

EXHIBIT "A"

ARTICLE SIX – ENVIRONMENT AND HEALTH

DIVISION NINE- The Acceleration of Redemption for Waste or Abandonment

SECTION 6.09.010 DEFINITIONS

The following words and phrases mean:

- (1) "Abandonment": It occurs when, for a period of six consecutive months, property is not occupied by the former owner or any person or entity appearing in the records of the County to have a lien or other interest in the property, and the property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.
- (2) "Board": Means the Curry County Board of Commissioners
- (3) "Former Owner": Means any person or entity whose interest in property located within Curry County has been foreclosed by a judgment of foreclosure for delinquent taxes under the authority of ORS Chapter 312. "Former owner" includes any person or entity claiming the right to possession of the property, and any person or entity acting as agent for or by permission of and under the permission or control of such "former owner".
- (4) "Owner": Means Curry County, with respect to all properties shown in a judgment issued by the Circuit Court of the State of Oregon for Curry County in a proceeding to foreclose delinquent taxes under the authority of ORS Chapter 312.
- (5) "Party": When used in the context of the public hearing provided for in this ordinance, means Curry County and any person or entity entitled to notice of that public hearing.
- (6) "Property": Means any property listed in a judgment issued by the Circuit Court of the State of Oregon for Curry County in a proceeding to foreclose delinquent taxes under the authority of ORS Chapter 312.
- (7) "Record of the County": Has the meaning given that term by the provisions of ORS 312.125(7).
- (8) "Tax Collector": Means the Curry County Tax Collector.

- (9) "Waste": Means any act or omission with the potential to affect adversely the value or condition of the "property", whether caused by the "former owner" or by any person or entity acting as an agent for, with permission of, or under the direction or control of such "former owner". Waste includes, but is not limited to, deterioration, destruction or material alteration of land or improvements, removal of agricultural or mineral assets, violation of any applicable state or local zoning codes, or violation of any state or local building codes.

SECTION 6.09.020 **FORFEITURE FOR WASTE: PENALTY**

Any waste of property, as defined by this ordinance, shall constitute an immediate forfeiture to the County of the former owner's right to possession during the period of redemption. In addition, the former owner is subject to a fine in an amount no less than twice the monetary value of the waste committed upon the property, as determined by the Board.

SECTION 6.09.030 **ACCELERATION OF REDEMPTION PERIOD AUTHORIZED**

If the Board finds that there is reason to believe that waste is being committed upon property or that property has been abandoned, the Board shall conduct a public hearing as provided for in this ordinance. If the Board finds, after such hearing, that the property has been subjected to waste or abandonment, the Board shall:

- (1) Order that the former owner's right to possession during the redemption period is forfeited to the County.
- (2) Order that the redemption period shall end thirty (30) days after the date of the Board's Order, and
- (3) Order that upon the expiration of the accelerated redemption period, the Tax Collector shall deed the property to the County unless the former owner or any other person having a right to redeem the property under ORS Chapter 312 has actually redeemed it.

SECTION 6.09.040 **HEARING REQUIRED**

- (1) Whenever the Board finds that there is a reason to believe that the property may be subject to waste or abandonment resulting in a forfeiture to the County of the former owner's right to possession of the property during the redemption period, the Board shall set a date, time and place within the County for a hearing to determine whether the property should be deeded to the County as described in Section 6.09.030 of this ordinance.
- (2) At the hearing described in Section 6.09.040(1), the former owner and any other person or entity that appears, from the records of the County, to have a lien or other valid interest in the property shall be given an opportunity to be heard.

SECTION 6.09.050

NOTICE OF HEARING

- (1) Not less than thirty (30) days prior to the date of the hearing described in Section 6.09.040 the County shall direct notice of the hearing to the former owner, the current occupants, and any other person or entity that appears, from the records of the County, to have a lien or other valid interest in the property. The notice of the hearing shall contain the following information:
 - (a) The date, time and place of the hearing.
 - (b) The date of the judgment issued under authority of ORS 312.100.
 - (c) The normal date of expiration of the period of redemption under ORS 312.120
 - (d) The legal description and tax account number of the property.
 - (e) The name of the former owner as it appears on the latest tax roll.
 - (f) A warning that if the Board determines that the property is subject to waste or abandonment, the redemption period normally associated with tax foreclosure will be shortened to thirty (30) days from the date of the Board's decision and that if the property is not redeemed before the end of the accelerated redemption period, the property shall be deeded to the County by the Tax Collector and every right or interest of any person in the property shall be forfeited forever to the County.
 - (g) A warning that if the Board determines that the former owner or persons acting under the former owner's permission or control have committed waste on the property, the former owner is subject to a fine of not less than twice the monetary value of the waste committed.
 - (h) A warning that any persons or entities remaining on the property after the property is deeded to the County may be subject to civil or criminal prosecution for trespass or to any other lawful action that would remove the persons or entities from the property.
 - (i) A statement that interested parties having a valid claim to an interest in the property have a right to be represented by an attorney at the hearing, but that such representation shall be at the party's own option and expense.
- (2) The required notice shall be given in any manner reasonably calculated, under all existing circumstances, to apprise the former owner and other interested persons of the existence and the pendency of the action and to afford them a reasonable opportunity to appear and

be heard. The notice must be mailed to the last known address of any interested persons using both certified mail and regular first class mail. The required notice shall be directed to interested parties using the following guidelines:

- (a) **Notice to Former Owners:** Notice sent to a former owner shall be addressed to the former owner at the address appearing in the records of the County as the true and correct address of such former owner.
- (b) **Notice to Other Interested Persons:** Notice sent to persons or entities other than the former owner who appear to have a valid interest in the property shall be addressed to the person or entity at the address which, after reasonable inquiry, appears to be the address at which such person or entity is most likely to receive the notice.
- (c) **Notice to Corporations or Limited Partnerships:** If a person or entity with a right to receive notice is a corporation or limited partnership the notice shall be mailed to the registered agent or last registered office of the corporation or limited partnership as shown by the records of the Corporation Division of the office of the Oregon Secretary of State. If the corporation or limited partnership is not registered with the Corporation Division, the notice shall be mailed to the principal office or place of business of such corporation or limited partnership, if known.
- (d) **Notice to Occupants:** Notice to the occupants of the property shall be addressed to "Occupants" and mailed to the address of the property. If reasonably possible, notice shall also be posted on the property itself.

SECTION 6.09.060 **CONDUCT OF THE HEARING**

The Board shall open the public hearing by informing the parties as to the following matters:

- (1) A general description of the hearing procedure, including the order of the presentation of evidence, what kinds of evidence are admissible, and a brief explanation of the burden of proof and the burden of production of evidence.
- (2) That the proceedings shall be recorded and a description of the manner of the recording, as well as a statement that the record will be made available to any party at that party's own expense.
- (3) That the Board's decision may be appealed pursuant to the provisions of ORS Chapter 34 and that any appellant shall pay all costs on such appeal, including the costs of preparing a transcript of the proceedings.

SECTION 6.09.070

HEARING PROCEDURE

- (1) Witnesses, testimony and representation. At any hearing conducted pursuant to the provisions of this ordinance, the County shall be represented by County Legal Counsel.
 - (a) After the Board opens the hearing, the Tax Collector or the Tax Collector's designee shall present evidence or testimony to explain the County's position on the following matters: what information indicates that the property is subject to waste or abandonment and should therefore be deeded to the County; and if the property is subject to waste, how should the value of the waste be quantified, and if appropriate, what is the anticipated cost to the County in cleaning up the property.
 - (b) Adverse parties shall have the right to ask questions of the Tax Collector or the Tax Collector's designee, on the questions outlined in Section 6.09.070(1)(a) above.
 - (c) If there are additional witnesses present to testify in support of the County's position, they shall present evidence or testimony relevant to the questions listed in Section 6.09.070(1)(a) above. Adverse parties shall have the right to ask questions of the witnesses on the relevant evidence as well.
 - (d) Following the presentation of evidence by all witnesses testifying in support of the County's position in the matter, the Board shall allow any person or entity entitled to notice to present evidence or testimony. Any such evidence or testimony shall be on the questions outlined in Section 6.09.070(1)(a).
 - (e) The County's Legal Counsel or the Tax Collector or the Tax Collector's designee shall have the right to ask questions of any witnesses who testify or present evidence on behalf of any other party.
 - (f) The Board shall have the right to question any witness at any time.
 - (g) The Board may set reasonable time limits for testimony and evidence and may exclude or limit cumulative or repetitious or immaterial evidence and testimony.
 - (h) After all the parties have been given the opportunity to present evidence and to respond and reply to the evidence of other parties, the Board shall close the hearing and deliberate and decide the matter.

(2) Evidence and Proof

- (a) In hearings held pursuant to the provisions of this ordinance, the County has the burden to prove the allegations by a preponderance of admissible evidence.
- (b) The Board members presiding over the hearing shall place on the record a statement declaring whether there have been any ex parte communications of information relating to any fact in issue during the pendency of the proceedings. If there has been any such ex parte communication, the Board member shall place in the record the substance of any such communication and shall inform the parties of their right to ask questions or make statements regarding the communication.
- (c) All evidence not excluded shall be received and considered by the Board in its decision and shall be made part of the record of the proceedings.
- (d) The Board may take official notice of judicially recognizable facts and the Board may take official notice of general, technical or scientific facts within the specialized knowledge of County employees. Parties shall be notified before the close of the hearing of any facts officially noticed by the Board and shall have an opportunity to contest the facts so noticed.

(3) Record of the Proceeding

- (a) The hearing shall be recorded electronically. The recording shall be retained for a period of six (6) years from the date of the Board's order.
- (b) The record of the hearing shall include the following, if applicable:
 - i. The electronic recording of the proceedings, and a transcript if one is ordered by any party.
 - ii. Proof that notice was adequately given in accordance with the requirements of Section 6.09.050 of this ordinance.
 - iii. Documents filed by any party.
 - iv. All evidence received by the Board.
 - v. Information regarding any ex parte communications of the Board.
 - vi. The findings, conclusions and order of the Board issued pursuant to the provisions of Section 6.09.080 of this ordinance.

SECTION 6.09.080

BOARD ORDER; FINDINGS AND CONCLUSIONS

- (1) The Board's order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the

findings as to each contested issue of the fact. If the Board concludes that the property is subject to waste or abandonment and should be deeded to the County, the Board shall adopt an order so finding. The order shall state:

- (a) That any rights of possession the former owner may have in the property are forfeited to the County.
- (b) That the former owner, or any person or entity that then appears in the records of the County to have a lien or other interest in the property, may redeem the property; and
- (c) That if the property is not redeemed before the expiration of thirty (30) days from the date of the order, the Tax Collector shall deed the property to the County, and all rights of redemption shall terminate upon execution of that deed to the County.

(2) If the Board concludes that the former owner, or those under the former owner's permission or control, have committed waste as described in ORS 312.180 on the property, the Board shall adopt an order so finding. The order shall state:

- (a) That a fine of not less than twice the value so wasted may be imposed under ORS 312.990.
- (b) That the fine is intended, in part, to reimburse the County for the expenses associated with notice and hearing under this ordinance.
- (c) What method is being used to quantify the value so wasted, and what evidence was presented to support the value relied upon by the Board.
- (d) That if the property is redeemed before the expiration of the accelerated redemption period, a lien in the amount of the fine shall attach to the property, unless and until the fine is paid.
- (e) That if the former owner owns any other real property within the County, a lien in the amount of the fine shall also attach to those other parcels, unless and until the fine is paid.

(3) The Board shall notify the parties of the final order by personal delivery or regular mailing of the order to the parties, or, if applicable, the parties' attorneys. A final order shall be issued by the Board not later than fourteen (14) days after conclusion of the hearing. A final order shall become effective when signed by a majority of the Board members.

SECTION 6.09.090 **JUDICIAL REVIEW**

Review of the Board's decision shall be by writ of review, pursuant to ORS Chapter 34.

SECTION 6.09.100 **TAX COLLECTOR'S DEED**

Upon failure of any party having the right of redemption to redeem the subject property within thirty (30) days after adoption of the Board order, the Tax Collector shall issue a deed to the County, which shall terminate all redemption rights and cancel all taxes and special assessments.

SECTION 6.09.110 **REMOVAL OF OCCUPANTS**

After issuance of a deed pursuant to this ordinance, the County may remove in any manner provided by law any persons still in possession of the property.

SECTION 6.09.120 **PENALTIES**

The commission of waste by the former owner, or anyone under the permission or control of the former owner, on property sold to the County pursuant to ORS Chapter 312 is punishable, upon the Board's finding that waste exists, by a fine of not less than twice the value so wasted.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON

In the Matter of an Amendment)
To the Curry County Code Regarding) ORDINANCE NO. 13-04
The Acceleration of Redemption for)
Waste or Abandonment)

The Board of Curry County Commissioners ordains as follows:

SECTION 1 TITLE

This ordinance shall be known as Ordinance _____, and ordinance amending the Curry County Code regarding the acceleration of redemption for waste or abandonment.

SECTION 2 AUTHORITY

This ordinance is enacted pursuant ORS 203.035 and ORS 312.122.

SECTION 3 PURPOSE

The Curry County Board of Commissioners has determined that Curry County is in need of a remedy to prevent the hazards, detrimental effects, and devaluation of property sold to Curry County in tax foreclosure actions when such property is subjected to waste and abandonment. This ordinance is enacted under the authority of ORS 312.122 to provide such a remedy by accelerating the tax foreclosure redemption process and imposing fines for waste of such properties.

SECTION 4 ADOPTION

Exhibit "A", attached hereto and incorporated by reference, is adopted as an amendment to the Curry County Code, Ordinance 96-7, as amended.

SECTION 5 SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this Ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of this Ordinance. It is expressly declared that every other section, subsection, provision, clause or paragraph of the Ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

ADOPTED this 5th day of December, 2013

BOARD OF CURRY COUNTY COMMISSIONERS


David Brock Smith, Chair

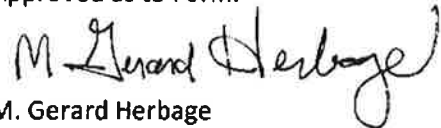
Absent
Susan Brown, Vice Chair


David G. Itzen, Commissioner

Attest:


Recording Secretary

Approved as to Form:


M. Gerard Herbage
Curry County Legal Counsel

First Reading: 11/07/2013
Second Reading: 12/05/2013
Emergency Adoption: No
Effective Date: 3/05/14