

TITLE 8

BUSINESS REGULATION

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TITLE 8
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Chapter 8.01

8.01 LIQUOR LICENSE CRITERIA

8.01.010 Policy and Purpose

The purpose of this chapter is to establish criteria to be considered by the Board of County Commissioners or its designees the County Clerk, the Clackamas County Sheriff's Office, and the Environmental Health Division, in providing information or making recommendations to the Oregon Liquor Control Commission concerning the granting, denying, or renewing of liquor licenses for premises within the unincorporated area of the County. In addition, this chapter will establish procedures to be used to investigate license applicants in order to provide accurate local information or make fair, effective, and efficient recommendations. This chapter is necessary to assist the Oregon Liquor Control Commission in ensuring that premises licensed to sell or dispense liquor within the County conduct business in a lawful, peaceful, safe, and sanitary manner. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2010, 12/16/10]

8.01.020 Definitions

- A. OLCC means Oregon Liquor Control Commission.
- B. BOARD means Clackamas County Board of County Commissioners.
- C. COMMISSIONER means Clackamas County Commissioner.
- D. CLERK means Clackamas County Clerk.
- E. SHERIFF means Clackamas County Sheriff's Office.
- F. ENVIRONMENTAL HEALTH means Environmental Health Section of the Public Health Division of the Clackamas County Department of Human Services.

[Codified by Ord. 05-2000, 7/13/00]

8.01.030 Application Procedure

- A. New Licenses. Any applicant for a liquor license, other than a license renewal, who is required by the OLCC to provide Clackamas County with notice of the filing of the application, shall present properly completed application forms prescribed by the OLCC, to the Clerk along with the appropriate processing fee.
 - B. Renewal Licenses. The Clerk will receive from the OLCC a list of all liquor licenses that are due to expire and are subject to a license renewal. Any applicant for renewal of a liquor license shall mail or deliver the County license renewal processing fee to the County Clerk at 2051 Kaen Rd. 2nd Floor, Oregon City, OR 97045. No application form is required by the County for license renewals. Applicants for license renewal must certify to the OLCC that they have paid the County fee. OLCC will provide the Clerk with a list of license renewal applicants who certify they have paid the County fee.
 - C. If the County does not provide information or a written recommendation
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regarding an applicant, as provided below, to the OLCC within the time allowed by ORS 471.166, OLCC will proceed as if the County had made a favorable recommendation. The County may request additional time as provided by statute or administrative rule.

- D. Liquor license processing fees are nonrefundable.
[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 10-2001, 12/13/01; Amended by Ord. 07-2010, 12/16/10]

8.01.040 Investigation of License Applicants

- A. The Clerk shall forward the liquor license application, or list of license renewals, for investigation by the Sheriff and Environmental Health. Each such County agency after investigation may send the Clerk copies of police reports or other informational documents regarding an applicant or location, or may provide the Clerk with summaries of relevant information and a written recommendation. This information or recommendation should be provided to the Clerk within 15 days after receipt of the application or list of renewals unless the agency receives permission from the Clerk for an extension of said time.
- B. At the end of the investigation time described above, the Clerk shall forward any and all documentation it has received from County agencies to the OLCC for their use in determining whether to issue or renew a liquor license.

[Added by Ord. 07-2010, 12/16/10]

8.01.050 Criteria for Investigation

County agency investigations shall be focused on finding information related to an applicant or location that indicates that one or more of the following has occurred:

- A. The application is incomplete;
- B. The applicant fails to provide the Clerk or any County agency with reasonably requested information in a timely manner;
- C. The applicant provides the County with false or misleading information;
- D. The applicant has been convicted of, or pled guilty to, one or more of the following local, State, or Federal offenses within the last five years--
1. Driving while under the influence of intoxicants;
 2. Drinking alcoholic liquor in a motor vehicle upon a highway;
 3. Possession of a controlled substance;
 4. Delivery of a controlled substance;
 5. Manufacture of a controlled substance;
 6. Furnishing alcohol to a minor; or
 7. Any other offense involving moral turpitude;
- E. The applicant has been under the influence of alcoholic liquor or controlled substances while on duty in a liquor establishment;
- F. The applicant's record shows, through convictions, guilty pleas, civil compromises, administrative rulings, or other means, violation(s) of law(s), or code(s), or ordinance(s), connected in time, place and manner with a liquor establishment, including State alcoholic liquor and gambling laws;
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- G. The applicant has maintained, or allowed to exist, an establishment that creates or is a public nuisance under state law or County code or ordinance;
- H. The applicant has maintained, or allowed to exist, an establishment in which any violation of Federal, State or County law regarding minors, gambling, alcoholic beverages, controlled substances, obscenity, or prostitution, or violations of Oregon Revised Statutes Chapters 163, 164, 165, or 166, by anyone has occurred;
- I. The applicant has maintained, or allowed to exist, an establishment that creates an increase in disorderly or violent acts, litter, noise, vandalism, or vehicular or pedestrian traffic congestion, in reasonable proximity to the premises;
- J. The applicant's premises put an unreasonable and excessive demand on County services, including law enforcement;
- K. There are sufficient licensed premises in the locality, and public interest or convenience does not demand a new license or increase in selling or dispensing privilege;
- L. There is a history of illegal activities, altercations, noisy conduct, or other disturbances in or around these particular premises; or
- M. The applicant has demonstrated an unwillingness or inability to cooperate with County agencies and/or neighbors in resolving community disputes related to a liquor-licensed establishment.
- N. The applicant has made false statements to the OLCC regarding payment of license renewal fees to the County.
- O. There are present any conditions listed in ORS 471.313, OAR 845-005-0320, OAR 845-005-0325, OAR 845-005-0326, or OAR 845-005, 0355.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 10-2001, 12/13/01; Amended by Ord. 07-2010,

Chapter 8.02

8.02 TRANSIENT ROOM TAX

8.02.010 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

- A. ACCRUAL ACCOUNTING means the operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.
 - B. BOARD means the Clackamas County Board of Commissioners.
 - C. CASH ACCOUNTING means the operator does not enter the rent due from a transient on his records until rent is paid.
 - D. COUNTY means Clackamas County.
 - E. HOTEL means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy, for thirty (30) days or less, for dwelling, lodging, or sleeping purposes. This includes, but is not limited to, any hotel, motel, inn, bed and breakfast, space in mobile home or trailer parks, tourist home, condominium, hostel, studio hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, or similar structure or portions thereof so occupied.
 - F. OCCUPANCY means the use or possession, or the right to the use or possession, for lodging or sleeping purposes, of any room or rooms in a hotel, or space in a mobile home, or trailer park, or portion thereof.
 - G. OPERATOR means the person who is proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter, by either the principal or the managing agent, shall be considered to be compliance by both.
 - H. PERSON means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
 - I. RENT means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property, or any other consideration valued in money, without any deduction; but does not include the sale of any goods, services, and commodities, other than the furnishing of room accommodations and parking space in mobile home parks or trailer parks.
 - J. RENT PACKAGE PLAN means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this chapter shall be the same charge
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- made for rent when consideration is not a part of a package plan.
- K. TAX ADMINISTRATOR means the official appointed by the Board of County Commissioners to carry out provisions of this chapter.
- L. TAX means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.
- M. TRANSIENT means any person who exercises occupancy, or is entitled to occupancy, in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than thirty (30) consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter, may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

[Codified by Ord. 05-2000, 7/13/00]

8.02.020 Tax Imposed

For the privilege of occupancy in any hotel, on and after the effective date of this chapter, each transient shall pay a tax in the amount of six percent (6%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County, which is extinguished only by payment to the operator. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis, and when earned if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, the transient shall pay a proportionate share of the tax to the operator with each installment.

[Codified by Ord. 05-2000, 7/13/00]

8.02.030 Where Tax is Imposed

The tax imposed by this chapter shall apply to all hotels located within Clackamas County.

[Codified by Ord. 05-2000, 7/13/00]

8.02.040 Collections of Tax by Operator, Rules for Collection

- A. Every operator renting rooms in this County, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the County.
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- B. In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.
- C. For rent collected on portions of a dollar, the first one cent (\$.01) of tax shall be collected on five cents (\$.05) through twenty-one cents (\$.21) inclusive; and the second one cent (\$.01) of tax on twenty-two cents (\$.22) through thirty-eight cents (\$.38); the third one cent (\$.01) of tax on thirty-nine cents (\$.39) through fifty-five cents (\$.55); the fourth one cent (\$.01) of tax on fifty-six cents (\$.56) through seventy-two cents (\$.72); the fifth one cent (\$.01) of tax on seventy-three cents (\$.73) through eighty-nine cents (\$.89); and the sixth one cent (\$.01) of tax on ninety cents (\$.90) through the next one dollar and four cents (\$1.04) of rent.

[Codified by Ord. 05-2000, 7/13/00]

8.02.050 Operator's Duties

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax, or any part of the tax, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that when added, any part will be refunded, except in the manner provided by this chapter.

[Codified by Ord. 05-2000, 7/13/00]

8.02.060 Exemptions

No tax imposed under this chapter shall be imposed upon:

- A. Any person for more than thirty (30) successive calendar days; (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
- B. Any person whose rent is of a value less than \$15.01 per day;
- C. Any person who rents a private home, vacation cabin, or like facility from any owner who personally rents such facilities incidentally to his own use thereof;
- D. Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people; or
- E. Employees, officials or agents of the U. S. Government occupying a hotel in the course of official business.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2005, 5-26-05; Amended by Ord. 02-2010, 2/25/10]

8.02.070 Registration of Operator, Form and Contents, Execution, Certification of Authority

Every person engaging or about to engage in, business as an operator of a hotel in this County shall register with the Tax Administrator on a form provided by him or her. Operators engaged in business at the time this chapter is adopted, must not register later than thirty (30) calendar days after passage of this chapter. Operators starting business

after this chapter is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment, or collection of tax, regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The operator shall sign the registration. The Tax Administrator shall, within ten (10) days after registration, issue without charge from the occupant, a Certificate of Authority to the registrant to collect the tax, from the occupant of the hotel, together with a duplicate thereof, for each additional place of business for each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued; and,
- D. “This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Chapter of the Clackamas County Code by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by the County and remitting the tax to the Tax Administrator.”

[Codified by Ord. 05-2000, 7/13/00]

8.02.080 Due Date, Returns, and Payments

- A. The transient shall pay the tax imposed by this chapter to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a monthly basis on the fifteenth (15th) day of the month for the preceding month and are delinquent on the last day of the month in which they are due.
 - B. On or before the fifteenth (15th) day of the month following each month of collection a return for the preceding month's tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.
 - C. Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of the operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.
 - D. The person that required filing the return should deliver the return together with the remittance of the amount of the tax due to the Tax Administrator at his office either by personal delivery or by mail. If the return is mailed, the postmark shall
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- be considered the date of delivery for determining delinquencies.
- E. For good cause, the Tax Administrator may extend for up to one (1) month the time for making any return or payment of tax. No further extension shall be granted, except by the Board. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month, on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter.
- F. If the operator has complied with the terms of this chapter and particularly the provisions of this section relating to prompt payment of taxes due and payable to the Tax Administrator, the operator shall be permitted to deduct as collection expense five percent (5%) of the amount of the taxes collected, as shown by the return mentioned in paragraph C of this section.

[Codified by Ord. 05-2000, 7/13/00]

8.02.090 Penalties and Interest

- A. Original Delinquency: Any operator who has not been granted an extension of time for remittance of tax due, and who fails to remit any tax imposed by this chapter prior to delinquency, shall pay a penalty of ten percent (10 %) of the amount of tax due in addition of the amount of the tax.
- B. Continued Delinquency: Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due, plus the amount of the tax due, and the ten percent (10%) penalty first imposed.
- C. Fraud: If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax due shall be added thereto, in addition to the penalties stated in paragraphs (1) and (2) of this section.
- D. Interest: In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent (.5%) per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, for the date on which the remittance first became delinquent until paid.
- E. Penalties merged with tax: Every penalty imposed and such interest as accrues under the provisions of this chapter, shall be merged with and become a part of the tax herein required to be paid.
- F. Petition for waiver: Any operator who fails to remit the tax levied within the time stated, shall pay the penalties stated. However, the operator may petition the Board for waiver and refund of the penalty or any portion thereof, and the Board may if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

[Codified by Ord. 05-2000, 7/13/00]

8.02.100 Deficiency Determinations, Fraud, Evasion, Operator Delay

- A. Deficiency determination: If the Tax Administrator determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in 8.02.090.
1. In making a Determination, the Tax Administrator may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in 8.02.090.
 2. The Tax Administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by certified mail. In the case of service by mail of any notice required by this chapter, the service is complete upon receipt by the operator or his agent or employee, or if refused, the date of its refusal as shown by the United States Postal Department return receipt.
 3. Except in the case of fraud or intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.
 4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.
- B. Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise willfully attempts to evade this chapter, the Tax Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, he/she shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator of any
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- fraud, intent to evade, or failure, or refusal to collect said tax or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.
- C. Operator Delay. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the County, will be jeopardized by delay or if any determination will be jeopardized by delay, s/he shall thereupon make a determination of the tax or amount of tax required to be collected noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the Tax Administrator after service of notice thereof provided. However, the operator may petition after payment has been made for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.
- [Codified by Ord. 05-2000, 7/13/00]

8.02.110 Re-determinations

- A. Any operator against whom a determination is made under Section 8.02.100 or any person directly interested may petition for a re-determination and redemption and refund within the time required in 8.02.100, hereof. If a petition for re-determination and refund is not filed within the time required in 8.02.100, the determination becomes final at the expiration of the allowable time.
- B. If a petition for re-determination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in his petition, shall grant the person an oral hearing, and shall give him ten (10) days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
- C. The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.
- D. The order or decision of the Tax Administrator upon a petition for re-determination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the Board within ten (10) days after service of such notice.
- E. No petition for re-determination of redemption and refund or appeal there from shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

[Codified by Ord. 05-2000, 7/13/00]

8.02.120 Security, Collection of Tax

- A. The Tax Administrator, after delinquency and when he or she deems it necessary to insure compliance with this chapter, may require any operator subject thereto to
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- deposit with him/her such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or Five Thousand Dollars (\$5,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.
- B. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any State, or of the United States in the name of the County to collect the amount delinquent together with penalties and interest.
- [Codified by Ord. 05-2000, 7/13/00]

8.02.130 Lien

- A. The tax imposed by this chapter together with the interest and penalties herein provided and the filing fees paid to the Clerk of Clackamas County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter shall be and until paid remain a lien from the date of its recording with the Clerk of Clackamas County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator, which may be foreclosed on and sold as may be necessary to discharge said lien if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his or her deputy whenever the operator is in default in the payment of said tax, interest, and penalty and shall be recorded and a copy sent by certified mail to the delinquent operator. The personal property subject to such lien may be seized by any authorized deputy or employee of the Tax Administrator and may be sold at public auction after twenty- (20) days notice of sale given by two publications in a newspaper of general circulation in the County. The notices required hereunder shall be published not less than seven (7) days apart. Such seizure and sale shall be in addition to any other process to secure payment of the delinquent tax allowed by law.
- B. Any lien for taxes shall upon the payment of all taxes, penalties, and interest thereon be released by the Tax Administrator, and the operator or person making such payment shall receive a receipt therefore stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released.
- [Codified by Ord. 05-2000, 7/13/00]

8.02.140 Refunds

- A. Operators' refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, it may be refunded provided a verified claim in writing therefore stating the specific reason upon which the claim is
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- founded is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to each such operator, his administrators, executors or assignees.
- B. Transient Refunds. Whenever the tax required by this chapter has been collected by the operator and deposited by the operator with the Tax Administrator and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient provided a verified claim in writing therefore, the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment.
- [Codified by Ord. 05-2000, 7/13/00]

8.02.150 Administration

- A. Transient Room Tax Fund. The Tax Administrator shall place all monies received pursuant to this order in the Transient Room Tax Fund.
- B. Records Required from Operators. Every operator shall keep guest records of room sales and accounting books and records of room sales. The operator shall retain all records for a period of three (3) years and six (6) months after they come into being.
- C. Examination of Records, Investigations. For the purpose of enforcing 8.02.100 of this chapter, if the Tax Administrator has reason to believe that the returns are incorrect or that fraud, refusal to remit, evasion or operator delay has occurred as set forth in 8.02.100 of this chapter, then the Tax Administrator or any person authorized in writing by him or her may examine during normal business hours the books, papers, and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- D. Confidential Character of Information Obtained, Disclosure Unlawful. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount of source of income, profits, losses, expenditures, or any particular thereof set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Nothing in this subsection shall be construed to prevent:
1. The disclosure to or the examination of records and equipment by another
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county official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter or collecting taxes imposed hereunder;

2. The disclosure after the filing of a written request to that effect to the taxpayer himself receivers, trustees, executors, administrators' assignees, and guarantors if directly interested of information as to any paid tax, and unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the Clackamas County Counsel approves each such disclosure, and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his/her opinion the public interest would suffer thereby;
3. The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued; or
4. The disclosure of general statistics regarding taxes collected or business done in the County.

[Codified by Ord. 05-2000, 7/13/00]

8.02.160 Tax Revenue Sharing

- A. Commencing with tax revenues collected January 1, 1993, the total net transient room tax receipts after operator collection expense of 5% and County administrative costs, not to exceed 2%, have been deducted, shall be distributed by the Tax Administrator as follows:
 1. Between January 1, 1993, and June 30, 1993, an amount sufficient to bring proceeds up to a base support amount of \$250,000 per year shall be paid in equal quarterly installments to the Clackamas County Fair; this amount shall be adjusted annually to allow for inflation by an amount to be determined by the Tourism Development Council (TDC); these funds shall be used by the Fair for construction, operations and maintenance, in accordance with its annual budget approved by the Board; and,
 2. The balance placed with the County Treasurer for deposit until transferred to the TDC monthly to pay expenditures authorized as provided below.
 - B. There is hereby created the Clackamas County Tourism Development Council, consisting of nine (9) members to be appointed by the Board of County Commissioners. The TDC is to oversee the development and promotion of tourism and conventions in Clackamas County.
 - C. The TDC is to develop, adopt and implement, subject to Board of County Commissioners' approval, a Tourism Development and Promotion Master Plan. The Master Plan shall address at least the following elements: tourism promotion, tourism development, conventions, visitor information services, special events and festivals, and the County Fair. The Master Plan may be revised from time to time, subject to Board of County Commissioners' approval. Prior to adoption of the Master Plan, the TDC may adopt, subject to Board of County Commissioners' approval, an Interim Plan.
 - D. The funds described in subsection 8.02.160 A 2 above shall be allocated to projects and programs by the TDC in accordance with the Tourism Development
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and Promotion Master Plan, except that revenues collected prior to final Board of County Commissioners' approval of a Master Plan may be expended pursuant to an interim Plan, if adopted.
[Codified by Ord. 05-2000, 7/13/00]

8.02.170 Appeals to the Board

Any person aggrieved by any provisions of the Tax Administrator may appeal to the Board by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Board who shall fix a time and place for hearing such appeal. The Board shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter.
[Codified by Ord. 05-2000, 7/13/00]

8.02.180 Violations

It is unlawful for any operator or other person so required, to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator, or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due, required by this chapter. Any person willfully violating any of the provisions of this chapter shall be subject to a fine in an amount set by resolution of the Board of County Commissioners.
[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3/13/03]

[Chapter 8.03, Secondhand Dealers, codified by Ord. 05-2000, Amended by Ord. 05-2003, 3/13/03 is hereby repealed and replaced by Chapter 8.03 Secondhand Dealers, adopted by Ord. 02-2011, 9/15/11]

Chapter 8.03

8.03 SECONDHAND DEALERS

8.03.010 Purpose

The purpose of this chapter is to strictly regulate certain business activities that present an extraordinary risk of being used by criminals to dispose of stolen property. This risk is present despite the best effort of legitimate Secondhand Dealer and Pawnbroker businesses, because these businesses process large volumes of goods and materials that are frequently the object of theft. This chapter is intended to reduce this type of criminal activity by facilitating timely police notification of such property transactions, and by regulating the conduct of persons engaged in this business activity. The need for these regulations outweighs any anti-competitive effect that may result from their adoption. [Adopted by Ord. 02-2011, 9/15/11]

8.03.020 Definitions

As used in this chapter, unless the context requires otherwise:

- A. ACCEPTABLE IDENTIFICATION means either a current driver license, a State of Oregon Identification Card issued by the Department of Motor Vehicles, or one current United States federal, state or local government-issued identification card which has a photograph of the seller.
 - B. ACQUIRE means to take or transfer any interest in personal property in a voluntary transaction, including but not limited to: sales, consignments, memoranda between a Dealer and a private party seller, leases, trade-ins, loans, and abandonments. Any acquisitions of regulated property by a Dealer will be presumed to be an acquisition on behalf of the Secondhand Dealer business. Notwithstanding the foregoing, “acquire” does not include:
 - 1. Any loans made in compliance with state laws by persons licensed as Pawnbrokers by the State of Oregon for the purposes of making a pawn loan; or
 - 2. Memoranda between a Dealer and a person engaged in the business of selling regulated property.
 - C. BOARD means the Clackamas County Board of County Commissioners or its designee;
 - D. CRIMINAL CONVICTIONS RELATED TO FRAUD, DECEPTION, DISHONESTY, OR THEFT means any conviction for a criminal violation of
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- ORS 162.015 to 162.121; 162.265 to 162.385; 164.005 to 164.235; 164.377; 164.395 to 164.415; Chapter 165, or any similar provision of previous or later Oregon statutes, or statutes of another state, or of the United States;
- E. **DEALER or SECONDHAND DEALER**
1. Means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business and that either:
 - a. Acquires regulated property on behalf of a business, regardless of where the acquisition occurs, for the purpose of reselling the property; or
 - b. Offers for sale regulated property in Clackamas County.
 2. Notwithstanding Subsection 1 above, **DEALER or SECONDHAND DEALER** does not include any of the following:
 - a. A business whose acquisitions of regulated property consist exclusively of donated items and/or purchases from 501(c)(3) organizations; or
 - b. An individual or business whose only transactions involving regulated property in Clackamas County consist of the acquisition of regulated property for personal use, or the sale of regulated property that was originally acquired by the seller for personal use; or
 - c. A person whose only business transactions with regulated property in Clackamas County consist of a display space, booth, or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any calendar year.
- F. **HELD PROPERTY** means any regulated property that cannot be sold, dismantled, altered, or otherwise disposed of for a proscribed period of time as more specifically described in Section 8.03.090.
- G. **INVESTMENT PURPOSES** means the purchase of personal property by businesses and the retention of that property, in the same form as purchased, for resale to persons who are purchasing the property primarily as an investment.
- H. **MEDICATION** means any substances or preparation, prescription or over-the-counter, used in treating or caring for ailments and/or conditions in humans or animals.
- I. **NEW** means anything conspicuously not used.
- J. **PAWNBROKER** has the meaning set forth in ORS 726.010 (2) and includes any business required by ORS 726.040 to hold an Oregon Pawnbroker's license.
- K. **PERSON** means any natural person, or any partnership, association, company, organization or corporation.
- L. **PRINCIPAL** means any person who will be directly engaged or employed in the management or operation of the Secondhand Dealer business, including any owners and any shareholders with a 5% or greater interest in the company.
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- M. **REGULATED PROPERTY** means any property of a type that has been determined by the Sheriff's Office to be property that is frequently the subject of theft, including but not limited to the following property, unless excluded by subsection 3 below, and may be revised as necessary by the Sheriff's Office after giving appropriate advance notification.
1. Used Items:
 - a. Precious metals;
 - b. Precious gems;
 - c. Watches of any type and jewelry containing precious metals or precious gems;
 - d. Sterling silver including, but not limited to, flatware, candleholders, salt and pepper shakers, coffee and tea sets or ornamental objects;
 - e. Audio equipment;
 - f. Video equipment;
 - g. Other electronic equipment including, but not limited to: global positioning systems (GPS), electronic navigation devices or radar detectors;
 - h. Photographic and optical equipment:
 - i. Electrical office equipment;
 - j. Power equipment and tools;
 - k. Automotive and hand tools;
 - l. Telephones or telephone equipment;
 - m. Power yard and garden tools;
 - n. Musical instrument and related equipment;
 - o. Firearms including, but not limited to, rifles, handguns, shotguns, pellet guns or BB guns;
 - p. Sporting equipment;
 - q. Outboard motors, and boating accessories;
 - r. Household appliances;
 - s. Entertainment media such as Blu-ray discs, DVD's, DVD boxed sets, Video Game Cartridges, etc.;
 - t. Property that is not purchased by a bona fide business for investment purposes, limited to:
 - i. Gold bullion bars (0.995 or better);
 - ii. Silver bullion bars (0.995 or better);
 - iii. All tokens, coins, or money, whether commemorative or an actual medium of exchange adopted by a domestic or foreign government as part of its currency whose intrinsic, market or collector value is greater than the apparent legal or face value; or
 - iv. Postage stamps, stamp collections and philatelic items whose intrinsic market or collector value is greater than the apparent legal or face value.
 - u. Computers and computer related software and equipment;
 2. New items.
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- a. New items purchased from a licensed business shall be exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent for the new items that specifies the seller's business name, physical and mailing address, date of transaction and description of the purchased items. The bill of lading shall be held by the Dealer for one (1) year, or as long as the property is in the Dealer's possession, whichever is longer. Upon reasonable belief that a specific licensed business is dealing in stolen property, the Sheriff may deem that new items purchased from that specific licensed business are regulated property.
 - b. Items acquired from a manufacturer, manufacturer's representative or distributor that are discontinued or have been used for display or demonstration but not previously sold are new and exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent that includes the information specified in subsection (2)(a) of this section. The Dealer must hold the bill of lading, receipt, and invoice or equivalent for one (1) year or as long as the property is in the Dealer's possession.
3. Regulated property does not include any of the following property:
- a. Books and comic books;
 - b. Sports cards and sports memorabilia;
 - c. Glassware and objets d'art including, but not limited to, paintings, prints, sculptures, ceramics, and porcelains;
 - d. Vehicles required to be registered with the Oregon Motor Vehicles Division;
 - e. Boats required to be certified by the Oregon Marine Board;
 - f. Furniture;
 - g. Refrigerators, freezers, stoves, ovens, dishwashers, washers and dryers;
- N. REMANUFACTURED means that an item has been altered to the degree that that the main components are no longer identifiable as the original item.
- O. SHERIFF or SHERIFF'S OFFICE means the Sheriff of Clackamas County, or his or her designee;
- P. SELLER means any person who:
1. Offers items of regulated property in exchange for money or other property; or as collateral for a loan; or
 2. Donates or abandons items of regulated property.
- Q. TRANSACTION REPORT means the record of the information required by Section 8.03.080, transmitted to the Sheriff's Office by means required in Section 8.03.090.
- R. TRADE SHOW means an event open to the public, held in a venue other than a Dealer's business location, at which vendors of a specific type of merchandise may exhibit, buy, sell or trade items that may include regulated property.
- S. USED means anything that has been put into action or service.
- [Adopted by Ord. 02-2011, 9/15/11]
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8.03.030 Permit Required

- A. No person shall act as a Secondhand Dealer in Clackamas County without a valid Secondhand Dealer's Permit issued by the Sheriff's Office.
- B. Any person or business that advertises or otherwise holds him/herself out to be acquiring or offering for sale regulated property within Clackamas County will be presumed to be operating as a Secondhand Dealer subject to the terms of this chapter.
- C. Any Pawnbroker operating within Clackamas County shall be required to maintain a valid license pursuant to the Oregon Revised Statutes Chapter 726. If any Pawnbroker also acts as a Secondhand Dealer, that Pawnbroker shall be required to obtain a Secondhand Dealer permit and meet all requirements of this chapter. Any Pawnbroker that is not a Secondhand Dealer shall nonetheless be subject to the following sections of this chapter:
 - 1. 8.03.080 Reporting requirements (this section shall be used by Pawnbrokers in order to meet the requirements of ORS 726.280 – 726.285).
 - 2. 8.03.090 Sale Limitations
 - 3. 8.03.095 Exceptions to Sale Limitations
 - 4. 8.03.100 Tagging and Inspection of Property
 - 5. 8.03.110 Prohibited Acts
 - 6. 8.03.120 Citations
 - 7. 8.03.150 Nuisance
- D. The sale of regulated property at events known as “garage sales,” “yard sales,” “flea markets” or “estate sales,” is exempt from these regulations if all of the following are present:
 - 1. No sale exceeds a period of seventy-two (72) consecutive hours; and
 - 2. No more than four (4) sales are held in any twelve- (12) month period.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.035 Minimum Standards

- A. No person may operate as a Secondhand Dealer within Clackamas County unless the person maintains a fixed physical business location.
- B. Any Secondhand Dealer who holds a valid permit may not change the business name of the premises without notifying the Clackamas County Sheriff's Office at least 30 days prior to the actual effective date of the name change.
- C. Dealers shall comply with all federal, state and local regulations.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.040 Application for Permit

- A. An application for Secondhand Dealer's Permit shall set forth the following information:
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1. The name, business and residential address, business and residential telephone number, birth date, driver license information, including state of issue and license number and principal occupation of the applicant and any person who will be directly engaged or employed in the management or operation of the business or the proposed business;
 2. The name, address, telephone number, and electronic mail address of the business or proposed business and a description of the exact nature of the business to be operated;
 3. The web address of any and all web pages used to acquire or offer for sale regulated property on behalf of the Dealer, and any and all internet auction account names used to acquire or offer for sale regulated property on behalf of the Dealer;
 4. Written proof that the applicant and all principals of the business are at least 18 years of age;
 5. Each principal's business occupation or employment for the five (5) years immediately preceding the date of application;
 6. The business license and permit history of the applicant in operating a business identical to or similar to those regulated by this chapter.
 7. A brief summary of the applicant's business history in Clackamas County or in any other city, county or state including:
 - a. The business license or permit history of the applicant; and
 - b. Whether the applicant has ever had any such license or permit revoked or suspended, the reasons therefor, and the business activity or occupation of the applicant subsequent to the suspension or revocation;
 8. The form of the business or proposed business, whether a sole proprietorship, partnership or corporation, etc., and
 - a. If a partnership, the names, birth dates, addresses, telephone numbers, principal occupations, along with all other information required of any individual applicant, for each partner, whether general, limited, or silent, and the respective ownership shares owned by each;
 - b. If a corporation, or limited liability company, the name, copies of the articles of incorporation and the corporate bylaws, and the names, addresses, birth dates, telephone numbers, and principal occupations, along with all other information required of any individual applicant, for every officer, director, and every shareholder owning more than five percent of the outstanding shares, and the number of shares held by each.
 9. If the applicant does not own the business premises, a true and complete copy of the executed lease (and the legal description of the premises to be permitted) must be attached to the application;
 10. All arrests and criminal convictions relating to fraud, deception, dishonesty or theft, or citations for violation of Secondhand Dealer ordinance or statutes of any city, county, or state of each principal and all natural persons enumerated in paragraphs 1 through 7 of this section; and
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- B. New employees of dealers shall complete and submit the Secondhand Dealer personal history information as required in Section A of this Subsection. Employees may not acquire regulated property until all required information has been reviewed by the Sheriff's Office, unless the Dealer receives permission from the Sheriff's Office while those employees' background checks are being evaluated. The criteria used to review a new employee will be the same as those used in the review of an initial application in Section 8.03.050(B).

[Adopted by Ord. 02-2011, 9/15/11]

8.03.050 Issuance and Renewal of Permit

- A. Applications for Secondhand Dealer's Permit must be notarized, and shall be filed with the Sheriff and shall include payment of the required fee. Individual employee history forms containing the required information of each employee need not be notarized, but must be signed by the specific individual represented on the form.
- B. The Sheriff's Office shall conduct an investigation of the applicant and all principals and employees directly engaged in the management or operation of the business listed according to the requirements in Sections 8.03.040(A) and 8.03.040(B). The Sheriff shall issue such permit if no cause for denial as noted herein exists.
- C. The Sheriff shall deny an application for a Secondhand Dealer's Permit if:
1. The applicant, or any other person who will be directly engaged in the management or operation of the business, or any person who owns a five percent or more interest in the business, has previously owned or operated a business regulated by this chapter or a similar ordinance or law of another city, county or state, and
 - a. the license and permit for the business has been revoked for cause which would be grounds for revocation pursuant to this chapter; or
 - b. The business has been found to constitute a public nuisance and abatement has been ordered; or
 2. Any person involved in the business has been convicted of any criminal offense related to fraud, deception, dishonesty or theft, or convicted of any violation of this chapter or laws of any city, county or state; or
 3. The operation as proposed by the applicant would not comply with all applicable requirements of statutes and local ordinances including, but not limited to: building, health, planning, zoning and fire chapters; or
 4. Any statement in the application is found to be false or any required information is withheld; or
 5. Evidence exists to support a finding that the location of the business for which the application has been filed has a history of violations of the provisions of this chapter; or
 6. The operation does not comply with applicable federal or state licensing requirements.
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- D. Notwithstanding Section 8.03.050(B), the Sheriff may grant a permit despite the presence of one or more of the enumerated factors, if the applicant establishes to the Sheriff's satisfaction that:
1. The behavior evidenced by such factor(s) is not likely to recur;
 2. The behavior evidenced by such factor(s) is remote in time; and
 3. The behavior evidenced by such factor(s) occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of this chapter.
- E. Secondhand Dealer's Permits shall be for a term of one year and shall expire on the anniversary of their issuance. The permits shall be nontransferable and shall be valid only for a single location. When the business location is to be changed, the permit holder shall provide the address of the new location in writing to the Sheriff for approval or disapproval at least 30 days prior to such change.
- F. All Secondhand Dealer's Permits shall be displayed on the business premises in a manner readily visible to patrons.
- G. The Sheriff's Office will have primary authority concerning the issuance of a permit. If an applicant for permit is denied, denied applicants will make their first appeal to the Clackamas County Hearings Officer. If denial of an application for permit is denied by the Hearings Officer, review shall be by writ of review as provided in ORS 34.010 to 34.100.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.060 Permit Fees

Every person engaged in conducting, carrying on or controlling a Secondhand Dealer's business shall:

- A. File an application as described in Section 8.03.050 and pay a nonrefundable fee as required by the Sheriff.
- B. For renewal of a Secondhand Dealer's Permit, file an application and pay a nonrefundable fee as required by the Sheriff.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.070 Additional Locations

- A. The holder of a valid Secondhand Dealer's Permit shall file with the Sheriff an application for a permit for each additional location, and shall pay a nonrefundable fee as required by the Sheriff.
- B. Permits issued for additional locations shall be subject to all the requirements of this chapter, and the term of any permit issued for an additional location shall expire on the same date as the initial permit.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.080 Reporting of Secondhand Dealer Regulated Property Transactions and Seller Identification

- A. Dealers shall provide to the Sheriff all required information listed for each regulated property transaction (not including sales). The Sheriff may designate the format of transfer of this information and may direct that it be communicated to the Clackamas County Sheriff's Office Pawn Shop Detail by means of mail, the internet or other computer media.
1. In the event the Sheriff directs that the transaction information be transmitted via computer media, the Sheriff may also specify the system that will be utilized in order to ensure conformity among all dealers
 2. If, after establishing the format and requirements for the transmission of computerized reports of transactions, the Sheriff alters the required format; Dealers will be given at least sixty (60) days to comply with the new format requirements. If unable to implement the reporting system before the deadline, a Dealer must, prior to the deadline submit a written request to the Sheriff for additional time.
 3. Pawnbrokers are required to report only new transactions. Loan renewals and redemptions by the original client do not need to be reported as long as the property involved in the transaction has not left the store for any period of time.
- B. If paper forms are approved for use by the Sheriff's Office, the Sheriff will provide all Dealers with transaction report forms at cost until sixty (60) days after such time that the Sheriff directs a change in the reporting method. The Sheriff may specify the format (size, shape and color) of the transaction report form. The Sheriff may require that the transaction report form include any information relating to the regulations of this chapter. Dealers may utilize their own forms, in lieu of those supplied by the Sheriff's Office, if the Sheriff has approved such forms. The Declaration of Proof of Ownership is considered to be included in references in this chapter to the transaction reports, as appropriate. Declaration of Proof of Ownership will be retained by the business and made available to law enforcement.
- C. When receiving regulated property, the Dealer must do all of the following except that Pawnbroker loan transactions are temporarily exempt from the requirements regarding copying acceptable identification, obtaining a thumbprint and completion of the Declaration of Proof of ownership until an electronic reporting system is implemented by the Sheriff's Office on October 31, 2011. If unable to comply before the deadline, a Pawnbroker must submit a written request for additional time to the Sheriff before the deadline. The requirements for a Dealer at the time of a transaction when receiving any regulated property are:
1. The Dealer must obtain acceptable photo identification from the seller or pledgor and verify that the photograph is a photograph matches the individual in the transaction.
 2. The Dealer must record the seller's current residential address, telephone number and thumbprint on the transaction report.
 3. The dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other. If an item is new, the Dealer must include the word "new" in the property description.
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- a. The Dealer must complete the transaction report in its entirety, and the individual completing the report must initial it.
 - b. Transaction reports must be completed in legible printed English.
 4. The Dealer must require the Seller to legibly complete the Declaration of Proof of Ownership except that no such Declaration of Proof of Ownership is required for pawn loans made in compliance with state law by licensed pawnbrokers.
 - a. In completing the Declaration of Proof of Ownership the Seller must, at the time of the transaction, certify in writing that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased.
 - b. The Dealer or Dealer's employee must place the identifiable print of the seller's right thumb (left if right is unavailable) in the thumbprint box on the Declaration of Proof of Ownership. Thumbprints and the information on the Declaration of Proof of Ownership may be produced using a digital format with prior approval of the process from the Sheriff.
 - c. When no Declaration of Proof of Ownership is required for pawn loan transactions, the Dealer or Dealer's employee shall verbally verify that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased, and enter that information in the transaction report.
 5. A Dealer may provide a description of any motor vehicle (including license number) identified as used in the delivery of regulated property and record the description and license number next to the seller's thumbprint.
 6. Transaction reports are designed to assist in the investigation of the theft of property. Therefore, additional reporting for Dealers includes unregulated property that is identifiable with markings indicating apparent ownership.
 7. Dealers must take either a photograph or still video of each person selling or loaning on an item of regulated property or make a copy of the acceptable identification presented by the seller. All information on the copy must be legible and may be made by photostatic copying, computerized scanning or any other photographic, electronic, digital or other process that preserves and retains an image of the document, and which can be subsequently produced or reproduced for viewing of the image. If a photograph is taken, a print of the photograph must be referenced to the transaction report number. A video photograph (still) must be referenced by time and date and transaction report number to correspond to the regulated property accepted. Copied identification must be kept with the transaction report or shall be referenced to the transaction report number. The photograph or videotape or copied identification must
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be kept by the Dealer for one year and must be provided to the Sheriff's Office upon request.

- D. Dealers must mail or deliver to the Sheriff's Office at the close of each business day the original of all transaction reports describing articles received during that business day.
- E. Dealers must retain at their business location a copy of all completed and voided transaction reports for a period of not less than one year from the date of acquisition. Any unused transaction reports must be available for inspection by the Sheriff's Office.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.090 Regulated Property Sale Limitations

- A. Regulated property is subject to the following limitations:
 - 1. Holding Period: Regulated property acquired by any Dealer must be held for a period of thirty (30) full days from the date of acquisition. Pawnbroker loan transactions are exempt from the 30-day hold requirements of this section because of the redeemable nature of the loans and the holding requirements of ORS 726. However, if the loan is converted to a buy by the Pawnbroker within 30 days from the date of the pawn transaction, the difference between the original date of the pawn and the buy will count toward the 30-day hold requirement. All other provisions of this section remain in effect.
 - 2. Requirements of held property: All held property must remain in the same form as when received, must not be sold, dismantled, altered or otherwise disposed of, and must be kept separate and apart from all other property during the holding period to prevent theft or accidental sale, and to allow for identification and examination by the Sheriff's Office. Held property must be kept at the business location during this holding period so that it can be inspected during normal business hours as provided in Section 8.03.100.
 - 3. Held property requirements do not apply if:
 - a. the property is received by a Dealer from another Dealer (regulated by the Sheriff's Office or any other nearby police agency approved by the Sheriff) who has already satisfied the holding requirements of this chapter, and the receiving Dealer records the original transaction report number on the transaction report completed for the new transaction.
 - b. a customer, who originally purchased property from a Dealer, returns it with the original receipt.
 - B. Upon reasonable belief that an item of regulated property is the subject of a crime, any peace officer may provide notice to any Dealer that a specifically described item of regulated property must be held in a separate Police Hold area for a period not to exceed thirty (30) days from the date of notification, and is subject to the (30) days upon notice provided to the Dealer that additional time is needed to determine whether a specific item of regulated property is the subject of a crime.
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- The Dealer shall comply with the hold notice and notify the Sheriff's Office Pawn Shop Detail of the hold notice not later than five (5) calendar days from the day the notice was received, either by telephone, fax, email or in person. A Dealer must notify the Pawn Shop Detail of its intent to dispose of any item of regulated property under Police Hold at least ten (10) days prior to doing so. A Police Hold area must meet the following criteria:
1. Located out of public view and access, and
 2. Marked "Police Hold", and
 3. Contains only items that have been put on Police Hold
- C. Any peace officer or Community Service Officer (unsworn peace officers employed by law enforcement agencies) who places a police hold on any property suspected of being the subject of a crime shall provide the Dealer with a DPSST number and a valid incident number.
- D. Upon probable cause that an item of regulated property is the subject of a crime, the Sheriff may take physical custody of the item or provide written notice to any Dealer to hold such property for a period of time to be determined by the Sheriff, not to exceed the statute of limitations for the crime being investigated. Any property placed on hold pursuant to this subsection is subject to the requirements of subsection (A)(2) above, and will be maintained in the Police Hold area unless seized or released by the Sheriff. Seizure of property will be carried out in accordance with ORS.
- E. If a Dealer acquires regulated property with serial numbers, personalized inscriptions or initials, or other identifying marks which have been destroyed or are illegible due to obvious normal use, the Dealer shall continue to hold the regulated property at the business location for a period of ninety (90) full days after acquisition. The Dealer must notify the Sheriff's Office by writing "90-day hold" next to the item on the transaction report or by an electronic means approved by the Sheriff's Office. The held property must conform to all the requirements of this section.
- F. If a peace officer seizes any property from a Dealer, the Dealer must notify the Sheriff's Office not later than five (5) calendar days from the day the seizure occurs. The Dealer must provide the name of police agency, the incident or case number, the name and DPSST number of the peace officer, the number of the receipt left for the seizure, and the seized property information. Notification to the Sheriff's Office may be given by telephone, fax, email or in person.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.095 Exceptions to Regulated Property Sale Limitations

- A. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, or have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements in Section 8.03.090 and if:
1. The item is acquired through consignment by a Dealer from a person who lives more than 150 miles from Clackamas County and the consigned property is mailed, shipped, or sent by courier to the Dealer.
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2. The item is acquired during a trade show. All items acquired during a trade show by a Dealer must be reported. At the time of the transaction, the Dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other. The Dealer must also record the name and date of the event and the address of the venue in the name, date, and address fields of the transaction report form. Items acquired during a trade show may be sold or traded during the trade show without being held. Items still in a Dealer's possession at the end of the show will be subject to the hold period requirement in effect for that Dealer's acquisitions of regulated property.
 3. The item is acquired from a business whose acquisitions of regulated property consists exclusively of donated items and/or purchases from a 501(c)(3) organization. The Dealer must record the name and location address of the business in the name and address fields of the transaction report form and the date of acquisition.
 4. The item is acquired through an internet transaction. The Dealer must record on the transaction report the seller's email address or seller's identification, the name of the internet website that listed the item, and the date of the acquisition.
 5. The item is acquired by the Dealer from a yard sale, garage sale, estate sale or swap meet. The Dealer must record on the transaction report the physical address of the sale location and the date of acquisition.
- Items acquired under subsection (A) must be held in compliance with the hold period requirement in effect for the Dealer's other acquisitions of regulated property.
- B. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, nor have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements in Section 8.03.090 and if the item is used, regulated property acquired from a licensed business. The Dealer must keep a receipt for the item from the licensed business that includes the licensed business' name and a description of the item. The receipt must be retained at the Dealer's business location for one year or until the item is sold, whichever is longer. The Dealer must record on the transaction report the name and location address of the business in the name and address fields of the transaction report form, and the date of the acquisition. The item does not have to be held.
 - C. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint if the Dealer complies with the following requirements:
 1. Conducts each and every acquisition of regulated property by either:
 - a. Not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer; or
 - b. Offering in-store credit that must be used for merchandise only and not redeemed for cash; and
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2. Holds each and every item of regulated property for a minimum of fifteen (15) days from the date of acquisition; and
 3. Complies with the remaining requirements set forth in the Section 8.03.090; and
 4. Notifies the Sheriff in writing that each and every acquisition of regulated property will be conducted by not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer.
- D. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint when the Dealer acquires an item of regulated property on consignment if the Dealer complies with the following requirements:
1. Does not tender payment to the consignor for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer;
 2. Holds each and every item of consigned regulated property for a minimum of fifteen (15) days;
 3. Complies with the remaining requirements in Section 8.03.090.
- [Adopted by Ord. 02-2011, 9/15/11]

8.03.100 Tagging Regulated Property for Identification, Sheriff's Inspection

- A. Secondhand Dealer acquiring any regulated property shall affix to such property a tag upon which shall be written a unique number, in legible characters, which shall correspond to the number on the transaction report forms required by Section 8.03.080. After the holding period has expired, the transaction number must remain identifiable on the property until it is sold.
- B. After the applicable holding period has expired, hand tools, or items that are sold with other like items and have no identifiable numbers or markings need not remain tagged.
- C. After the applicable holding period has expired, items that are remanufactured need not remain tagged.
- D. Upon presentation of official identification, the Sheriff may seek permission to enter onto the business premises of any person with a Secondhand Dealer's Permit to ensure compliance with the provisions of this chapter. An inspection shall be for the limited purpose of inspecting any regulated property acquired by the dealer, held by the dealer pursuant to Section 8.03.090, or the records incident thereto. Such inspections shall occur only during normal business hours. The failure to grant permission to the Sheriff for inspection could result in a violation of this chapter.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.110 Prohibited Acts

- A. It shall be unlawful for any principal, employee or Dealer regulated by this chapter to:
1. Receive any property from any person known to the principal, employee or Dealer to be prohibited from selling by a court order or is under the age of eighteen (18) years,
 2. Receive property prohibited by this chapter. Items specifically prohibited from being acquired by Secondhand Dealers include:
 - a. Medications;
 - b. Gift cards, in-store credit cards, or activated phone cards;
 - c. Property with serial numbers, personalized inscriptions or initials or other identifying marks which appear to have been intentionally altered, obliterated, removed, or otherwise rendered illegible;
 - d. Any item that cannot be lawfully possessed pursuant to local, state, or federal law.
 3. Act as a Secondhand Dealer within Clackamas County without a valid Secondhand Dealer's Permit issued by the Sheriff.
 4. Fail to obtain acceptable identification from the person selling any regulated property;
 5. Fail to have the person selling any regulated property sign the transaction report form describing the article acquired;
 6. Fail to retain on the business premises a copy of the transaction report form describing the acquired regulated property for a period of one (1) year from the date of acquisition;
 7. Fail to mail or deliver to the Sheriff at the close of each business day the original and second copy of all transaction report forms describing regulated property acquired during that business day;
 8. Fail to include on transaction report forms all readily available information required by the form;
 9. Fail to withhold from sale any regulated property for the required holding period after acquisition;
 10. Fail, after acquiring regulated property, to retain the property on the business premises for the required holding period after its acquisition;
 11. Fail to allow inspection by the Sheriff of any regulated property being retained pursuant to this chapter;
 12. Fail to allow inspection by the Sheriff of any records required by this chapter;
 13. Fail to have affixed to any acquired regulated property, during the required holding period, a tag on which is written a number in legible characters which corresponds to the number on the transaction report form required by this chapter;
 14. Continue activities as a Secondhand Dealer after suspension or revocation of a permit.
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- B. Any violation of Section 8.03.110(A) is a County Code violation punishable by a fine in an amount set by resolution of the Board of County Commissioners.
[Adopted by Ord. 02-2011, 9/15/11]

8.03.120 Citation

- A. The Sheriff, upon learning of a violation of Section 8.03.110(A) may issue the Secondhand Dealer a citation. Such citation shall be delivered at the address listed on the permit application during regular business hours to a person who appears to be in charge.
- B. The citation shall list the nature of the violation, and the time and date of the citation. The citation shall also indicate the fine assessed for said violation, which is to be paid to the Sheriff, or appealed within ten (10) days from the date of delivery. Appeal may be taken under the Hearing Officer procedure outlined in Section 8.03.140.
- C. Nothing in this section shall affect the ability of the Sheriff to take any and all actions otherwise authorized to abate any violation.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.130 Revocation or Suspension of Permit

- A. The Sheriff may revoke or suspend any permit issued pursuant to this chapter:
1. For any cause which would be grounds for denial of a permit; or
 2. Upon a finding that any violation of the provisions of this chapter, federal, state or other local law has been committed and the violation is connected with the operation of the permitted business location so that the person in charge of the business location knew, or should reasonably have known, that such violations or offenses were permitted to occur at the location by the Dealer or any principal or employee engaged or employed in the management or operation of the business location; or
 3. If lawful inspection has been refused; or
 4. If the Secondhand Dealer's activities cause significant litter, noise, vandalism, vehicular or pedestrian traffic congestion or other locational problems in the area around the Dealer's premises; or
 5. If a fine assessed under this chapter has not been paid to the Sheriff or appealed under Section 8.03.140 within ten (10) days after the date of delivery of a citation; or
 6. If any statement contained in the application for the permit is found to have been false; or
 7. If any Secondhand Dealer fails to meet federal or state licensing requirements.
- B. The Sheriff shall give the permittee written notice of proposed revocation or suspension of any permit issued pursuant to this chapter by causing notice to be served upon the permit holder at the address listed on the permit application. Service of the notice shall be accomplished by either mailing the notice by
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- certified mail, return receipt requested, or by service in the same manner as a summons served in an action at law. Refusal of the service by the person whose permit is revoked or suspended shall be prima facie evidence of receipt of the notice. Service of the notice upon the person in charge of a business, during its hours of operation shall constitute prima facie evidence of notice to the person holding the permit to operate the business.
- C. Revocation or suspension shall be effective and final ten (10) days after the giving of such notice unless such revocation or suspension is appealed in accordance with Section 8.03.140.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.140 Appeals

- A. Appeals of violations of this chapter will be made to the County Hearings Officer pursuant to Chapter 2.07 of the County Code.
- B. Orders of the Hearings Officer:
1. Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.
 2. Findings of fact and conclusions of law shall accompany a final order. The findings of fact shall consist of a concise statement of the underlying facts supporting the Hearings Officer's order.
 3. The Hearings Officer shall notify the appellant and respondent of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the appellant and respondent or, if applicable, their attorney of record. The Hearings Officer shall issue a final order within fourteen (14) days from the conclusion of the hearing.
 4. The Hearings Officer shall file all final orders with the Clerk of the Board of County Commissioners. A final order shall become effective five (5) days after it is filed unless a party makes objections to the form of the order within five (5) days of filing and the Hearings Officer subsequently amends the final order.
- C. Enforcement of Hearings Officer Order:
1. Fines and costs are payable upon receipt of the final order declaring the fine and costs. Fines and costs under this chapter are a debt owing to the Sheriff's Office and may be collected in the same manner as any other debt allowed by law.
 2. The Sheriff may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce any order of the Hearings Officer, including, but not limited to, an action to obtain judgment for any fine or any assessment for costs imposed pursuant to Sections 8.03.110(B) or 8.03.140(G).
- D. Judicial Review of the final order of the Hearings Officer under this chapter shall be by writ of review as provided in ORS 34.010 – 34.100.

[Adopted by Ord. 02-2011, 9/15/11]

8.03.150 Maintenance of Regulated Business Activity in Violation Declared a

Nuisance, Abatement

Any business maintained in violation of the provisions of this chapter is hereby declared to be a public nuisance. The Sheriff is authorized to bring any action or suit to seek imposition of fines for violation of this chapter or to abate such nuisance by seeking injunctive or other appropriate relief to:

- A. Cease all unlawful activities;
- B. Close the unlawful business establishment;
- C. Return property obtained through unlawful activities to the rightful owners; or
- D. Seek such other relief as may be appropriate.

[Adopted by Ord. 02-2011, 9/15/11]

Chapter 8.04

8.04 PUBLIC HEALTH CERTIFICATES OF SANITATION, LICENSES, AND CONTESTED CASE PROCEDURES

8.04.010 Tourist Facilities

- A. No person shall establish, operate, manage or maintain any travelers' accommodation, hostel, recreation park or organizational camp, or combination recreation park - mobile home park without first securing a license or certificate of sanitation from the Public Health Division of the Clackamas County Department of Human Services. No person shall construct any travelers' accommodation, recreation park, or organizational camp without obtaining a permit to do so from the Public Health Division of Clackamas County Department of Human Services (Division).
- B. An applicant for a permit to construct a travelers' accommodation, recreation park, or organizational camp shall pay the Division a plan review fee. Every applicant for a license or certificate of sanitation shall pay to the Division a fee.
- C. Certificates or licenses issued under this section shall expire at the end of each calendar year and are not transferable nor shall refunds be made on unused portions of such licenses or upon applications that have been denied.
- D. The Assistant Director for Health of the Oregon Department of Human Resources has delegated to Clackamas County the authority, responsibility and functions to administer recreational facilities health laws under ORS 446.425 et seq. This chapter incorporates the provisions of those sections by reference herein.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

8.04.020 Swimming Facilities

- A. No person shall operate or maintain a public swimming pool, public spa pool, or bathhouse without a license to do so from the Public Health Division of the Clackamas County Department of Human Services.
 - B. A fee shall be paid to the Division for a license to operate a year-round public swimming pool, public spa pool, or bathhouse either:
 - 1. For profit;
 - 2. For the primary benefit of the patrons, members or employees of the person operating the public swimming pool, public spa pool, or bathhouse;
or
 - 3. In conjunction with a travelers' accommodation or tourist park.
 - C. A fee to the Division for a license to operate a seasonal public swimming pool, public spa pool, or bathhouse either
 - 1. For profit;
 - 2. For the primary benefit of the patrons, members or employees of the
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person operating the public swimming pool, public spa pool, or bathhouse;
or

3. In conjunction with a travelers' accommodation or tourist park.
 - D. A person who operates a single facility containing more than one year-round public pool or spa shall pay to the Division an additional fee for each pool in excess of (1) pool for a license to operate such pools.
 - E. A person who operates a single facility containing more than one seasonal public pool or spa shall pay to the Division an additional for each pool in excess of one (1) pool for a license to operate such pools.
 - F. No person shall construct any public swimming pool, public spa pool, or bathhouse without a permit to do so from the Division.
 - G. An applicant for a permit to construct a public swimming pool, public spa pool, or bathhouse shall pay the Division a plan review/construction permit fee. Licenses issued under this section shall expire at the end of each calendar year. Such licenses shall not be transferable, nor shall refunds be made on the unused portion of such licenses or upon applications that have been denied.
 - H. The Assistant Director of Health of the Oregon Department of Human Services has delegated to Clackamas County the authority, responsibility and functions to administer swimming facilities health laws under ORS 448.100 et seq. This chapter incorporates the provisions of those sections by reference herein.
- [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

8.04.030 Food Service Facilities

- A. No person shall construct, extensively remodel, or convert an existing structure to use as a food service establishment without first providing properly prepared plans and specifications to the Division for review and approval, and paying plan review fees.
 - B. No person shall operate a restaurant without a license to do so from the Public Health Division of the Clackamas County Department of Human Services. The restaurant license shall be posted in a conspicuous place on the premises of the licensee.
 - C. Every applicant for a restaurant license or for a renewal thereof shall pay to the Division a license fee.
 - D. To reinstate a restaurant license other than a temporary restaurant license after the expiration date, the operator must pay a reinstatement fee in an amount set by resolution of the Board of County Commissioners.
 - E. Licensees whose restaurant requires a critical item re-inspection shall pay a fee to the Division for such inspection.
 - F. No person shall operate a temporary restaurant without first procuring a license to do so from the Public Health Division of the Clackamas County Department of Human Services. The temporary restaurant license shall be posted in a conspicuous place on the premises of the licensee.
 - G. Except as provided in ORS 624.028, every applicant for a temporary restaurant license or renewal thereof shall pay to the Division a license fee. No person shall operate a vending machine, commissary, commissary combination, warehouse, or
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- mobile unit without a license to do so from the Public Health Division of the Clackamas County Department of Human Services. The license shall be posted in a conspicuous place in the commissary. A card, emblem or other device clearly showing the name and address of the licensee and the serial number of the licensee shall be affixed to each vending machine or mobile unit, as the case may be.
- H. No person shall construct or establish a mobile unit or pushcart without first providing properly prepared plans and specifications to the Division for review and approval. A person presenting plans and specifications for a mobile unit or pushcart shall pay to the Division a plan review fee.
- I. In order to be certified as a food handler, an applicant shall pay the Division a fee.
- J. Every applicant for a license to operate a commissary, commissary combination, vending machine, warehouse, or mobile unit shall pay to the Division a fee. No person shall operate a bed and breakfast facility without a license to do so from the Public Health Division of the Clackamas County Department of Human Services. The bed and breakfast license shall be posted in a conspicuous place on the premises of the licensee. No person shall construct or establish a bed and breakfast facility without a permit to do so from the Division.
- K. An applicant for a permit to establish a bed and breakfast shall pay the Division a plan review fee. Every applicant for a bed and breakfast license or for a renewal thereof shall pay to the Division a license fee.
- L. Licenses issued under Section 8.04.030 C, J and L shall expire at the end of each calendar year. Such licenses shall not be transferable, nor shall refunds be made on the unused portion of such licenses or upon applications that have been denied.
- M. The Assistant Director for Health of the Oregon Department of Human Resources has delegated to Clackamas County the authority, responsibility and functions to administer food service facilities health laws under ORS 624.510 et seq. This chapter incorporates the provisions of those sections by reference.
- [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2008, 3/13/08]

8.04.040 Review of Existing Property's Drinking Water & Subsurface Sewage Disposal

Fees shall be paid to the Public Health Division of the Clackamas County Department of Human Services for the review of existing property's individual drinking water and subsurface sewage disposal systems.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

8.04.050 School Cafeteria Inspections

Schools requesting cafeteria sanitation inspections or plan review from the Public Health Division of the Clackamas County Department of Human Services shall pay fees for those services.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

8.04.060 Public Drinking Water System Review

Public drinking water system operators are requesting sanitary hazard reviews shall pay fees to the Division for those services.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

8.04.070 Miscellaneous Fees - Hourly Rate

For miscellaneous services of the Environment & Health section of the Public Health Division, Clackamas County Department of Human Services, an hourly fee shall be paid.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

CONTESTED CASE PROCEDURES**8.04.080 Division Defined, Contested Case Defined, Notice of Opportunity for Hearing, Notice of Hearing, Service**

- A. DIVISION means the Public Health Division of the Clackamas County Department of Human Resources.
 - B. CONTESTED CASE exists whenever:
 - 1. A constitutional provision or the Division Enabling Act requires a hearing upon the action;
 - 2. The Division has discretion to suspend or revoke a right or privilege of a person;
 - 3. There is a proceeding regarding a license to pursue a commercial activity, trade or profession; or
 - 4. There is a proceeding in which the Division by rule or order provides for a hearing, in accordance with contested case requirements.
 - C. When the Division is required or permitted to give a person an opportunity for a hearing to contest the Division action, a notice shall be served personally or by registered or certified mail on all parties. The notice shall include:
 - 1. A statement of the party's right to hearing, or a statement of the time and place of the hearing;
 - 2. A statement of the authority and jurisdiction under which the hearing is to be held;
 - 3. A reference to the particular sections of the ordinance and rules involved;
 - 4. A short and plain statement of the matters asserted or charged; and
 - 5. A statement that if the party desires a hearing, the Division must be notified within a specified number of days from the date of mailing of notice.
 - D. The number of days within which the Division must be notified that the party desires a hearing shall be as follows:
 - 1. Within 20 days of the date of mailing of notice; or
 - 2. When the Division refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that division shall
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grant the person requesting the license 60 days from notification of the refusal to request a hearing.

[Codified by Ord. 05-2000, 7/13/00]

8.04.090 Request for Party Status to Participate in Contested Case

- A. When the Division gives notice that it intends to hold a contested case hearing, interested persons shall be given the opportunity to become parties who have an interest in the outcome of the Division's proceeding or who represent a public interest in such result.
 - B. Persons requesting status as a party shall file a petition, with sufficient copies for service on the parties, with the Division at least ten (10) days prior to the date set for hearing. Petitions untimely filed shall not be considered unless the Division determines that good cause has been shown for failure to file timely.
 - C. The petition requesting status as a party shall set forth the following:
 - 1. Name and address of the petitioner, and of any organization which the petitioner represents;
 - 2. Name and address of the petitioner's attorney, if any;
 - 3. If the petitioner is seeking party status to protect an alleged personal interest in the outcome of the Division's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and of how such interest may be affected by the results of the proceeding;
 - 4. If the petitioner purports to be representing a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and of the petitioner's qualifications to represent such public interest; and
 - 5. A statement of the reasons why existing parties to the proceeding cannot represent adequately the interest identified in 3 and 4 above.
 - D. The Division shall serve petitions for party status on all parties personally or by mail. Parties shall have seven (7) days from the date of personal service or division mailing to file and answer to the petition.
 - E. If the Division determines that good cause has been shown for failure to file a timely petition, the Division at its discretion may:
 - 1. Shorten the time within which answers to the petition shall be filed; or
 - 2. Postpone the hearing until disposition is made of the petition.
 - F. If a person is granted status as a party, the Division may postpone or continue the hearing to a later date when it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties in the case.
 - G. In ruling on petitions for party status, the Division shall consider:
 - 1. Whether the petitioner has demonstrated a personal or public interest which reasonably could be affected by the outcome of the proceeding;
 - 2. Whether any such affected interest is within the scope of the Division's jurisdiction;
 - 3. The qualifications the petitioner represents in cases where a public interest is alleged; and
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4. The extent to which the petitioner's alleged interest will be represented by existing parties.
- H. Division ruling on a petition for party status shall be by written order and served promptly on the petitioner and all parties.
- [Codified by Ord. 05-2000, 7/13/00]

8.04.100 Immediate Suspension or Refusal to Review a License, Notice of Opportunity for Hearing, Service

- A. If the Division finds there is a serious danger to the public health or safety, it may suspend or refuse to renew a license immediately.
- B. The Division shall give notice to the party upon immediate suspension or refusal to renew a license. The notice shall be served personally or by registered or certified mail and shall include:
 1. A statement of the party's right to hearing;
 2. A statement of the authority and jurisdiction under which the hearing is to be held;
 3. A reference to the particular sections of the ordinance and rules involved;
 4. A short and plain statement of the matters asserted or charged;
 5. A statement that the party may be represented by counsel at the hearing;
 6. A statement that if the party demands a hearing the Division must be notified within 90 days of the date of the notice;
 7. A statement giving the reason or reasons for the immediate actions; and
 8. The effective date of the suspension or refusal to renew the license.

[Codified by Ord. 05-2000, 7/13/00]

8.04.110 Orders When No Hearing Requested or Failure to Appear

- A. When a party has been given an opportunity and fails to request a hearing within a specified time or having requested a hearing and fails to appear at the specified time and place, the Division shall enter an order which supports the Division action.
- B. The order supporting the Division action shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

[Codified by Ord. 05-2000, 7/13/00]

8.04.120 Subpoenas, Depositions

- A. Subject to subsection B, any party to a contested case shall, upon request, be issued subpoenas by the Division to compel the attendance of witnesses.
- B. Before issuing subpoenas to the requesting party, the Division may require a showing of need, general relevancy and the evidence to be given by the witness to be within the reasonable scope of the proceedings.
- C. On petition of any party to a contested case, the Division may order the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall include:

1. The name and address of the witness whose testimony is desired;
 2. A showing of materiality of the testimony; and
 3. A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.
- D. If the Division issues an order for the taking of a deposition and the witness resides in this state and is unwilling to appear, the Division may issue a subpoena as provided in subsection A requiring his appearance before the officer taking the deposition.
- E. Witnesses appearing pursuant to subpoena, other than parties, or officers or employees of the Division shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the fees and mileage to the witness.

[Codified by Ord. 05-2000, 7/13/00]

8.04.130 Conducting Contested Case Hearing

- A. The hearing shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the Division, its governing body or a member thereof or any other person designated by the Division.
- B. At the discretion of the presiding officer, the hearing shall be conducted in the following manner:
1. Statement and evidence of division in support of its action;
 2. Statement and evidence of affected person disputing division action; then
 3. Rebuttal testimony.
- C. The presiding officer and the affected parties and the Division or its attorneys shall have the right to question or examine or cross-examine any witnesses.
- D. The hearing may be continued with recesses as determined by the presiding officer.
- E. The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.
- F. Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Division as part of the record of the proceedings.

[Codified by Ord. 05-2000, 7/13/00]

8.04.140 Evidentiary Rules

- A. Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.
- B. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- C. All offered evidence, not objected to, will be received by the presiding officer subject to his power to exclude irrelevant, immaterial or unduly repetitious matter.
- D. Evidence objected to may be received by the presiding officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.
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- E. Any time ten (10) days or more before a hearing, any party may serve on an opposing party a copy of any affidavit, certificate or other document the party proposes to introduce in evidence. Unless the opposing party requests cross-examination of the affiant, certificate preparer, or other document preparer or custodian, within five (5) days prior to hearing the affidavit or certificate may be offered and received with the same effect as oral testimony or the document may be received in evidence.
- F. If the opposing party requests cross-examination of the affiant, certificate preparer, or other document preparer or custodian as provided in subsection E and the opposing party is informed within five (5) days prior to the hearing that the person will not appear for cross-examination but the affidavit, certificate or other document will be offered in evidence, the affidavit, certificate or other document may be received in evidence, provided the hearings officer determines that:
1. The contents of the affidavit, certificate or other document is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and
 2. The party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.

[Codified by Ord. 05-2000, 7/13/00]

8.04.150 Proposed Orders on Contested Cases, Filing of Exceptions and Argument

- A. If a majority of the officials who are to render the final order in a contested case were not present at the hearing or have not reviewed and considered the record, and the order is adverse to a party (excluding the Division), a proposed order including findings of fact and conclusions of law shall be served upon the parties.
- B. When the Division serves a proposed order on the parties, the Division shall at the same time or at a later date notify the parties:
1. When written exceptions must be filed to be considered by the Division; and
 2. When oral argument may be made to the officials who will render the final order.

[Codified by Ord. 05-2000, 7/13/00]

8.04.160 Final Orders on Contested Cases, Notification

- A. Final orders on contested cases shall be in writing and include the following:
1. Rulings on admissibility of offered evidence;
 2. Findings of fact – those matters which are either agreed as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be a fact over contentions to the contrary;
 3. Conclusion(s) of law – applications of the controlling law to the facts found and the legal results arising therefrom; and
 4. Order – the action taken by the Division as a result of the finding of fact and conclusions of law.
- B. Parties to contested cases and their attorneys of record shall be served a copy of
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the final order. Parties shall be notified of their right to judicial review of the order.
[Codified by Ord. 05-2000, 7/13/00]

8.04.170 Petitions for Reconsideration, Rehearing

- A. A party may file a petition for reconsideration or rehearing on a final order with the Division within 30 days after the order is served.
- B. The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.
- C. The Division may grant a reconsideration petition if sufficient reason therefor is made to appear. If the petition is granted an amended order shall be entered.
- D. The Division may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be limited by the Division to specific matters. If a rehearing is held an amended order shall be entered.
- E. If the Division does not act on the petition within the 60th day following the date the petition was filed, the petition shall be deemed denied.

[Codified by Ord. 05-2000, 7/13/00]

Chapter 8.05

8.05 SOCIAL GAMBLING REGULATION

8.05.010 Purpose

Pursuant to the legislative grant of authority of Oregon Revised Statute 167.121, the Board of Commissioners of Clackamas County hereby ordains as follows, a chapter which authorizes, regulates and licenses the playing and conducting of social games in charitable, fraternal, and religious organizations.

[Codified by Ord. 05-2000, 7/13/00]

8.05.020 Definition

Social game means a game other than a lottery, between players in a charitable, fraternal, or religious organization where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

[Codified by Ord. 05-2000, 7/13/00]

8.05.030 Organizations

Charitable, fraternal, or religious organizations may conduct the playing of social games upon receipt of a valid license issued by the County of Clackamas.

[Codified by Ord. 05-2000, 7/13/00]

8.05.040 Applications

Application for such license shall be made annually to the Board of County Commissioners upon such form as the Board shall provide. The application for a license shall be accompanied by a fee in an amount set by resolution of the Board of County Commissioners.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3/13/03]

8.05.050 Social Game License

Upon presentation of a valid receipt from the County Clerk's office evidencing payment of the fee referred to in Section 8.05.040, accompanied by an appropriate application, the Board of County Commissioners shall refer such application to the Sheriff's office for investigation and comment. The Board of County Commissioners may issue a social games license after due consideration of the Sheriff's comments.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3/13/03]

8.05.060 Appeals

Any organization whose application is denied may appeal the denial to the Board of County Commissioners, which shall hold a hearing on the matter. The applicant may

present additional evidence and testimony to show why its application for a social games license ought to be granted. The Board of County Commissioners must receive notice of appeal on or before 60 days have elapsed since the Board signed the written denial.

[Codified by Ord. 05-2000, 7/13/00]

8.05.070 Suspension

A social games license may be suspended or revoked when it appears to the Board of County Commissioners that the licensee, its officers, employees or agents have violated this chapter or the provisions of Chapter 167 of the Oregon Revised Statutes as they relate to gambling, or have provided false information either on their application or to the Sheriff in the conduct of his/her investigation.

[Codified by Ord. 05-2000, 7/13/00]

Chapter 8.06

8.06 BINGO

8.06.010 Purpose

The purpose of this chapter is to ensure that bingo or lotto games are conducted only by charitable, fraternal, or religious organizations within Clackamas County, consistent with the intent of ORS 167.118 and accompanying criminal prohibitions (or successor statutes).

[Codified by Ord. 05-2000, 7/13/00]

8.06.020 Game Limitations And Exceptions

No bingo or lotto game shall be maintained, operated or conducted anywhere in unincorporated Clackamas County for more than two days in any week (Monday through Sunday) by any single organization, nor for more than 8 hours in any one day (12:01 a.m. through midnight), nor shall any single structure be used as the location of games of bingo or lotto on more than two days in any week.

Upon application to the Board of County Commissioners and for good cause shown, the County Commissioners may by a majority vote, approve one (1) additional day per week usage at a single structure.

This exception is for special events by organizations other than the organization regularly using that single structure and shall not exceed one (1) additional day per month. This exception shall not expand the two- (2) days per week limitation for any single organization.

[Codified by Ord. 05-2000, 7/13/00]

8.06.030 State Law

Compliance with the requirements of this chapter shall not excuse any violation of State criminal provisions relating to gambling (See ORS 167.117 through 167.162).

[Codified by Ord. 05-2000, 7/13/00]

8.06.040 Inspection Of Games, Premises And Records

Any deputy sheriff or any investigator from the District Attorney's office, upon presentation of official identification, shall be permitted entry by the organization conducting a bingo or lotto game into the premises where the game is played for the purpose of inspecting such premises, the equipment used in playing such games, and the records kept by the organization relating to the game.

[Codified by Ord. 05-2000, 7/13/00]

8.06.050 Definitions

For purposes of this chapter, the following definitions shall apply:

- A. BINGO or LOTTO means the game as defined by ORS 167.117(1), or successor statute.
- B. CHARITABLE, RELIGIOUS or FRATERNAL ORGANIZATION means those persons within the definition of ORS 167.117(4) (d), or successor statute.
- C. PERSON, PERSONS or ORGANIZATION means any human being or, where appropriate, any combination of human beings or any organized entity in any form including, but not limited to, sole proprietorship, partnership, corporation or association.

[Codified by Ord. 05-2000, 7/13/00]

8.06.060 Nuisance And Abatement

Any bingo or lotto games maintained, operated, or conducted in violation of this chapter are hereby declared to be a public nuisance. Upon direction by the Board of Commissioners of Clackamas County, the County Counsel's office may bring any action or suit necessary to have such nuisance abated in any court of competent jurisdiction.

[Codified by Ord. 05-2000, 7/13/00]

8.06.070 Pre-Existing Nonconforming Games

Bingo games or lotto games, being conducted in compliance with State law on the date of adoption of the Bingo Ordinance, adopted pursuant to Board Order No. 86-104, shall be allowed to continue on their existing schedule, notwithstanding the provisions of Section 6.05.020 of this chapter, provided that this exemption is limited to the same organization conducting the games, at that same location, and on the same schedule, as at the date of adoption of this chapter, and is not transferable.

[Codified by Ord. 05-2000, 7/13/00]

[Chapter 8.07, Burglar Alarm Ordinance, codified by Ord. 05-2000, Amended by Ord. 05-2003, 3/13/03 is hereby repealed and replaced by Chapter 8.07 Alarm Permit, adopted by Ord. 01-2010, 1/28/10]

Chapter 8.07

8.07 ALARM PERMIT

8.07.010 Purpose

- A. The purpose of this chapter is to protect the efficient use of Clackamas County Sheriff emergency law enforcement services and to protect the public from unreasonable alarm noise and disturbance.
- B. The provisions of this chapter shall be administered by the Clackamas County Sheriff and shall apply only to Alarm Systems operated in unincorporated Clackamas County, unless otherwise permitted by law.

[Adopted by Ord. 01-2010, 1/28/10]

8.07.020 Definitions

- A. **ALARM BUSINESS** means a business by any individual, partnership, corporation or other entity, that sells, leases, maintains, services, repairs, alters, replaces, moves or installs, any Alarm System in or on any building, structure, dwelling or facility.
- B. **ALARM SYSTEM** means any assembly of equipment, mechanical or electrical, arranged to signal the occurrence of an entry to a building, structure, dwelling or facility or other activity requiring urgent attention and to which emergency services are expected to respond.
- C. **ALARM USER** means the person(s), firm, partnership, association, corporation, company, organization of any kind, or public entity in control of any building, structure, dwelling or facility wherein an Alarm System is maintained.
- D. **AUTOMATIC DIALING DEVICE** means a device, which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or chapter signal an emergency message indicating a need for emergency response.
- E. **FALSE ALARM** means an alarm signal eliciting a response by emergency services when a situation requiring a response does not in fact exist. False Alarm does not include an alarm signal caused by uncontrollable conditions of nature or other extraordinary circumstances not reasonably subject to control by the Alarm Business or Alarm User.
- F. **SHERIFF** means the Clackamas County Sheriff or designee.

[Adopted by Ord. 01-2010, 1/28/10]

8.07.030 Fines and Fees

- A. Fines and fees associated with this chapter shall be set by resolution of the Board
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of County Commissioners.

- B. Fees must be paid upon demand and fines must be paid within 14 days of the date of notice that a fine is due or the fine will double.

[Adopted by Ord. 01-2010, 1/28/10]

8.07.040 Alarm Permit Requirements; Violation; Suspension of Sheriff Emergency Services

- A. No Alarm System shall be operated without an alarm permit issued by the Sheriff. Application for an alarm permit shall be made with the Sheriff and the applicant shall be the responsible party for purposes of enforcing this chapter.
- B. A permit shall be issued to the property address of the Alarm System and bear the signature of the Sheriff. The permit shall be valid for one-year from the date issued unless suspended pursuant to this chapter.
- C. An alarm permit shall be kept physically upon the premises using the Alarm System and shall be available for inspection by the Sheriff upon request.
- D. An alarm permit fee is not required upon proof that a residential applicant is over 65 and is a primary resident unless a commercial business is conducted in or on the premises.
- E. An alarm permit fee is not required when the Alarm User is a public entity and the permit issued shall not be subject to suspension.
- F. It shall be a violation of this chapter to operate an Alarm System without a permit except as provided by this chapter. Within 14 days of a Notice of Violation an Alarm User must submit a permit application, and applicable fees and fines to the Sheriff. Failure to comply may suspend further Sheriff emergency law enforcement services to the subject address without further notice.

[Adopted by Ord. 01-2010, 1/28/10]

8.07.050 Automatic Dialing Device: Certain Interconnections Prohibited

- A. It is a violation of this chapter for any person to program an Automatic Dialing Device to select a telephone line assigned to the County.
- B. It is a violation of this chapter to fail to disconnect or to reprogram an Automatic Dialing Device which is programmed to select a telephone line assigned to the County within twelve (12) hours of notice that it is so programmed.

[Adopted by Ord. 01-2010, 1/28/10]

8.07.060 False Alarms and Permit Suspension

- A. It shall be a violation of this chapter for an Alarm User to incur a False Alarm at the permit address during the alarm permit year. The fourth False Alarm in a permit year shall be cause to suspend the alarm permit for one year from the date of the last False Alarm
 - B. Following a fourth False Alarm within the permit year, the Sheriff will mail the permit applicant a Notice of Suspension which unless appealed in accordance
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- with this chapter will be effective and final on the date of mailing without further notice.
- C. The Sheriff may suspend law enforcement emergency response to an alarm at the permit address for the period of suspension or until a new permit is issued.
 - D. An alarm permit suspended under this chapter will prohibit reapplication at the permit address for the term of the suspension period and until all fines have been paid, except upon new application and proof of transfer of ownership of the property.
- [Adopted by Ord. 01-2010, 1/28/10]

8.07.070 Appeal of Notice of Suspension

- A. An appeal of Notice of Suspension of an alarm permit may be made by a permit applicant and must be received by the Sheriff within 14 days from the date of mailing of the notice. It must set forth an explanation why the permit should not be suspended, an explanation if any for the False Alarms to include supporting or mitigating information, and describe actions taken to eliminate a future False Alarm.
- B. The Sheriff will review a timely appeal and issue a written final determination setting forth reasons supporting the determination within 14 days from the date of receipt of the appeal. The final determination will be effective on the date issued and shall include information on the right of appeal.
- C. Appeal of a final determination may be taken exclusively by writ of review in the manner set forth in ORS 34.010 to ORS 34.100.

[Adopted by Ord. 01-2010, 1/28/10]

8.07.080 Continuous Alarm as Public Nuisance; Disconnection Of Alarm

Any bell, horn, or siren used in conjunction with an Alarm System which can be heard outside a building, structure, dwelling or facility for more than fifteen (15) minutes continuously or intermittently and the Alarm User is not readily available or able to silence the device, is a public nuisance and may be disconnected or otherwise silenced by responding law enforcement personnel. Disconnection may be made by such means as is reasonably necessary to silence the alarm. The Alarm User shall be solely responsible for property damage associated with disconnecting or silencing the alarm, and costs of reconnection.

[Adopted by Ord. 01-2010, 1/28/10]

8.07.090 Allocation Of Revenues And Expenses

All fees and fines collected pursuant to this chapter shall be set aside solely for the administration of this chapter. The Sheriff shall maintain records sufficient to identify the sources and amounts of that revenue.

[Adopted by Ord. 01-2010, 1/28/10]

Chapter 8.08

8.08 ADULT CARE HOMES

8.08.010 Purpose

Under ORS 443.780, the County is exempt from State licensing and inspection provisions for Adult Care Home facilities when the County has a similar program that is equal or superior to the requirements of ORS 443.705 to 443.825. The purpose of this chapter is to maintain the County's exemption status by regulating, licensing, and inspecting Adult Care Homes, adult day care facilities operating within Adult Care Homes, and providers of such services, and to insure quality care options for County residents.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02; Amended by Ord. 14-2003, 7/24/03]

8.08.020 Definitions and Exclusions

A. Definitions

1. **ADULT CARE HOME:** Any single family dwelling or other facility in which residential care is provided for compensation for five or fewer elderly or physically disabled adults who are not related to the provider by blood or marriage.
2. **ADULT DAY CARE FACILITY:** An Adult Day Care Facility located and operated within an Adult Care Home, which serves one or more elderly or disabled adults by providing board or day care services for compensation, and which includes assistance with activities of daily living or other elements of care for any part of a 24 hour period, except that over night care shall not be allowed.
3. **PROVIDER:** The person licensed by the Division to operate an Adult Care Home, and qualified as a caregiver equal to or greater than the licensed level of the home. The provider is responsible for the overall operation and management of the facility, the provision of room, board, care and services in the daily operation of the home and the supervision of all staff working in the facility.
4. **RESIDENTIAL CARE:** The provision of room, board, care and services that assist the resident in activities of daily living. Residential care also includes twenty-four (24) hour supervision, being aware of the resident's general whereabouts, monitoring the activities of the resident to ensure his/her health, safety, and welfare, and providing social and recreational activities and assistance with money management as needed.

B. Exclusions: This chapter does not regulate the following:

1. Any house, institution, hotel, or other similar place that supplies board and room only, or room only, or board only, if no resident thereof requires any element of care;
 2. Any specialized living situation for physically disabled persons where the State of Oregon Seniors and People with Disabilities provides payment for
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3. personal care services other than to an Adult Care Home provider;
 3. Any residential facility, as defined in ORS 443.400, licensed and funded by the State of Oregon Mental Health and Developmental Disability Services Division or by the State office of Alcohol and Drug Abuse Programs;
 4. Any residential treatment home, as defined in ORS 443.400, licensed and funded by the State of Oregon Mental Health and Developmental Disability Services Division or by the State office of Alcohol and Drug Abuse Programs; or
 5. Any Adult Day Care Facility not located within an Adult Care Home.
- [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02; Amended by Ord. 14-2003, 7/24/03]

8.08.030 Administration and Enforcement; Powers and Duties of Administrator

- A. The Director of the Social Services Division of the Department of Human Services of Clackamas County (Division), or designee, shall act as Administrator to enforce this chapter. The Administrator shall have the authority to promulgate and enforce any administrative rule necessary to insure the effective administration of this chapter. Nothing in the provisions of this chapter shall be construed to create a right or cause of action against Clackamas County, its agents, or employees for failure to enforce any provision of this chapter or its rules.
 - B. The Administrator shall have the authority to do the following:
 1. Promulgate such rules as may be necessary for the administration and enforcement of this chapter pursuant to the procedures set forth in this chapter;
 2. Perform all acts necessary to enforce the provisions of this chapter and its rules;
 3. Designate the responsibility to carry out the requirements of any provision of this chapter and its rules;
 4. Audit records in order to insure conformance with this chapter and its rules;
 5. Subpoena and/or require attendance of witnesses at meetings or hearings to determine compliance with this chapter and its rules;
 6. Require the production of relevant documents;
 7. Swear witnesses;
 8. Take testimony of witnesses in person or by deposition;
 9. Administer oaths;
 10. Grant an exception to a provision of this chapter or its rules after determining upon good and sufficient cause that the exception will not jeopardize the care, health, welfare or safety of the Adult Care Home residents or other occupants and is consistent with the intent and purpose of this chapter and its rules. No exception, however, shall be granted to a rule that affects standards and practices, facility inspections, residents' rights, or inspection of public records;
 11. Assess and collect licensing fees;
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12. Assess and enforce civil penalties and fines.
- C. The Administrator as necessary shall develop and conduct education programs and, or written materials to inform interested persons regarding new or revised rules under this chapter.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02; Amended by Ord. 14-2003, 7/24/03]

8.08.040 Licensing

- A. It is unlawful and it shall constitute a violation of this chapter for any person or entity in Clackamas County to operate an Adult Care Home, or Adult Day Care Facility operating within a care home without first obtaining a license under this chapter.
- B. Every person or entity desiring to operate an adult care home within Clackamas County shall make an application for a license and successfully complete the application process. After receipt of a complete application and fees the Administrator shall consider the application and if the adult care home and all caregivers are in compliance with this chapter and its rules a license will be granted.
- C. Licenses are effective for one year from the date of issue unless sooner revoked and may be renewed annually on a date established by the Administrator providing the adult care home and all caregivers are in compliance with this chapter and its rules
- D. The issuance of a license under this chapter does not mean that the Administrator has inspected, approved or made any representation regarding the quality of an Adult Care Home.
- E. A license is not transferable to any location, person(s), or type of facility other than that for which it is issued.
- F. The Administrator shall have the authority to revoke, suspend, deny, reclassify or attach conditions to any license when the license holder has failed to comply with this chapter or its rules.
- G. The Administrator shall maintain a registry of all Adult Care Homes, adult day care facilities operating within Adult Care Homes, and providers licensed under this chapter.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02; Amended by Ord. 14-2003, 7/24/03]

8.08.050 License Fees

License fees may be adopted by the Board of County Commissioners in accordance with Clackamas County Code, Chapter 1.01, Section 1.01.090.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02]

8.08.060 Operation of Adult Care Home; Adult Day Care Facility Within an Adult Care Home

- A. The Administrator shall ensure that all adult care homes or adult day care
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- facilities within an adult care home meet or exceed the standards set forth in this chapter and its rules.
- B. The provider, resident manager, and caregivers in an adult care home or adult day care facility within an adult care home are required to abide by the provisions of this chapter and its rules.
 - C. In an adult care home the provider or resident manager must live in the home where the care is provided.
 - D. The provider must ensure that any individual age 16 or older who lives or works in the adult care home or adult day care facility within an adult care home has an Oregon and/or multi-state criminal record check approval before working in or living in that facility. Residents and resident family members are excluded from this provision.

[Added by Ord. 05-2002, 5/2/02; Amended by Ord. 14-2003, 7/24/03]

8.08.070 Inspections

- A. The Administrator or designee, including county, city or state officials shall have authority at any time to enter an adult care home to inspect the facility to determine the health, safety and welfare of the residents and may inspect adult care home records and privately interview residents for the following reasons:
 - 1. Prior to issuance of a license under this chapter;
 - 2. Prior to annual renewal of a license;
 - 3. Upon receipt of an oral or written complaint of violation(s) that threaten the health, safety or welfare of residents;
 - 4. When the Administrator has cause to believe a facility is operating as an unlicensed adult care home;
 - 5. When inspections are authorized by this chapter or its rules to determine if an adult care home is in compliance with this chapter and its rules, and to determine if cited deficiencies have been corrected.
- B. In the event that the Administrator or designee is denied access to a licensed or unlicensed adult care home for the purposes of making an inspection, a search warrant or its equivalent may be obtained ex parte from any magistrate authorized to issue a warrant of arrest. The application for a search warrant shall be supported by an affidavit stating the purpose and extent of the proposed inspection, whether it is an inspection caused by a complaint or a routine inspection, and any other relevant information regarding the facility.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02; Amended by Ord. 14-2003, 7/24/03]

8.08.080 Complaints

Any person may file a complaint against a licensed or unlicensed adult care home with the Administrator. The Administrator shall cause an investigation to occur and shall respond promptly to each complaint subject to available resources.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02]

8.08.090 Sanctions

The Administrator shall have the authority to revoke, suspend, not renew, deny, reclassify or attach any conditions to an adult care home license for violations of this chapter or its rules or for other circumstances as may be established by rules adopted under this chapter.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02; Amended by Ord. 14-2003, 7/24/03]

8.08.100 Civil Penalties; Fines

- A. Any person who violates a provision of this chapter or its rules may be punished by a fine in an amount set by resolution of the Board of County Commissioners.
- B. When an order assessing a civil penalty or fine becomes final according to this chapter and its rules, and the amount of the penalty is not paid within 60 days after the order becomes final the order may be recorded with the county clerk in any county of this state in the county lien record.
- C. The provisions of this chapter are in addition to and not in lieu of any other procedures and remedies provided by law.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02; Amended by Ord. 05-2003, 3/13/03]

8.08.110 Institution of Legal Proceedings

In addition to any administrative remedies provided by this chapter, the county may bring a civil action against any person to compel compliance with this chapter and its rules or restrain by injunction any violation of this chapter and its rules.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02]

8.08.120 Hearings and Appeals

- A. Any person who has been denied a license, whose license has been suspended or revoked, not renewed, or upon whose license conditions have been imposed or who has received sanctions may request a hearing by filing a written request with the Administrator within fifteen (15) days of the date of mailing or personal delivery of the Administrator's written notice of the action. The request shall set forth with particularity the reasons the person disagrees with the action and the issues to be heard.
 - B. If a timely request for hearing is not received then the written notice of action shall be deemed a final order of the Administrator without further notice and any civil penalties or fines imposed shall become due in accordance with this chapter.
 - C. Upon receipt of a timely request for a hearing, the Administrator shall designate and notify a hearings officer, who shall set a time and place for hearing and notify all parties. The hearing shall be held not more than sixty (60) days from the date of receipt of the request for hearing unless waived by the requesting party. The hearings officer shall give the requesting party at least fifteen (15) days written notice of the time and place of the hearing unless waived by the requesting party.
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- D. Hearings shall be conducted in accordance with hearing rules adopted by the Administrator. If a procedural issue arises that is not addressed in the Administrator's hearing rules, the issue shall be resolved in a manner consistent with the Oregon Attorney General's Model Rules of Procedure.
- E. The hearings officer shall issue a proposed final order and mail a copy to each party as soon as practicable, but in no event no later than thirty (30) days after termination of the hearing. The order shall include an opinion containing findings of fact and conclusions of law explaining the reasons adopted by the hearing officer in reaching his or her conclusions. The proposed final order shall indicate when written exceptions must be filed. If exceptions are not filed within the time allowed then the proposed order shall become the final order effective upon the date of mailing of the proposed order unless the proposed order specifies otherwise.
- F. A final order shall notify the parties of the right to appeal. Appeal of a final order shall be taken exclusively by writ of review in the manner set forth in ORS 34.010 to ORS 34.100.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02]

8.08.130 Intergovernmental Agreement

The County may enter into agreements with municipal corporations within the County to enforce this chapter, its rules, and amendments. In addition the County may enter agreements with the state as necessary to permit administration or enforcement of this chapter within Clackamas County.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2002, 5/2/02]

8.08.140 Interim Administrative Rules

Those Administrative Rules which previously comprised Clackamas County Code, chapter 8.08, sections 8.08.080 through 8.08.330, codified July 13, 2000, shall be known as the Interim Administrative Rules upon adoption of this chapter. An interim administrative rule shall remain in effect until that rule is replaced by a temporary or permanent rule adopted in accordance with this chapter.

[Added by Ord. 05-2002, 5/2/02]

8.08.150 Initiation of Rule Adoption

The Administrator or any member of the Board of County Commissioners may propose adoption, amendment or repeal of a rule under this chapter.

[Codified by Ord. 05-2000, 7/13/00; Amended by of Ord. 05-2002, 5/2/02]

8.08.160 Approval of Rule Form; Filing

The proposed rule shall be approved as to form by county counsel and filed with the Administrator.

[Added by Ord. 05-2002, 5/2/02]

8.08.170 Contents of the Notice of Intent to Adopt Proposed Rule

A notice of intent to adopt a proposed rule shall contain the following information:

- A. Whether the proposal is to adopt, repeal, or amend a rule;
- B. A summary of the intent, subject and content of the proposed rule;
- C. Complete text of the proposed rule where practicable or the location, time and contact person for obtaining a copy of the complete text of the proposed rule;
- D. The time limit, location, contact person and format for submitting views and comments on the proposed rule;
- E. The time limit, location, contact person for requesting postponement of the action on the proposed rule.

[Added by Ord. 05-2002, 5/2/02]

8.08.180 Publication and Posting of Notice to Adopt Proposed Rule

- A. Notice of intent to adopt a proposed rule shall be published in a newspaper of general circulation in the county at least 15 days before the close of the review period. The notice shall also be posted in the county office of the Department of Human Resources, Social Services Division where public notices are kept.
- B. Notice shall also be given by mail to the list of interested persons. Any person interested in receiving notice by mail of a proposed rule may do so by contacting the office of Administrator to make that request.

[Added by Ord. 05-2002, 5/2/02]

8.08.190 Review and Comment Period

Notice of intent to adopt a proposed rule shall be made after the notice is filed with the Administrator. The review period for submitting comments shall be a minimum of fifteen (15) days and shall commence with the publication of the notice of intent to adopt a proposed rule.

[Added by Ord. 05-2002, 5/2/02]

8.08.200 Rule Adoption

If at the close of the review period there have been no requests for postponement or a public hearing, the Administrator shall within ten (10) days from the close of the review period consider the review comments and either adopt or reject the proposed rule, or adopt the proposed rule with modifications. The adopted rule shall be filed with the office of the Administrator within ten (10) days from the close of the review period.

[Added by Ord. 05-2002, 5/2/02]

8.08.210 Postponement of Rule Action

If within the review period an interested person requests postponement of the intended action the Administrator may postpone the intended action no less than ten (10) days and no more than thirty (30) days to permit the requesting person an opportunity to submit

comments. A request for postponement must be made to the Administrator in writing and must include a statement of the identity and interest of the requesting person and the grounds for postponement.

[Added by Ord. 05-2002, 5/2/02]

8.08.220 Request for Public Hearing

If within the review period a written request for public hearing is made on the proposed rule the Administrator shall announce and conduct a public hearing.

[Added by Ord. 05-2002, 5/2/02]

8.08.230 Public Hearing Notice Contents

Notice of a public hearing on a proposed rule shall contain the following information:

- A. Whether the proposal is to adopt, repeal, or amend a rule;
- B. A summary of the intent, subject and content of the proposed rule;
- C. Complete text of the proposed rule where practicable or the location, time and contact person for obtaining a copy of the complete text of the proposed rule;
- D. The date, time, and place of the public hearing and the manner in which interested persons may present their views;
- E. The manner in which the decision of the Administrator may be appealed to the Board of County Commissioners.

[Added by Ord. 05-2002, 5/2/02]

8.08.240 Publication of Notice of Public Hearing

The notice of a public hearing shall be published in a newspaper of general circulation within the county and posted in the county office of the Department of Human Resources, Social Services Division where public notices are kept at least ten (10) days before the hearing. Notice of public hearing shall also be given by mail to all persons who have submitted comments and to the mailing list of interested persons.

[Added by Ord. 05-2002, 5/2/02]

8.08.250 Public Hearing; Action on Rule; Filing of Notice of Action Taken

The Administrator or designee shall conduct the public hearing. After the close of the hearing the Administrator or designee shall adopt, reject, or amend the proposed rule or continue the hearing to a date certain announced at the hearing without further notice requirement. Within ten (10) days of the conclusion of the public hearing the Administrator shall post notice of the action taken in the county office of the Department of Human Resources, Social Services Division where public notices are kept. Notice of action taken shall also be given by mail to all persons who submitted comments on the proposed rule, to the mailing list of interested persons, and to any person present at the hearing who requested notice. The notice shall indicate whether the proposed rule was adopted, amended or repealed, the manner in which the action may be appealed to the Board of County Commissioners, and the duration of the appeal period. The appeal period shall be no less than 10 (ten) days from the date of mailing of the notice of action

taken. If no appeal is made then the action by the Administrator shall take effect at the end of the appeal period unless a later effective date is specified in the proposed rule.
[Added by Ord. 05-2002, 5/2/02]

8.08.260 Appeal to the Board of County Commissioners; Board Action

After a public hearing on the matter any person who has participated in the rule adoption process and has taken a position on the merits may appeal the action of the Administrator on a rule to the Board of County Commissioners. An appeal must be made in writing and filed with the Administrator within the time set by the Administrator as the period for appeal. A member of the Board of County Commissioners may initiate review by requesting that the Administrator schedule a review hearing before the Board. The action of the Board on review shall be in the form of a Board Order.
[Added by Ord. 05-2002, 5/2/02]

8.08.270 Appeal Contents

An appeal of the action of the Administrator shall contain the following:

- A. A statement of the identity of the person making the appeal;
- B. Identification of the action being appealed, and its date;
- C. The specific grounds for the appeal.

[Added by Ord. 05-2002, 5/2/02]

8.08.280 Date of Appeal Hearing

Upon receipt of an appeal request in conformance with this chapter the Administrator shall schedule a hearing before the Board of County Commissioners.
[Added by Ord. 05-2002, 5/2/02]

8.08.290 Notice of Appeal Hearing

The Administrator shall prepare a notice of appeal hearing to be published in a newspaper of general circulation in the county and posted in the county office of the Department of Human Resources, Social Services Division where public notices are kept at least ten (10) days before the hearing before the Board of County Commissioners. Notice of appeal hearing shall also be given by mail to all parties who have submitted comments on the proposed rule, to the mailing list of interested persons, and to any person present at the public hearing who requested notice. The published notice shall contain the following information:

- A. The date, time and place of the hearing;
- B. A summary of the intent, subject and content of the proposed rule;
- C. Complete text of the proposed rule where practicable or the location, time and contact person for obtaining a copy of the complete text of the proposed rule;
- D. The action of the Administrator being appealed.

[Added by Ord. 05-2002, 5/2/02]

8.08.300 Temporary Rules; Requirements

The Administrator is authorized to use temporary rules when it is necessary to put a rule into immediate effect in order to protect the public or the interests of concerned parties and where there is not sufficient time to follow the rule adoption procedure set forth in this chapter. The Administrator shall complete the requirements for a temporary rule as follows:

- A. Post a copy of the temporary rule in the county office of the Department of Human Resources, Social Services Division where public notices are kept along with a statement that sets forth specific facts and reasons to support the Administrator's determination that failure to put the temporary rule into immediate effect will result in serious prejudice to the public interest or to the interest of the parties concerned.
- B. Provide notice of the temporary rule by publication in a newspaper of general circulation in the county as promptly after posting the rule as practicable and give notice of the rule by mail to persons that may be affected. Notice shall set forth the effective and termination dates of the temporary rule.

[Added by Ord. 05-2002, 5/2/02]

8.08.310 Effective Date of Temporary Rule

A temporary rule adopted in compliance with this chapter becomes effective immediately upon posting or at a later time that may be designated by the rule itself.

[Added by Ord. 05-2002, 5/2/02]

8.08.320 Duration of Temporary Rule

A temporary rule may be effective for a period of not longer than 120 days. A temporary rule, however may be renewed for an additional period not to exceed 120 days when there is a permanent proposed rule being promulgated under the rule adoption procedures set forth in this chapter.

[Added by Ord. 05-2002, 5/2/02]

8.08.330 Adult Day Care Facilities

[Codified by Ord. 05-2000, 7/13/00; Deleted by Ord. 05-2002, 5/2/02]
