; provided, however, that if either party shall default in the performance of this Memorandum of Agreement, the other party may terminate it upon written notice thereof being given to the defaulting party.

DEPARTMENT OF ENVIRONMENTAL QUALITY
State of Oregon

COUNTY OF YAMHILL

By William H. Young
Director

By Colin Armstrong
Chairman Colin Armstrong

Ted Lopuszynski
Commissioner Ted Lopuszynski

Date 5-20-81

Robin J. Hamblet
Commissioner Robin J. Hamblet

Date 5/13/81

XL41 (1)

YAMHILL COUNTY CODE

TITLE 10: BUILDING AND DEVELOPMENT REGULATION

Chapter 10.50: Yamhill County Septic System Enforcement Code

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LEGISLATIVE HISTORY

SECTION 1 - PURPOSE AND DEFINITIONS

10.50.01.01 Purpose. The purpose of this Chapter is to implement the County's authority to enforce the subsurface sewage disposal program delegated to Yamhill County by the State of Oregon for onsite septic systems.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

10.50.01.02 Specific Definitions. As used in this Chapter:

- a) “**Board**” means the Yamhill County Board of Commissioners.
- b) “**County**” means Yamhill County.
- c) “**DEQ**” means the Oregon Department of Environmental Quality, or designee thereof, or its successor in title as applicable.

- d) **“Enforcement Officer”** means the person or persons designated by the Planning Director as the enforcer of this Chapter.
 - e) **“Planning Director”** means the Yamhill County Planning Department Director.
 - f) **“YCC”** means the Yamhill County Code.
- [ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

SECTION 2 - REGULATION OF COUNTY SEPTIC SYSTEMS

10.50.02.01 Adoption of Statewide Rules and Regulations. Except as specifically provided herein, all administrative rules which are duly existing and adopted by DEQ pursuant to ORS 454.605 through 454.755, including as amended, are hereby adopted as regulations by the County and shall have full force and effect as law in Yamhill County. Violations of this Chapter shall be measured by the technical and other standards found in said rules and regulations.

[ADOPTED VIA ORDINANCE NO. 940 eff 05/01/97; AMENDED VIA ORDINANCE 911 eff 11/05/20]

10.50.02.02 Permits Required. Except as specifically provided in the rules, it is unlawful and a violation of this Chapter to:

- a) Begin construction, installation, or development of any septic system without first obtaining a septic installation or alteration permit from the County;
- b) Place into service, change the use of, or increase the projected daily sewage flow into an existing septic system without obtaining either an authorization notice or an alteration permit, as appropriate, from the County; and/or
- c) Repair a septic system without first obtaining a septic repair permit from the County, except that emergency repairs may be made when sewage is backing up into a dwelling or commercial facility, or when there is a broken sewer pipe and immediate action is necessary, provided that a permit is obtained within three days after the emergency repairs are begun.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

10.50.02.03 Compliance; Prohibited Conduct.

- a) No person shall construct a subsurface sewage disposal system except in compliance with ORS Chapter 454 and rules promulgated thereunder.
- b) No person shall inhabit on or utilize land except in compliance with ORS Chapter 454 and rules promulgated thereunder.
- c) It is unlawful and a violation of this Chapter for any person to:
 - (i) Except where otherwise connected to a municipal sewer system, fail to treat or dispose of any sewage as required by this Chapter;
 - (ii) Discharge untreated or partially treated sewage or septic tank effluent directly or indirectly onto the ground surface or into any public waters;
 - (iii) Connect any plumbing fixture from which wastewater is or may be discharged into any sewage disposal system that has not been approved by the County;
 - (iv) Obstruct, cover, modify the soil covering, or otherwise affect a system replacement area without first obtaining approval from the County;
 - (v) Fail to abandon an on-site system, including a septic tank and system, when required to under the rules or fail to comply with the procedures and requirements for proper abandonment as provided in the rules;
 - (vi) Backfill, cover, connect to, or use, any system without first obtaining a certificate of satisfactory completion of construction, installation, repair, or alteration unless issuance of the certificate has been waived by operation of law;
 - (vii) Fail to meet requirements for satisfactorily complying with any correction notice within the time required;
 - (viii) Use any materials that do not comply with standards for on-site septic systems set forth in this Chapter, or as otherwise designated by DEQ;

- (ix) Falsify or fail to provide any information requested by the County of any applicant for a permit, variance, or hardship relief with the intent to evade or circumvent the procedures or standards established for regulation of on-site systems; and/or
- (x) Fail to comply with the terms or conditions of any permit including the duties imposed on permit holders by the rules.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

SECTION 3 – ENFORCEMENT

10.50.03.01 Authority to Enforce; Investigation; Right of Entry.

- a) The Enforcement Officer is hereby delegated the authority to carry out the provisions of the Chapter, including those available to DEQ under the Oregon Revised Statutes and Oregon Administrative Rules.
- b) The Enforcement Officer shall, upon the written complaint of any person or upon the Enforcement Officer's own initiative, make an investigation to determine whether or not there is a violation of this Chapter.
- c) In making an investigation, the Enforcement Officer shall have the right of entry only in accordance with state and federal law and consistent with the following limitations:
 - (i) Entry may only be done at reasonable hours.
 - (ii) Before entering into any buildings or property, the Enforcement Officer shall first make reasonable efforts to notify the owner or occupant and obtain consent to enter.
 - (iii) In the event that consent to enter into buildings or upon property is not granted, or after reasonable efforts the Enforcement Officer is not able to contact the owner or occupant, the Enforcement Officer may seek an administrative inspection warrant as provided in YCC 1.10.05.
- d) If, after completion of the investigation, the Enforcement Officer determines that a violation of this Chapter exists, the Enforcement Officer shall engage in enforcement procedures pursuant to the provisions of this Chapter.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

10.50.03.02 Notice.

- a) Whenever the County has reasonable grounds for believing that any subsurface sewage disposal system, alternative sewage disposal system or nonwater-carried sewage disposal facility or part thereof is being operated or maintained in violation of this Chapter, it shall give written notice to the person or persons in control of such system or facility.
- b) The notice required under subsection (a) of this Section shall include the following information:
 - (i) Identification of the property;
 - (ii) Specific description of the alleged violation;
 - (iii) Length of time within which the owner and occupant have to fully comply with this Chapter;
 - (iv) A statement of the party's right to request a public hearing in accordance with YCC 2.65; and
 - (v) A statement that if the violation is not eliminated within the time specified, the violation will be referred to the Board of Commissioners for action, which could result in the County abating the violation and charging the costs of that abatement to the land upon which the violation is found by placing a lien thereon.
- c) The notice shall be served personally or by registered or certified mail and shall be accompanied by an order of the Planning Department requiring remedial action which will, if taken within the time specified in the order, ensure compliance with this Chapter. The order shall become final unless a request for hearing is made by the party receiving the notice within 10 days from the date of personal service or the date of mailing of the notice.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

10.50.03.03 Public Hearing.

- a) If a public hearing is requested by the owner or occupant, or if the violation is not otherwise eliminated within the time specific in the notice required under YCC 10.50.03.01, the Enforcement Officer shall arrange for a public hearing with the Board in accordance with the provisions of YCC 2.65. When a public hearing is so required, the Enforcement Officer shall:
 - (i) Make a written report to the Board setting forth the findings of fact and conclusions of the investigation and providing the Board with written recommended actions; and
 - (ii) Not less than 14 days prior to the hearing date, issue notice to the owner and/or occupant, by registered and certified mail, of the time and place of the public hearing. Within such notice, the Enforcement Officer shall include a copy of the written report required under subsection (i).
- b) At the time and place scheduled in the notice, the Board shall hold a hearing on the alleged violation of this Chapter and shall have the power to subpoena witnesses and compel their attendance.
- c) If the Board finds a violation to exist, it shall declare the existence of a violation by order entered in its journal and shall order the violation abated within 30 days after the entry of its order.
- d) If the owner or occupant of the property fails to abate the violation within 30 days of the order, the Board may either refer the matter to the Yamhill County Counsel's office for appropriate legal action, or it may cause the violation to be abated and have the costs thereof charged to the owner of the property through a lien on the property in accordance with YCC 10.50.03.04.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

10.50.03.04 Abatement; Property Lien.

- a) In abating a violation of this Chapter, the County and its employees shall not be liable for either trespass or conversion.
- b) The Enforcement Officer shall keep an accurate record of expenses incurred by the County in abating the violation. The Enforcement Officer shall forward to the property owner, by registered and certified mail, a notice of abatement, to include:
 - (i) The total cost of the nuisance abatement;
 - (ii) A statement that the cost will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice; and
 - (iii) An objection to the cost of the abatement may be filed with the Board not more than 14 days from the date of the notice.
- c) If a written statement of objection to the notice of abatement costs is provided to the Board within 14 days of the notice, the Board shall, at the next regularly scheduled Board meeting, hear the objections and shall determine whether an adjustment of the assessment should be made.
- d) If the costs of the abatement are not paid within 90 days from the date of the notice, or else within 90 days from the date of the determination by the Board of the assessed cost, or as otherwise ordered by the Board, an assessment of the costs shall be made by resolution and shall be entered in the lien docket of Yamhill County. The amount of the charges and expenses shall constitute a valid lien upon the land or premises and shall have the same effect and may be enforced as provided in ORS 205.125 and ORS 205.126.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

10.50.03.05 Appeals; Other Remedies Preserved.

- a) Appeals from orders of the Board under this Chapter shall be by writ of review to the Yamhill County Circuit Court.
- b) The provisions of this Section 10.50.03.05 are in addition to, and not in lieu of, any other penalties or remedies otherwise provided by law.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

SECTION 4 – APPLICATION & SEVERABILITY

10.50.04.01 Application. This Chapter shall apply to all of unincorporated Yamhill County and shall also apply within a city when the governing body or the electors of the city have consented to the application of the Chapter.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

10.50.04.02 Severability. If any section, subsection, clause, or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The County declares that it would have enacted this code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

[ADOPTED VIA ORDINANCE NO. 940 eff xx/xx/xx]

LEGISLATIVE HISTORY

Adopted via Ordinance No. 940 on XX/XX/XXXX, effective XX/XX/XXXX

YAMHILL COUNTY CODE

TITLE 1: GENERAL PROVISIONS

Chapter 1.10: Yamhill County Code Enforcement Code

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LEGISLATIVE HISTORY

1.10.01 Title. This ordinance may be cited as the “Yamhill County Code Enforcement Ordinance”.
[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

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

- “Authorized Official” means a person authorized to issue citations under Section 1.10.05 of this ordinance.
- “County” means Yamhill County.
- “Department” means the Yamhill County Planning and Development Department.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

1.10.03 Authority.

- a) 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:
- (i) To enforce solid waste management laws and ordinances by ORS 459.085;
 - (ii) To enforce land division and land use ordinances by ORS Chapters 92, 197, and 215;
 - ~~(iii) To enforce Oregon Environmental Quality Commission and Statutory subsurface sewage disposal regulations by ORS 454.640;~~
 - (iv) To enforce building codes and other structural codes by ORS 456.775 and 456.880;
 - (v) To enforce County regulation of noise sources by ORS 467.100 and/or YCC 4.25;
 - (vi) To enforce the County parks laws by YCC 6.05 through 6.15;
 - (vii) To enforce the County's soil erosion control laws by YCC 10.45; and
 - (viii) By other provisions of law not enumerated herein.
- b) 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.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23; AMENDED VIA ORDINANCE 932 eff 06/12/24; AMENDED VIA ORDINANCE 940 eff XX/XX/XX]

1.10.04 Laws Enforceable Under This Ordinance.

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

- a) Yamhill County Solid Waste Management Code, YCC 5.20;
- b) Yamhill County Land Division Code, YCC 10.40;
- c) Yamhill County Zoning Code, as amended;
- ~~d) ORS Chapter 454, as applicable, and Oregon Administrative Rules Chapter 340, Division 71;~~
- e) Yamhill County Building Code, YCC 10.05;
- f) Yamhill County General Provisions for Construction and Activities Conducted in the Public Right of Way, YCC 7.35, and all provisions of permits issued by the Yamhill County Department of Public Works;
- g) State law pertaining to road rights of way (e.g. ORS 368.251, ORS 368.256, and ORS 368.942);
- h) Yamhill County Parks Code, YCC 6.05, Wheatland Ferry Boat Ramp Parking Regulations, YCC 6.10, and Rogers Landing Park Fee Schedule, YCC 6.15;
- i) Yamhill County Noise Control Code, YCC 4.25; and
- j) Yamhill County Construction Erosion and Sediment Control Code, YCC 10.45.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23; AMENDED VIA ORDINANCE 932 eff 06/12/24; AMENDED VIA ORDINANCE 940 eff XX/XX/XX]

1.10.05 Persons Authorized to Issue Citations; Investigation; Administrative Inspection Warrants.

- a) The following persons are authorized to issue citations under ordinance:
- (i) The Yamhill County Sherriff or any deputy of the Yamhill County Sheriff's Department;
 - (ii) Any other person designated as an "enforcement officer" under ORS 153.005; or
 - (iii) 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.
- b) 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:

- (i) Entry may only be done at reasonable hours.
 - (ii) 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.
 - (iii) 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 (c).
- c) 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.
- (i) An administrative inspection warrant shall be issued only upon cause, supported by an affidavit and motion which shall describe with particularity:
 - 1. The position and authority of the person applying for the administrative inspection warrant;
 - 2. The statute, ordinance or rule requiring or authorizing the inspection or investigation;
 - 3. The place, building or property to be inspected or investigated; and
 - 4. The purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect or investigate.
 - (ii) Cause shall be deemed to exist when there is probable cause to believe that a violation exists.
 - (iii) 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23; AMENDED VIA ORDINANCE 940 eff XX/XX/XX]

1.10.06 Issuance of Warnings; Voluntary Compliance.

- a) 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.

- b) At the discretion of the Authorized Official, the County may delay further processing of 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 interest of the County, taking into consideration the nature and severity of the violation and the history of the property and the person responsible.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

1.10.07 Citation and Summons Form and Content.

- a) Citation and summons shall be in the form described by ORS 153.
- b) 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.
- c) The court may amend a citation at its discretion, in the interest of justice.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

1.10.08 Service of Citation.

- a) An authorized official shall serve a person cited as follows:
- (i) Personally;
 - (ii) 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;
 - (iii) By mailing to the defendant via first class mail plus any of the following: certified, registered, or express mail with return receipt requested. For the purposes of this subsection (iii), service shall be complete on the day the defendant, or other person authorized by appointment or law, signs a receipt for the mailing, or seven days after the mailing, whichever occurs first.
- b) 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.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23; AMENDED VIA ORDINANCE 932 eff 06/12/24]

1.10.09 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.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05]

1.10.10 Appearance by Defendant.

- a) The defendant shall 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.
- b) 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.
- c) If the defendant requests a trial, the court shall fix a date and time for a trial in accordance with ORS 153.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

1.10.11 Trial Proceedings.

- a) A trial on any violation shall be tried to the court sitting without jury.

Exhibit C

- b) The County shall have the burden of proof of the alleged violation by a preponderance of the evidence.
- c) The pretrial discovery rules in ORS 135.805 to 135.873 shall apply.
- d) The defendant may not be required to be a witness in the hearing.
- e) Defense Counsel shall not be provided at public expense.
- f) Proof of a culpable mental state is not an element of a violation unless expressly provided in the ordinance alleged to have been violated.
- g) 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.
- h) Notwithstanding any other provisions 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
- i) 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:
 - (i) The application of statutes and rules to the facts in the case;
 - (ii) The literal meaning of the statutes or rules at issue in the case;
 - (iii) The admissibility of evidence; and
 - (iv) Proper procedures to be used in the trial.

[ADOPTED VIA ORDINANCE NO. 923 eff 02/02/23]

1.10.12 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 initial appearance noticed on the summons or at a subsequent 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.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

1.10.13 Fines.

- a) 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 for each separate violation.
- b) Failure to comply with a provision enforceable under this ordinance may be counted as a separate violation for each day that non-compliance continues. At the discretion of the County, fines may be calculated cumulative for ongoing violations.
- c) Except where otherwise provided, all violations are designated Class “A” violations pursuant to ORS 153.025.
- d) The court may impose reasonable court costs in addition to any fine levied by the court,
- e) 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.
- f) 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.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23; AMENDED VIA ORDINANCE 932 eff 06/12/24]

1.10.14 Order of Abatement; Injunctive Relief.

- a) 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.

- b) 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, employee, and contractors.
- c) 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.
- d) 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.
- e) 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.
- f) The remedies provided in this section are in addition to all other remedies provided by law.

[ADOPTED VIA ORDINANCE NO. 923 eff 02/02/23]

1.10.15 Disposition of Money Received. In accordance with ORS 203.065 (4), fines and costs recovered by the County 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. The Treasurer shall pay these sums to the Department of Planning and Development.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

1.10.16 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 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.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

1.10.17 [REPEALED]

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; REPEALED VIA ORDINANCE 923 eff 02/02/23]

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

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05]

1.10.19 Establishment of Rules. The County Administrator may establish procedures to carry out this ordinance.

[ADOPTED VIA ORDINANCE NO. 755 eff 03/09/05; AMENDED VIA ORDINANCE 923 eff 02/02/23]

LEGISLATIVE HISTORY

Adopted via Ordinance No. 448 on 07/01/1987, effective 07/01/1987

Amended via Ordinance 574 on 06/15/1994, effective 06/15/1994

Amended via Ordinance 619 on 03/05/1998, effective 06/04/1998

Amended via Ordinance 663 on 09/17/1998, effective 09/17/1998

Repealed via Ordinance No. 755 on 03/09/2005, effective 03/09/2005

Adopted via Ordinance No. 755 on 03/09/2005, effective 03/09/2005

Amended via Ordinance No. 923 on 02/02/2023, effective 02/02/2023

Amended via Ordinance No. 932 on 3/14/2024, effective 06/12/2024

Amended via Ordinance No. 940 on XX/XX/XXXX, effective XX/XX/XXXX