

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 966

Amending Multnomah County Code Chapter 21, Health, By Adding § 21.614 and Amending §§ 21.999 and 21.100 to Impose Civil Penalties for Food Service Violations and Repealing §§ 21.101 and 21.102

(Language ~~striken~~ is deleted; double- underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Pursuant to delegations under ORS 624.510(1) (restaurants, temporary restaurants, bed and breakfast facilities, commissaries, mobile units and vending machines) Multnomah County (COUNTY) is authorized to inspect and license facilities and to charge fees for these services.
- b. The costs of licensing, inspection and enforcement are paid from fees charged.
- c. Pursuant to ORS 624.992, COUNTY is authorized to impose civil penalties for violations of ORS 624.010 to 624.120 and ORS 624.310 to 624.440 involving operation without a license and imminent and present dangers to public health.
- d. Civil penalties are necessary to improve timely compliance with licensing requirements, thereby reducing administrative collection costs and increasing funds available for health and safety inspection purposes.
- e. The Model Rules of Procedure referenced in MCC §§ 21.101 and 21.102 apply specifically to state agencies. The rules cannot be directly transferred and should be deleted rather than updated.

Multnomah County Ordains as follows:

Section 1. MCC Chapter 21, Health is amended to add § 21.614 as follows:

§ 21.614 Food Service Violations.

(A) It shall be unlawful for any person to operate a restaurant or bed and breakfast facility without a current license issued by the Health Department.

(B) It shall be unlawful for any person to operate a restaurant or bed and breakfast facility in a manner that creates an “imminent or present danger to the public health” as these terms are defined in ORS 624.085 and Oregon Health Division rules adopted pursuant to ORS 624.100.

Section 2. MCC § 21.999 is amended as follows:

§ 21.999 Penalty.

(A) *Emergency medical services violations.*

(1) Violation of the emergency medical services subchapter, §§ 21.400 through 21.443, shall be a county offense and may be punished by a civil penalty of not more than \$10,000.

(2) A schedule of fines to be levied for violations shall be found in EMS administrative rules.

(3) Additional penalties for contract violations are found in the contract for exclusive emergency ambulance service.

(4) The provisions of this section are in addition to and not in lieu of other procedures and remedies provided by law.
(‘90 Code;§ 6.33.096) (Ord. 816, passed 1995)

(B) *Food services violations.*

(1) *Food handler's certificate violations.* Violation of any provisions of §§ 21.600 through 21.609 not otherwise provided for is punishable upon conviction by a fine of not more than \$500, or by imprisonment not exceeding six months, or both.
(‘90 Code;§ 8.30.900) (Ord. 124, passed 1976)

(2) *Food service license and operation violations.*

(a) Any person who violates §§ 21.610 through 21.614 will be subject to civil penalties of no more than \$500 per day imposed by the Multnomah County Department of Health.

(b) Civil penalties are due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(c) Civil penalties will be imposed by written notice stating clearly the amount of the penalty, the basis for the penalty, and the person's right to appeal imposition of the civil penalty.

(d) A person against whom a civil penalty has been imposed may request a hearing, in writing, to the Director of the Health Department or designee, within 20 days from the date of service of the notice of the civil penalty.

(e) All hearings under this subsection shall be conducted in accordance with applicable portions of ORS 183.413 to ORS 183.470. At the discretion of the Hearings Officer, the hearing regarding civil penalties may be consolidated with any related licensing hearing on the same matter to which the person is entitled under ORS chapter 624.

(f) The Multnomah County Sheriff's Office, at the request of the Health Department, may assist in the imposition of any civil penalties authorized by this chapter, as well as any inspection or closure activities authorized by ORS chapter 624, ORS chapter 433 and ORS chapter 448.

(g) These civil penalty provisions are in addition to any other civil or criminal penalty or enforcement mechanism provided by law.

(C) *Refuse violations.*

(1) *Refuse hauling violations.* Any person, firm or corporation violating § 21.701 shall be subject to a civil fine of not less than \$100 and no more than \$500 for each violation. The county may prosecute any violation of § 21.701 before a hearings officer. ('90 Code;§ 8.75.110) (Ord. 717, passed 1992)

(2) *Dumping and littering violations.*

(a) Any person, firm or corporation violating § 21.702 shall be subject to the following:

1. A civil fine of not less than \$500 and no more than \$999 for each violation; and

2. An award of costs to reimburse the county for the actual expenses of clean-up and disposal caused by the violation.

(b) The county may prosecute any violation of § 21.702 before a hearings officer, or the county may prosecute a violation as a criminal or civil offense to the extent permitted under state law.

(D) *Smoke-Free workplace violations*

Any person who violates §§ 21.500 et seq. will be subject to the following penalties imposed by the Multnomah County Department of Health:

(1) For a first complaint of a violation, a notice and warning, with educational materials and a referral phone number for the Tobacco Prevention Program. The Tobacco Prevention Program will provide technical assistance to achieve compliance upon request.

(2) For a second complaint of a violation, the employer and Tobacco Prevention staff will jointly develop a smoke-free workplace remediation plan if indicated. If a

complaint indicates a person other than the employer committed the second violation, the Tobacco Prevention Program staff will provide additional services and referral information designed to achieve compliance by that person, if indicated.

(3) For subsequent complaints, if the Health Department substantiates the violation through investigation, a civil fine consistent with the fine schedule adopted by the Director of the Department of Health by administrative rule.

(4) Fines imposed under (3) may be appealed in writing to the Director of the Multnomah County Department of Health. The Director's decision shall be final.

Section 3. MCC § 21.100 is amended as follows:

§ 21.100- Policy and Purpose; Delegation of Enforcement to County.

Pursuant to the Board Order of October 9, 1975, the county has requested the administrator of the state Health Division to delegate responsibility to the county for certain licensing and other functions which Oregon Laws, Chapter 790, 1975ORS 624.510, authorizes the administrator to delegate to the state's counties. Under state laws, any person aggrieved by a denial, suspension or revocation of a license or certificate in connection with the delegated functions, or otherwise coming within the statutory conditions for the existence of a contested case with respect to the delegated functions, is entitled to a hearing and other administrative procedures which meet the requirement of ORS Chapter 183. The purpose of this subchapter is to establish administrative rules for hearings and other procedures in the county in connection with the functions delegated to the county under Oregon Laws, Chapter 790, 1975ORS 624.510.

Section 4. MCC §§ 21.101 and 21.102 are repealed as follows:

§ 21.101 — Adoption of Rules of Administrative Procedure.

~~— Except as otherwise provided in this subchapter, the Board adopts Division III of the Attorney General's Model Rules of Procedure Under the Administrative Procedures Act, dated October 22, 1975, together with any provisions of ORS Chapter 183 which are not embodied in the model rules and which set forth procedural requirements for contested cases, as the county's rules for hearings and other administrative procedures in connection with contested cases arising from the county's performance of the functions delegated to the county under Oregon Laws, Chapter 790, 1975.~~

§ 21.102 — Judicial Review; Form of Notice.

~~— (A) — The notice of parties of their right to judicial review of final orders under Rule 30.70(2) of the model rules adopted under § 21.102 shall read as follows:~~

~~— NOTICE: You are entitled to judicial review of this Order in the manner provided by applicable laws of the state.~~

~~(B) At such time as the legislature or the courts of this state determine what judicial procedures are applicable to review of final orders of the Board under Oregon Laws, Chapter 790, 1975, the foregoing form of notice shall be replaced by a notice which specifies the applicable procedures for judicial review.~~

FIRST READING: September 6, 2001

SECOND READING AND ADOPTION: September 13, 2001



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn
Diane M. Linn, Chair

REVIEWED:

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