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BOARD OF COUNTY COMMISSIONERS  
KLAMATH COUNTY, OREGON

ORDINANCE NO. 36.2

NUISANCE CONTROL

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BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

AN ORDINANCE RELATING TO NUISANCE CONTROL, )  
DEFINING NUISANCE, PROVIDING FOR ENFORCEMENT )  
AND ADMINISTRATION, HEARINGS ON CONTESTED ) ORDINANCE NO. 36.2  
MATTERS, ABATEMENT AND PENALTIES, REPEALING )  
ORDINANCE NO. 36.1, AND DECLARING AN )  
EMERGENCY. )  
\_\_\_\_\_ )

The Board of County Commissioners of Klamath County, Oregon, ordains as follows:

Section 1. Title.

This ordinance shall be known as the Klamath County Nuisance Control Ordinance.

Section 2. Definitions.

As used in this ordinance, unless the context requires otherwise, the following terms are defined as follows:

2.1. "Abandoned Vehicle" means any vehicle, as defined in this section, which reasonably appears to be in one or more of the following conditions: Inoperable, wrecked, discarded, unoccupied and unclaimed; or totally or partially dismantled and resting upon the roads, streets, alleys, and/or unincorporated areas of Klamath County, Oregon.

2.2. "Authorized Officer" means, unless the context requires otherwise, the Director of the Klamath County Building Department, the County Health Officer/Public Health Administrator of Klamath County, Oregon, the Planning Director of Klamath County, Oregon, Klamath County Public Works Director, the Solid

Waste Director of Klamath County, Oregon, Klamath County Counsel or Assistant Counsel, and any duly licensed law enforcement officer.

2.3. "Chief Administrative Officer" means the Klamath County Director of the Building Department or his designee.

2.4. "County Health Officer" means the individual responsible for the delivery of public health services in Klamath County, Oregon, his Sanitation Supervisor or other designee.

2.5. "Dangerous Building" means any building or structure, including any portion thereof of any dwelling unit, guest room or suite of rooms where conditions exist to the extent that life, limb, health, property safety or welfare of the public or the occupants shall be endangered; specifically:

(a) Any building or structure which has any of the conditions or defects listed in Section 302, Uniform Code For the Abatement of Dangerous Buildings, as adopted by the International Conference of Building Officials, Library of Congress Number 81-86616, copyrighted 1982 and any amendments thereto.

(b) Any building or structure which has any of the conditions or defects listed in Section 1001, Uniform Housing Code, as adopted by I.C.B.U., Library of Congress Number 81-86609, copyrighted 1982 and any amendments thereto.

(c) Any building or structure which has any of the conditions or defects listed in the Uniform Fire Code as

adopted by I.C.B.U., Library of Congress Number 81-86619, copyrighted 1982.

2.6. "Inoperable Vehicle" means a self-propelled vehicle designated for use on the highway which has been left on public or private property ten days or more and is not currently licensed or has been extensively damaged, vandalized or stripped, including, but not limited to missing tires, wheels, motor or transmission.

2.7. "Garbage" means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

2.8. "Hazardous Waste" means the waste that may, by itself or in combination with other wastes, be infectious, explosive, poisonous, caustic, toxic or otherwise dangerous to human, animal or plant life or which are defined as hazardous under ORS 459.410.

2.9. "Intersection" means the area embraced within the prolongation or connection of the lateral right-of-way lines of two or more streets or roads which join one another at an angle, whether or not one street or road crosses the other.

2.10. "Liquid Waste" means waste oil, septic tank pumping or effluent, liquid industrial wastes or other similar material.

2.11. "Non-authorized Land Use" means any use of real property or improvements which use is expressly prohibited

pursuant to the Klamath County Land Use Ordinance or Zoning Ordinance then in effect, or any use of land which fails to conform to conditions established by the governing body on Conditional Use Permits, variances, temporary permits or zone changes. Non-authorized land use does not include lawfully existing non-conforming uses.

2.12. "Nuisance", where not otherwise specifically enumerated or described, shall mean anything that works or causes injury, damage or hurt to another and the legitimate enjoyment of a person's reasonable rights of person or property, or capable of causing an unreasonable threat to the public health, safety, and welfare under the circumstances.

2.13. "Owner" means any person, as defined in this section, having a legal interest in the real or personal property.

2.14. "Person" means any natural person, association, trust, partnership firm or corporation.

2.15. "Person in Charge of Property" means an agent, occupant, lessee, contract purchaser or person other than the owner, having possession or control of property or the rights thereto.

2.16. "Rodent" means mouse, rat or other animals commonly known as rodents, including, but not limited to, gophers, moles, shrews and squirrels.

2.17. "Refuse" means all solid wastes except body wastes and shall include garbage, ashes and rubbish.

2.18. "Rubbish" means glass, metal, paper, wood, plastics, or other nonputrescible solid waste.

2.19. "Sewage Sludge" means residual waste of sewage treatment plants, consisting of digested organic waste and undigestible solids.

2.20. "Sidewalk" means that portion of a public right-of-way, other than the roadway, set apart by curbs, barriers, marking or other delineation for pedestrian travel.

2.21. "Solid Waste" means all putrescible and non-putrescible wastes, whether in solid or liquid form (except wastes produced by the human body, liquid-carried industrial waste or sewage, or sewage hauled as an incidental part of septic tank or cesspool cleaning service) and includes garbage, rubbish, refuse, ashes, fill material, sewage sludge, street refuse, industrial wastes, swill, demolition and used construction materials, abandoned vehicles, or parts thereof, discarded home or industrial appliances, vegetable or animal wastes not associated with agricultural or garden activities and semi-solid waste, dead animals and other discarded solid materials.

2.22. "Vector" means any insect organism, including but not limited to flies, fleas, lice, ticks, fly maggots and mosquito larvae, rodent or other animal capable of bearing or carrying disease transmittable to human beings.

2.23. "Vehicle" means any self-propelled device which

is designed or used for transporting people, goods, or property upon a public street or roadway, including, but not limited to a body, engine, transmission, frame or other major parts, but does not include a device propelled by human power, such as a bicycle, or a device operated exclusively upon fixed rails or tracks. "Vehicle" shall not include devices primarily designed for use in agricultural operations.

Section 3. Policy.

The Board has determined it necessary to establish and maintain a program for the effective control and abatement of nuisances which constitute a hazard or menace to the health, safety and welfare of the people of Klamath County, and this ordinance shall be liberally construed to effectuate this purpose.

Section 4. Nuisances Defined.

4.1. It shall be unlawful for any person to maintain or allow to exist the following things, practices or conditions on any property, or within public road rights-of-way adjacent thereto, which are hereby declared to be nuisances:

(a) A small animal carcass not buried, destroyed or removed by an approved method within twenty-four (24) hours after death. A large animal carcass not buried, destroyed or removed by an approved method within three (3) business days after death. An approved method under this Section shall mean a method approved by the State of Oregon Health Department or Agricultural Department.



(b) Accumulation, collection or storage of solid waste, hazardous waste, garbage, sewage sludge, or liquid waste, without prior approval of the County Health Officer/Public Health Administrator, or Solid Waste Department, unless the person is licensed by lawful authority to operate a business specifically for those purposes, franchised or has been issued a permit by lawful authority, and storage or accumulation occurs on such property which allows such use as a permitted use under the Klamath County Zoning and Land Use Ordinances.

(c) A well, septic system or cesspool that has not been safely or securely sealed or properly constructed and maintained, which may cause or have caused an injury to any person or contamination of potable water supply.

(d) An abandoned, discarded or unattended icebox, refrigerator, or other container with a compartment of more than one and one-half cubic feet capacity, and a door or lid which locks or fastens automatically when closed, and which cannot be easily opened from the inside.

(e) Any property, whether vacant or improved, building, residence, structure, or accumulation of any materials which is infested or provides harborage for vector or rodents.

(f) Uncontrolled or uncultivated growth of weeds, plants, brush, vines or grasses, which offer vector or rodent harborage, which constitute a fire hazard, or which unreasonably interfere with the use and enjoyment of public and private

property within 500 feet of the external property lines on which the vegetation or growth is located.

(g) An open pit, well, quarry, cistern, excavation or other hole of depth of four feet or more and a top width of twelve (12) inches or more without reasonable safeguards or barriers to prevent such places from being accessible to children.

(h) Dead or decaying trees and tree limbs that present a safety hazard to the public or to abutting property.

(i) Any abandoned or inoperable vehicle upon private property, unless the owner of the property is lawfully authorized to operate a business specifically for the purpose of storage of discarded vehicles.

(j) Signs, hedges, shrubbery, fences, walls, natural growth or other obstructions at or near intersections which hinder the view necessary for the safe operation of vehicles.

(k) Any excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks or other public property.

(l) Obstruction to public sidewalks or roadways by trees, bushes, roots, other natural growth, soil or solid waste.

(m) Any accumulation of discarded tire casings which is not demonstrably a part of an ongoing construction or

reclamation project or short term storage for commercial tire recapping or tire retail business or authorized land fill. Short term storage shall not exceed a period of 90 days.

(n) Any dangerous building or structure as defined in Section 2 of this ordinance, which from any cause endangers the life, limb, health, property, safety or welfare of the general public, their uses or occupants, which to correct said nuisance may require its repair, vacation or demolition.

(o) The burning of refuse, liquid waste, solid waste, or waste which emits an obnoxious odor and for which a fire permit has not been issued.

4.2. The declaration of the above nuisances shall not be construed to limit the power of the Chief Administrative Officer or his authorized representative to investigate any other thing, practice or condition appearing to be a nuisance which is a danger to public health and safety and to declare the same practice, thing or condition a nuisance when the facts appear that a thing, practice or condition exists which is the cause or a threat to public health and safety. Such nuisance shall become subject to the provisions of this ordinance upon the said declaration of the Chief Administrative Officer.

4.3. Notwithstanding Section 4.1(i), an owner of property upon which any inoperable vehicle is kept, may file an application for storage of a vehicle. Such application shall describe the vehicle, location, value, when the vehicle will be

operational and any other information deemed relevant by the Chief Administrative Officer. The filing of such application shall be on a form prescribed by the Chief Administrative Officer. Upon the filing of such application, the owner shall have six months within which to cause the vehicle to be operational. If it is not made operational, it shall be removed or placed in an enclosed garage. No more than two applications may be filed for one piece of property.

Section 5. Administration and Enforcement.

5.1. The Chief Administrative Officer, under this ordinance, shall be responsible for the administration and enforcement of this ordinance.

5.2. The Chief Administrative Officer, or any authorized officer shall have the authority, to enforce all the provisions of this ordinance, including but not limited to administer oaths, certify to all official acts, subpoena, require the attendance of witnesses at public hearings before the Board of County Commissioners, require production of relevant documents at public hearing and take testimony of any person by depositions.

5.3. The Board of County Commissioners hereby establishes two non-mutually exclusive methods for enforcement of this ordinance.

- (a) Emergency abatement
- (b) Civil Action to abate procedure

The Board may direct the use of one or more of these enforcement methods or may enforce by any other remedy provided by Oregon law. No method shall be deemed exclusive. Any and all remedies may be pursued in the alternative.

Section 6. Inspections.

6.1. The Chief Administrative Officer or other authorized officer may enter any property or building at any reasonable time for the purpose of inspection or enforcing this ordinance provided that the officer obtains the consent of the owner or person in charge of property, or court warrant prior to entering upon the private property or private building.

6.2. Where an emergency exists, the Klamath County Chief Administrative Officer may enter any property or building at any reasonable time where he has reasonable cause to believe that a nuisance constitutes an immediate and active danger to the public health, safety and welfare.

6.3. An investigation shall be conducted by the Chief Administrative Officer or other authorized officer:

(a) Upon receiving a written nuisance complaint specifying the name of the owner or name of the person in charge of property, location of the property, the nature of the nuisance involved.

(b) Whenever it appears there is reasonable cause to believe that a nuisance exists.

6.4. The Chief Administrative Officer may order immediate abatement if he finds that the existence of the nuisance poses an extreme hazard to the public health, safety and welfare.

Section 7. Emergency Abatement.

7.1. Chief Administrative Officer may declare that an emergency exists where the County Health Officer/Public Health Administrator has reasonable cause to believe that a nuisance constitutes an immediate and active danger to public health, safety and welfare.

7.2. In an emergency, the County Health Officer/Public Health Administrator or the Chief Administrative Officer may proceed with an immediate abatement of the nuisance if the owner or person in charge of the property is unwilling or unable to carry out the necessary action in a reasonable period of time under the circumstances, or cannot be located after diligent inquiry. The Chief Administrative Officer or the County Health Officer/Public Health Administrator shall forthwith thereafter send or serve written notice of abatement to the owner of the property. This notice shall be served upon the person and shall advise him that he may within ten (10) days from the date of service upon him request a hearing before the Board of Commissioners. The request for hearing shall include the mailing address of the owner.

7.3. Upon receipt of the request for hearing, the Chief Administrative Officer shall promptly notify the Board of Commissioners, and they shall set a time and place for hearing at the earliest possible time and shall promptly notify the person requesting the hearing as to the time and place of hearing, by certified mail, return receipt requested, to the last known mailing address. Notice may also be given to such persons as the Board may believe to be interested persons.

7.4. The person or persons requesting the hearing and the Chief Administrative Officer may subpoena witnesses, submit testimony, give argument, cross-examine witnesses and submit rebuttal evidence on any pertinent issue. Any party may be represented by counsel.

7.5. Failure of the person requesting the hearing to appear at the hearing shall constitute a waiver of the right to a hearing.

7.6. The Chief Administrative Officer shall cause all hearings to be recorded in a manner which will allow for the written transcription thereof and all material submitted at the hearing shall be retained by the Board for a period of two (2) years from the date of order.

7.7. Within ten (10) days following the hearings, the Board shall prepare an order specifying the facts found to exist.

7.8. If the Board determines that a nuisance no longer exists, it can order the return of any property removed by the

Chief Administrative Officer upon such condition as the Board may prescribe which will eliminate the nuisance. The person requesting the hearing may claim it upon paying the expense incurred in its removal or storage. The Board may also direct the filing of a civil abatement action or specify steps the owner can take to prevent such action. No other issues shall be determined at said hearing.

7.9. Review of any action of the Board taken pursuant to this ordinance, and the rules and regulations adopted pursuant hereto, shall be taken solely and exclusively by writ of review.

Section 8. Notice of Future Abatement Action.

The Chief Administrative Officer or other authorized officer shall issue and serve written notice upon the owner, or the person in charge of the property prior to the filing of a civil abatement action. The notice provided herein shall describe with reasonable certainty the property, nature of the nuisance and require the person in charge of the property, or owner thereof, to abate the nuisance within the time specified in the notice or to sign a voluntary compliance with all the specifications of the notice within the time set forth in the notice. In event it can be reasonably determined, written notice shall be served personally upon the owner, or person in charge of the property. Additionally, if nuisance concerns the condition of real property, or improvement thereon including the existence of any noxious weeds, the notice shall be posted in a conspicuous



place upon the real property or improvement. If the nuisance concerns a vehicle, the notice shall additionally be posted in a conspicuous place upon the vehicle, provided that the Chief Administrative Officer can legally obtain access to the vehicle without the necessity of securing a search warrant. If the owner or person in charge of the property cannot be reasonably determined, the notice provided for herein shall be mailed by prepaid, certified mail, return receipt requested, to the addressee's last known address. A mailed notice shall be presumed to have been received on the fourth mail delivery day after mailing.

Section 9. Form of Notices.

All notices required by this ordinance shall be of form authorized by the County Counsel.

Section 10. Civil Action to Abate Nuisance.

10.1. If an owner fails to abate a nuisance as required under this ordinance within thirty (30) days after the expiration of the time period set forth in the notice of violation, the Chief Administrative Officer may cause abatement of the nuisance by civil action. Said action shall be to seek a declaration of the nuisance and a decree to abate. After judgment, should it reasonably appear that the items constituting the nuisance can be removed and sold and that the costs of such removal are less than the reasonable value of the property, Chief Administrative Officer shall direct removal and storage. In all other cases the nuisance shall be abated in the least costly

manner. Accurate record of the abatement costs shall be kept and shall include a surcharge of 25% of the cost of the abatement for administrative overhead. A billing for the amount of said costs shall be forwarded by certified mail, return receipt requested, to the owner and/or the person in charge of the property by the Klamath County Building Department within thirty (30) days from the date of the billing. Should payment not be received within thirty (30) days, the Board of Commissioners may order the filing of a lien against the real or personal property.

10.2. After the decree of abatement is issued by the court providing for abatement by the county, should it reasonably appear to the Chief Administrative Officer that the property removed by Klamath County is of the value of \$300 or more, the Chief Administrative Officer shall cause an appraisal to be made of the property.

(a) In the event that the property is valued at \$300 or less, the Chief Administrative Officer may order the disposition of the property without notice or public auction. In the event that the personal property is a vehicle, the Chief Administrative Officer shall file with the Department of Motor Vehicles an affidavit describing the vehicle, including license plate, if any, stating the location and appraised value of the vehicle and stating it will be junked or dismantled.

(b) In the event that the property is appraised at \$300 or more, the Chief Administrative Officer shall cause

notice of sale to be published in a newspaper of general circulation within the county. The notice shall state:

(i) The sale is of property under Ordinance 36.2 of Klamath County;

(ii) A description of the property (and if a vehicle, the type, make, model, year, license number and I.D. number, if available) and any other information which will aid in identification;

(iii) The terms of the sale;

(iv) The date, time and place of the sale, and that Klamath County will bid in the amount claimed against the property for abatement costs;

(v) The location of the property and where it can be inspected;

(vi) Notice shall be published two times, once not less than fifteen (15) days prior to the sale, and the second not less than five (5) days prior to the sale.

10.3. Any property abated under provisions of this ordinance may be redeemed five (5) days prior to the sale by its owner, or by the person in charge of the property by applying to the Chief Administrative Officer with:

(a) Evidence of ownership or interest therein;

(b) Payments of the costs due and owing up to the time of application for redemption for abatement;

(c) Provide sufficient evidence that the nuisance will not be allowed to be resumed.

10.4. The lien provided for herein shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate.

10.5. The lien provided for shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments for municipal corporations.

Section 11. Civil Enforcement Procedures; Injunction; Voluntary Compliance.

11.1. In addition to the abatement proceedings under Section 10 of this ordinance, the enforcement officer or his designee, if he or she has probable cause to believe that a person is maintaining or allowing a nuisance to exist within an unincorporated area of Klamath County, may bring suit in the name of Klamath County in the Circuit Court to restrain such person from allowing the alleged nuisance to continue.

11.2. Before filing a suit under this section, the enforcement officer shall, in writing, notify the person charged with maintaining the alleged nuisance of its existence and the relief to be sought. Such notice shall be served in the manner set forth in Section 8 of this ordinance. The person charged thereupon shall have ten days within which to execute and deliver to the enforcement officer or his designee an assurance of voluntary compliance. Such assurance shall set forth what

actions, if any, the person charged intends to take with respect to the abatement of the alleged nuisance. If the enforcement officer or his designee is satisfied with the assurance of voluntary compliance, it may be submitted to an appropriate court along with a complaint for injunction, requesting the court enter a stipulated decree enjoining the person maintaining the nuisance. If approved, it shall thereafter be filed with the clerk of the court. The enforcement officer may reject as unsatisfactory any assurance which in his opinion will not abate the nuisance within a reasonable time.

11.3. Violation of any of the terms of an assurance of voluntary compliance which has been approved by and filed with the Court may constitute a contempt of court upon cause being shown therefor.

11.4. If the enforcement officer or his designee alleges that he or she has reason to believe that the delay caused by complying with the provisions of this ordinance would cause immediate harm to the public health, safety or welfare, enforcement officer or his designee may immediately institute a suit under this section without notice.

11.5. A temporary restraining order may be granted without prior notice (under the provisions of ORCP) to the person if the court finds there is a threat of immediate harm to the public health, safety or welfare. Such a temporary restraining order shall expire by its terms within such time after entry, not

to exceed ten days, as the court fixes, unless, within the time so fixed, the order for good cause shown is extended for a like period or unless the person restrained consents that it may be extended for a longer period.

11.6. Penalties. Any person who willfully violates the terms of an injunction issued under this section shall be punished pursuant to ORS 33.010, et seq. For purposes of this section, the court issuing the injunction shall retain jurisdiction and the cause shall be continued and in such cases the enforcement officer acting in the name of the county may petition for enforcement of the decree.

11.7. Any person who willfully violates any provision of an assurance of voluntary compliance approved and filed with an appropriate court under this section, shall forfeit and pay to the county a civil penalty to be set by the court of not more than \$500 per violation, in addition to being subject to the provisions of ORS 33.010, et seq. The enforcement officer may apply to the appropriate court for recovery of such civil penalty and other enforcement.

11.8. The court may continue a hearing on contempt for a fixed or indefinite basis should it appear to the satisfaction of the court that the party is making reasonable progress in abating the nuisance per the court's original decree.

11.9. The remedies provided in this section are in addition to all other remedies provided by this ordinance.

Section 12. Receiver.

In any proceeding commenced under this ordinance, the county shall, upon application to the court and notice to all parties, be entitled to the appointment of a receiver, either before or after judgment, if it is established that the appointment is necessary to fulfill the purpose and intent of this ordinance. Such appointment shall be in addition to all other remedies available to the county.

Section 13. Separability.

If any section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions of this ordinance.

Section 14. Repealer.

Ordinance 36.1 of Klamath County, Oregon, is hereby repealed on the effective date of this ordinance.

Section 15. Emergency Clause.

In order to abate existing conditions which are a threat to the public health, safety and welfare of the residents and citizens of Klamath County, it is necessary that the terms and conditions of this ordinance become effective immediately; therefore, an emergency is hereby declared, and this ordinance

shall become effective upon adoption by the Board of County Commissioners for Klamath County.

DATED this 6<sup>th</sup> day of September, 1985.

Carroll Zou Robert  
Chairman

out of office today  
Commissioner

Kevin Hamilton  
Commissioner

ATTEST:

Gonna A. Verling  
Recording Secretary

APPROVED AS TO FORM AND LEGALITY

Robert Brown  
County Counsel