

BE IT REMEMBERED, that at a regular term of the Board of Commissioners of the State of Oregon, for the County of Union, sitting for the transaction of county business, begun and held at the Joseph Building Annex in the City of La Grande, in said County and State, on Wednesday of said month and the time fixed by law for holding a regular term of said Commissioner, when were present:

The Honorable	<u>Paul Anderes</u>	<u>Chair</u>
	<u>R. Matthew Scarfo</u>	<u>Commissioner</u>
	<u>Jake Seavert</u>	<u>Commissioner</u>

WHEN, on WEDNESDAY, the 21st day of May 2025, among others the following proceedings were had to-wit:

In the Matter of Implementing the Authority)	
to Enforce the Onsite Wastewater Treatment)	ORDINANCE 2025-02
Systems Management Program Delegated to)	
Harney County by the State of Oregon and)	Page 1 of 5
Declaring an Emergency)	

NOW THEREFORE, THE BOARD OF COMMISSIONERS, COUNTY OF UNION, STATE OF OREGON, ADOPTS AS FOLLOWS:

SECTION 1- SHORT TITLE

This ordinance shall be known as the Union County Onsite Wastewater Treatment Systems Implementing Ordinance and shall be so cited and plead.

SECTION 2 - JURISDICTION

Under a 2025 Intergovernmental Agreement between the Oregon Department of Environmental Quality (DEQ"), Union County, and Harney County in accordance with the authority provided by ORS 190.010, 190.030, 190.110, 454.640, 454.725, and 454.745, attached as Exhibit A, DEQ has delegated to Harney County its authority to perform DEQ's duties under ORS 454.635, 454.655, 454.665, and 454.755 within Union County. Accordingly, this ordinance shall have force and effect throughout the entirety of incorporated and unincorporated Union County.

SECTION 3 - PURPOSE

It is the declared purpose of the County, in furtherance of the protection of the public health, safety and welfare of the community, to enact an ordinance:

- (1) implementing the authority to enforce the subsurface wastewater management program delegated to Harney County by DEQ, and
- (2) providing written guidelines for the initiation and investigation of complaints of violation of this ordinance; enforcement of this ordinance through voluntary compliance; abatement of violations and prosecution of ordinance violators who do not comply; sanctioning of ordinance violators and the assessment of fines and penalties; and recovery of the County's investigation and enforcement costs.

SECTION 4 - POLICY

The County's policy is to achieve compliance with this ordinance in all cases of reported and verifiable ordinance violations. Enforcement procedures for this ordinance are designed to allow the level of enforcement that best fits the type and circumstance of the violation(s), within clear and objective criteria as set forth herein and consistent with the stated purpose and policy of this ordinance.

SECTION 5 - ADMINISTRATION

The Harney County Public Health Administrator, under the supervision of the Union County Board of Commissioners, is responsible for the administration and enforcement of this chapter.

SECTION 7 - DEFINITIONS

As used in this Ordinance:

- (1) "Abatement of nuisance" means the affirmative acts of removing, repairing or taking other steps as may be necessary to remove or otherwise remediate a nuisance.
- (2) "Enforcement officer" means the Public Health Administrator and his or her duly authorized employees, agents, and designees.

- (3) "Citation" means a document issued to a person who has committed a civil infraction in violation of a duly enacted ordinance.
- (4) "Control" means the ability to regulate, restrain, dominate, counteract, or govern property, or conduct that occurs on a property
- (5) "Court" means the Circuit Court, Justice Court, or Municipal Court where the violation citation was prosecuted.
- (6) "Notice" means a Notice of Violation and Proposed Civil Penalty ("NOV") issued to a violator.
- (7) "Offense" shall have the meaning as defined in ORS 161.505 (and any amendments thereof).
- (8) "On-site wastewater treatment system" means a "subsurface sewage disposal system" as that term is defined in ORS 454.605 (and any amendments thereof).
- (9) "Owner" means:
 - (a) any person whose name and address are listed as the owner of the property on the County Assessment and Taxation records and that person's agent;
 - (b) any person who has purchased or otherwise acquired a property but whose ownership is not yet reflected in the official records of the County;
 - (c) a trustee, executor, administrator, guardian or mortgagee in possession and having control of the property;
 - (d) a person who has care and control of a property in the case of the absence or disability of the person holding title thereto; and
 - (e) a lessee, tenant, or any other person in possession of the property.
- (11) "Person" means any natural person, agent, association, firm, partnership, corporation, or other entity capable of owning, occupying or using property in Union County.
- (12) "Property" means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one (1) unit, property may be limited to the unit or the portion of the property on which any violation has occurred or is occurring, but includes areas of the property used in common by all units of property including, without limitation, other structures erected on the property and areas used for parking, loading, and landscaping.
- (13) "Public Health Administrator" means the Harney County Public Health Administrator and his or her duly authorized employees, agents, and designees.
- (14) "Violation" shall have the meaning as defined in ORS 153.008 (and any amendments thereof).
- (15) "Violator" means a person to whom a citation has been issued.

SECTION 7 - STATUTES AND REGULATIONS ADOPTED BY REFERENCE

All administrative rules duly existing and adopted by the Environmental Quality Commission of the State of Oregon and DEQ pursuant to ORS 454.605 through 454.755 (and any amendments thereof), currently found in OAR Chapter 340, Divisions 71 and 73, hereinafter referred to as the "Onsite Wastewater Treatment System Rules and Regulations," are adopted in their entirety as the onsite wastewater treatment system rules for the County for regulating and controlling the construction, alteration, repair, operation and maintenance of on-site wastewater treatment systems within the County. The Onsite Wastewater Treatment System Rules and Regulations so adopted¹ are referred to and by this reference made a part of this ordinance as though fully set out herein.

¹ The Onsite Wastewater Treatment System Rules and Regulations are published on DEQ's public website at <https://www.oregon.gov/deq/Residential/Pages/Onsite-Rules.aspx>

SECTION 8 - STRICT LIABILITY

Violations of this ordinance are strict liability offenses and do not require the proof of any culpable mental state.

SECTION 9 - VIOLATION CLASSIFICATION

Any violation of this ordinance shall constitute a Class A violation under ORS 153.012.

SECTION 10 - CONTINUING VIOLATIONS

- (1) When a violation of this ordinance is of a continuing nature, a separately punishable violation occurs on each calendar day that the violation continues.
- (2) The complaint for a continuing violation will clearly state the following:
 - (a) The ongoing or uninterrupted nature of the violation;
 - (b) The date the violation is alleged to have first occurred;
 - (c) The dates or range of dates of the continuing or uninterrupted violation; and
 - (d) The amount of the fine for each day's violation

SECTION 11 - INTERMITTENT VIOLATIONS

A code violation that occurs only intermittently (*e.g.*, surfacing sewage from a drain field) may be deemed a continuing violation if the violation may be attributed to, arises out of or results from the failure or refusal to address an underlying condition (*e.g.*, surfacing sewage from a drain field caused by or resulting from the failure to properly maintain, repair, or decommission an on-site system).

SECTION 12 - ENFORCEMENT OFFICERS; DESIGNATION

- (1) The Public Health Administrator is delegated the authority to designate, from time to time, specific employees of the Harney County Building Department On-Site Specialists that are authorized to administer and enforce this ordinance. The employees so designated shall be deemed to be "enforcement officers" within the meaning of ORS 153.008 to 153.145.
- (2) The designation of a Harney County Building Department On-Site Specialist as an enforcement officer pursuant to subsection (1), above, shall be continuous until either such designation is revoked by the Harney County Public Health Administrator or upon separation from employment.
- (3) Nothing in this ordinance shall be construed as preventing Harney County from implementing changes to the enforcement officers and/or procedures identified herein.

SECTION 13 - ENFORCEMENT MECHANISMS

The enforcement mechanisms available to enforcement officers are:

- (1) Warning Letter with Opportunity to Correct ("WLOC");
- (2) Obtaining voluntary compliance;
- (3) Notice issued to the owner;
- (4) Citation and prosecution of violation in Circuit Court, Justice Court or Municipal Court.
- (5) Petition for injunction in Circuit Court;
- (6) Nuisance abatement;
- (7) Permit revocation.

These enforcement mechanisms are not mutually exclusive, and the sequence of enforcement mechanisms as outlined above is not binding on enforcement officers. Rather, enforcement officers may use any of the enforcement mechanisms alone or in sequence or combination with other enforcement mechanisms as appropriate and necessary under the circumstances of each enforcement action to achieve compliance with this ordinance.

SECTION 14 - CRITERIA FOR CHOOSING LEVEL OF ENFORCEMENT

Aggravating circumstances warranting a departure from the above enforcement sequence set forth in Section 13, above, exist if one or more of the following circumstances is present:

- (1) The violation is severe;
- (2) The violation poses a significant threat to public health and safety, or to the environment as determined by the Public Health Administrator or;
- (3) The physical size or extent of the violation is significant as determined by the Public Health Administrator;
- (4) The violation has existed uncorrected for a significant period as determined by the Public Health Administrator;
- (5) There is a previous history of complaints and ordinance enforcement on the subject property and/or with the alleged ordinance violator;
- (6) There is good potential for combining enforcement action on the violation with other violations;
- (7) There is little likelihood of obtaining voluntary compliance.

SECTION 15 - INJUNCTIONS

Enforcement officers shall seek an injunction from the Circuit Court when:

- (1) the violation presents an imminent threat to the public life, health, and safety, or to the environment; or
- (2) the violation has not been corrected within a reasonable time after the violator was found by the Court to be guilty of a code violation.

If the violator fails to comply within the time period specified in the injunction, the enforcement officer shall request that legal counsel for the County initiate civil contempt proceedings against the violator.

SECTION 16 - VIOLATIONS DECLARED PUBLIC HEALTH NUISANCES

Any violation of this ordinance is declared a public health nuisance and may be enjoined and abated as provided by any ordinance of this County.

SECTION 17 - VIOLATION CITATION PROCEDURES

The violation citation procedures as set forth in ORS 153.030 to 153.111 and ORS 153.990 shall be the procedures for violations of this ordinance, and are adopted hereby by reference.

SECTION 18 - DISPOSITION OF ENFORCEMENT ACTIONS

The primary objective of any action to enforce this ordinance is to achieve voluntary compliance by providing violators with information about this ordinance and an opportunity to comply with the requirements of this ordinance with little or no penalty. It is the County's assessment that voluntary compliance is generally less expensive for all parties and provides the most satisfactory and long-lasting resolution. However, the County finds it necessary to discourage violators from abusing the voluntary compliance opportunity for the purpose of delaying compliance. Therefore, it is the County's policy to enforce citations through prosecution, conviction, or guilty plea when compliance is not achieved by the day before the matter is set for trial.

SECTION 19- COUNTY COST RECOVERY

The County incurs costs investigating ordinance violations and enforcing ordinance provisions. Costs include, but are not limited to, legal advice and representation, service of citation, and administrative expenses. It is the County's policy to maximize enforcement of this ordinance and to increase the incentives for voluntary compliance with this ordinance by filing a legal claim to recover the County's reasonable enforcement costs from violators.

SECTION 20 - PENALTIES

- (1) Violations of this ordinance shall be punishable, upon conviction, by fine and by the specific remedies specified herein, including but not limited to equitable and injunctive relief ordered by a County Municipal Court, Justice Court, or Circuit Court.
- (2) A sentence to pay a fine for violation of this ordinance shall be a sentence to pay an amount not exceeding the Maximum Fine for a Class A violation as provided in ORS 153.018.
- (3) Notwithstanding any other provision of this ordinance, the Presumptive and Minimum fine amount for violations of this ordinance shall be the Maximum Fine described in subsection (2), above.
- (4) Notwithstanding any other provision of this ordinance, the court may (but is not required to) impose a fine lower than provided in subsections (2) and (3) of this section, upon an identified finding of mitigating factors including, but not limited to, the indigence of the defendant, the severity of the violation, the number of times the defendant has been previously cited for Union County ordinance violations, the length of time the violation has existed, and the reason(s) the violation has not been cured.

SECTION 21 - REMEDIES NOT EXCLUSIVE

None of the remedies available to the County as set forth in this ordinance are exclusive. Nothing in this this ordinance shall preclude any remedy otherwise available to the County, either in law or in equity, including enforcement under any other County ordinances.

SECTION 22 - SEVERABILITY

The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and/or subsections.

SECTION 23 - EMERGENCY DECLARATION

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

DULY PASSED AND APPROVED BY THE BOARD OF COMMISSIONERS, COUNTY OF UNION, STATE OF OREGON ON THE DATE LAST WRITTEN BELOW.

First Reading: Approved this ____ day of _____, 2025.
Second Reading: Approved this ____ day of _____, 2025.

Paul Anderes, CHAIR

R. Matthew Scarfo, COMMISSIONER

Jake Seavert, COMMISSIONER

ATTEST

Shelley Burgess, County Administrator