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BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY, OREGON

ORDINANCE #533

Relating to code enforcement; creating new provisions; repealing LCC 10.210, 10.310, 10.320, 10.325, 10.330, 10.335, 10.340, and 10.345; and declaring an emergency.

WHEREAS by Ordinance 332 adopted and made effective April 27, 1994, the Board created sections 10.200 through 10.415 ENFORCEMENT – NUISANCE AND VIOLATION in the Lincoln County Code (LCC), and;

WHEREAS after evaluating changes to the enforcement code to obtain compliance in code enforcement matters which have arisen in land use, environmental health, building code and environmental services, and;

WHEREAS these changes will be beneficial to advancing the public health and welfare by creating tools for staff to use to obtain compliance or to remedy violations of the LLC.

NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

SECTION 1.

Section 2 through 26 of this Ordinance is added and made part of the LCC Chapter 10, Enforcement.

SECTION 2.

ENFORCEMENT
NUISANCE AND VIOLATION

10.100 Definitions

(1) “Assessment” means a proposed or Determined fine, depending on the context.

(2) “Citation” means a written uniform citation under LCC 10.300 issued by an Enforcement Officer.

(3) “Corporate” or “corporation” means a legal entity created by filing articles with Oregon Secretary of State, and the term includes limited liability companies.

1 **(4) “Determined fines” means fines assessed administratively whether presented to a**
2 **Hearings Officer or not, and whether or not adjusted by said Hearings Officer or**
3 **Circuit or Oregon Appellate Court. “Determined fines” also means fines**
4 **determined by the Circuit Court under any citation issued under LCC 10.300 et.seq.**
5 **“Determined fines” also includes any circuit court legal action under LCC 10.400**
6 **et.seq. to obtain a money judgment for assessed fines.**

7
8 **(5) “Enforcement Agent” means any person authorized to issue a Written Notice.**

9
10 **(6) “Enforcement officer” means a member of the State Police, and a county**
11 **sheriff’s deputy and anyone who is authorized to issue a uniform Citation under**
12 **LCC 10.300.**

13
14 **(7) “Fines” means those daily fines set forth in LCC 10.205-10.210 for violations.**

15
16 **(8) “Owner in violation” means the person or persons who is given a Written Notice**
17 **of violation from an Enforcement Agent. “Owner in violation” means the person or**
18 **entity to whom a Written Notice has been mailed or delivered, and includes the fee**
19 **or equitable title owner, buyer, lessee, any corporate or business owner (or**
20 **registered agent), and anyone who has an interest in the property (other than only a**
21 **security interest) such that they have actual or constructive control over the causes**
22 **of the Violation. Owner in violation includes those identified in LCC 10.200.**

23
24 **(9) “Prosecution” means by citation under LCC 10.300. “Prosecution” shall also**
25 **mean any legal or administrative action taken to enforce, collect or otherwise obtain**
26 **Determined fines the County is entitled to under the Code pursuant to the Chapter.**

27
28 **(10) “Written Notice” means any written notice, including but not limited to**
29 **correspondence, stop work, or use tag or posting, a written complaint, or written**
30 **notice describing the alleged violation and demanding some action for compliance,**
31 **including a notice to abate pursuant to LCC 10.240. The written notice may**
32 **originate from any department or division of Lincoln County with enforcement**
33 **authority including but not limited to agents of the:**

34
35 **(a) Lincoln County Building Official, and;**

36
37 **(b) Lincoln County Planning Department, and;**

38
39 **(c) Lincoln County Sheriff’s Office, and;**

40
41 **(d) Lincoln County Environmental Services, and;**
42

1 (e) Lincoln County Environmental Health, and;

2
3 (f) Lincoln County Counsel.
4

5
6 **Written notice, when properly addressed, shall be deemed received five days after the**
7 **mailing date, which shall be the effective date for the calculation of any time periods in**
8 **LCC Chapter 10.**
9

10 (11) **“Violation” means an offense described in LCC 10.200 as authorized by ORS**
11 **153.008(1)(c) and does not include imprisonment as punishment, but a violation is**
12 **subject to fines in the amounts as set forth in the Sections 10.205-10.215 and real**
13 **property liens as set forth in LCC 10.220 and LCC 10.245.**
14

15 (12) **“Violation proceeding” means a judicial proceeding initiated by issuance of a**
16 **Citation.**
17

18 **SECTION 3.**
19

20 **10.200 Violation of Lincoln County Code a Nuisance and a Violation Subject to Citation, Fine**
21 **& Legal Action**
22

23 Every act or thing done, or anything existing within the limits of Lincoln County, that is in
24 violation of any provision of the Lincoln County Code is declared to be:
25

26 (1) [*A nuisance, shall constitute*] A nuisance and may be regarded as a nuisance in all
27 actions, suits, and proceedings, **authorized by this Chapter or Oregon law** unless the
28 provision of the Lincoln County Code is declared void by a court of competent
29 jurisdiction and a nuisance shall constitute a **Violation**.
30

31 (2) **A Violation of a county ordinance or code shall be punishable by fines defined in**
32 **LCC 10.205-10.210 or by any other specific remedies within the County Code,**
33 **including but not limited to equitable and injunctive relief ordered by any County**
34 **Hearings Officer, or Circuit Court.**
35

36 (3) **All of the offenses in the Lincoln County Code are strict liability offenses and do**
37 **not require the proof of any culpable mental state unless an Ordinance or County**
38 **Code provision defining the offense expressly provides that culpability is required.**
39

40 (4) **It is no defense to prosecution under any provision in this code that the actor**
41 **was not the person who actually created, moved, caused, or maintained the unlawful**
42 **condition or use.**

1
2 **(5) A person is liable to the remedies herein under any provision of this code:**
3

4 **(a) If the person created, moved, caused, or maintained an unlawful**
5 **condition or use;**

6 **(b) If the person aided or abetted another person in creating, moving,**
7 **causing, or maintaining an unlawful condition or use;**
8

9 **(c) If the person is in actual or constructive possession of premises on which**
10 **an unlawful condition or use or is found, or;**
11

12 **(d) If the person has any ownership or possessory interest, other than a**
13 **security interest, in premises on which an unlawful condition or use is**
14 **found and has actual knowledge of condition constituting the violation,**
15 **or;**
16

17 **(e) After a stop work or use tag is posted, any person continuing work or use**
18 **commits a separate violation.**
19

20 **(6) An assessment to pay a fine for a violation of a county ordinance shall be an**
21 **assessment to pay an amount not exceeding the Maximum Fines provided in LCC**
22 **10.205-10.210.**
23

24 **(7) When a violation is of a continuing nature as defined, and subject to the**
25 **limitations in LLC 10.210, a separately punishable violation occurs on each calendar**
26 **day the violation continues, and after a written notice is issued complying with the**
27 **following:**
28

29 **(a) The written notice for a continuing violation will clearly state the**
30 **following:**
31

32 **(i) The ongoing or uninterrupted nature of the violation;**
33

34 **(ii) The date the violation is alleged to have first occurred;**
35

36 **(iii) The dates or range of dates of each day of the continuing or**
37 **uninterrupted violation as of the date of the citation; and**
38

39 **(iv) The amount of the fine for each day's violation.**
40

41 **(8) An owner in violation receiving a Written Notice alleging a violation who**
42 **complies with the conditions herein, will not be subject to a continuing fine if such**
43 **owner in violation:**

1
2 (a) Submits a complete permit for the property use. The application or
3 permit or license requested must be submitted and complete within 30 days
4 of the Written Notice. Such application or permit or license shall not be
5 accepted if the application, permit or license cannot be legally issued by the
6 County. Otherwise, the proposed application, permit or license
7 (“application”) shall not be processed by the County except where the
8 application, if approved and any required action completed would remedy
9 the code violation alleged in the Written Notice. If an application or permit
10 or license as defined herein is accepted, the owner in violation making
11 application must pay all application fees and one day’s minimum fine for
12 violation of the code in the amount set forth in LCC 10.205 at the time of
13 making the application, and;

14
15 (b) If the owner in violation does not fully complete any work required or
16 provide proof of ceasing a use under any authorization issued pursuant LCC
17 10.200(8) within 30 days or such time as the Enforcement Agent may deem
18 reasonable under the circumstances, including the extent and type of work
19 required, the resources of the owner in violation to timely comply, the
20 Enforcement Agent may send a Written Notice that fines shall be reinstated
21 as a continuing fine (the Written Notice shall comply with the requirements
22 of LCC 10.200(7)) except that the reinstated fines shall begin to accrue the
23 15th day after the mailing of the Written Notice under this subsection, or;

24
25 (c) Submits satisfactory evidence that the use or condition described in the
26 Written Notice has been suspended or removed and such evidence in the
27 determination of the Enforcement Agent constitutes compliance with the
28 demands in the Written Notice.

29
30 (9) An owner in violation to whom an Enforcement Agent has mailed a Written
31 Notice may request in writing a hearing under the procedure set forth in LCC
32 10.245 2(c) within 35 days of mailing the Written Notice.

33
34 **SECTION 4.**

35
36 **10.205 Fines**

37
38 (1) Fines for a violation of Lincoln County Code by individuals shall be:

39
40 (a) Single Code Violations:

41
42 **Maximum Fine Presumptive Fines Minimum Fines**

Note: Matter in boldfaced type in an amended section is new; matter in [italic and bracketed] is existing ordinance to be omitted. New sections are in boldfaced type.

1 **\$2,000.00** **\$435.00** **\$220.00**

2
3 **(b) Continuing Code Violations – Per day fines:**

4
5 **Maximum Fine** **Presumptive Fine** **Minimum Fine**
6
7 **\$2,000.00** **\$435.00** **\$220.00**

8
9 **(2) Fines for a violation of Lincoln County Code by any legal entity including**
10 **corporations and limited liability companies (LLC) shall be:**

11
12 **(a) Single Code Violations:**

13
14 **Maximum Fine** **Presumptive Fines** **Minimum Fines**
15
16 **\$4,000.00** **\$800.00** **\$220.00**

17
18 **(b) Continuing Code Violations – Per day fines:**

19
20 **Maximum Fine** **Presumptive Fine** **Minimum Fine**
21
22 **\$4,000.00** **\$800.00** **\$500.00**

23
24 **(3) Criteria for Fines. The decision to apply the maximum, presumptive, or**
25 **minimum fine shall be made on a case-by-case basis including consideration of the**
26 **cooperation of the owner in violation with attempts to obtain code compliance, the**
27 **objective level of damage or danger to the environment or the public health, or the**
28 **gain of money or property by virtue of the violation.**

29
30 **SECTION 5.**

31
32 *[10.210 Enforcement of Lincoln County Code*

33
34 *(1) The provisions of the Lincoln County Code may be enforced by:*

- 35
36 *(a) Issuance of a warning notice;*
37
38 *(b) A code violation action as provided in LCC 10.300 to 10.355;*
39
40 *(c) A civil action as provided in LCC 10.400 to 10.415;*
41
42 *(d) Any other action authorized by statute, common law, rule, ordinance,*
43 *franchise agreement or contract; or*

Note: Matter in boldfaced type in an amended section is new; matter in [italic and bracketed] is existing ordinance to be omitted. New sections are in boldfaced type.

1
2 (e) Any combination of the enforcement mechanisms described in this section.

3
4 (2) *The Office of Lincoln County Legal Counsel shall prosecute all actions to enforce any*
5 *provision of the Lincoln County Code instituted on behalf of Lincoln County.]*

6 **SECTION 6.**

7
8 **10.210 Continuing Violation**

9
10 **(1) A continuing violation is any violation of Lincoln County Code for which a**
11 **Written Notice has been issued, which violation persists by circumstances under**
12 **which the owner in violation has the control to correct but fails to correct or cease**
13 **the violation nor be in compliance with LCC 10.200(8).**

14
15 **(2) The County shall consider the first day of a continuing violation to be the 36th**
16 **day after a Written Notice has been mailed to the owner in violation.**

17
18 **(3) If the violation requires a permit or license to be issued by the County to**
19 **eliminate the nuisance, any application for a permit or license which does not**
20 **propose to remedy the violation in the Written Notice, or where the application for**
21 **permit or license cannot be legally issued under the LCC or other law shall not be**
22 **accepted or processed by the County, and the property owner in violation shall**
23 **continue to be in violation and subject to any applicable fine(s) as provided from the**
24 **time of the original Written Notice.**

25
26 **SECTION 7.**

27
28 **10.220 Property Lien**

29
30 **Determined Fines shall become a lien on any property of an owner in violation of County**
31 **Code under this Chapter. At any time 60 days after Determined fines are made the County**
32 **may record a lien in the property records of Lincoln County.**

33
34 **SECTION 8.**

35
36 **10.240 Notice Of Public Nuisance And Abatement Procedure**

37
38 **(1) If an Enforcement Agent is satisfied that a public nuisance exists, the**
39 **Enforcement Agent may cause a Notice of Abatement to be posted on the premises,**
40 **or at the site of the nuisance, directing the person or persons in charge of the**
41 **property to abate the nuisance and in the form as follows. The Notice of Abatement**
42 **shall contain:**

- 1 (a) A description of the real property, by street address or otherwise, on
2 which the nuisance exists.
3
4 (b) A description of the nuisance.
5
6 (c) A direction to abate the nuisance within 10 days from the date of notice.
7
8 (d) A statement that unless the nuisance is removed, the County may abate
9 the nuisance and the full cost of abatement including administrative
10 charges and attorney fees will be charged to the owner in violation and
11 shall become a lien on the property.
12
13 (e) A statement that failure to abate a nuisance may warrant imposition of a
14 fine or administrative penalty upon the owner in violation. The fine or
15 administrative penalty may be issued at any time there is a violation of
16 this code, pursuant to Chapter 10.
17
18 (f) A statement that the owner in violation may protest the order to abate
19 and/or request a hearing by giving written notice to the Office of the
20 Lincoln County Counsel within 10 days from the date of the notice,
21 together with a written statement as to why a nuisance should not be
22 declared.
23

24 (2) At the time of posting, the Enforcement Agent shall cause a copy of the Notice of
25 Abatement to be forwarded by certified mail and first class mail, postage prepaid, to
26 the owner in violation at the last known address of such person(s) as shown on the
27 tax rolls of Lincoln County or records of the Oregon Secretary of State or to any
28 address registered with the County under LCC 5 or otherwise provided to the
29 Enforcement Agent or is known to the Enforcement Agent.

30 (3) If the property is unimproved, the Enforcement Agent shall cause a Notice of
31 Abatement to be sent by certified mail and first class mail, postage prepaid, to the
32 owner in violation, at the last known address of such person(s) as shown on the tax
33 rolls of Lincoln County or records of the Oregon Secretary of State or to any
34 address registered with the County under LCC 5 or otherwise provided to the
35 Enforcement Agent or is known to the Enforcement Agent
36

37 (4) If the mailed Notice of Abatement is returned as undeliverable or is unclaimed
38 by the owner in violation, nothing shall preclude the County from exercising its
39 option to abate the nuisance as specified herein in LCC 10.240-10.245.
40

41 (5) On completion of the posting and mailing, the persons posting and mailing shall
42 execute and file with the County Planning Director or designee certificates stating

1 the date and place of the mailing and posting, together with copies of said
2 documents.

3
4 **(6) The County shall use all reasonable means to provide notice to the owner in
5 violation. Failure to provide actual notice to the owner in violation shall not void the
6 procedure to abate the nuisance, however. Use of the Abatement Notice process does
7 not preclude assessing fines or a continuing fine if applicable prior to any abatement
8 procedure.**

9
10 **SECTION 9.**

11
12 **10.245 Abatement Cost, Notice and Collection**

13
14 **(1) The owner in violation, if consisting of more than one person or entity, shall be
15 jointly and severally liable for all costs associated with the abatement of a nuisance
16 or violation, including administrative costs, warrant costs, any fines and attorney
17 fees.**

18
19 **(2) The Enforcement Agent shall keep an accurate record of the expense incurred
20 by the County for any abatement. After the violations have been determined by the
21 County to be corrected by abatement, the Enforcement Agent or designee shall mail
22 to the owner in violation an Abatement Costs Notice which includes:**

23
24 **(a) The total costs of abatement;**

25
26 **(b) Notification that the costs of abatement shall become a lien against the
27 property; and**

28
29 **(c) Notification that if the owner objects to the Abatement Cost Notice. The
30 owner may request a quasi-judicial hearing with the Hearings Officer by
31 delivering to the County Counsel's Office a written protest and request
32 for a hearing within thirty-six (36) calendar days from the date of the
33 notification to the owner in violation was mailed. If a written protest and
34 request for a hearing is timely made, such hearing shall be conducted on
35 the record (written evidence and argument only) unless the Hearings
36 Officer determines there is good cause shown for an evidentiary hearing,
37 or the parties agree to an evidentiary hearing.**

38
39 **(3) The decision of the Hearings Officer is final with respect to Determined fines
40 and/or abatement costs.**

41
42 **(4) Collection and Abatement Costs.**
43

- 1 (a) The costs listed in the Abatement Costs Notice shall be delinquent if not
2 paid within thirty-six (36) days from later of the date of the notice or
3 from the date on which the Hearings Officer makes a final decision on a
4 timely filed protest.
5
6 (b) If the abatement costs are delinquent, the amount due may accrue
7 interest at 10% per annum.
8
9 (c) The abatement costs shall be entered in the docket of county liens with
10 the County Clerk and shall constitute a lien upon the property that was in
11 violation of the county code. In addition, the Abatement Costs Notice
12 shall also constitute a personal obligation of the owner and persons in
13 charge of the property. The County may seek a money judgment against
14 the owner and/or persons in charge of the property through the Circuit
15 Court in addition to any lien remedy, for the lien amounts. The proceeds
16 of fines and of foreclosure sale proceeds to the extent permitted by law,
17 shall be payable to Lincoln County's general fund.
18
19 (d) The lien may be enforced in the same manner as liens for assessments for
20 local improvement districts. Failure to pay may result in foreclosure in
21 any manner provided by law.
22
23 (e) An error in the name of the owner shall not void the lien, nor shall a
24 failure to receive the notice render the lien void, but it shall remain a
25 valid lien against the property.
26
27 (f) The County Counsel's office shall have the final authority to decide what
28 fine and lien process and form of remedy the County will pursue for
29 collecting abatement costs and/or Determined fines.
30

31 **SECTION 10.**

32
33 **(Renumbered from LCC 10.210)**

34
35 **10.250 Enforcement of Lincoln County Code**

36
37 **(1) The provisions of the Lincoln County Code may be enforced by:**

- 38
39 **(a) Issuance of a warning [*notice*] Written Notice;**
40
41 **(b) Abatement as provided in LCC 10.240 to 10.245;**
42

1 (c) A code violation action by uniform citation as provided in LCC 10.300 to
2 10.355;

3
4 (d) A civil action as provided in LCC 10.400 to 10.415;

5
6 (e) Any other action authorized by statute, common law, rule, ordinance,
7 franchise agreement or contract; or

8
9 (f) Any combination of the enforcement mechanisms described in this section.

10
11 (2) The Office of Lincoln County Legal Counsel shall prosecute all actions to
12 enforce any provision of the Lincoln County Code instituted on behalf of Lincoln
13 County. [1994 o.332 § 3]

14
15 **SECTION 11.**

16
17 **CODE VIOLATION ACTION PROCEDURES BY CITATION**

18
19 10.300 Institution of Code Violation Action by Citation; Statutory Provisions Adopted

20
21 (1) *[All peace officers as defined in ORS 161.015, and all employees of Lincoln County,*
22 *have jurisdiction of and]* **All Enforcement Officers** may institute a code violation action
23 charging a person with a violation of the Lincoln County Code in accordance with the
24 provisions of *[LCC 10.300 to 10.355]*. **ORS 153.030 to 153.108, and ORS 153.990 to**
25 **ORS 153.992. Citizens shall have no right to use the citation process regardless of**
26 **the provisions of ORS 153.058(7).**

27
28 *[(2) A code violation action shall be instituted by issuing a citation to the person charged*
29 *with the code violation. If the person to be issued a citation is a firm, corporation or*
30 *other organization, issuance of a citation to any employee, agent or representative*
31 *thereof shall be sufficient to confer jurisdiction.]*

32
33 *[(3) Any person issued a citation for a code violation shall not be arrested. However, if*
34 *there is reasonable suspicion to believe that a person has committed a code violation, the*
35 *person may be detained, but only so long as is necessary to determine, for the purposes of*
36 *issuing a citation, the identity of the violator and such additional information as is*
37 *appropriate for law enforcement agencies in the state.] [1994 o.332 § 3a]*

38
39 *[10.305 Citation Requirements and Delivery of Citation Parts*

40
41 *(1) A citation issued pursuant to LCC 10.300 shall be in the form of an Oregon Uniform*
42 *Citation and Complaint, as adopted by the Oregon Supreme Court pursuant to ORS*
43 *1.525, must contain the parts and certificate provided by ORS 153.130, and must meet*

1 *the minimum requirements for summons and complaint as provided by ORS 153.140 and*
2 *153.150.*

3
4 (2) *The peace officer or county employee issuing the citation shall cause:*

5
6 (a) *The "COMPLAINT" and "ABSTRACT" copies to be delivered to the court;*

7
8 (b) *The "POLICE RECORDS" copy to be delivered to the Office of Lincoln*
9 *County Legal Counsel;*

10
11 (c) *The "OFFICER'S NOTES" copy to be retained by the agency or department*
12 *employing the peace officer or county employee issuing the citation; and*

13
14 (d) *The "SUMMONS" copy to be delivered to the person cited. [1994 o.332 § 4]*

15
16 *10.310 Defendant's Appearance; Bail; Request for Hearing; Statement; Guilty Plea*

17
18 (1) *For all citations issued pursuant to LCC 10.300 to 10.355, the defendant shall either*
19 *appear in court at the time indicated in the summons, or prior to such time shall*
20 *deliver to the court the summons, together with check or money order in the amount*
21 *of the bail set forth in the summons, and enclosing therewith:*

22
23 (a) *A request for a hearing;*

24
25 (b) *A statement of matters in explanation or mitigation of the violation charged; or*

26
27 (c) *The executed appearance, waiver of hearing and plea of guilty appearing on the*
28 *summons. A statement in explanation or mitigation also may be enclosed with the*
29 *guilty plea.*

30
31 (2) *In a case in which the defendant personally appears in court at the time indicated in*
32 *the summons, if the defendant desires to plead guilty and the judge accepts the plea, the*
33 *judge shall hear any statement in explanation or mitigation that the defendant desires to*
34 *make.]*

35
36 *[10.315 Fixing Hearing Date; Notice to Defendant; Waiver*

37
38 *If the defendant requests a hearing under LCC 10.310, or if pursuant to LCC 10.320, the court*
39 *directs that a hearing be had, the court shall fix a date and time for the hearing and, unless*
40 *notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of*
41 *the date and time so fixed. [1994 o.332 § 7]*

42
43 **SECTION 12.**

1
2 *10.320 Hearing Discretionary; Powers of Court on Hearing and Without Hearing;*
3 *Judgment*

4
5 *(1) For all citations issued pursuant to LCC 10.300 to 10.355, the court may direct that a*
6 *hearing be held.*

7
8 *(2) The court may proceed to make a determination on the violation under any of the*
9 *following circumstances:*

10
11 *(a) If a hearing is held, either at the request of the cited person or at the court's*
12 *own direction, when the court makes a finding on the evidence presented at*
13 *the hearing.*

14
15 *(b) If a hearing is not required by law, directed by the court, or requested by the*
16 *cited person and the cited person has complied with LCC 10.310, when the*
17 *court makes a finding on the citation, any plea and any evidence or other*
18 *material submitted.*

19
20 *(c) If the court does not direct that a hearing be held, a hearing is not required by*
21 *law and the person has not complied with LCC 10.310 or made appearance,*
22 *when the time indicated in the citation passes and the court makes a finding*
23 *on the citation and any other evidence the judge determines appropriate.*

24
25 *(3) On completion of its determination under subsection (2) of this section, the court may*
26 *enter the appropriate judgment and, if the determination is one of conviction, may do any*
27 *of the following as part of the judgment:*

28 *(a) Impose a sentence of a fine.*

29
30 *(b) Direct that the fine be paid out of the bail deposit.*

31
32 *(c) Unless the court orders otherwise, remit the balance to the defendant or to*
33 *any other person designated by the defendant.*

34
35 *(4) If the person complies with LCC 10.310 and deposits the amount of bail thereunder*
36 *but neither the person nor the court requests a hearing and a hearing is not required by*
37 *law, no fine may be imposed in excess of the bail deposited. If the person has not*
38 *deposited bail under LCC 10.310 or has requested a hearing under LCC 10.310 without*
39 *depositing bail and does not appear at the hearing, the court may impose any fine within*
40 *the limits of LCC 10.350.*

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

3
4 (a) *Taking any other action against the person as permitted by law for the*
5 *person's failure to comply, including, but not limited to, sentencing the person*
6 *further as permitted by law or ordinance after the person is brought to*
7 *hearing.*

8
9 (b) *Following any procedures established by law or ordinance when the person*
10 *fails to appear.*

11
12 (6) *If a judgment is entered under this section after a person has failed to comply with*
13 *LCC 10.310 or make appearance, on motion and upon such terms as are just, the court*
14 *may relieve a person from the judgment upon a showing that the failure of the cited*
15 *person to comply with LCC 10.310 or to appear was due to mistake, inadvertence,*
16 *surprise, or excusable neglect. The motion must be made within a reasonable time, and in*
17 *no event more than one year after the person receives notice of the judgment.*

18
19 (7) *No judgment may be entered under this section by reason of a person failing to*
20 *comply with LCC 10.310 or make appearance unless the citation issued to the person*
21 *contains a statement notifying the cited person that a monetary judgment may be entered*
22 *against the person up to the maximum limit established for the offense if the cited person*
23 *fails to comply with LCC 10.310 or appear at the time, date and court specified in the*
24 *citation. [1994 o.332 § 8]*

25
26 **SECTION 13.**

27
28 ***10.325 Failure to Appear or Comply***

29
30 (1) *If a person cited under LCC 10.305 fails to comply with LCC 10.310, but has not*
31 *previously appeared before the court on the code violation action, the Office of Lincoln*
32 *County Legal Counsel shall:*

33
34 (a) *Submit an affidavit of probable cause to the court. If, after reviewing the*
35 *affidavit, the court is satisfied that the cited person has committed the violation*
36 *alleged, the court shall enter an order authorizing a peace officer to issue and*
37 *serve a citation in lieu of custody pursuant to ORS 133.110 and 133.055. If, after*
38 *being served with the citation in lieu of custody, the cited person fails to appear in*
39 *court as directed in the citation in lieu of custody, the matter shall be referred to*
40 *the Lincoln County District Attorney's Office for prosecution for the crime of*
41 *Failure to Appear on a citation, as provided in ORS 133.075; or*
42

1 *(b) Institute contempt proceedings against the cited person seeking remedial*
2 *sanctions, including an award of reasonable attorney fees, in accordance with the*
3 *provisions of ORS 33.015 to 33.155 and UTCR 19.010 to 19.050.*
4

5 *(2) If a person cited under LCC 10.305 has previously appeared before the court on the*
6 *code violation action, and was, at the time of the previous appearance, directed by the*
7 *court to appear in court at a certain date and time, and the person cited fails to so*
8 *appear, the court may:*
9

10 *(a) Issue a bench warrant, as defined in ORS 131.005, for the arrest of the*
11 *person cited;*
12

13 *(b) Direct the Office of Lincoln County Legal Counsel to submit an affidavit of*
14 *probable cause to the court. If, after reviewing the affidavit, the court is satisfied*
15 *that the cited person has committed the violation alleged, the court shall enter an*
16 *order authorizing a peace officer to issue and serve a citation in lieu of custody*
17 *pursuant to ORS 133.110 and 133.055. If, after being served with the citation in*
18 *lieu of custody, the cited person fails to appear in court as directed in the citation*
19 *in lieu of custody, the matter shall be referred to the Lincoln County District*
20 *Attorney's Office for prosecution for the crime of Failure to Appear on a citation,*
21 *as provided in ORS 133.075; or*
22

23 *(c) Direct the Office of Lincoln County Legal Counsel to institute contempt*
24 *proceedings against the cited person seeking remedial sanctions, including an*
25 *award of reasonable attorney fees, in accordance with the provisions of ORS*
26 *33.015 to 33.155 and UTCR 19.010 to 19.050. [1994 o.332 § 9]*
27

28 **SECTION 14.**
29

30 *10.330 Jurisdiction and Venue*
31

32 *The Lincoln County District Court shall have jurisdiction and venue over all code violation*
33 *actions conducted pursuant to the provisions of LCC 10.300 to 10.355. [1994 o.332 § 10]*
34

35 **SECTION 15.**
36

37 *10.335 Trial Without Jury; Discovery; Burden of Proof; No Culpable Mental State Required; No*
38 *Defense Counsel Provided at Public Expense*
39

40 *For all code violation actions conducted pursuant to LCC 10.300 to 10.355:*
41

42 *(1) Trial shall be by the court without a jury.*
43

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

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

5
6 (4) The pretrial discovery rules in ORS 135.805 to 135.873 shall apply.

7
8 (5) The defendant may not be required to be a witness in the trial.

9
10 (6) Proof of a culpable mental state is not required.

11
12 (7) Defense counsel shall not be provided at public expense. [1994 o.332 § 11]

13
14 **SECTION 16.**

15
16 10.340 Appeal

17
18 Appeal from a judgment involving a violation commenced under LCC 10.300 to 10.355 shall be
19 as provided in ORS chapter 46. [1994 o.332 § 12]

20
21 **SECTION 17.**

22
23 10.345 Bail

24
25 Bail for each alleged violation of any provision of the Lincoln County Code shall be \$300 for a
26 noncontinuing offense and \$600 for a continuing offense. [1994 o.332 § 13]

27
28 **SECTION 18.**

29
30 10.350 Penalties

31
32 Pursuant to ORS 203.065(1), violation of any provision of the Lincoln County Code shall be
33 punishable, upon conviction, by a fine [of not more than \$500 for a noncontinuing offense and
34 \$1000 for a continuing offense.]**as specified in LCC 10.205 et.seq.** [1994 o.332 § 14]

35
36 **SECTION 19.**

37
38 10.355 Collection and Disposition of Fines

39
40 Pursuant to ORS 203.065(4), fines recovered as the result of a conviction for a violation of any
41 provision of the Lincoln County Code shall be paid to the clerk of the Lincoln County [District]
42 **Circuit** Court. After first deducting court costs in the proceedings, the clerk shall pay the

1 remainder to the Lincoln County Treasurer for deposit into the Lincoln County General Fund.
2 [1994 o.332 § 15]

3
4 **SECTION 20.**

5
6 **NUISANCE ABATEMENT ACTION BY CIVIL ACTION IN CIRCUIT COURT**

7
8 **10.400 Civil Action to Redress Violation of Lincoln County Code**

9
10 Pursuant to ORS 203.065(2), 30.310 and 30.315, upon referral from any agency, office or
11 department of Lincoln County, the Office of Lincoln County Legal Counsel may commence and
12 maintain a civil proceeding by, and on behalf of, Lincoln County, seeking redress of any
13 violation of the Lincoln County Code. In such proceedings, the Office of Lincoln County Legal
14 Counsel may seek an order:

- 15
16 (1) Temporarily restraining a nuisance;
17
18 (2) Preliminarily enjoining a nuisance;
19
20 (3) Permanently enjoining a nuisance;
21
22 (4) Directing abatement of a nuisance;
23
24 (5) Awarding economic damages **including, but not limited to recovery of transient**
25 **room taxes or real property taxes;**
26
27 (6) Awarding non-economic damages;
28
29 (7) Awarding punitive damages;
30
31 (8) Awarding reasonable attorney fees;
32
33 (9) Awarding costs and disbursements;
34
35 (10) **Imposing or entering judgment for fines or abatement costs** in an amount [*not to*
36 *exceed the maximum fines*] specified under [*LCC 10.350*] **10.205-10.210, 10.245;** and,
37
38 (11) **Directing the foreclosure of any lien and order the sale of any property subject**
39 **to a lien under LCC 10.220 or LCC 10.245, pursuant to any applicable law.**
40
41 [*(11)*] **(12)** Holding a person in contempt of court and imposing remedial sanctions
42 pursuant to ORS 33.015 to 33.155 and UTCR 19.010 to 19.050 against the person if the

1 person has violated any provision court order providing for relief in any manner
2 described in this section. [1994 o.332 § 16]
3

4 **SECTION 21.**
5

6 10.405 Jurisdiction and Venue
7

8 The Lincoln County Circuit Court shall have jurisdiction and venue over all civil actions brought
9 under LCC 10.400. [1994 o.332 § 17]
10

11 **SECTION 22.**
12

13 10.410 ORCP Apply to Civil Action; Burden of Proof; No Culpable Mental State Required; No
14 Defense Counsel Provided at Public Expense
15

16 (1) The Oregon Rules of Civil Procedure govern the procedural conduct of all civil
17 actions brought under LCC 10.400. **et.seq.**
18

19 (2) The burden of proof in a civil action brought under LCC 10.400 shall be upon the
20 county by a preponderance of the evidence.
21

22 (3) Proof of a culpable mental state is not required to prove a violation of any provision
23 of the Lincoln County Code.
24

25 (4) Defense counsel shall not be provided at public expense. [1994 o.332 § 18]
26

27 **SECTION 23.**
28

29 10.415 Appeal
30

31 Appeal from a judgment involving a civil action brought under LCC 10.400 shall be as provided
32 in ORS chapter 19. [1994 o.332 § 19]
33

34 **SECTION 24.**
35

36 **10.420 Non-Waiver of Remedy**
37

38 **No waiver of enforcement under the Lincoln County Code for fines or relief under LCC**
39 **Chapter 10 or otherwise, shall occur by any delay in enforcement.**
40

41 **SECTION 25.**
42
43

CERTAIN SOLID WASTE OFFENSES

1
2 10.500 Presumption of Violation of LCC 2.1505
3

4 Notwithstanding LCC 10.335(3) and 10.410(2), pursuant to ORS 459.108, in any action
5 commenced under LCC chapter 10 that results from any alleged violation of subsections (1)
6 through (6) of LCC 2.1505 relating to littering and dumping, a name found on various items in a
7 deposit of rubbish or other solid waste placed on land or in water in violation of LCC 2.1505
8 constitutes rebuttable evidence that the person whose name appears on the items has violated
9 LCC 2.1505. However, the rebuttable presumption created by this section exists only when a
10 name on items denotes ownership of the items, such as the name of an addressee on an envelope.
11 [1994 o.333§ 6]
12

13 **SECTION 26.**
14

15 10.505 No Action for Violation of LCC 2.1505 if District Attorney is Prosecuting Criminal
16 Action for Same Conduct
17

18 Notwithstanding **any provision in LCC Chapter 10** [*10.210, 10.300 and 10.400*], pursuant to
19 ORS 459.108, no action against any person to enforce a violation of LCC 2.1505 shall be
20 commenced or maintained pursuant to this chapter if the Lincoln County District Attorney's
21 Office has commenced or maintained a criminal action against the person under ORS 164.775,
22 164.785 or 164.805 for the same conduct that forms the basis for the violation of LCC 2.1505.
23 [1994 o.333 § 7]
24

25 **SECTION 27.**
26

27 This Ordinance being necessary for the immediate preservation of the public peace,
28 health and safety, an emergency is declared to exist, and this Ordinance shall take effect upon its
29 passage.
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Note: Matter in boldfaced type in an amended section is new; matter in [italic and bracketed] is existing ordinance to be omitted. New sections are in boldfaced type.

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DATED this _____ day of _____, 2024.

LINCOLN COUNTY BOARD OF COMMISSIONERS

CASEY MILLER, Chair

KAETY JACOBSON, Commissioner

CLAIRE HALL, Commissioner

ATTESTED TO:

APPROVED AS TO FORM:

KATHLEEN KELLAY, Recorder

KRISTIN H YUILLE, County Counsel

Note: Matter in boldfaced type in an amended section is new; matter in [italic and bracketed] is existing ordinance to be omitted. New sections are in boldfaced type.