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KLAMATH COUNTY BOARD OF COMMISSIONERS

KLAMATH COUNTY, OREGON

**IN THE MATTER OF AN ORDINANCE OF THE)
BOARD OF COUNTY COMMISSIONERS OF) ORDINANCE NO. 92.00
KLAMATH COUNTY, OREGON RELATING TO)
THE PROCEDURES FOR THE ESTABLISHMENT)
OPERATION, MODIFICATION, AND)
DISESTABLISHMENT OF BUSINESS)
IMPROVEMENT AREAS IN KLAMATH COUNTY)**

WHEREAS, businesses located and operating within some areas of the County are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities supporting these industries; and

WHEREAS, it is in the public interest to promote the economic improvement of businesses within the County in order to create jobs, attract new businesses, promote tourism, and prevent the erosion of business industries; and

WHEREAS, it is of particular local benefit to allow businesses to fund business related improvements and services through the levy of fees upon the businesses that receive benefits from those improvements and services; and

WHEREAS, fees levied for the purpose of conferring benefits upon the businesses in a business improvement area shall be related to the costs of providing the improvements and services within the business improvement area and shall not be taxes for the general benefit of the County; and

WHEREAS, it is the desire of the Board of County Commissioners to create a mechanism, pursuant to the County's statutory home rule authority, to allow certain businesses to initiate the formation of business improvement areas for the purpose of providing enhanced improvements and services for the benefit of those businesses within the business improvement area; and

WHEREAS, pursuant to ORS 203.035, the County of Klamath has the authority to legislate over matters of local concern; and

WHEREAS, the Board of County Commissioners determines that the establishment, operation, modification, and disestablishment of business improvement areas within the County of Klamath is a matter of local concern.

NOW, THEREFORE, based on the foregoing, the Board of County Commissioners of Klamath County Oregon, hereby ordain the following.

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Section 1. Purpose.

The purpose of this ordinance is to establish the procedure for the establishment, operation, modification, and disestablishment of business improvement areas within the County, and to ensure that business improvement area fees conform to all constitutional requirements and are determined and levied in accordance with the procedures set forth in this ordinance.

Section 2. Severability

This ordinance is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect.

Section 3. Definitions

“Activities” means, but is not limited to, all of the following that benefit businesses in the business improvement area:

- (a) Promotion of public events.
- (b) Promotion of business activity, including but not limited to tourism, of businesses subject to the fee within the business improvement area.
- (c) Marketing and economic development, including retail retention and recruitment.
- (d) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other services supplemental to those normally provided by the County.
- (e) Other services provided for the purpose of conferring benefits upon businesses located in the business improvement area that are subject to the business improvement area fee.

“Board of County Commissioners” means the governing body of the County.

“Business” means the type or category of business that is described in the resolution creating a business improvement area.

“Business improvement area” means a business improvement area established pursuant to this ordinance.

“Business improvement area plan” means a proposal as defined in Section 6.

“Business owner” means any person recognized by the County as the owner of the business. The County has no obligation to obtain other information as to the ownership of businesses, and its determination of ownership shall be final and conclusive for the purposes of this ordinance. Wherever this ordinance requires the signature of the business owner, the signature of the authorized representative of the business owner shall be sufficient.

“Clerk” means the County Clerk.

“County” means the County of Klamath.

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“Fee” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements or providing activities that will provide benefits to businesses located within a business improvement area that are subject to the business improvement area fee. Fees may be based on a percent of gross business revenue, a fixed dollar amount per transaction, or any other reasonable method approved by the Board of County Commissioners.

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more.

“Owners’ association” means a private nonprofit entity that is under contract with the County to administer the business improvement area and implement activities and improvements specified in the business improvement area plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

Section 4. Establishment of business improvement area

A business improvement area may be established as provided in this ordinance.

Section 5. Requirement of consent of city council

The County may not form a business improvement area within the territorial jurisdiction of a city without the consent of the city council of that city. The city council of a city proposed to be included in the proposed business improvement area must adopt a resolution granting consent to the Board of County Supervisors to form the proposed business improvement area within the city prior to the Board of County Commissioners adopting the resolution forming the business improvement area pursuant to Section 11 of this ordinance. If the city council of a city proposed to be included in the proposed business improvement area does not adopt a resolution granting consent to the Board of County Commissioners to form the proposed business improvement area within the city, the city shall not be included in the business improvement area.

Section 6. Contents of business improvement area plan

The business improvement area plan shall include, but is not limited to, all of the following:

- (a) A map that identifies the business improvement area boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the business improvement area boundaries. The boundaries of a business improvement area may overlap with other business improvement areas established pursuant to this ordinance.
- (b) The name of the proposed business improvement area.
- (c) The activities and improvements proposed for each year of operation of the business improvement area and the estimated cost thereof. If the activities and improvements proposed for each year of operation are the same, a description of the first year’s proposed activities and improvements and a statement that the same activities and

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improvements are proposed for subsequent years shall satisfy the requirements of this subsection.

(d) The estimated annual amount proposed to be expended for activities and improvements in each year of operation of the business improvement area. This amount may be estimated based upon the fee rate. If the estimated annual amount proposed to be expended in each year of operation of the business improvement area is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subsection.

(e) The proposed source or sources of financing, including the proposed method and basis of levying the fee in sufficient detail to allow each business owner to calculate the amount of the fee to be levied against his or her business. The business improvement area plan may set forth specific increases in fees for each year of operation of the business improvement area.

(f) The time and manner of collecting the fees.

(g) The specific number of years in which fees will be levied. In a new business improvement area, the maximum number of years shall be five (5). In a renewed business improvement area, the maximum number of years shall be ten (10).

(h) Any proposed rules and regulations to be applicable to the business improvement area.

(i) A list of the businesses within the business improvement area that will be subject to the fee. The list shall contain all businesses of the type or category that will be subject to the fee that are shown on the official records of the County to be in existence at the time the business improvement area plan is compiled. Any new business of the type or category that will be subject to the fee that commences operations during the business improvement area's term shall be subject to the fee.

(j) Any other item or matter required to be incorporated therein by the Board of County Commissioners.

Section 7. Establishment of separate benefit zones within business improvement area; Categories of businesses

The business improvement area plan may establish one or more separate benefit zones within the business improvement area based upon the degree of benefit derived from the activities and improvements to be provided within the benefit zone and may impose a different fee rate within each benefit zone. The business improvement area plan may also define categories of businesses based upon the degree of benefit that each will derive from the activities and improvements to be provided within the business improvement area and may impose a different fee rate on each category of business, or on each category of business within each zone.

Section 8. Initiation of proceedings; Petition of business owners in proposed business improvement area

(a) Upon the submission of a written petition, signed by any of the following: more than fifty percent (50%) of the business owners that will be subject to the fee in the proposed business improvement area or business owners in the proposed business improvement

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area that will pay more than fifty percent (50%) of the fees proposed to be levied, the Board of County Commissioners may initiate proceedings to form a business improvement area by the adoption of a resolution expressing its intention to form a business improvement area.

(b) The petition of business owners required under subsection (a) shall include a summary of the business improvement area plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the business improvement area.
- (2) The types or categories of businesses that will be subject to the fee.
- (3) The fee rate for each type or category of business that will be subject to the fee.
- (4) Information specifying where the complete business improvement area plan can be obtained.
- (5) Information specifying that the complete business improvement area plan shall be furnished upon request.

(c) The resolution of intention described in subsection (a) shall contain all of the following:

- (1) A brief description of the proposed activities and improvements, the amount of the proposed fee, a statement describing the businesses within the proposed business improvement area that will be subject to the fee, and a description of the exterior boundaries of the proposed business improvement area, which may be made by reference to any plan or map that is on file with the Clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable a business owner to generally identify the nature and extent of the activities and improvements, and the location and extent of the proposed business improvement area.
- (2) A time and place for a public hearing on the establishment of the business improvement area and the levy of fees, which shall be consistent with the requirements of Section 9.

Section 9. Procedure to establish or renew a business improvement area and levy fee

- (a) If the Board of County Commissioners has adopted a resolution of intention to establish or renew a business improvement area and levy a new or increased business improvement area fee, it shall hold a public hearing on the establishment or renewal of the business improvement area prior to adoption of the resolution establishing or renewing the business improvement area and levying the fee. Notice of the public hearing shall be mailed to the owners of the businesses proposed to be subject to the fee.
- (b) The Board of County Commissioners shall provide at least thirty (30) days' written notice of the public hearing at which the Board of County Commissioners proposes to establish or renew the business improvement area and levy the fee.
- (c) A protest shall be made in writing by any business owner that will be subject to the proposed fee. Every written protest shall be filed with the Clerk at or before the time fixed for the public hearing. The Board of County Commissioners may waive any irregularity in the form or content of any written protest. A written protest may be

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withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the County as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from more than fifty percent (50%) of the business owners that will be subject to the fee in the proposed business improvement area or business owners in the proposed business improvement area that will pay more than fifty percent (50%) of the fees proposed to be levied and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), no further proceedings to levy the proposed fee against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the Board of County Commissioners. The method of determining a majority protest shall be the same method that was used to determine the sufficiency of the petition pursuant to Section 8, subsection (a) of this ordinance.

Section 10. Changes to proposed business improvement area plan

At the conclusion of the public hearing to establish or renew the business improvement area, the Board of County Commissioners may adopt, revise, change, reduce, or modify the proposed fees, the boundaries of the business improvement area, or the types or categories of businesses within the business improvement area subject to the fee. Proposed fees may only be revised by reducing any or all of them. The proposed business improvement area boundary may only be revised to exclude territory that will not benefit from the proposed activities and improvements. The types or categories of businesses that will be subject to the proposed fee may only be revised to exclude the business types or categories that will not benefit from the proposed activities and improvements. Any modifications, revisions, reductions, or changes to the proposed business improvement area plan shall be updated in business improvement area plan prior to the Board of County Commissioners' adoption of the resolution creating or renewing the business improvement area.

Section 11. Resolution establishing or renewing a business improvement area

(a) If the Board of County Commissioners, following the public hearing, decides to establish or renew a proposed business improvement area, the Board of County Commissioners shall adopt a resolution of formation or renewal that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed fee, a statement as to the types or categories of businesses that will be subject to the fee, and a description of the exterior boundaries of the business improvement area, which may be made by reference to any plan or map that is on file with the Clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and

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extent of the activities and improvements and the location and extent of the business improvement area.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment or renewal of the business improvement area.

(4) A determination regarding any protests received. The Board of County Commissioners shall not establish or renew the business improvement area or levy fees if a majority protest was received.

(5) A statement that the businesses in the business improvement area established by the resolution shall be subject to any amendments to this ordinance.

(6) A statement that the activities and improvements to be conferred on businesses in the business improvement area will be funded by the levy of fees. The revenue from the levy of fees within a business improvement area shall not be used for any purpose other than the purposes specified in the business improvement area plan, as modified by the Board of County Commissioners at the hearing concerning establishment of the business improvement area.

(7) A finding that the businesses within the business improvement area will be benefited by the activities and improvements funded by the business improvement area fees.

(b) The adoption of the resolution of formation or renewal shall constitute the levy of fees in each of the fiscal years referred to in the business improvement area plan.

Section 12. Expiration of business improvement area; Creation of new business improvement area plan; Renewal of business improvement area

If a business improvement area expires due to the time limit set pursuant to subsection (g) of Section 6, a new business improvement area plan may be created and the business improvement area may be renewed pursuant to this ordinance.

Section 13. Time and manner of collection of fees; Delinquent payments

The collection of the fees levied pursuant to this ordinance shall be made at the time and in the manner set forth by the Board of County Commissioners in the resolution establishing or renewing the business improvement area and levying the fees. All delinquent payments for fees levied pursuant to this part may be charged interest and penalties.

Section 14. Time for contesting validity of fee

The validity of a fee levied under this ordinance shall not be contested in any action or proceeding unless the action or proceeding is commenced within thirty (30) days after the resolution establishing or renewing a business improvement area and levying the fee is adopted pursuant to Section 11. Any appeal from a final judgment in an action or proceeding shall be perfected within thirty (30) days after the entry of judgment.

Section 15. Service contracts authorized to establish levels of County services and funding

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The Board of County Commissioners shall execute baseline service contracts that would establish levels of County services and funding that would continue after a business improvement area has been formed.

Section 16. Request to modify business improvement area plan

The owners' association may, at any time, request that the Board of County Commissioners modify the business improvement area plan. Any modification of the business improvement area plan shall be made pursuant to this ordinance.

Section 17. Modification of business improvement area plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the Board of County Commissioners may modify the business improvement area plan after conducting one public hearing on the proposed modifications. The Board of County Commissioners may modify the activities and improvements to be funded with the revenue derived from the levy of the fees by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of new or increased fees, the Board of County Commissioners shall comply with Section 9. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the County once at least seven (7) days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least ten (10) days before the public hearing, to each business owner affected by the proposed modification.

(b) The Board of County Commissioners shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than ninety (90) days after the adoption of the resolution of intention.

Section 18. Report by owners' association; Approval or modification by Board of County Commissioners

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which fees are to be levied and collected to pay the costs of the activities and improvements described in the report. The owners' association's first report shall be due ninety (90) days after the first year of operation of the business improvement area.

(b) The report shall be filed with the Clerk and shall refer to the business improvement area by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) A current list of the businesses subject to the business improvement area fee.

(2) The activities and improvements to be provided for the current fiscal year.

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- (3) An estimate of the cost of providing the activities and improvements for the current fiscal year.
 - (4) The method and basis of levying the fees in sufficient detail to allow each business owner to estimate the amount of the fee to be levied against his or her business for that fiscal year.
 - (5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- (c) The Board of County Commissioners may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. The Board of County Commissioners shall not approve a change in the basis and method of levying fees that would impair an authorized or executed contract to be paid from the revenues derived from the levy of fees.

Section 19. Designation of owners' association to provide activities and improvements

The business improvement area plan may, but is not required to, state that an owners' association will provide the activities and improvements described in the business improvement area plan. If the business improvement area plan designates an owners' association, the Board of County Commissioners shall contract with the designated nonprofit corporation to provide activities and improvements in the business improvement area.

Section 20. Renewal of business improvement area; Transfer or refund of remaining revenues

- (a) Any business improvement area previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this ordinance.
- (b) Upon renewal, any remaining revenues derived from the levy of fees, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed business improvement area.
- (c) There is no requirement that the boundaries, fees, activities, or improvements of a renewed business improvement area be the same as the original or prior business improvement area.

Section 21. Circumstances permitting disestablishment of business improvement area; Procedure

- (a) Any business improvement area established or extended pursuant to the provisions of this ordinance, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the business improvement area, may be disestablished by resolution by the Board of County Commissioners in either of the following circumstances:
 - (1) If the Board of County Commissioners find there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the business improvement area, it shall notice a hearing on disestablishment.

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(2) During the operation of the business improvement area, there shall be a thirty (30) day period each year in which businesses subject to the fee may request disestablishment of the business improvement area. The first such period shall begin one year after the date of establishment of the business improvement area and shall continue for thirty (30) days. The next such thirty (30) day period shall begin two (2) years after the date of the establishment of the business improvement area. Each successive year of operation of the business improvement area shall have such a thirty (30) day period. Upon the written petition of more than fifty percent (50%) of the business owners that are subject to the fee in the business improvement area, or business owners in the business improvement area that pay more than fifty percent (50%) of the fees levied, the Board of County Commissioners shall pass a resolution of intention to disestablish the business improvement area. The disestablishment petition shall be the same method that was used to determine the sufficiency of the petition pursuant to Section 8, subsection (a) of this ordinance. The Board of County Commissioners shall notice a hearing on disestablishment.

(b) The Board of County Commissioners shall adopt a resolution of intention to disestablish the business improvement area prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the fees levied within the business improvement area. The notice of the hearing on disestablishment required by this section shall be given by mail to the owner of each business subject to fees in the business improvement area. The Board of County Commissioners shall conduct the public hearing not less than thirty (30) days after mailing the notice to the business owners. The public hearing shall be held not more than sixty (60) days after the adoption of the resolution of intention.

Section 22. Refund of remaining revenues upon disestablishment or expiration without renewal of business improvement area; Calculation of refund; Use of outstanding revenue collected after disestablishment of business improvement area

Upon the disestablishment or expiration without renewal of a business improvement area, any remaining revenues, after all outstanding debts are paid, derived from the levy of fees, or derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the businesses then located and operating within the business improvement area in which fees were levied by applying the same method and basis that was used to calculate the fees levied in the fiscal year in which the business improvement area is disestablished or expires.

Section 23. Effective Date

First reading by the Board of County Commissioners this ___ day of _____, ____.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this ___ day of _____, _____. This ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

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KLAMATH COUNTY BOARD OF COUNTY COMMISSIONERS

Donnie Boyd, Chair

Kelley Minty Morris, Vice-Chair

Derrick DeGroot, Commissioner

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Mika N. Blain, County Counsel