

Partially repealed  
by ORD 538; 92-565

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

92-368

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending )  
an Ordinance Proposed by Initiative Pe- )  
tition, Measure 36-1, Approved by the )  
Voters May 19, 1992 Entitled "Limits )  
Development and Operations at Sanitary )  
Landfills", to Limit County Paid )  
Attorney Fees, Expert Witness Fees )  
and Costs to \$10,000 through )  
September 14, 1992; Directing a Measure )  
Election on September 15, 1992 which )  
Would Reinstate the Former Attorney )  
Fees Provision and Require Retroactive )  
Fees; Declaring an Emergency. )

ORDINANCE 535-A

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on June 3, 1992, Commissioners Ted Lopuszynski, Debi Owens, and Dennis L. Goecks being present.

WHEREAS, on May 19, 1992 the voters of Yamhill County approved measure 36-1 entitled "Limits Development and Operations of Sanitary Landfills." Passage of Measure 36-1 was certified by the County Clerk on June 3, 1992 with an effective date of June 18, 1992 pursuant to Article IV, Section 4(d) of the Oregon Constitution, notwithstanding an immediate effective date in the Section 10 of the ordinance. The approval of Measure 36-1 enacted a new county ordinance. (The county ordinance enacted by the approval of Measure 36-1 on May 19, 1992 is referred to in this Ordinance 535-A as "the Measure 36-1 Ordinance.") Section 8 of the Measure 36-1 Ordinance provided as follows:

"Section 8. The limitations and prohibitions of this Act are specifically intended to benefit the taxpayers, electors, tenants, and residents of the County who may enforce the terms and sue for violation as described in subsections (A) and (B).

"A. An action to enforce the terms or sue for violation of this Act, including violations of Section 7(B) may be brought by any taxpayer, elector, tenant or resident within the County in his or her name as a party, and upon prevailing, such party shall be entitled to

reimbursement from the County for expert witness fees, costs and reasonable attorney's fees incurred, whether or not the County is a party to such an action.

"B. If the County does not become a party to an action in subsection (1) [sic], the prevailing party beneficiary may enforce the claim for reimbursement of witness fees, costs and attorney fees in a separate suit.

"C. Nothing in this act shall make the County liable for the fees, costs or expenses of defending a suit for enforcement or violation."

WHEREAS, the Board believes that the effect of Section 8 of the Measure 36-1 Ordinance will be to significantly reduce funds presently reserved by the county for the purpose of potential remediation of landfills and for operation of the county's solid waste program. Instead, those funds, and at some point county general funds, will be spent to pay attorneys fees, expert witness fees and other costs for lawsuits which may not even involve the county as a party. Because the Board believes that the funds should be reserved for potential remediation of landfills and operation of the county's solid waste program, the Board finds that Section 8 of the Measure 36-1 Ordinance is not in the best interests of the citizens of Yamhill County.

WHEREAS, the Board believes that due to the confusion of a multitude of issues surrounding Measures 36-1 and 36-2 on the May 19, 1992 ballot, the voters may not have been fully informed as to the consequences of approval of Section 8 of the Measure 36-1 Ordinance. While the Board believes that Section 8 should be repealed, the Board recognizes that the citizens of Yamhill County should have the right to reinstate the provisions of Section 8 after informed consideration of the consequences of approval. Therefore, the Board believes that an election on the issue should be held on September 15, 1992.

WHEREAS, the Board also believes that a limited amount of money should be made available to pay attorney fees and costs, in limited circumstances, from the effective date of the Measure 36-1 Ordinance through the September 15, 1992 election. The Board also believes that if the voters reinstate the attorney fees provision of the Measure 36-1 Ordinance on September 15, 1992, actions filed between the effective date of the Measure 36-1 Ordinance and the September 15, 1992 election should be able to collect attorney fees

and costs to the extent otherwise allowed by the Measure 36-1 Ordinance.

WHEREAS, the Board finds that adoption of this ordinance is necessary to meet an emergency in order to prevent the depletion of county solid waste funds and county general funds. NOW, THEREFORE,

**THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**

**Section 1.** Section 8 of the ordinance proposed by Measure 36-1, "Limits Development and Operations of Sanitary Landfills" (herein referred to as "the Measure 36-1 Ordinance") as approved by the voters of Yamhill County on May 19, 1992, is hereby repealed. In its place, the following language is added to the Measure 36-1 Ordinance as Section 8:

"Section 8. (1) The limitations and prohibitions of this Act are specifically intended to benefit the taxpayers, electors, tenants, and residents of the County who may enforce the terms and sue for violation as described in subsections (2) and (3) of this section.

"(2) Except as provided in subsection (3) of this section, an action to enforce the terms or sue for violation of this Act may be brought by any taxpayer, elector, tenant or resident within the County in his or her name as a party, at his or her own expense. Except as provided in subsection (3) of this section, the County shall have no obligation to pay attorney fees or costs of any kind for the benefit of any party to such an action, regardless of whether the County is a party to the action.

"(3) (a) Notwithstanding subsection (2) of this section, an action to enforce the terms or sue for violation of this ordinance may be brought by any taxpayer, elector, tenant or resident within the County in his or her name as a party. Upon prevailing, and regardless of whether the County is a party, the Court shall award such party reasonable attorney fees, expert witness fees and costs from a special account of \$10,000 to be established by the County in its Solid Waste Fund, subject to the following conditions:

"(i) The total amount of attorney fees, expert witness fees and costs awarded in any and all actions filed under this section has not exceeded \$10,000; and

"(ii) The fees and costs have been incurred by the parties not later than September 14, 1992 in an action filed between June 18, 1992 and September 14, 1992 to enforce the terms or sue for violation of this Act.

"(b) In the event competing claims for fees and costs exceed \$10,000, the Court shall have authority to allocate the special account of \$10,000 in a manner deemed appropriate by the Court.

"(c) Upon certification of judgment from the Court ordering such fees and costs, the county shall pay the amount of the award or awards from the special account of \$10,000 in its Solid Waste Fund created in accordance with this subsection.

"(4) Nothing in this Act shall make the County liable for any fees, costs or expenses of defending a suit for enforcement of violation of this Act."

Section 2. County counsel is directed to prepare a draft measure for consideration by the Board for referral to the voters in the September 15, 1992 special election. The draft measure shall ask whether Section 8 of the Measure 36-1 Ordinance shall be reinstated after September 15, 1992. The draft measure shall include a provision allowing claims for attorney fees, expert witness fees and costs to be awarded by the Court and paid by the County in the same manner and to the same extent as would have been required had the original language of the Measure 36-1 Ordinance not been modified by this Ordinance 535-A.

Section 3. The intent of this Ordinance 535-A is to bar, except to the extent allowed by Section 1 of this Ordinance, any claims for attorney fees, expert witness fees and other costs sought in any forum which would otherwise be allowed by the passage of the Measure 36-1 Ordinance on May 19, 1992 until such time that an election is held in accordance with Section 2 of this Ordinance.

Section 4. Section 1 of this Ordinance 535-A shall remain in effect only so long as the Measure 36-1 Ordinance remains in effect. If the Measure 36-1 Ordinance is declared invalid by a Court or judicial authority of competent jurisdiction, Section 1 shall likewise be of no further force or effect.

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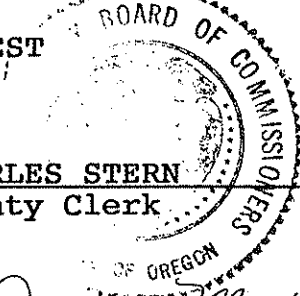
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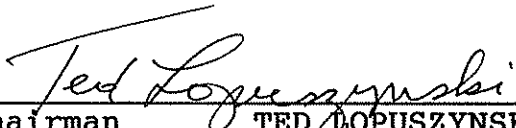
Section 5. This ordinance 535-A is necessary to meet an emergency for the citizens of Yamhill County. In accordance with ORS 203.045(9), this ordinance shall take effect immediately upon the date of its adoption.

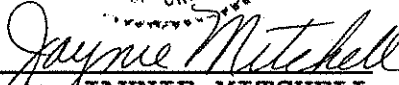
DONE at McMinnville, Oregon on June 3, 1992.


ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS


The seal is circular with the text "BOARD OF COMMISSIONERS" around the top and "OF OREGON" around the bottom. In the center, there is a smaller circular emblem with a landscape scene.  
CHARLES STERN  
County Clerk


  
Chairman TED LOPUSZYNSKI

By:   
Deputy JAYNIE MITCHELL

  
Commissioner DEBI OWENS

FORM APPROVED BY:

  
JOHN M. GRAY, JR.  
Yamhill County Counsel

  
Commissioner DENNIS L. GOECKS