

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF ORDINANCE NO' s. 36.08) ORDINANCE NO' S. 36.08
AND 57.07B WHICH AMENDS OPERATION OF) AND 57.07B
OF MARIJUANA DISPENSARIES AND)
MARIJUANA RETAIL SALES AND COUNTY)
CODE CHAPTER 800, UNIFORM CIVIL)
VIOLATION PROCEDURE)

WHEREAS, a periodic review of the Klamath County Code indicates that some housekeeping amendments are necessary to make the Klamath County Code Ordinance 36.07 consistent with the Oregon Revised Statutes, the Oregon Administrative Rules and operating changes that have occurred within the County; and

WHEREAS, it is in the best interest of Klamath County to amend the Code and Ordinance 36.07 to make it consistent with the Oregon Revised Statutes, the Oregon Administrative Rules and current County operations;

NOW, THEREFORE, the Board of County Commissioners ordains that the Klamath County Code and Ordinance 36.07 will be amended to read as follows:

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DIVISION 8
ENFORCEMENT
CHAPTER 800 CONTENTS

CHAPTER 800
UNIFORM CIVIL VIOLATION PROCEDURE

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Ordinance No. 57.04B - 11/28/2000
Ordinance No. 57.05B - 10/05/2004
Ordinance No. 57.06B - 03/03/2009
Ordinance No. 57.07B -

CHAPTER 800
UNIFORM CIVIL VIOLATION PROCEDURE

800.001 Purpose. A civil violation procedure has been established for the purpose of decriminalizing penalties for violations of certain civil ordinances and for the purpose of providing a convenient and practical forum for the civil hearing and determination of cases arising out of said violations.

800.005 Definitions. For the purpose of this Ordinance the following mean:

(1) "Civil violation" means commission of an act or omission to act in a manner prescribed by this Ordinance or other County ordinance constituting breach or infringement of a section of a County ordinance or of this Ordinance constitutes a civil violation and shall be handled in accordance with the procedures established by this Ordinance.

(2) "Enforcement Officer" means the County Commissioners or any designee or designees whom the County Commissioners appoints by Resolution or Order to enforce the Code.

(3) "Penalty; Penalty schedule" means the only penalty to be imposed for a violation is a monetary penalty. The penalty to be assessed for a specific violation will be determined pursuant to specific provisions within the ordinance defining the violation or the penalty schedule found in KCC 800.900.

The procedure prescribed by this Ordinance shall be the exclusive procedure for imposing a penalty; however, this section shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statute or state law which are intended to abate or alleviate ordinance violations, nor shall the County be prohibited from recovering, in a manner prescribed by law, any expense incurred by it in abating or removing ordinance violations pursuant to any ordinance.

(4) "Person" means any natural person or persons, firm, partnership, association or corporation.

(5) "Prior contact" means:

(a) Any prior contact between the Enforcement Officer and the responsible party regarding the alleged violation, including, but not limited to phone calls, personal oral communication at any location, letters or other forms of written communication, or a prior citation issued for the same or similar violation.

(b) Prior contact shall be deemed to occur without actual contact between the Enforcement Officer and a responsible party if the alleged violation is related to regulated activity for which the County has issued any permit, license, agreement, or written directive required by law or policy of the County in conjunction with the regulated activity.

No time limit shall restrict prior contact which is deemed to have occurred under the terms of this section.

(6) "Responsible party" means the person responsible for curing or remedying a violation and includes:

(a) The owner of the property or the owner's manager or agent or other person in control of the property on behalf of the owner;

(b) The person occupying the property including bailee, lessee, tenant or other person having possession;

(c) The person who is alleged to have committed or authorized the commission of the violation.

800.100 Violation Procedure.

(1) Reporting. All reports or complaints of violations covered by this Ordinance shall be made to the Enforcement Officer.

(2) Review of Facts By Enforcement Officer. When a violation covered by this procedure is reported to the Enforcement Officer, the Enforcement Officer may refuse to proceed further with the matter after a review of the facts and circumstances surrounding the alleged violation, and upon making a determination that sufficient evidence does not exist to support the allegation that a violation has occurred or if the Enforcement Officer deems it in the best interest of the County.

(3) Prior Contact. Before a uniform violation citation and complaint is issued for a civil violation the Enforcement Officer may make a prior contact with the responsible party. Whether a prior contact is made prior to issuance of a uniform violation citation and complaint for a civil violation, is solely within the sound discretion of the Enforcement Officer while enforcing the best interests of the County.

In making the prior contact, the following information shall be communicated to the responsible party:

(a) a description or identification of the activity constituting the alleged violation and identification of the recipient as being the responsible party for the violation;

(b) a statement that the Enforcement Officer has determined the activity to be a violation;

(c) a statement of the action required to remedy or cure the violation and the time and/or date by which the remedy must be completed or begun;

(d) a statement advising that, if the required abatement is not completed or commenced within the time specified, a uniform violation citation and complaint will be issued and that a penalty in the maximum amount provided by Section 800.900 of this Ordinance for that particular violation could be imposed.

(4) When the Enforcement Officer considers it advisable, the Enforcement Officer may enter into a written agreement resolving the problems which gave rise to the complaint. The agreement shall be known as a voluntary compliance agreement and shall be binding on the responsible party. The fact that a person alleged to have committed a civil violation enters into such an agreement shall not be considered an admission of having committed a violation for any purpose.

(5) During the time allowed in the voluntary compliance agreement for the completion of necessary correction action, the County shall hold in abeyance further processing of the alleged violation. If all terms of the voluntary compliance agreement are satisfied, the County shall take no further action concerning the alleged violation other than those steps necessary to terminate the matter.

(6) The failure to comply with any term of the voluntary compliance agreement constitutes a separate Class A Civil Violation and shall be handled in accordance with the procedures established in this Chapter. The County may also proceed with processing the alleged violation giving rise to the voluntary compliance agreement.

800.110 Issuance of Uniform Violation Citation and Complaint.

(1) If the responsible party with whom prior contact was made fails to cure or remedy the alleged violation or if the Enforcement Officer does not make a prior contact, a uniform violation citation and complaint signed by the Enforcement Officer or any citizen may be filed with the Klamath County Justice Court or the Klamath County Circuit Court charging the responsible party with the civil violation and setting a date for the responsible party to

appear before the court to answer said complaint. The violator may be prosecuted by the County in the name of the County or be made a defendant in a civil proceeding as prescribed by O.R.S. 203.065.

(2) The Enforcement Officer shall prescribe the form of the uniform violation citation and complaint, but it shall consist of an original and three copies. The required copies are to be distributed as follows:

- (a) One to the Enforcement Officer;
- (b) One to the person being cited;
- (c) The original and one copy to the Court.

(3) Each of the three pages shall contain the following information:

- (a) the name of the court and the court's file number, if available;
- (b) the name of the person cited;
- (c) the violation with which the person is charged;
- (d) the date, time and place the violation occurred, or if the violation is of a continuing nature, the date, time and place the violation was observed by the enforcement officer, or the citizen signing the complaint;
- (e) the date on which the citation was issued;
- (f) the scheduled penalty for the alleged violation;
- (g) the time and place at which the person cited is to appear in court to answer the complaint.

(4) The complaint shall contain a form of verification that the person signing the complaint swears that the person has reasonable grounds to believe, and does so believe, that the person cited committed the violation.

800.120 Service. Service of the uniform violation citation and complaint shall be made by personal service upon the responsible party. If personal service cannot be made then service of the uniform violation citation and complaint shall be in accordance with the Oregon Rules of Civil Procedure.

800.130 Answer.

(1) A person who receives a summons and complaint alleging a violation shall answer such complaint by personally appearing to answer at the time and place specified therein; except an answer may be made by mail or personal delivery if received by the County within ten (10) days of the date of the receipt of the summons as provided in subsection 2 and 3 below.

(2) If the person alleged to have committed a violation admits the violation, the person may complete the appropriate answer on the back of each summons and forward the summons to the appropriate court. Cash, check or money order in the amount of the penalty for the violation alleged as shown on the face of the summons shall be submitted with the answer. Upon receipt of the penalty, an appropriate order shall be entered in the court records.

(3) If the person alleged to have committed the violation denies part or all of the violation, the person may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for court fees. Upon receipt, the answer shall be entered and a hearing date established by the court. The court shall notify the person alleged to have committed the violation by return mail of the date of the hearing. The security received shall be returned upon appearance by the person alleged to have committed the violation for the hearing, except as otherwise provided in this Chapter. The security deposit may be waived in whole or in part at the discretion of the court for good cause shown and upon written application of the person alleged to have committed the violation setting forth the reason for requesting the waiver and certifying that the person alleged to have committed the violation will attend the hearing when scheduled.

800.140 Hearing.

(1) Every hearing that is held before the Circuit court to determine whether a violation has been committed shall be held without a jury.

(2) The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense. If legal counsel is to appear, written notice shall be provided to the court at least ten days prior to the hearing date.

(3) Klamath County may be represented by legal counsel or the designated Klamath County Enforcement Officer.

(4) The defendant shall have the right to present evidence and witnesses in the defendant's favor, to cross-examine witnesses who testify against the defendant and to submit rebuttal evidence.

(5) The hearing shall be limited to production of evidence only on the violation alleged in the complaint.

(6) The complainant or, if the County is the complainant, the Enforcement Officer, shall have the burden of proving the alleged ordinance violation by a preponderance of the evidence.

(7) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the violation as alleged in the complaint was committed. When the violation has not been proven, an order dismissing the complaint shall be entered in the court records. A copy of the order shall be delivered to the person named in the order personally or by mail. When the court finds that the violation was committed, and upon written request by a party to the hearing, the order shall include a brief statement of the necessary findings of fact to establish the violation alleged.

(8) Upon a finding that a violation has occurred, the court shall assess a penalty pursuant to the schedule established in accordance with this Chapter, plus court costs and witness fees. The judge is authorized to set reasonable court costs including security for court fees by court order.

800.200 Enforcement.

(1) If a cited person fails to answer the summons and complaint or appear at a scheduled hearing as provided herein, a default judgment shall be noted for the scheduled penalty applicable to the charged violation. In addition, when a person fails to appear for a hearing, the security posted, or an amount equal to the security waived, shall be ordered forfeited. Nothing in this subsection shall be construed to limit in any way the contempt powers of the judge granted by State law, and the judge may exercise those powers as the judge considers necessary and advisable in conjunction with any matter arising under the procedures set forth in this Chapter.

(2) Any penalty assessed is to be paid no later than ten (10) days after the receipt of the final order declaring that penalty. Such period may be extended upon order of the judge.

(3) Delinquent penalties and those brought to default judgment which were assessed for violations may in addition to any other method be collected or enforced pursuant to O.R.S. 30.310 or 30.315.

800.210 Lien Filing and Docketing.

(1) When a judgment is given in either Justice Court or Circuit court in favor of the County and includes a money award, such judgment shall become a lien upon all the judgment debtor's real property as set out in O.R.S. 18.150.

800.300 Effect of Citation on Nuisance. The requirement to abate a nuisance is not a penalty for violating nuisance ordinances, but is an

additional remedy. The imposition of a civil violation penalty does not relieve a person of the duty to abate a nuisance.

800.400 No Mental State Required. Acts or omissions to act which are processed pursuant to the provisions of this Ordinance or are designated a violation by a County ordinance, do not require a culpable mental state as an element of the violation.

800.450 Non-Exclusive Remedy. The procedures and remedies contained in this Ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or State statutes or State law which are intended to alleviate ordinance violations or abate nuisances, and the procedures set forth in this Chapter shall not be prerequisites for utilizing any of said alternative remedies.

800.900 Schedule of Penalties.

(1) Violations are classified for the purpose of determining penalties in the following categories:

- (a) Class A violations.
- (b) Class B violations.

(2) An assessment of a penalty for a violation shall be an assessment to pay an amount not exceeding:

- (a) \$ 720.00 for Class A violations;
- (b) \$ 360.00 for Class B violations;

(3) For a continuing offense where only one citation is used, a fine of not more than \$1,000.00 may be assessed.

(4) Violations of specific Klamath County Ordinances are classified as follows:

CODE PROVISION	CLASS
KCC Chapter 400	A
KCC Chapter 401	A
KCC Chapter 402	A
KCC Chapter 405	B
KCC Chapter 406	A
KCC Chapter 407	A
KCC Chapter 408	A
KCC Chapter 601	A
KCC Chapter 602	A
*KCC Chapter 603	A
KCC Chapter 604	A
KCC Chapter 700	A
Land Development Code	A

* This Chapter is also applicable to KCC Chapter 603, however, the penalties for KCC Chapter 603 are outlined at KCC Chapter 603, Section 603.400.

Ordinances enacted after the effective date of this Ordinance which provide a penalty provision for their enforcement shall expressly incorporate the violation procedure set out herein and classify violations thereof in accordance with this Section of this Ordinance.

800.920 Severability. The provisions of this Chapter are severable. If a portion of this Chapter is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter.

**IN THE MATTER OF AMENDING KLAMATH COUNTY)
ORDINANCE No. 36.07 TO ADDRESS "MEDICAL) ORDINANCE No. 36.08
ONLY" MARIJUANA BUSINESSES)**

WHEREAS, Klamath County enacted Ordinance 36.07 on September 22, 2015 prohibiting marijuana processing sites registered under ORS 475B.450; and

WHEREAS, Legislature passed House Bill 2198, which was signed into law August 2, 2017 and provided authority to governing bodies to amend their current ordinances to address medical only marijuana businesses.

NOW THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Ordinance 36.07 is amended to read:

(1) In accordance with section 133(2), chapter 614, Oregon Laws 2015 (Enrolled House Bill 3400), the following are prohibited in the area subject to the jurisdiction of Klamath County:

- (a) *Marijuana processing sites registered under section 85, chapter 614, Oregon Laws 2015.*
- (b) *Medical marijuana dispensaries registered under ORS 475.314.*
- (c) *Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015.*
- (d) *Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015.*
- (e) *Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015.*
- (f) *Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015.*
- (g) **The premises of a licensee, as those terms are defined in ORS 475B.015, that have been designated an "exclusively medical licensee" under section 24, 25, 26 or 27, Chapter 183, Oregon Laws 2017 (enrolled Senate Bill 1057).**

ENFORCEMENT. The Sheriff, or his/her designee, is charged with enforcement of this ordinance.

SEVERABILITY. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not

affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

EFFECTIVE. This Ordinance shall be in effect 90 days after the date of its adoption.

DONE and DATED this 19th day of December, 2017.

KLAMATH COUNTY BOARD OF COMMISSIONERS



Chair


Commissioner


Commissioner

APPROVED FOR LEGAL SUFFICIENCY:

ATTEST:

 12/27/2017
David P. Groff
Klamath County Counsel


Recording Secretary