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**BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY, OREGON**

ORDINANCE # 332

Relating to code enforcement; creating new provisions; repealing LCC 10.005, 10.010, 10.015, 10.020, 10.025, 10.030, 10.035, 10.040, 10.045, 10.050, 10.055, 10.060, 10.065, 10.070, 10.075, 10.080, 10.085, 10.090, 10.095, 10.100 and 10.105; and declaring an emergency.

The Lincoln County Board of Commissioners ordains as follows:

SECTION 1.

Sections 2 through 19 of this Ordinance are added to and made a part of Lincoln County Code Chapter 10, as indicated.

SECTION 2.

10.200 Violation of Lincoln County Code a Nuisance and a Violation

Every act or thing done, or anything existing within the limits of Lincoln County, that is in violation of any provision of the Lincoln County Code is declared to be:

(1) A nuisance, shall constitute a nuisance and may be regarded as a nuisance in all actions, suits and proceedings, unless the provision of the Lincoln County Code is declared void by a court of competent jurisdiction; and

(2) A violation.

SECTION 3.

10.210 Enforcement of Lincoln County Code

(1) The provisions of the Lincoln County Code may be enforced by:

(a) Issuance of a warning notice;

(b) A code violation action as provided in LCC 10.300 to 10.355;

(c) A civil action as provided in LCC 10.400 to 10.415;

Lincoln County Legal Counsel
Lincoln County Courthouse
225 W. Olive Street
Newport, Oregon 97365
Phone: 255-6611, Ext. 2306

1 (d) Any other action authorized by statute, common law, rule, ordinance, franchise
2 agreement or contract; or

3 (e) Any combination of the enforcement mechanisms described in this section.

4 (2) The Office of Lincoln County Legal Counsel shall prosecute all actions to
5 enforce any provision of the Lincoln County Code instituted on behalf of Lincoln County.

6 **SECTION 3.**

7 **10.300 Institution of Code Violation Action**

8 (1) All peace officers as defined in ORS 161.015, and all employees of Lincoln
9 County, have jurisdiction of and may institute a code violation action charging a person
10 with a violation of the Lincoln County Code in accordance with the provisions of LCC
11 10.300 to 10.355.

12 (2) A code violation action shall be instituted by issuing a citation to the person
13 charged with the code violation. If the person to be issued a citation is a firm,
14 corporation or other organization, issuance of a citation to any employee, agent or
15 representative thereof shall be sufficient to confer jurisdiction.

16 (3) Any person issued a citation for a code violation shall not be arrested.
17 However, if there is reasonable suspicion to believe that a person has committed a code
18 violation, the person may be detained, but only so long as is necessary to determine, for
19 the purposes of issuing a citation, the identity of the violator and such additional
20 information as is appropriate for law enforcement agencies in the state.

21 **SECTION 4.**

22 **10.305 Citation Requirements and Delivery of Citation Parts**

23 (1) A citation issued pursuant to LCC 10.300 shall be in the form of an Oregon
24 Uniform Citation and Complaint, as adopted by the Oregon Supreme Court pursuant to
25 ORS 1.525, must contain the parts and certificate provided by ORS 153.130, and must
26 meet the minimum requirements for summons and complaint as provided by ORS 153.140

1 and 153.150.

2 (2) The peace officer or county employee issuing the citation shall cause:

3 (a) The "COMPLAINT" and "ABSTRACT" copies to be delivered to the court;

4 (b) The "POLICE RECORDS" copy to be delivered to the Office of Lincoln
5 County Legal Counsel;

6 (c) The "OFFICER'S NOTES" copy to be retained by the agency or department
7 employing the peace officer or county employee issuing the citation; and

8 (d) The "SUMMONS" copy to be delivered to the person cited.

9 **SECTION 5.**

10 **10.310 Defendant's Appearance; Bail; Request for Hearing; Statement;**
11 **Guilty Plea**

12 (1) For all citations issued pursuant to LCC 10.300 to 10.355, the defendant shall
13 either appear in court at the time indicated in the summons, or prior to such time shall
14 deliver to the court the summons, together with check or money order in the amount of
15 the bail set forth in the summons, and enclosing therewith:

16 (a) A request for a hearing;

17 (b) A statement of matters in explanation or mitigation of the violation charged;

18 or

19 (c) The executed appearance, waiver of hearing and plea of guilty appearing on
20 the summons. A statement in explanation or mitigation also may be enclosed with the
21 guilty plea.

22 (2) In a case in which the defendant personally appears in court at the time
23 indicated in the summons, if the defendant desires to plead guilty and the judge accepts
24 the plea, the judge shall hear any statement in explanation or mitigation that the defendant
25 desires to make.

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SECTION 7.

10.315 Fixing Hearing Date; Notice to Defendant; Waiver

If the defendant requests a hearing under LCC 10.310, or if pursuant to LCC 10.320, the court directs that a hearing be had, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of the date and time so fixed.

SECTION 8.

10.320 Hearing Discretionary; Powers of Court on Hearing and Without Hearing; Judgment

(1) For all citations issued pursuant to LCC 10.300 to 10.355, the court may direct that a hearing be held.

(2) The court may proceed to make a determination on the violation under any of the following circumstances:

(a) If a hearing is held, either at the request of the cited person or at the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by law, directed by the court or requested by the cited person and the cited person has complied with LCC 10.310, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by law and the person has not complied with LCC 10.310 or made appearance, when the time indicated in the citation passes and the court makes a finding on the citation and any other evidence the judge determines appropriate.

(3) On completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine.

1 (b) Direct that the fine be paid out of the bail deposit.

2 (c) Unless the court orders otherwise, remit the balance to the defendant or to any
3 other person designated by the defendant.

4 (4) If the person complies with LCC 10.310 and deposits the amount of bail
5 thereunder but neither the person nor the court requests a hearing and a hearing is not
6 required by law, no fine may be imposed in excess of the bail deposited. If the person
7 has not deposited bail under LCC 10.310 or has requested a hearing under LCC 10.310
8 without depositing bail and does not appear at the hearing, the court may impose any fine
9 within the limits of LCC 10.350.

10 (5) If a court sentences a person to pay a fine under this section when the person
11 has not complied with LCC 10.310, the court is not precluded from:

12 (a) Taking any other action against the person as permitted by law for the person's
13 failure to comply, including, but not limited to, sentencing the person further as permitted
14 by law or ordinance after the person is brought to hearing.

15 (b) Following any procedures established by law or ordinance when the person
16 fails to appear.

17 (6) If a judgment is entered under this section after a person has failed to comply
18 with LCC 10.310 or make appearance, on motion and upon such terms as are just, the
19 court may relieve a person from the judgment upon a showing that the failure of the cited
20 person to comply with LCC 10.310 or to appear was due to mistake, inadvertence,
21 surprise or excusable neglect. The motion must be made within a reasonable time, and
22 in no event more than one year after the person receives notice of the judgment.

23 (7) No judgment may be entered under this section by reason of a person failing
24 to comply with LCC 10.310 or make appearance unless the citation issued to the person
25 contains a statement notifying the cited person that a monetary judgment may be entered
26 against the person up to the maximum limit established for the offense if the cited person

1 fails to comply with LCC 10.310 or appear at the time, date and court specified in the
2 citation.

3 **SECTION 9.**

4 **10.325 Failure to Appear or Comply**

5 (1) If a person cited under LCC 10.305 fails to comply with LCC 10.310, but has
6 not previously appeared before the court on the code violation action, the Office of
7 Lincoln County Legal Counsel shall:

8 (a) Submit an affidavit of probable cause to the court. If, after reviewing the
9 affidavit, the court is satisfied that the cited person has committed the violation alleged,
10 the court shall enter an order authorizing a peace officer to issue and serve a citation in
11 lieu of custody pursuant to ORS 133.110 and 133.055. If, after being served with the
12 citation in lieu of custody, the cited person fails to appear in court as directed in the
13 citation in lieu of custody, the matter shall be referred to the Lincoln County District
14 Attorney's Office for prosecution for the crime of Failure to Appear on a citation, as
15 provided in ORS 133.075; or

16 (b) Institute contempt proceedings against the cited person seeking remedial
17 sanctions, including an award of reasonable attorney fees, in accordance with the
18 provisions of ORS 33.015 to 33.155 and UTCR 19.010 to 19.050.

19 (2) If a person cited under LCC 10.305 has previously appeared before the court
20 on the code violation action, and was, at the time of the previous appearance, directed by
21 the court to appear in court at a certain date and time, and the person cited fails to so
22 appear, the court may:

23 (a) Issue a bench warrant, as defined in ORS 131.005, for the arrest of the person
24 cited;

25 (b) Direct the Office of Lincoln County Legal Counsel to submit an affidavit of
26 probable cause to the court. If, after reviewing the affidavit, the court is satisfied that the

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1 cited person has committed the violation alleged, the court shall enter an order authorizing
2 a peace officer to issue and serve a citation in lieu of custody pursuant to ORS 133.110
3 and 133.055. If, after being served with the citation in lieu of custody, the cited person
4 fails to appear in court as directed in the citation in lieu of custody, the matter shall be
5 referred to the Lincoln County District Attorney's Office for prosecution for the crime of
6 Failure to Appear on a citation, as provided in ORS 133.075; or

7 (c) Direct the Office of Lincoln County Legal Counsel to institute contempt
8 proceedings against the cited person seeking remedial sanctions, including an award of
9 reasonable attorney fees, in accordance with the provisions of ORS 33.015 to 33.155 and
10 UTCR 19.010 to 19.050.

11 **SECTION 10.**

12 **10.330 Jurisdiction and Venue**

13 The Lincoln County District Court shall have jurisdiction and venue over all code
14 violation actions conducted pursuant to the provisions of LCC 10.300 to 10.355.

15 **SECTION 11.**

16 **10.335 Trial Without Jury; Discovery; Burden of Proof; No Culpable Mental**
17 **State Required; No Defense Counsel Provided at Public Expense**

18 For all code violation actions conducted pursuant to LCC 10.300 to 10.355:

19 (1) Trial shall be by the court without a jury.

20 (2) Trial shall not commence until the expiration of seven days from the date the
21 citation for the violation unless the defendant waives the seven-day period.

22 (3) The burden of proof shall be upon the county by a preponderance of the
23 evidence.

24 (4) The pretrial discovery rules in ORS 135.805 to 135.873 shall apply.

25 (5) The defendant may not be required to be a witness in the trial.

26 (6) Proof of a culpable mental state is not required.

1 (7) Defense counsel shall not be provided at public expense.

2 **SECTION 12.**

3 **10.340 Appeal**

4 Appeal from a judgment involving a violation commenced under LCC 10.300 to
5 10.355 shall be as provided in ORS chapter 46.

6 **SECTION 13.**

7 **10.345 Bail**

8 Bail for each alleged violation of any provision of the Lincoln County Code shall
9 be \$300 for a noncontinuing offense and \$600 for a continuing offense.

10 **SECTION 14.**

11 **10.350 Penalties**

12 Pursuant to ORS 203.065(1), violation of any provision of the Lincoln County
13 Code shall be punishable, upon conviction, by a fine of not more than \$500 for a
14 noncontinuing offense and \$1000 for a continuing offense.

15 **SECTION 15.**

16 **10.355 Collection and Disposition of Fines**

17 Pursuant to ORS 203.065(4), fines recovered as the result of a conviction for a
18 violation of any provision of the Lincoln County Code shall be paid to the clerk of the
19 Lincoln County District Court. After first deducting court costs in the proceedings, the
20 clerk shall pay the remainder to the Lincoln County Treasurer for deposit into the Lincoln
21 County General Fund.

22 **SECTION 16.**

23 **10.400 Civil Action to Redress Violation of Lincoln County Code**

24 Pursuant to ORS 203.065(2), 30.310 and 30.315, upon referral from any agency,
25 office or department of Lincoln County, the Office of Lincoln County Legal Counsel may
26 commence and maintain a civil proceeding by, and on behalf of, Lincoln County, seeking

1 redress of any violation of the Lincoln County Code. In such proceedings, the Office of
2 Lincoln County Legal Counsel may seek an order:

- 3 (1) Temporarily restraining a nuisance;
- 4 (2) Preliminarily enjoining a nuisance;
- 5 (3) Permanently enjoining a nuisance;
- 6 (4) Directing abatement of a nuisance;
- 7 (5) Awarding economic damages;
- 8 (6) Awarding non-economic damages;
- 9 (7) Awarding punitive damages;
- 10 (8) Awarding reasonable attorney fees;
- 11 (9) Awarding costs and disbursements;
- 12 (10) Imposing fines in an amount not to exceed the maximum fines under LCC
13 10.350; and
- 14 (11) Holding a person in contempt of court and imposing remedial sanctions
15 pursuant to ORS 33.015 to 33.155 and UTCR 19.010 to 19.050 against the person if the
16 person has violated any provision court order providing for relief in any manner described
17 in this section.

18 **SECTION 17.**

19 **10.405 Jurisdiction and Venue**

20 The Lincoln County Circuit Court shall have jurisdiction and venue over all civil
21 actions brought under LCC 10.400.

22 **SECTION 18.**

23 **10.410 ORCP Apply to Civil Action; Burden of Proof; No Culpable Mental**
24 **State Required; No Defense Counsel Provided at Public Expense**

25 (1) The Oregon Rules of Civil Procedure govern the procedural conduct of all civil
26 actions brought under LCC 10.400.

1 (2) The burden of proof in a civil action brought under LCC 10.400 shall be upon
2 the county by a preponderance of the evidence.

3 (3) Proof of a culpable mental state is not required to prove a violation of any
4 provision of the Lincoln County Code.

5 (4) Defense counsel shall not be provided at public expense.

6 **SECTION 19.**

7 **10.415 Appeal**

8 Appeal from a judgment involving a civil action brought under LCC 10.400 shall
9 be as provided in ORS chapter 19.

10 **SECTION 20.**

11 LCC 10.005, 10.010, 10.015, 10.020, 10.025, 10.030, 10.035, 10.040, 10.045,
12 10.050, 10.055, 10.060, 10.065, 10.070, 10.075, 10.080, 10.085, 10.090, 10.095, 10.100
13 and 10.105 are repealed.

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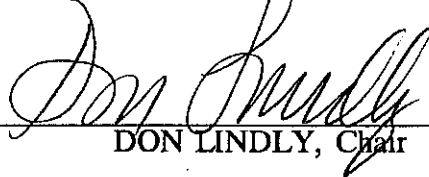
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1 **SECTION 21.**

2 This Ordinance being necessary for the immediate preservation of the public
3 peace, health and safety, an emergency is declared to exist and this Ordinance shall take
4 effect upon its passage.

5
6 DATED this 27th day of April, 1994.

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8 LINCOLN COUNTY BOARD OF COMMISSIONERS

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10 
11 _____
12 DON LINDLY, Chair

13 
14 _____
15 JEAN COWAN, Commissioner

16 
17 _____
18 NANCY E. LEONARD, Commissioner

19 ATTESTED TO:

20 
21 _____
22 SUSAN KAYS, Recorder

23 APPROVED AS TO FORM:

24 
25 _____
26 WAYNE BELMONT, County Counsel

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