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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF JACKSON

SCHULZ FAMILY FARMS LLC, an Oregon limited liability company; JAMES FRINK, MARILYN FRINK, individuals; and FRINK FAMILY TRUST, an Oregon revocable living trust,

Plaintiffs,

vs.

JACKSON COUNTY, an Oregon municipal corporation,

Defendant.

No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF, AND IN  
THE ALTERNATIVE, INVERSE  
CONDEMNATION**

**(Not Subject to Mandatory  
Arbitration – Prayer of  
\$4,205,000)**

**Fee Authority: ORS 21.160(1)(d)**

**Jury Trial Requested as to  
Alternative Claims for Relief 2-3**

Plaintiffs allege as follows:

**PRELIMINARY STATEMENT**

1.

This action challenges the Proposed Jackson County Ordinance 635 (“Ordinance”), which voters in Jackson County, Oregon approved as ballot measure 15-119 on May 20, 2014, to ban the growing of genetically engineered (“GE”) plants in Jackson County. The Ordinance conflicts with Oregon state law and requires plaintiffs to destroy valuable crops they have already planted, cultivated, and planned to sell, without just compensation.

2.

Plaintiffs seek declaratory relief and to permanently enjoin the enforcement of the Ordinance. Alternatively, plaintiffs seek damages as just compensation for the forced

1 destruction of their property as a result of the Ordinance, as well as attorney fees and costs to  
2 redress the violation of plaintiffs’ state and federal constitutional and statutory rights.

3 **JURISDICTION**

4 3.

5 This court has jurisdiction because this action is brought in accordance with:

6 (1) ORS 203.060, seeking judicial review and invalidation of an ordinance  
7 adopted by the voters of Jackson County relating to the ban on genetically engineered crops  
8 in Jackson County; and

9 (2) ORS 28.010-28.160, Oregon’s Uniform Declaratory Judgments Act, seeking  
10 “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and  
11 other legal relations” relevant to plaintiffs.

12 (a) ORS 28.010 provides courts of record “shall have power to declare rights,  
13 status, and other legal relations, whether or not further relief is or could be claimed.”

14 (b) ORS 28.020 provides any person “whose rights, status or other legal  
15 relations are affected by a[n] \*\*\* ordinance \*\*\* may have determined any question of  
16 construction or validity arising under such \*\*\* ordinance.”

17 Plaintiffs allege the Ordinance conflicts with paramount state laws, and plaintiffs seek  
18 relief from uncertainty and insecurity with respect to their rights under the Ordinance.

19 **VENUE**

20 4.

21 Venue is appropriate in Jackson County because the Ordinance was adopted in  
22 Jackson County, is intended to be enforced within Jackson County, and at least some part of  
23 the cause of suit arose in Jackson County.

24 // // //

25 // // //

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1 **BACKGROUND AND PARTIES**

2 5.

3 Plaintiffs Schulz Family Farms LLC, James Frink and Marilyn Frink, and Frink  
4 Family Trust are Oregon farmers who all currently reside in Jackson County, Oregon. All of  
5 the plaintiffs have previously grown, and currently have planted, crops of Roundup Ready®  
6 Alfalfa (“RRA”) in Jackson County. RRA is grown from GE seeds that enable the alfalfa  
7 crop to tolerate glyphosate, the active ingredient in Roundup agricultural herbicides. RRA  
8 provides farmers with an effective tool for weed control in their alfalfa crop.

9 6.

10 Genetic engineering is a process of intentionally copying a gene for a desired trait  
11 from one plant or organism and using it in another plant. This process develops crops that  
12 benefit growers and consumers. GE crops are often engineered to generate higher crop  
13 yields, improve crop insect resistance, and enhance crop herbicide tolerance to make weed  
14 control simpler. GE crops may also have enhanced nutrition profiles or be engineered  
15 without allergens and toxins. Genetic engineering can also facilitate the use of more  
16 environmentally sustainable farming practices, for instance, by reducing resource use.

17 7.

18 Over the past decades, farming GE crops has become an important and generally  
19 accepted farming practice throughout the United States, including Oregon. Today, the vast  
20 majority of several major U.S. crops are GE varieties, including soybeans, corn, and cotton.<sup>1</sup>

21 8.

22 The federal government ensures the safety of new GE crops through comprehensive  
23 safety regulations. Every GE crop on the market today has been thoroughly reviewed,

24 ///

25  
26 <sup>1</sup> See USDA, Economic Research Service, Adoption of Genetically-Engineered Crops  
in the U.S., [http://ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-  
the-us.aspx](http://ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx).

1 evaluated, and deemed safe by expert governmental agencies and non-governmental  
2 agencies.

3 9.

4 RRA is a GE crop. RRA allows for effective weed control, especially in the first year  
5 of planting when weed pressure is high. Herbicides used on conventional alfalfa may cause  
6 some injury to the alfalfa crops thus reducing yield. Use of RRA has been shown to produce  
7 more consistent high yields and consistent high quality forage for animal feed, thus providing  
8 a greater economic return to the grower. Because of the more efficient weed control, farmers  
9 may get more years of production before needing to rotate to another less profitable grain  
10 crop.

11 10.

12 Plaintiffs' RRA is approximately a ten-year crop. After removing RRA or  
13 conventional alfalfa, plaintiffs may not be able to replant any alfalfa for several years. The  
14 recommended practice after removing RRA is to leave the field out of alfalfa production for  
15 four years so that any non-germinated seeds can be allowed to germinate and controlled in a  
16 non-alfalfa crop. During that time, farmers may only grow less profitable grain crops while  
17 the soil returns to the right conditions to replant alfalfa.

18 11.

19 Schulz Family Farms LLC ("Schulz Family Farms") is a 250-acre farm in Gold Hill,  
20 Oregon run by Bruce Schulz. The Schulz family has farmed for four generations on their  
21 land since 1935. Bruce Schulz is the managing member of Schulz Family Farms, and farms  
22 his land through Schulz Family Farms.

23 12.

24 Schulz Family Farms has 105 acres of RRA. Schulz Family Farms planted all of its  
25 RRA prior to the approval of the Ordinance. Schulz Family Farms has nearly 200 customers  
26 for its RRA, who primarily use the alfalfa for feeding horses and goats.

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13.

Schulz Family Farms has never received any complaints from customers or neighbors regarding its farming of RRA.

14.

Schulz Family Farms prefers RRA because it is more convenient and profitable to grow than conventional alfalfa. Growing conventional alfalfa requires Schulz Family Farms to spray their crops twice as often, and requires three times more in the cost of materials.

15.

Pursuant to the Ordinance, Schulz Family Farms will have to tear out the RRA it already planted. Schulz Family Farms will lose the benefit of the ten-year crop life if forced to tear out its RRA, and the farm will lose a significant portion of its gross income.

16.

After prematurely tearing out the RRA, the Schulz family will not be able to replant conventional alfalfa for four years. They will lose four cuttings each year during this time.

17.

Schulz Family Farms' current yield of RRA is approximately seven tons per acre per year, which they can sell for \$220-\$300 per ton, depending on the cutting. In 2014, Schulz Family Farms sold approximately 545 tons of RRA.

18.

If forced to pull out its RRA, the true value of the Schulz Family Farms' RRA at the time of destruction is \$2,205,000.

19.

Plaintiff James Frink is a 72-year old third generation farmer in Jackson County. Together with his wife, plaintiff Marilyn Frink, he farms on land owned by plaintiff Frink Family Trust. James Frink and Marilyn Frink are co-trustees of Frink Family Trust. The Frinks have been growing RRA for many years. Among other things, the Frinks decided to

1 grow RRA because RRA is less expensive in cost and labor for the Frinks than conventional  
2 alfalfa.

3 20.

4 The Frinks currently grow 200 acres of RRA, and 20 acres of conventional alfalfa.  
5 Their entire RRA crop was planted before the Ordinance was passed. The Frinks intended to  
6 replace their conventional alfalfa with RRA but for the Ordinance. Pursuant to the  
7 Ordinance, they will have to tear out all of the RRA they planted before the Ordinance was  
8 approved. The Frinks will lose the benefit of the ten-year crop life if forced to tear out their  
9 RRA, and will lose a significant portion of their gross income. After prematurely tearing out  
10 the RRA, the Frinks will not be able to replant conventional alfalfa for four years.

11 21.

12 No other crop would be as profitable on the Frinks' land as RRA.

13 22.

14 The Frinks have never received any complaints from customers or neighbors  
15 regarding their farming of RRA.

16 23.

17 The Frinks yield approximately four tons per acre per year of their 200-acre RRA  
18 crop. The Frinks sell their RRA crop for approximately \$200-\$250 per ton. If forced to  
19 remove or destroy their RRA, the true value of the Frinks' RRA at the time of destruction is  
20 \$2,000,000.

21 24.

22 The Frinks will stop farming if required to tear out their RRA crops. If their farm  
23 suffers a four-year disruption in selling RRA, they will lose their entire customer base and  
24 will no longer be able to farm. They will be too old to start over.

25 25.

26 Plaintiffs' farming activities are occurring on lands zoned for farm or forest use.

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26.

Plaintiffs have established customers who are committed to buying plaintiffs’ entire output of RRA. If plaintiffs cannot grow RRA in Jackson County, their customers will obtain RRA from competing farmers. Plaintiffs will have no means to compete in the market with farmers who can grow RRA outside of Jackson County.

27.

Defendant Jackson County is a municipal corporation formed under the laws of the State of Oregon.

**RIGHT TO FARM AND FOREST ACT**

28.

Normal and accepted farming practices often result in a variety of unavoidable and sometimes unpleasant conditions, such as odors, use of pesticide, dust, and other similar conditions. In response to such conditions, farmers have faced nuisance actions or been subject to local ordinances to restrict their agricultural operations. These actions and ordinances could effectively shut down the agricultural business in its entirety. Nuisance actions and restrictive ordinances could prevent a farming operation from producing any profit, or create such uncertainty about the future viability of agricultural practices that it discourages farmers from continuing their operations or passing them down to future generations, or could incentivize them to sell off their farmland for nonagricultural uses. To avoid these substantial harms, states began to enact laws to protect farming practices.

29.

The Oregon legislature passed the Right to Farm and Forest Act (“Right to Farm Act”), ORS 30.930-30.960, finding that farming and forest practices are critical to the economic welfare of the state; that the expansion of residential and urban uses on and near lands zoned or used for agriculture or production of forest products may give rise to conflicts between resource and non-resource activities; and that in the interest of the continued welfare

1 of the state, farming and forest practices must be protected from legal actions that may be  
2 intended to limit, or have the effect of limiting, farming and forest practices.

3 30.

4 The Right to Farm Act declares that it is a policy of Oregon that farming practices on  
5 lands zoned for farm use must be protected, and that the authority of local governments and  
6 special districts to declare farming and forest practices to be nuisances or trespass must be  
7 limited because such claims for relief and local government ordinances are inconsistent with  
8 land use policies, including policies set forth in ORS 215.243, and have adverse effects on  
9 the continuation of farming and forest practices and the full use of the resource base of this  
10 state. ORS 30.933.

11 31.

12 To support Oregon’s policy, the Right to Farm Act provides that “[n]o farming or  
13 forest practice on lands zoned for farm or forest use shall give rise to any private right of  
14 action or claim for relief based on nuisance or trespass.” ORS 30.936(1). As such, the Right  
15 to Farm Act also provides that any local government or special district ordinance or  
16 regulation now in effect or subsequently adopted is invalid if the ordinance makes a farming  
17 practice a nuisance or trespass, or provides for its abatement as a nuisance or trespass. ORS  
18 30.935. The only exception to the Right to Farm Act’s prohibition of claims based on  
19 nuisance or trespass (an exception that does not apply here) is for damage to commercial  
20 agricultural products or death or serious physical injury.

21 32.

22 Under the Right to Farm Act, “farming practice” is defined as a mode of operation on  
23 a farm that:

- 24 (a) Is or may be used on a farm of a similar nature;
- 25 (b) Is a generally accepted, reasonable and prudent method for the operation of the  
26 farm to obtain a profit in money;

1 (c) Is or may become a generally accepted, reasonable and prudent method in  
2 conjunction with farm use;

3 (d) Complies with applicable laws; and

4 (e) Is done in a reasonable and prudent manner.

5 33.

6 Under the Right to Farm Act, a “nuisance or trespass” includes but is not limited to  
7 “actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of  
8 pesticides and use of crop production substances.”

9 **COUNTY ORDINANCE**

10 34.

11 On May 20, 2014, voters in Jackson County approved the Ordinance to ban the  
12 growing of GE plants in Jackson County. According to the County Assessor’s website, the  
13 Ordinance was enacted on June 6, 2014. A true copy of the Ordinance is attached hereto and  
14 incorporated herein as Exhibit A.

15 35.

16 The Ordinance purports to:

17 (1) Protect the health, safety, and welfare of its citizens; the economic security and  
18 commercial value of county agricultural enterprises whose products stand to be damaged, or  
19 diminished in value due to genetic contamination from GE crops; and the plants of citizen  
20 gardeners from pollen drift from GE plants; and

21 (2) Find that planting GE crops is not a reasonable and prudent farm practice because  
22 genetic drift from windborne and insect-carried pollens from one farm can create significant  
23 harm on other farms, particularly for farmers who follow organic farming practices; and that  
24 growing GE plants in Jackson County threatens the welfare of county citizens who are  
25 organic farmers.

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36.

The Ordinance provides that it is “a county violation for any person or entity to propagate, cultivate, raise, or grow [GE] plants within Jackson County.”

37.

The Ordinance exempts only state or federally licensed medical research institutions, medical laboratories, or medical manufacturing facilities; educational or scientific institutes; and licensed health practitioners for the treatment of human patients. No other exemptions may be sought under the Ordinance.

38.

The Ordinance requires all GE plants in Jackson County to be harvested or destroyed within 12 months of enactment. The Ordinance does not require any showing of harm or injury to commercial agricultural products by the GE crops before the GE crops must be destroyed.

39.

The Ordinance has four methods of enforcement:

(1) Levying penalties under the Jackson County Code Chapter 202.99 for breach of the Ordinance;

(2) Abating the violation under an administrative procedure created in sections 635.20 through 635.23 of the Ordinance;

(3) Destroying or removing GE plants after an administrative determination of violation, with an opportunity to appeal to the Circuit Court; and

(4) Bringing an action in Circuit Court to enforce the Ordinance.

**NATURE OF THE DISPUTE**

40.

Despite attempting to word the Ordinance to evade the application of the Right to Farm Act, the Ordinance is a nuisance abatement ordinance prohibited by the Right to Farm

1 Act.

2 41.

3 The Ordinance provides that propagating, cultivating, raising, or growing GE crops is  
4 a “violation” and that such a violation “shall not be construed to mean a nuisance” under the  
5 Right to Farm Act. But the Ordinance is a nuisance ordinance *in substance*; trying to re-  
6 characterize or disguise it as something else does not make it so. Otherwise a local  
7 government could circumvent the Right to Farm Act through creative language and render  
8 the Right to Farm Act a practical nullity. This is particularly true when the Ordinance’s  
9 findings specifically incorporate the language that is used to define a nuisance under the  
10 common law.

11 42.

12 Under the common law, a nuisance is the use of one’s own property in such a way as  
13 to cause harm to human comfort, safety, or health, or injury to another’s use and enjoyment  
14 of property. The Ordinance is squarely directed at this category of harms and injuries. The  
15 Ordinance purports to find that farming GE crops causes economic injury to others’ use and  
16 enjoyment of property, and that the ban of farming GE crops is necessary to protect the  
17 safety and health of Jackson County residents.

18 43.

19 Under the Right to Farm Act a nuisance includes, but is not limited to, actions or  
20 claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides,  
21 and use of crop production substances. The Ordinance equivalently finds that farming of GE  
22 crops will harm the economic interests of organic farmers by allowing GE organisms to land  
23 on the property of organic farmers through pollen drift and windborne or insect-carried  
24 pollens.

25 44.

26 Banning GE crops because they purportedly cause harm to the health, safety, and

1 welfare of Jackson County residents renders the farming of GE crops a nuisance, as it is  
2 defined under the common law and the Right to Farm Act. Banning GE crops because the  
3 farming of GE crops purportedly harms the economic interests of organic farmers due to  
4 alleged pollen drift also renders the farming of GE crops a nuisance.

5 45.

6 Again, despite its semantic maneuvering, the Ordinance provides for a “violation  
7 abatement” procedure that is identical to the Jackson County procedure for nuisance  
8 abatement. The violation abatement procedures in the Ordinance sections 635.20 to 635.23  
9 are almost word-for-word identical to the nuisance abatement procedures in Jackson County  
10 Code Chapter 1864.

11 46.

12 The Ordinance claims to support the goals of protecting “the health, safety, and  
13 welfare” of the County’s citizens, which is identical to the purpose of nuisance abatement  
14 procedures found at Jackson County Code Chapter 1864.

15 47.

16 The Ordinance purports to prevent harm to “the economic security and commercial  
17 value of county agricultural enterprises whose products stand to be damaged, or diminished  
18 in value due to genetic contamination from [GE] crops,” but bans GE plants that do not cause  
19 harm and does not require any showing of harm as a prerequisite to the destruction of the GE  
20 crops.

21 48.

22 The Ordinance bans an established and common farming practice without any  
23 individualized showing of harm or damage to anyone or anything. The Ordinance prohibits  
24 conduct that cannot be prohibited under the Right to Farm Act.

25 49.

26 The Ordinance flatly prohibits the farming of any GE plants, and broadly bans all GE

1 plants regardless of damage to other crops and without any showing of actual harm.

2 50.

3 Plaintiffs seek a declaration under ORS 28.020 that the County’s Ordinance is  
4 facially invalid and prohibited by the Right to Farm Act, as well as an injunction against  
5 enforcement of the ordinance. In the event that the Ordinance is deemed consistent with the  
6 Right to Farm Act, plaintiffs seek damages and attorney fees based on the taking of the  
7 plaintiffs’ private property without just compensation under the Oregon and United States  
8 Constitutions.

9 51.

10 This matter presents an actual and justiciable controversy between the parties, in that  
11 the County’s Ordinance to ban the growing of all GE plants in Jackson County restricts  
12 ongoing activities of plaintiffs which have been expressly authorized by the law of Oregon,  
13 specifically the Right to Farm Act. Plaintiffs are adversely affected by the Ordinance, in that  
14 the Ordinance requires plaintiffs to harvest, destroy, or remove GE plants they legally  
15 planted within 12 months of enactment; prevents any future farming of GE plants; and  
16 imposes financial and other obligations on plaintiffs if they do not comply with the  
17 Ordinance. Plaintiffs contend that the Ordinance is facially invalid and prohibited by the  
18 Right to Farm Act as explained above.

19 52.

20 The Ordinance impairs plaintiffs’ ability to engage in farming practices, impairs the  
21 value of their farms, and forces plaintiffs to prematurely harvest, destroy, or remove their GE  
22 crops, which impairs the value of their property and destroys the value of their property.  
23 Neither the Ordinance nor any other local or administrative remedy is available to plaintiffs  
24 to obtain compensation for the destruction of their property.

25 // // //

26 // // //

1 **FIRST CLAIM FOR RELIEF**

2 **(Facial Invalidity of the Ordinance under State Law)**

3 **(Count I- Declaratory Relief)**

4 53.

5 Plaintiffs re-allege the preceding paragraphs set forth above and incorporate them  
6 herein by reference.

7 54.

8 The Right to Farm Act expressly prohibits any local government or special district  
9 ordinance or regulation that makes a farm practice a nuisance or trespass, or provides for its  
10 abatement as a nuisance or trespass. Notwithstanding the semantics of the Ordinance and its  
11 drafters' attempt to evade the prohibitions of the Right to Farm Act, the Ordinance is  
12 prohibited by the Right to Farm Act. The Ordinance is a local government ordinance that  
13 makes a farm practice a nuisance or trespass, and provides for its abatement as a nuisance or  
14 trespass. The County has no lawful authority to adopt an ordinance that conflicts with the  
15 express terms of the Right to Farm Act.

16 55.

17 Growing GE plants is a farming practice under the Right to Farm Act:

18 (a) GE plants are used on the farms of Schulz Family Farms, James and Marilyn  
19 Frink, and Frink Family Trust, and are or may be used on a farm or farms of a similar nature;

20 (b) Growing GE plants, including RRA, is a generally accepted, reasonable, and  
21 prudent method for operation of a farm to make a profit; and is or may become a generally  
22 accepted, reasonable, and prudent method in conjunction with farm use;

23 (c) Growing GE plants, including RRA, complies with applicable laws; and

24 (d) Growing GE plants, including RRA, is done in a reasonable and prudent manner.

25 56.

26 The Ordinance applies intentionally and specifically to farming practices that use GE

1 crops, including farming RRA.

2 57.

3 The Ordinance does not attempt to remedy any specific damage to commercial  
4 agricultural products because it does not require any showing of harm or injury by GE plants.  
5 The Ordinance does not require any proof of harm prior to enforcement, and applies to all  
6 GE plants despite the absence of harm caused by the GE plants that are destroyed.

7 58.

8 The Right to Farm Act, ORS 30.930-30.960, expressly prohibits the Ordinance.  
9 Plaintiffs are entitled to a declaration, pursuant to ORS 203.060 and ORS 28.010-28.160,  
10 finding the Ordinance facially invalid under state law, unlawful, and null and void.

11 59.

12 Plaintiffs are interested in the relief they seek because they currently own, grow, and  
13 intend to grow GE crops, including RRA, that are prohibited under the Ordinance. The  
14 enactment of the Ordinance as described above caused damage to plaintiffs and will continue  
15 to cause damage.

16 **(Count II- Injunctive Relief)**

17 60.

18 Plaintiffs re-allege the preceding paragraphs set forth above and incorporate them  
19 herein by reference.

20 61.

21 By passing the Ordinance, the County has made the Ordinance applicable to  
22 plaintiffs. The County also threatens to enforce the penalties under the Ordinance against  
23 plaintiffs. Plaintiffs face a real and immediate threat of irreparable injury as a result of the  
24 Ordinance.

25 // // //

26 // // //

1 62.

2 For all of the reasons stated above, the Ordinance is unlawful, null and void, and of  
3 no lawful effect. Plaintiffs are nevertheless threatened with immediate and irreparable injury  
4 because the Ordinance applies now and requires plaintiffs to prematurely harvest, destroy, or  
5 remove their RRA and alter their chosen farming operations to comply with the Ordinance.  
6 The Ordinance prohibits plaintiffs from engaging in generally accepted farming practices that  
7 are protected by the Right to Farm Act. Plaintiffs must expend costs and labor to remove  
8 their RRA crops. Plaintiffs are further threatened with immediate and irreparable injury  
9 because they will need either to expend substantial funds and resources to modify their  
10 farming operations to comply with the Ordinance, or cease their farming operations in light  
11 of the conversion and compliance costs. In addition, plaintiffs will lose business because  
12 they cannot grow RRA. Plaintiffs suffer an immediate and irreparable injury to the  
13 continued viability of their farming operations from the requirements of the Ordinance.

14 63.

15 Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to preliminary and  
16 permanent injunctive relief barring the County from taking any action to implement or  
17 enforce the Ordinance.

18 64.

19 Plaintiffs currently have planted RRA crops that are subject to the Ordinance.  
20 Plaintiffs have grown RRA for years, and planted their RRA prior to the enactment of the  
21 Ordinance. Injunctive relief is necessary to maintain the status quo throughout the pendency  
22 of this action. Plaintiffs are entitled to an injunction maintaining the status quo by  
23 prohibiting the County from taking any action to implement or enforce the Ordinance.  
24 Plaintiffs will suffer irreparable harm if injunctive relief is not issued on or before May 2015.

25 // // //

26 // // //

1 **ALTERNATIVE SECOND CLAIM FOR RELIEF**  
2 **(Inverse Condemnation under State and Federal Law –**  
3 **Plaintiff Schulz Family Farms)**

4 65.

5 If the Ordinance is not invalidated and permanently enjoined from enforcement  
6 pursuant to plaintiffs' First Claim for Relief, plaintiffs re-allege the preceding paragraphs set  
7 forth above and incorporate them herein by reference.

8 66.

9 The constitutions of the United States and the State of Oregon guarantee that private  
10 property shall not be taken for public use without just compensation.

11 67.

12 Condemnation is the legal process by which a public entity exercises its right of  
13 eminent domain. Inverse condemnation is a cause of action against a public entity to recover  
14 the true value of property which has been taken in fact by the public entity, even though no  
15 formal exercise of the power of eminent domain has been attempted.

16 68.

17 During all times mentioned herein, Schulz Family Farms was and is the owner of 105  
18 acres of RRA located within Jackson County.

19 69.

20 During all times mentioned herein, the County was and is a county existing under the  
21 Constitution and laws of the State of Oregon, and is authorized to enforce local ordinances.

22 70.

23 By authority of Oregon law, the County is authorized to condemn and to appropriate  
24 property for public use.

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71.

The County intentionally approved the Ordinance for the purported use and purported benefit of the public. The County’s approval of the Ordinance is a final decision. No alternatives or exemptions relevant to Schulz Family Farms exist from the Ordinance’s requirement that all GE plants be harvested, destroyed, or removed within 12 months of enactment of the Ordinance. There is nothing left to happen at the local or administrative level in relation to the Ordinance before the Ordinance applies to Schulz Family Farms. The Ordinance’s requirement of harvest, destruction, or removal within 12 months of enactment applies to Schulz Family Farms now.

72.

As a direct, natural, and ordinary consequence of the enactment of the Ordinance, the County requires Schulz Family Farms to destroy its private property, namely the 105 acres of RRA already planted on its land. Schulz Family Farms has years of productive life remaining for its crop of RRA. The forced destruction of Schulz Family Farms’ RRA substantially interferes with its property interest in their crops; in fact, it eliminates Schulz Family Farms’ interest in the RRA crops altogether.

73.

If Schulz Family Farms does not harvest, destroy, or remove its 105 acres of RRA prior to June 6, 2015, the Ordinance purports to authorize others to occupy the private property of Schulz Family Farms without its consent to destroy or remove Schulz Family Farms’ private property, its crops.

74.

The Ordinance’s mandatory harvest, destruction, or removal of all GE plants will deprive Schulz Family Farms of its entire property interest and economic value in the RRA crops. It is a per se and/or physical taking. In the alternative, the Ordinance is a regulatory taking of the RRA crops that requires the provision of just compensation to the plaintiffs

1 under the state and federal Constitutions.

2 75.

3 By passing the Ordinance, the County, without first purchasing or condemning any of  
4 Schulz Family Farms' property, ordered Schulz Family Farms to take certain actions with its  
5 property, effectively took possession of Schulz Family Farms' property, and authorized  
6 others to enter onto and forcibly destroy its property.

7 76.

8 The County's acts constituted a taking and appropriation of Schulz Family Farms'  
9 private property for public purposes without payment of just compensation in violation of  
10 Article I, § 18, of the Oregon Constitution, and the Fifth and Fourteenth Amendments to the  
11 United States Constitution.

12 77.

13 The true value of the personal property and interests appropriated by the County  
14 together with the damages to the Schulz Family Farms' property by reason of said  
15 appropriation is the sum of \$2,205,000.00.

16 78.

17 Pursuant to ORS 20.085 and 42 U.S.C. § 1988, Schulz Family Farms is entitled to  
18 reasonable attorney fees and costs.

19 79.

20 Schulz Family Farms is entitled to interest at the rate of 9% per annum on the just  
21 compensation from the date the Ordinance requires Schulz Family Farms to destroy its RRA.

22 // // //

23 // // //

24 // // //

25 // // //

26 // // //

1  
2 **ALTERNATIVE THIRD CLAIM FOR RELIEF**

3 **(Inverse Condemnation under State and Federal Law –**  
4 **Plaintiffs James and Marilyn Frink, and Frink Family Trust)**

5 80.

6 If the Ordinance is not invalidated and permanently enjoined from enforcement  
7 pursuant to plaintiffs' First Claim for Relief, plaintiffs re-allege the preceding paragraphs set  
8 forth above and incorporate them herein by reference.

9 81.

10 During all times mentioned herein, James and Marilyn Frink and/or the Frink Family  
11 Trust ("Frinks") were and are the owners of 200 acres of RRA located within Jackson  
12 County.

13 82.

14 During all times mentioned herein, the County was and is a county existing under the  
15 Constitution and laws of the State of Oregon, and is authorized to enforce local ordinances.

16 83.

17 By authority of Oregon law, the County is authorized to condemn and to appropriate  
18 property for public use.

19 84.

20 The County intentionally approved the Ordinance for the purported use and purported  
21 benefit of the public. The County's approval of the Ordinance is a final decision. No  
22 alternatives or exemptions relevant to the Frinks exist from the Ordinance's requirement that  
23 all GE plants be harvested, destroyed, or removed within 12 months of enactment of the  
24 Ordinance. There is nothing left to happen at the local or administrative level in relation to  
25 the Ordinance before the Ordinance applies to the Frinks. The Ordinance's requirement of  
26 harvest, destruction, or removal within 12 months of enactment applies to the Frinks now.

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85.

As a direct, natural, and ordinary consequence of the enactment of the Ordinance, the County requires the Frinks to destroy their private property, namely the 200 acres of RRA already planted on their land. The Frinks have years of productive life remaining for their crop of RRA. The forced destruction of the Frinks’ RRA substantially interferes with their property interest in their crops; in fact, it eliminates their interest in the RRA crops altogether.

86.

If the Frinks do not harvest, destroy, or remove their 200 acres of RRA prior to June 6, 2015, the Ordinance purports to authorize others to occupy the private property of the Frinks without their consent to destroy or remove the Frinks’ private property, their crops.

87.

The Ordinance’s mandatory harvest, destruction, or removal of all GE plants will deprive the Frinks of their entire property interest and economic value in the RRA crops. It is a per se and/or physical taking. In the alternative, the Ordinance is a regulatory taking of the RRA crops that requires the provision of just compensation to the plaintiffs under the state and federal Constitutions.

88.

By passing the Ordinance, the County, without first purchasing or condemning any of the Frinks’ property, ordered the Frinks to take certain actions with their property, effectively took possession of the Frinks’ property, and authorized others to enter onto and forcibly destroy their property.

89.

The County’s acts constituted a taking and appropriation of the Frinks’ private property for public purposes without payment of just compensation in violation of Article I, §

1 18, of the Oregon Constitution, and the Fifth and Fourteenth Amendments to the United  
2 States Constitution.

3 90.

4 The true value of the personal property and interests appropriated by the County  
5 together with the damages to the Frinks' property by reason of said appropriation is the sum  
6 of \$2,000,000.00.

7 91.

8 Pursuant to ORS 20.085 and 42 U.S.C. § 1988, the Frinks are entitled to reasonable  
9 attorney fees and costs.

10 92.

11 The Frinks are entitled to interest at the rate of 9% per annum on the just  
12 compensation from the date the Ordinance requires the Frinks to destroy their RRA.

13 **WHEREFORE**, plaintiffs pray for relief as follows:

14 A. Entry of a judgment on plaintiffs' First Claim for Relief:

- 15 1. Declaring the Ordinance invalid, unlawful, and null and void; and  
16 2. Granting preliminary and permanent injunctive relief to enjoin the  
17 County from taking any action to enforce the Ordinance.

18 B. As an alternative to plaintiffs' First Claim for Relief:

- 19 1. Entry of a judgment on plaintiffs' Second Claim for Relief, awarding  
20 Schulz Family Farms the sum of \$2,205,000.00, together with  
21 reasonable attorney fees, costs, and interest from the date the County  
22 takes its actions against plaintiffs' property; and  
23 2. Entry of a judgment on plaintiffs' Third Claim for Relief, awarding  
24 James and Marilyn Frink and the Frink Family Trust the sum of  
25 \$2,000,000.00, together with reasonable attorney fees, costs, and  
26

1 interest from the date the County takes its actions against plaintiffs'  
2 property.

3 C. An award of costs and disbursements under ORS 20.085 and 42 U.S.C. §  
4 1988; and

5 D. Such other and further relief as the court deems just and equitable.

6 DATED this 18th day of November, 2014.

7  
8 MARKOWITZ HERBOLD PC

9 By: /s/ Shannon Armstrong

10 David B. Markowitz, OSB No. 742046  
11 DavidMarkowitz@MHGM.com  
12 Shannon Armstrong, OSB No. 060113  
13 ShannonArmstrong@MHGM.com  
14 Kristin M. Asai, OSB No. 103286  
15 KristinAsai@MHGM.com  
16 Of Attorneys for Plaintiffs

16 41929

JACKSON COUNTY, OREGON  
RECORDED-FILED

2012 MAY -1 PM 2:17

JACKSON COUNTY CLERK

BY \_\_\_\_\_  
DEPUTY

**Chapter 635**

- 635.01 Title and Policy.
- 635.02 Findings.
- 635.03 Definitions.
- 635.04 Prohibitions.
- 635.05 Exemptions.
- 635.06 Implementation.
- 635.10 Jurisdiction.
- 635.11 Enforcement and Remedies.
- 635.20 Inspections; Violation Abatement; Costs.
- 635.21 Appeals on Notices of Abatement.
- 635.22 Hearings.
- 635.23 Recovery of Cost of Abatement.
- 635.99 Severability

**CROSS REFERENCES**

Enforcement - see ADM. 202.99 & Ch 203 , ORS 30.932

**635.01 TITLE AND POLICY.**

(a) It is the intent and purpose of this Ordinance to:

- (1) make it unlawful for any person to propagate, cultivate, raise, or grow genetically engineered plants in Jackson County, and
- (2) enable Jackson County to recoup expenses incurred in the abatement of genetically engineered plants due to noncooperation or non-action of property owners, or any tenant, occupant, lessee or person in possession of subject property.

(b) This Ordinance supports the Jackson County goals of protecting the health, safety, and welfare of its citizens. It also protects the economic security and commercial value of county agricultural enterprises whose products stand to be damaged, or diminished in value due to genetic contamination from genetically engineered crops.

(c) This Ordinance is added to the Jackson County Codified Ordinances as Chapter 635.

**635.02 FINDINGS.**

(a) Genetically engineered crops and products are being developed with precipitous speed, and have been introduced into the marketplace, often without the consumers' knowledge and before the potential risks and long term health and environmental effects of these products have been adequately studied.

- (b) Jackson County finds it to be in the public interest to protect the health, safety, and welfare of its citizens by protecting the economic welfare of organic farmers.
- (c) Planting genetically engineered crops is not a reasonable and prudent farm practice because genetic drift from windborne and insect carried pollens from one farm can create significant economic harm to organic farmers and to other farmers who choose to grow non-genetically engineered crops.
- (d) Planting genetically engineered crops is not a generally accepted method, nor will it become generally accepted, among certified organic farmers who use organic farm practices by complying with USDA regulations and certifications which explicitly ban the use of genetically engineered organisms to acquire and maintain their organic certification. As such, organic farm operations are not similar in nature to nonorganic farm operations because they are controlled and regulated by specific rules not applied to others. Therefore, farming practices that utilize genetically engineered organisms compromise the welfare of the organic farmers who are citizens of Jackson County.
- (e) A ban on genetically engineered crops does not deprive farmers from obtaining a profit in money.
- (f) Jackson County recognizes that all citizens have the right to grow organic produce.
- (g) Pollen drift from genetically engineered crops can contaminate the plants of citizen gardeners who are within adopted urban growth boundaries in such manner as to interfere with the citizen's use of their lands within the urban growth boundary.
- (h) For all of these reasons, the People of Jackson County find and declare that the propagation, cultivation, raising, and growing of genetically engineered plants in Jackson County threatens the welfare of our citizens who are organic farmers and of those citizens who choose to grow non-genetically engineered plants.

**635.03 DEFINITIONS.**

- (a) "Board of Commissioners" or "Board" means the Jackson County Board of Commissioners.
- (b) For the purposes of this Ordinance, "genetically engineered" shall be interpreted by the following definitions:
  - (1) "genetically engineered" means modification of living plants and organisms by genetic engineering, altering or amending DNA using recombinant DNA technology such as gene deletion, gene doubling, introducing a foreign gene, or changing the position of genes, and includes cell fusion (including protoplast fusion), microencapsulation, macroencapsulation, gene splicing,) or hybridization techniques that overcome natural physiological, reproductive or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination, "in vitro nucleic acid techniques" include but are not limited to recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as microinjection, macro-injection, chemoporation, electroporation, microencapsulation and liposome fusion, and any other technology or technique that results in an organism that contains genes from more than one species, or genes that are not naturally occurring. "Genetically engineered" does not include traditional selective breeding, conjugation, fermentation, hybridization or normal in vitro fertilization.

- (2) "DNA" means deoxyribonucleic acid, the material naturally found within living cells which contains the genetic code and transmits hereditary patterns.
- (3) "Organism" means any living thing, and their offspring, including bacteria, exclusive of animals, human beings and human fetuses.
- (c) "Organic agriculture" or "organic farming" means farm practices that adhere to the regulations of USDA Organic Foods Production Act
- (d) "Organic" as it relates to garden produce means produce that is grown in a manner generally similar to that described in the regulations of The Organic Foods Production Act.
- (e) "Plants" and "crops" are used interchangeably in this Ordinance.
- (f) "Person" means an individual, partnership, corporation, or organization of any kind.
- (g) "Franchised collector" means a person holding a license or franchise authorizing them to handle, transport and dispose of refuse.

**635.04 Prohibitions.**

It is a county violation for any person or entity to propagate, cultivate, raise, or grow genetically engineered plants within Jackson County.

**635.05 Exemptions.**

- (a) State or federally licensed medical research institutions, medical laboratories, or medical manufacturing facilities engaged in licensed medical production, or medical research involving genetically engineered organisms are exempt from this Ordinance provided that such activities are conducted under secure, enclosed indoor laboratory conditions with the utmost precautions to prevent release of any part of genetically engineered organisms, especially but not limited to pollen, to the outside environment.
- (b) Educational or scientific institutes, including but not limited to Oregon State University Extension, working with genetically engineered organisms are exempt from this Ordinance provided that such activities are conducted under secure, enclosed indoor laboratory conditions with the utmost precautions to prevent release of any part of genetically engineered organisms to the outside environment.
- (c) Licensed health practitioners for the purposes of diagnosis, care, or treatment to any human patient are exempt from this Ordinance.

**635.06 Implementation.**

Upon enactment, existing genetically engineered plants must be harvested, destroyed or removed or from Jackson County within twelve (12) months of enactment of this Ordinance.

**635.10 Jurisdiction.**

The circuit court of the State of Oregon shall have jurisdiction for all violations of this Ordinance.

**635.11 Enforcement and Remedies.**

- (a) Penalty and Equitable Remedies.
  - (1) Violation of any provision under this Ordinance, unless otherwise provided, is subject to penalties set forth under JCC 202.99, except subparagraph (h).

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(2) In addition to the penalties provided in this Ordinance and in Chapter 202.99, violation of this Ordinance is subject to abatement procedures set forth under Sections 635.20 through 635.23 of this Ordinance.

(3) A violation and violation abatement shall not be construed to mean a nuisance or a trespass as those are defined by the common law or by ORS 30.932.

(b) The County of Jackson, any private person or group of private persons, shall have the authority to enforce this Ordinance through an action brought in a court of competent jurisdiction. In such a suit, neither party shall be entitled to recover damages or costs of litigation.

(c) Upon reasonable cause to believe that a violation of this Ordinance has occurred, the Code Enforcement Officer, or designee, is authorized to inspect any property within Jackson County at reasonable times, upon obtaining a valid search warrant from the Circuit Court of the State of Oregon.

(d) The County shall notify any person, corporation, association, or other entity that may be in violation of this Ordinance, that any organisms that violates this Ordinance are subject to confiscation or destruction and subject to applicable enforcement actions and penalties.

(e) Any person, corporation, association, or other entity that receives notification under subparagraph (d) shall have fifteen (15) business days to respond to such notification with evidence that such organisms are not in violation of this Ordinance, or have been destroyed, or have been entirely removed from Jackson County.

(f) After the time allowed for response under subparagraph (e), the County shall consider such evidence, if any, and any other evidence that is presented by the recipient of notification under subparagraph (d) or which is relevant to a determination of such violation. The County shall have fifteen (15) business days to consider any evidence and determine if the plants are in violation of this Ordinance, or have been destroyed or removed from Jackson County.

(g) Upon making a determination that a violation of this Ordinance exists, the County shall promptly serve notice of a violation of this Ordinance upon the defendant.

(h) Upon receipt of said notice under subparagraph (g), the defendant shall have fifteen (15) business days to appeal that decision to the Circuit Court of the State of Oregon.

(i) In the event that the defendant does not appeal a determination made under subparagraph (g), or if the County prevails in such an appeal, upon reasonable notice, the County shall thereafter promptly take all actions necessary to ensure that the genetically engineered plants are destroyed or removed from Jackson County in a manner that will minimize genetic contamination or other harm. Such destruction or confiscation shall be undertaken during daylight hours.

(j) Any person or persons knowingly and willfully responsible for the violation of this Ordinance may be held responsible for all administrative and abatement costs incurred by Jackson County. Costs of enforcement shall not be imposed upon any person whose violation is not knowing and willful.

(k) The provisions of this Ordinance are cumulative, and nothing in this Ordinance affects any other remedies that any individual or government entity may have against and any person, corporation, association, or other entity resulting from a violation of this Ordinance.

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(l) All other aspects of enforcement of this Ordinance shall comply with Chapter 203 of the Jackson County Code, except for the nuisance abatement procedures in that chapter.

**635.20 Inspections; Violation Abatement; Costs.**

(a) The purpose of this section and Sections 635.21, 635.22 and 635.23 is to provide for violation abatement by County action and for the recovery of the cost of such abatement. This abatement procedure may be pursued as an alternative to the judicial remedies for a violation of any of the provisions of this Ordinance. If, after notice and hearing as prescribed by such sections, a violation is found to exist but is not abated within the time provided by the order of the County, the County may, after reasonable notice to the landowner, enter upon the property, abate the violation and, by order, charge the reasonable cost of abatement as a lien against the property or as a personal obligation of the generator. The first step in administrative abatement proceedings under such sections is an investigation, which may be conducted whenever the Development Services Director, herein known as "the Director" or his or her authorized agent, receives a complaint that a violation exists.

(b) Whenever the Director has inspected or caused to be inspected any property and has found and determined that a violation exists, the Director shall commence proceedings to cause the abatement of the violation. The Director shall issue a notice and order directed to the record owner of the property. The notice and order shall contain:

- (1) The street address and a legal description sufficient for identification of the property upon which the violation is located.
- (2) A statement that the Director has determined that a violation exists, with a brief and concise description of the conditions found which constitute a violation of this chapter.
- (3) A statement of the action required to be taken to abate the violation as determined by the Director.
- (4) Statements advising that if any required work is not completed within the time specified, the Director may proceed to cause the work to be done and charge the costs thereof against the property or its owner.
- (5) Statements advising:
  - A. That any person having any record title or legal interest in the property may appeal from the notice and order or any action of the Director, provided the appeal is made in writing as provided in this chapter and filed with the Director within ten days from the date of service of such notice and order; and
  - B. That failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

(c) The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner; and one copy thereof shall be served on each of the following if known to the Director or disclosed from official public records; the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the land on which the violation is located. The failure of the Director to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her by the provisions of this section.

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(d) Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by first class and certified mail, postage prepaid, return receipt requested, to each such person at his or her address as it appears on the last equalized assessment roll of the County or as known to the Director. If no address of any such person so appears or is known to the Director, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the property involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by first class and certified mail in the manner herein provided shall be effective on the date of mailing.

(e) Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the County.

(f) Where the property owner does not comply with the abatement order issued under Section 635. 20(b), within the time specified in the order, the Director may direct County personnel to remove the organisms causing the violation, using County equipment. The Director may also contact the franchised collector assigned to the area where the violation exists. If the franchised collector has the equipment and personnel available to remove the organisms, the collector shall be given the option of either removing the violation or refusing the job. If the collector accepts the job, the generator shall be charged the approved hourly rate for such service. If the collector refuses the job, or does not have the equipment or personnel available, the Director may contract with another person to abate the violation. The cost of such abatement initially shall be paid by the Development Services Department, but the Jackson County Board of Commissioners may make the cost a special assessment against the property involved or a personal obligation of the generator.

(g) In an emergency, the Director may order the immediate abatement of a violation. The Director shall give notice of the requirement for immediate abatement to the owner.

(h) In an emergency, and in lieu of action under subsection (g) hereof, the Director may proceed with immediate abatement of the violation. The Director shall then immediately send written notice of abatement to the owner of the property. When such removal is performed by the County or its contractor, neither the County nor its contractor shall be liable for any trespass or conversion as to any real or personal property, and the costs of removal may be collected from the owner of the real property or any other person having possession of the property at the time the abatement measures are taken. Such costs may also be collected from the person causing or permitting the violation to exist.

(i) The provisions of this section are in addition to and not in lieu of the penalty and enforcement procedures provided for in this chapter or elsewhere in these Codified Ordinances.

**635.21 Appeals on Notices of Abatement.**

(a) Any person entitled to service under Section 635.20(c) may appeal from any notice and order or any action of the Director under these Codified Ordinances by filing at the office of the Director a written appeal containing:

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- (1) A heading in the words: "Before the Hearings Officer of the Development Services Department of Jackson County."
  - (2) A caption reading: "Appeal of," giving the names of all appellants participating in the appeal.
  - (3) A brief statement setting forth the legal interest of each of the appellants in the land involved in the notice and order.
  - (4) A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
  - (5) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
  - (6) The signatures of all parties named as appellants and their official mailing addresses.
  - (7) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal. The appeal shall be filed within ten days from the date of the service of such order or action of the Director. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of his or her right to an administrative hearing and adjudication of the notice and order or any portion thereof.
- (b) The Director shall, upon receipt of a request for a hearing, promptly appoint a hearings officer who shall set a time and place for a hearing at the earliest possible time, and the hearings officer shall promptly notify the person requesting the hearing as to the time and place of the hearing.
- (c) The date of such hearing shall be not less than ten days nor more than thirty days from the date the appeal was filed with the Director. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the Director either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his or her address shown on the appeal. Notice may also be given to such persons as the hearings officer determines to be interested persons.
- (d) Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.
- (e) Enforcement of any notice and order of the Director issued under this section shall be stayed during the pendency of an appeal there from which is properly and timely filed.

**635.22 Hearings.**

(a) General.

- (1) The hearings officer shall exercise all powers relating to the conduct of hearings.
- (2) A record of the entire proceedings shall be made by tape recording by any other means of permanent recording determined to be appropriate by the hearings officer.
- (3) The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefore. Such fees may be established by the Board, but shall in no event be greater than the cost involved.

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- (4) The hearings officer may grant continuances for good cause shown.
- (5) In any proceedings under this chapter, the hearings officer has the power to administer oaths and affirmations and to certify to official acts.
- (6) The hearings officer shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.
- (7) The notice to appellant shall be substantially in the following form, but may include other information: "You are hereby notified that a hearing will be held before (name of hearing officer) at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, at the hour \_\_\_\_\_, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefore with (name of hearings officer)."

(b) Subpoenas. The hearings officer may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefore which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his or her possession or under his or her control. A subpoena need not be issued when the affidavit is defective in any particular.

(c) Conduct of Hearing.

- (1) Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- (2) Oral evidence shall be taken only on oath or affirmation.
- (3) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this State.
- (4) Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.
- (5) Irrelevant and unduly repetitious evidence shall be excluded.
- (6) Each party shall have these rights, among others:
  - A. To call and examine witnesses on any matter relevant to the issues of the hearings;
  - B. To introduce documentary and physical evidence;
  - C. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
  - D. To impeach any witness regardless of which party first called him or her to testify;

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E. To rebut the evidence against him or her;

F. To represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so.

(7) Official notice may be taken as follows:

A. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this State, or of official records of the Board or departments, or of Ordinances of the County or of rules and regulations of the Board.

B. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

C. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Board or hearings officer.

D. The hearings officer may inspect any premises involved in the appeal during the course of the hearing, provided that:

1. Notice of such inspection shall be given to the parties before the inspection is made;
2. The parties are given an opportunity to be present during the inspection; and
3. The hearings officer shall state for the record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the hearings officer.

(d) Method and Form of Decision.

(1) The hearings officer shall within a reasonable time (not to exceed sixty days from the date the hearing is closed) prepare a written report. All hearings officers' reports shall be matters of public record. The decision shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested.

(2) The decision of the hearings officer shall be final; the effective date of the decision shall be as stated therein.

(3) After any order of the Director or the hearings officer made pursuant to these Codified Ordinances shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a class A misdemeanor.

(4) If, after any order of the Director or a hearings officer made pursuant to this chapter has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Director may:

- A. Cause such person to be prosecuted under paragraph (d)(3) hereof; or
- B. Institute any appropriate action to abate such public violation.

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**635.23 Recovery of Cost of Abatement.**

(a) The Director shall keep an itemized account of the expense incurred by the County or the contractors in the abatement of any violation done pursuant to the provisions of Section 635.20.

Upon the completion of the work of abatement, the Director shall prepare and file with the County Administrator a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the violation is or was located, and the names and addresses of the persons entitled to notice pursuant to Section 635.20(c).

(b) Upon receipt of said report, the County Administrator shall present it to the Board of County Commissioners for consideration. The Board shall fix a time, date and place for hearing said report and any protests or objections thereto. The County Administrator shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in Jackson County, and served by first class and certified mail, postage prepaid, addressed to the owner of the property as his or her name and address appear on the last equalized assessment roll of the County, if such so appear, or as known to the County Administrator. Such notice shall be given at least ten days prior to the date set for hearing and shall specify the day, hour and place when the Board will hear and pass upon the Director's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

(c) Any person interested in or affected by the proposed charge may file written protests or objections with the County Administrator at any time prior to the time set for the hearing on the report of the Director. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The County Administrator shall endorse on every such protest or objection the date it was received by him or her. He or she shall present such protest or objection to the Board at the time set for hearing, and no other protest or objection shall be considered.

(d) Upon the day and hour fixed for the hearing the Board of County Commissioners shall hear and pass upon the report of the Director, together with any such objections or protests. The Board may make such revision, correction or modification in the report or the charge as it may deem just, and when the Board is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified), together with the charge, shall be confirmed or rejected. The decision of the Board of this jurisdiction on the report and the charge, and on all protests or objections, shall be final and conclusive.

(e) The Board of County Commissioners may thereupon order that said charge shall be made a personal obligation of the property owner or the person causing the violation, or assess said charge against the property involved.

(f) If the Board orders that the charge shall be a personal obligation of the property owner or the person causing the violation it shall direct County Counsel to collect the same on behalf of the Board by use of all appropriate legal remedies.

(g) If the Board orders that the charge shall be assessed against the property it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

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(h) The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within thirty days after the entry of such judgment.

(i) The Board of County Commissioners, in its discretion, may determine that assessments in amounts of five hundred dollars (\$500.00) or more shall be payable in not to exceed five equal annual installments. The Board's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof, shall be by a resolution adopted prior to the confirmation of the assessment.

(j) Immediately upon its being placed on the assessment roll the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens, except for State, County, property taxes and irrigation districts, with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(k) All such assessments remaining unpaid after thirty days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of nine percent per annum from and after said date.

(l) After confirmation of the report, certified copies of the assessment shall be given to the Assessor and the Tax Collector for Jackson County, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes. A certified copy of the assessment shall be filed with the County Auditor on or before August 10 of every year. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year.

(m) The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment. If the Board of County Commissioners has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary property taxes.

**635.99 Severability**

The provisions of this Ordinance are severable. If any provision of this Ordinance or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

===== End of Ordinance =====