

TITLE 5

PUBLIC PEACE, HEALTH, SAFETY, AND WELFARE

CHAPTER 532

SEWAGE FACILITIES MANAGEMENT CODE

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I. Subchapter Title

532.010 Authority, intent and purpose

Pursuant to ORS 203.045 this chapter is adopted for the following purposes:

(A) To provide a management system for the safe and sanitary collection, treatment and disposal of domestic waste for cluster units.

(B) To provide for implementation of sewage facilities in specified areas within Linn County.

(C) To prevent sewage facilities from becoming a financial burden or otherwise a nuisance to those citizens not directly served by such sewage facilities.

(D) To provide a mechanism to permit sewage facilities in planned unit developments.

(E) To assure the financial stability and operational integrity of sewage facilities approved hereunder.

(F) To protect the health, safety and welfare of the people of Linn County.

[Adopted 81-119 Art. I eff 3/25/81]

532.100 Definitions

For purposes of this Chapter, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory, and the term "this Chapter" shall be deemed to include all amendments hereafter made to this Chapter.

"**Approval**" or "**approved**" means approved by the Board of County Commissioners.

"**Developer**" means any person or the heirs, successors or assigns of such person who owns or proposes or intends to develop a subdivision or multiple housing unit project which is proposed to be, or is served by sewer facilities.

"**Management**" means any person or his heirs, successors or assigns who forms and operates a management corporation for the purposes of, and under the provisions of this subchapter.

"**Management corporation**" means a private corporation which has the legal responsibility of assuring the financial stability and operational integrity of sewage facilities.

"**Mobile home park**" means any place where four or more mobile homes are located within 500 feet of one another on a lot, tract or parcel of land

under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

“Mobile home park” does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one mobile home per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.160.

“**Municipality**” means Linn County, special service district, or other governmental entity having authority to dispose of or treat or collect sewage, industrial wastes, or other wastes, or any combination of two or more of the foregoing acting jointly.

“**Public health hazard**” means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals and radioactive isotopes.

“**Purchaser**” means any person or the heirs, successors or assigns of such person, who purchases or leases one or more units in a subdivision or multiple housing unit project from a developer.

“**Sewage facility**” means any device or series of devices constructed for the purpose of collecting, treating or disposing of sewage, or any combination of these.

“**Travelers accommodations**” includes any establishment having rooms or apartments rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental or use of facilities.

[Adopted 81-119 Art. II eff 3/25/81]

532.110 Scope and applicability

(A) Any sewage facility constructed after the effective date of this subchapter, and not otherwise approved, and which is regulated by the

Department of Environmental Quality under the WPCF (Water Pollution Control Facilities) permit program and serves more than one parcel and more than eleven individual residential units using a common sewage disposal system, except mobile home parks and travelers accommodations, shall be operated and maintained by a municipality or by an approved management corporation.

(B) This subchapter shall apply to subsurface and alternative systems as defined in ORS 454.675 to 454.745. This subchapter shall not apply to sewage facilities constructed or operated in accordance with a waste discharge permit issued by the Oregon Department of Environmental Quality, unless authorized by that Department.

(C) Sewage facilities approved pursuant to this subchapter shall be located in the following areas:

(1) Residential planned unit developments approved in accordance with the Linn County Zoning Ordinance of 1980 as amended. Provisions of this Chapter do not apply within an urban service area or an urban growth boundary of an incorporated city.

(2) Areas determined by the Board to have identified health problems which an existing government cannot solve.

[Adopted 81-119 Art. III eff 3/25/81]

532.200 Rules and fees

The Board may adopt orders for the administration and implementation of this subchapter. The Board may establish fees for the approval and review of proposed and existing sewage facilities under this subchapter.

[Adopted 81-119 Art. IV eff 3/25/81]

532.210 DEQ compliance

All proposed or approved sewage facilities shall comply with all applicable provisions of ORS and rules and regulations of the Oregon Department of Environmental Quality.

[Adopted 81-119 Art. V eff 3/25/81]

532.220 Management corporation provisions

(A) In the event that there is no municipality which is willing or able to construct and operate

sewage facilities, a management corporation may be established for that purpose.

(B) In order to be considered for approval, a management corporation must meet the following conditions:

(1) It must be incorporated under the laws of the State of Oregon.

(2) It must have officers elected from the purchasers of property served by the management corporation.

(3) It must have a constitution and bylaws.

(4) There must be financial solvency on a continuous basis through a method of financing construction, maintenance, operation and emergency work related to the sewage facilities, to be exclusive of whatever additional obligations the corporation may assume in other fields. Rates must be set at a level which will provide sufficient funds for all sewerage operation, maintenance costs and emergencies. There shall be a special fund placed in a passbook account in the name of Linn County. This fund is to be used by the County in cases where the County's responsibilities must be exercised as per the provisions of this Chapter and its subsequent agreements. The amount of this fund is determined by order of the Board and included in the contract between the County and the developer and/or management corporation. The minimum amount of fund shall be determined as follows: \$5,000 plus \$1 per gallon of waste flow per day as determined by DEQ plus one year's operation and maintenance cost. Subtractions can be made from the amount based on the ability of the management corporation to derive cash. The passbook account shall have the provision that the County would sign over the money in event the system was turned over to a regional or municipal authority. The corporation would receive the interest from the money.

(5) The corporation must be continuously in operation with regard to its sewerage activities, so long as there is a need for such management service. There must be built into the organization a provision allowing the eventual

transfer of its sewerage responsibility to a municipality, should such a transfer become feasible.

(6) There must be a municipality to which control and operation of the management corporation will pass in trusteeship in the event that no persons are willing to serve as officers of the corporation.

(7) Funds collected for sewerage purposes must be kept in a separate account to be used for the sole purpose of carrying out the functions of the sewerage management system.

(8) The management corporation or municipality shall be provided the power to impose liens against property served to assure the collection of delinquent sewerage debts, and provision for the adjustment of rates from time to time to meet the cost of operation.

(9) In the event the corporation is initially run by a board of trustees, provision should generally be made for an election of corporate officers at the first annual meeting and transfer of control from the initial trustees to the newly elected board of trustees or corporate officers. Control of the management corporation must pass to the purchasers of property served by the sewerage facility as rapidly as possible.

[Adopted 81-119 Art. VI eff 3/25/81]

532.230 Existing statutes, rules and regulations; conflicts

The management corporation shall be established and organized in conformance with any applicable statutes, rules and regulations. Any portion of this subchapter in conflict with statutes, rules or regulations limiting the authority of any management corporation will not be applicable; however, management may be required to find an acceptable substitute for the inapplicable requirement.

[Adopted 81-119 Art. V II eff 3/25/81]

532.240 Management corporation contract

(A) The management corporation shall operate through a contract between the management corporation and the developer. The contract shall contain, but need not be limited to, a complete description of all rights, duties, obligations

and commitments of management or the maintenance and operation requirements, and all of the elements required by LCC 532.230.

(B) The contract shall provide:

(1) An agreement by management to provide maintenance and operation of sewer facilities, provide surveillance of the functioning of sewer facilities, keep records, collect fees, disburse funds, and perform all other duties set forth in these regulations as are assigned to management.

(2) An agreement by developer that, when selling or leasing property, as a condition of sale or lease, he will require the contract of sale, property deed or lease to include a clause wherein the purchaser agrees, prior to purchaser's signing of a purchaser contract, to conform to the provisions of the management corporation contract.

(3) That developer shall provide each purchaser a full and complete copy of the management corporation contract prior to purchaser's signing of a purchase contract.

(4) That, in the event the developer retains possession of individual lots which contribute sewage to the sewer facility, the developer's obligations will include those of a purchaser with respect to those individual lots.

(5) The means of making amendments, additions or deletions by agreement of management, developer and purchaser, and as approved by the Board and other applicable regulatory agencies.

(6) The right of management to contract with public or private agencies for labor and other services.

(7) That management shall employ competent personnel, as determined by the Board and other applicable regulatory agencies familiar with the maintenance and operation of the type of sewage facilities under its management.

(8) An identification of the portion of the sewage system for which management shall exercise responsibility.

(9) For the establishment of a method for the transfer of authority to another entity

acceptable to the regulatory agencies in the event that such a transfer is necessary.

(10) For the allocation of restoration costs, as required in LCC 532.320.

(11) For purchaser's right to perform work, if such work is permitted by management.

(12) That in the event of a property's connecting to an alternate sewage disposal system, the costs of such connection, if any, shall be the obligation of the property owner.

[Adopted 81-119 Art. VIII eff 3/25/81]

532.250 Management corporation contract enforcement

There must be a municipality which will consent to and accept a role as a third party having standing to enforce provisions of a management corporation contract and further consent to assure the appropriate regulatory agencies in writing that these provisions will be enforced as necessary to assure and, when necessary due to default, provide property operation, maintenance and financial stability of the sewer facilities.

[Adopted 81-119 Art. IX eff 3/25/81]

532.260 Financial solvency

Management shall assure financial solvency of its management responsibilities. Financial arrangements shall include, but not be limited to, the following:

(A) An accounting and audit system in accordance with any applicable statutes.

(B) A standard maintenance and operation fee.

(C) Fees for initial construction of sewage facilities.

(D) Establishment of an emergency fund.

(E) Preparation of a rate structure for services beyond routine operation and maintenance.

(F) Fees for any routine repair work, replacement, emergency work or modification undertaken on behalf of a purchaser's installation, to cover costs of materials and labor, and other proper associated costs.

(G) Establishment of a method of rate adjustment to maintain adequate funds. Rates shall be revised annually and adjusted accordingly.

(H) Provide for the collection of delinquent payments through an acceptable method, including at least a lien on the property.

(I) Establishment of a method of final disbursement of funds and claims at such time as the management system is dissolved.

(J) Establishment of a method of transfer of funds and claims at such time as the management responsibilities are transferred.

(K) Assurance that adequate operation and maintenance funds are available from the initiation of sewage system operation.

[Adopted 81-119 Art. X eff 3/25/81]

532.300 Maintenance and operation; management and purchaser

A maintenance and operation manual, specifically suited to the nature of the sewage facility for which management will be responsible, shall be prepared by management. A copy of this manual shall be submitted to Linn County and other appropriate regulatory agencies. The manual shall include, but need not be limited to, schedules and procedures for the following:

(A) Periodic inspection of the facilities to determine efficiency of operation and general condition of equipment.

(B) Record keeping of inspections, monitoring, work done, conditions found and related matters. Such records shall be maintained by the management corporation and shall be available for inspection by Linn County and appropriate regulatory agencies.

(C) Periodic pumping of septic tanks or other storage tanks by licensed tank pumpers.

(D) Periodic maintenance of motors, pumps and related equipment.

(E) Replacement or repair of work or damaged equipment.

(F) Responding to emergencies. Emergency procedures shall include provisions for:

(1) Notifying users, Linn County, and appropriate regulatory agencies of the emergency.

(2) Determining the cause of any major breakdown or of any essentially complete failure of any sewer facility to function as designed. The

findings shall be submitted in writing to Linn County and appropriate regulatory agencies.

(3) Making repairs, replacements or modifications of design as required to restore functioning of the system.

(4) Working with purchaser, Linn County, and appropriate regulatory agencies to prepare and install a substitute system, in the event of irreparable failure of the existing system to meet design requirements.

(G) Annual reporting of system maintenance and operation to Linn County and appropriate regulatory agencies, as specifically determined in an agreement between Linn County and the management corporation and/or developer.

[Adopted 81-119 Art. XI eff 3/25/81]

532.310 Right to enter on purchaser's property

Management, Linn County and appropriate regulatory agencies shall have the right to enter upon purchaser's or management corporation's property to perform routine inspections on work and to respond to emergency conditions.

[Adopted 81-119 Art. XII eff 3/25/81]

532.320 Restoration

Whenever work is performed by management on purchaser's property, management shall restore all paving, planting, and other features of purchaser's property to its original condition as nearly as possible. Provision for allocation of restoration costs shall be included in the management contract.

[Adopted 81-119 Art. XIII eff 3/25/81]

532.330 Purchaser's right to perform work

Except in the event of an emergency that demands immediate action, upon notification to management by the purchaser, management may permit purchaser to perform repairs, replacements, and other work other than routine maintenance and operation on those portions of the sewage system located on purchaser's property. If management permits such work by purchaser, it shall be performed under the following conditions:

(A) Design, materials, work to be performed, and time for completion shall be directed by

management, and shall comply with all applicable regulations.

(B) Cost of labor and materials shall be borne by purchaser.

(C) Completed work shall be inspected and approved in writing by management, Linn County, and appropriate regulatory agencies before being placed in service.

(D) Management may correct any improper construction performed by purchaser or require purchaser to make such corrections and may complete any work not finished by purchaser within the time limit set by management, and may bill purchaser for all labor and materials.

[Adopted 81-119 Art. XIV eff 3/25/81]

532.340 Approval of management corporations

All management corporations that are proposed for specific developments shall be subject to review and approval by the Board. Items submitted for review shall include, but need not be limited to:

(A) Evidence that no municipality is willing or able to operate sewage facilities.

(B) Proposed articles of incorporation.

(C) Proposed management contract.

(D) Proposed development for which facilities are planned.

(E) Proposed schedule of implementation.

(F) Certification by the Planning Director that the proposed development is in compliance with the existing comprehensive land use plan, zoning and subdivision ordinances, and other land use regulations applicable to the property, or that the proposed development will be in compliance.

(G) Documentation of any necessary reviews and/or approvals by the Oregon Department of Environmental Quality or other appropriate regulatory agencies.

(H) In addition to the above, the Board may require submission of any and all information and materials, including professional services, which it deems necessary to its review of the proposal.

(I) The Board has the power to appoint members to the management corporation and to

take such other action as is necessary to keep the management corporation functional.

[Adopted 81-119 Art. XV eff 3/25/81]

532.350 Annual review

Approved management corporations established to provide sewage facility management services under this subchapter shall be subject to an annual review by Linn County. The review will evaluate both operational and financial records for the preceding year to determine compliance with the conditions of approval. Management must submit the appropriate operational and financial records to Linn County for review by July 1, with annual review fee.

[Adopted 81-119 Art. XVI eff 3/25/81]

Statutory References and Authorities:

ORS 92.010 to 92.160; 203; 203.045; 454.675 to 454.745

Legislative History of Chapter 532:

Adopted 81-119 eff 3/25/81

Amendments to 81-119:

#1 95-177 eff 5/10/95 (renumbering)
