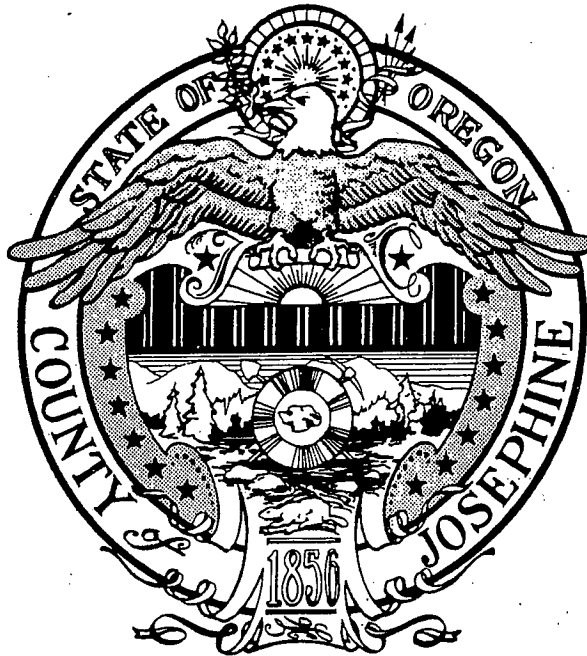


ZONING ORDINANCE

(Josephine County Ordinance 85-1)

JOSEPHINE COUNTY



THE QUALITY OF TOMORROW
BEGINS WITH WHAT WE DO TODAY

ACKNOWLEDGED PLAN
DECEMBER 1985
EFFECTIVE

8/20/91

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LEGAL COUNSEL

SUPPLEMENTARY PROVISIONS

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SECTION 14.100 Home Occupations.

All home occupations in addition to the requirements for an administrative permit shall comply with all the following provisions.

A. Requirements for all Home Occupations:

1. Notification to property owners in the area shall be required for all home occupations in accordance with the Josephine County Land Use Hearing Rules and the Oregon Revised Statutes.
2. The business shall not infringe upon the rights of neighboring residents to enjoy the peaceful occupancy of their homes.
3. The home occupation shall be subordinate and incidental to the residential use of the property.
4. The home occupation shall not give the outward appearance of a business.
5. A home occupation shall be conducted by the resident(s) of the property on which the business is located. No employees are allowed.
6. The home occupation must be conducted within a dwelling which is the actual residence of the person engaged in the occupation, or in an accessory building which is normally associated with uses permitted in the zoning classification of the property. No outside storage is permitted.
7. No alteration of any buildings shall be made which changes the character of such buildings so as to make them unusable or incompatible with any uses normally permitted in the zoning classification of the property.
8. No home occupation shall require alteration of the structure or involve construction features or the use of electrical or mechanical equipment that would change the classification of the structure under the Uniform Building Code from "R-3" for a residence or from "M-1" for a garage to "B-2".
9. The size of accessory structures must comply with size allowed by ministerial authority of Section 14.108.
10. Equipment used in the home occupation shall not interfere either visibly or audibly with reception of

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communication or video equipment used by adjoining neighbors or cause substantial fluctuations in the line voltage outside of the home occupation.

11. No outside parking or storage of more than two vehicles or two pieces of heavy equipment (more than 12,000 pounds) used as a part of the business is allowed.
 12. One non-illuminated identification sign not exceeding six square feet is permitted.
 13. No significant sight, sound, smell, vibration, traffic, or other impacts associated with the operation of the home occupation shall be detectable outside of the property lines.
 14. Off-street parking shall be provided to accommodate employees and clients in accordance with Sections 14.115 through 14.121.
 15. No materials or commodities shall be delivered to or from the property which are of such bulk or quantity as to require delivery by a commercial vehicle or trailer (exceeding 2.5 tons GVW) not including a licensed parcel service or United States Mail.
 16. No retail sales shall be allowed.
 17. There shall not be more than one home occupation authorized at any property location.
 18. The home occupation shall be conducted in accordance with all local, state, and federal requirements to include proper permits for all structures, sanitation facilities, and water uses.
 19. The Planning Director may attach conditions to the issuance of a permit in order to mitigate adverse impacts or to maintain the character of the neighborhood.
 20. All home occupation permits shall be reviewed annually. If occupations fail to maintain the standards of the ordinance, the permit may be revoked.
- B. Requirements for Home Occupations that may be approved by the Planning Commission notwithstanding the above requirements and subject to a Conditional Use Hearing.

The Planning Commission may approve home occupations contrary to subsections 5, 6, 8, 9, 11, 13, 15, 16, and 17 above where in the opinion of the Commission, subject to public hearing, the use will not infringe on the continued residential use of adjoining properties and the character of

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the neighborhood. Additional requirements for home occupations approved by the Commission are:

1. Retail sales shall be limited as an activity incidental or secondary to the primary home occupation.
2. NO more than 5 persons other than resident(s) occupying the dwelling shall be employed full or part time to assist the resident. any person associated with the home occupation performing any phase of the business on site shall be considered an employee. In all cases the business shall be operated by a resident of the property.
3. A site plan in conformance with Sections 15.216 through 15.219.
4. Any use of a home occupation conducted outside of a structure shall be limited to storage of materials and/or vehicles that are screened from view to the extent that they are not visible from a public right-of-way or from adjacent residences.
5. The hearing and procedure used to review these home occupations shall be as set forth as a conditional use provided in Section 15.213 through 15.215. However, the Planning Director shall not have the authority to waive the hearing as provided in Section 15.213(4).

C. Enforcement

1. Functions

- a. DISTRICT ATTORNEY. The District Attorney for Josephine County, or any Assistant District Attorney, will prosecute violations of this ordinance, except where otherwise (1) specifically provided by ordinance or (2) expressly and specifically directed by order of the Board of Commissioners designating the county Legal Counsel (or assistant Legal Counsel) or other duly licensed attorney at law in the State of Oregon to act as special counsel.
- b. OTHER ENFORCEMENT ACTIVITIES. The board of Commissioners shall designate an appropriate person or persons to perform functions involved with enforcing this ordinance. These functions include, but are not limited to, investigating code violations, issuing warnings, complaints and citations, accomplishing service of notices, subpoenas and court orders, and appearing in court and testifying. These functions may be divided among different persons of County Departments.

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Personnel of the Sheriff's Office may also assist in some or all of these functions.

- c. The Board of Commissioners shall control, either directly or through a designee, all actions by any county official taken pursuant to this ordinance. No county official shall (a) issue a warning, (b) prepare a citation and complaint, (c) serve a citation and complaint, or (d) initiate or carry forward legal action regarding any alleged violation without the authorization of the Board of Commissioners.

2. Infraction Procedure.

The infraction procedures contained in the Oregon Revised Statutes, Chapter 153, Sections 153.110 through 153.310, are hereby incorporated into this Ordinance by reference, and are adopted as a method of enforcement of County Ordinance 14.100, subject to the following:

- a. This does not, however, limit use of such other penalties, remedies or enforcement procedures where such are provided for by this ordinance, other ordinances or other sources of applicable laws.
- b. Use of ORS 153.130(2)(b) and (d) and 153.130(3) is optional.
- c. Application of ORS 153.110 through 153.310 shall be appropriately modified, to suit the circumstance of county, rather than state, prosecution.
- d. References to "state" are to be read as "county".
- e. Maximum fines provided in ORS 153.310 do not apply. ORS 161.635(4) and 161.655(3) do apply.
- f. The requirement of ORS 8.665 contained in ORS 153.120 and 153.130 shall not apply in cases of special designation by the Board of Commissioners under section C(1)(a) of this ordinance.
- g. In cases of conflict between any provision of ORS 153.110 through 153.310 and a specific provision of this ordinance, then such specific provision of this ordinance shall govern.

3. Issuance of Citations.

A deputy sheriff or an appropriate person designated by the Board of Commissioners pursuant to section C(1)(b),

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may issue a citation for a violation of Section 14.100 of this Ordinance.

4. Citation Complaint Not Exclusive Remedy.

Notwithstanding the provision of C.3, the county may in its discretion institute civil remedies otherwise provided by law, nor shall the provisions of this ordinance prohibit any other type of enforcement of, or remedy for, ordinance violations where otherwise allowed by law.

5. Issuance of Warnings

a. No citation shall issue unless at least 15 days prior to service of the citation, a warning notice of an alleged ordinance violation is given. A warning notice shall provide a brief description of the violation alleged to exist, and shall be served upon the person accused of the offense. The warning notice shall further contain the name of the County department to contact regarding the violation, the date the warning was issued, and a statement that failure to correct the alleged violation or to contact the appropriate County department may result in issuance of a formal citation to appear in Court. Failure to issue the warning, however, does not invalidate the citation or subsequent prosecution.

b. SERVICE OF WARNING NOTICE. Warning notices shall be deemed served when deposited in the United States mail addressed to the alleged violator at his last known address, postage prepaid.

6. Service of Citation.

a. PERSONAL SERVICE. The properly designated official shall service the citation portion of the complaint on the alleged violator if the alleged violator cannot be found personally at his usual abode, then service may be made on a member of his or her family over 14 years of age who resides at the abode.

b. SERVICE BY CERTIFIED MAIL. If after reasonable and diligent efforts have failed to accomplish personal service of the citation upon the alleged violator or a family member at the abode, service of the summons and complaint portion of the citation may be made by certified mail, return receipt requested, mailed to such person at her or his last known address with postage prepaid. Service by mail shall be deemed perfected upon

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filing with the court the return receipt endorsed by the alleged violator or a member of his family over 14 years of age residing at the abode.

7. Enforcement and Penalties.

- a. **PENALTY.** Any individual, firm, corporation or employee or agent thereof who violates or permits the violation of any provisions of this ordinance section shall, upon conviction, be punished by a fine of not more than \$500 for each separate offense or a fine of not more than \$200 per day for a continuing offense, not to exceed \$10,000. For the purposes of this ordinance, a failure to comply with any provision of this ordinance from day to day shall be a separate offense for each day.
- b. **CONTINUING VIOLATION.** Violations of ordinance constituting a continuing offense shall be so designated on the citation or complaint, either by (a) specifying more than one consecutive day of the existence of the violation or (b) placing in substance the words "and continuing" following a specific day of violation, or (c) a combination of (a) and (b). Use of (b) or (c) shall entitle the prosecution to prove violations of the ordinance from the initial date specified plus any or all dates through the date of the trial.
- c. **DOUBLE PERMIT FEE.** In the event the county is required to issue a citation for an alleged violation and the matter in dispute is thereafter resolved by obtaining the permit originally required by ordinance, either before or after the initial court appearance of the cited person, the fee for such permit shall be double the amount prescribed by ordinance.

8. Bail Schedule.

ESTABLISHMENT. The District Court is hereby authorized to establish a bail schedule for infractions covered by this ordinance.

9. Any Home Occupation not complying with Section 14.100 is a public nuisance, per se, and may be remedied as such by any provision of the applicable law.
10. In addition to the remedy provided by ORS 203.065 and Section 15.237 of this ordinance, the Board of Commissioners may utilize any other remedies for failure to comply with Section 14.100, provided for in ORS 153.110 through 153.310, 215.185, 203,065(2) and

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(3), 30.315(1)(c), (d) and (e), and other applicable law. In addition (and not in limitation of the foregoing) the Board of Commissioners may prosecute any non compliance with Section 14.100 as a public nuisance.

11. The county may be joined by any affected property owner as a co-plaintiff in any remedial or enforcement action authorized under Section 14.100 or pursuant to other applicable law.

SECTION 14.101 Conditions for Approval for Hydroelectric and Transmission Facilities.

Hydroelectric facilities and electric power transmission facilities may be approved subject to a site plan review and a demonstration that all necessary State and federal permits, licenses, exemptions, or variances are approved prior to the issuance of a development permit. Approval shall be subject to the following:

1. In addition to the requirements of the zone district, the applicant shall demonstrate the following:
 - a. The facility is sited on land that is generally unsuitable for forest use, or use of predominant forest areas is warranted for the safe, economical, and efficient operation of the facility;
 - b. Will not significantly affect forest uses on the site or surrounding land;
 - c. Will not alter the stability of the land use pattern in the area;
 - d. Will be consistent with the forest policies of the Comprehensive Plan.
 - e. Is located in an area in which the use is designated as appropriate by the zoning district. If the use is not listed in a district, an energy facility shall not be approved unless the zone district is amended;
 - f. Will comply with provisions applicable to Archaeological sites, Flood Hazard areas, Scenic Waterways, and Airport Overlay Districts;
 - g. Will incorporate mitigation and conditions to protect Class I and Class II streams and wetlands and the banks and vegetation along those streams and wetlands;

ADMINISTRATION

1. By Resolution of the Board of County Commissioners referring a proposed amendment to the Planning Commission for its consideration, report and recommendation;
2. By proposal of the Planning Commission;
3. By a petition filed with the Planning Director upon forms prescribed by the Commission; or
4. By proposal of the Planning Director or County Legal Counsel.

SECTION 15.234 Planning Commission Hearings on Amendments.

Proposals, resolutions and petitions for amendment to this Ordinance shall be held informally and may be adjourned from time to time as the Commission considers necessary or convenient. The Commission may apportion time between the proponents and opponents of the amendment proposed. The Planning Commission may hear such other persons as to them may seem appropriate or convenient. The Planning Commission shall provide the County Legal Counsel an opportunity to review and report upon the legal effect of proposed amendatory language.

SECTION 15.235 Commission Recommendations on Amendments.

After the hearing, the Planning Commission shall recommend that the proposed amendment be rejected, modified, or adopted. The Planning Director shall reduce to writing the Commission's recommendation, together with a brief statement of the facts and reasons upon which such recommendation is based. The Planning Director shall forward the same to the Board of County Commissioners. Amendments to the map of this Ordinance may be initiated as above or by application of a property owner or his authorized agent.

SECTION 15.236 Action by Board of County Commissioners on Amendments.

Upon receipt of the Planning Commission report, the Board of County Commissioners shall hold public hearings and take such action as it feels appropriate.

Amendments to the zoning maps, considered in a quasi-judicial review, may be ordered by the Board of County Commissioners, such order to be contained in the findings of fact and conclusions of law adopted by the Board.

Violations

SECTION 15.237 Penalty.

Any person violating any of the provisions of this regulation shall be punishable, upon conviction, by a fine of not more than \$500 for a non-continuing offense and a fine of not more than \$1,000 for a continuing offense.

ADMINISTRATION

SECTION 15.238 Notification of Violation.

Upon determination of an alleged violation, the Planning Director or his assistants shall notify the property owner. Initial correspondence with the property owner shall:

1. Be in written form and shall be composed in such a manner that no accusations are made;
2. Cite the alleged violation, the section of the ordinance which may be violated, and the remedies which are available to correct the problem;
3. Offer the assistance of the Planning Director or his assistants to work with the property owner to correct a problem. Such correspondence shall state all options available to the land owner and which options are most likely to meet with approval. Correspondence shall specify a period of time, not more than 30 days, to abate the alleged violation. Any extension of time beyond this period shall be granted in writing by the Planning Director or his assistants, with the signature of the property owner.

SECTION 15.239 Compliance Procedure.

1. If the Planning Director has reasonable cause to believe a violation of this Ordinance exists, a site inspection may be conducted on the property by the Planning Director or his assistants with the consent of the property owner. If the property owner refuses access to the property, the Director shall document such refusal and utilize other available legal remedies to gain access to said property.
2. If an alleged violation is not abated within the period authorized by the original notification, the Planning Director or his assistants shall attempt to document the violation with photographs and appropriate field notations. Departmental files shall contain a recording of the time, date and location of any photographs pertaining to the alleged violation, together with the names of any witnesses who, in addition to the enforcement officer, viewed the alleged violation.
3. Prior to submission of the alleged violation for legal remedy, the Planning Director or his assistants shall attempt to re-contact the property owner, explain the standards of the Ordinance, and seek to obtain voluntary compliance with the law. If an extension of time is necessary, such extension shall be agreed to in writing and shall be limited to no more than 30 days, or a compliance schedule with intermediate program check-ups.

4. If a property owner does not respond to notifications of violation, the Planning Director shall prepare documentation of the alleged violation for submission for appropriate legal remedy. Prior to submission of the violation the Director shall send a certified letter containing the following:
 - a. Citation of previous compliance request, extensions of time, or commitments;
 - b. Description of alleged violations and necessary corrective actions; and
 - c. Indication of a time limit of 15 days to comply with the Ordinance and a statement that if the alleged violation is not corrected within the time limit, formal legal action will begin without further notice.
5. The Planning Director or his assistants shall continue to offer to meet with the property owner to discuss any alleged violation and to secure a possible solution other than a court proceeding. Formal correspondence shall include a copy of the applicable sections of the County Ordinance and copies of all previous correspondence and agreements related to the matter.

SECTION 15.240 Legal Action.

Upon determination that voluntary compliance cannot be obtained, the Planning Director shall submit all evidence and documentation of the alleged violation to the District Attorney's Office for prosecution or to the Board of County Commissioners for civil remedy.

SECTION 15.241 Other Remedies.

In addition to penalties provided by ORS 203.065, the Board of County Commissioners may utilize such remedies for violation of this Ordinance as are authorized by ORS 215.185.

SECTION 15.242 Fees.

Any application for a permit, variance, appeal, or change in zoning districts shall be accompanied by a non-refundable fee in an amount to be established by resolution of the Board of County Commissioners.

SECTION 15.243 Zone Boundary Adjustment

The Planning Director has the authority to allow the adjustment of a zoning boundary without requiring a change of zone if all the following conditions are satisfied:

1. The adjustment is in conjunction with a movement of a property line.