

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON  
ORDINANCE NO. 2015-\_\_\_\_\_

**AN ORDINANCE PROVIDING FOR ESTABLISHMENT, GRANTING AND REGULATING  
FRANCHISES FOR THE OPERATION OF FIRE PROTECTION SERVICE AGENCIES;  
CREATING A FIRE PROTECTION SERVICES BOARD**

THE BOARD OF COUNTY COMMISSIONERS of Josephine County ordains as follows:

**SECTION 1. TITLE**

This Ordinance shall be known as "Fire Protection Services Ordinance."

**SECTION 2. AUTHORITY**

- A. The Josephine County Board of Commissioners hereby determines that the health, safety, and general welfare of the citizens of Josephine County requires that fire protection services outside of fire protection districts, cities or other legal governmental units be regulated so as to provide public accountability, and prompt, effective, efficient and safe service.
- B. This ordinance authorizes Josephine County to provide regulations that may be more stringent than any adopted by other governmental agencies or entities.
- C. This ordinance is authorized by Josephine County Home Rule Charter, Chapter II, and other applicable law.

**SECTION 3. POLICY AND PURPOSE**

The Board of Commissioners finds:

- A. That this Ordinance establishes requirements and the methods for granting franchises for the provision of fire protection services, and establishes the Fire Protection Services Board. This Ordinance together with the Administrative Rules adopted by the Board of County Commissioners, make up the complete plan for fire protection service outside of established rural fire districts, cities or other governmental agencies for Josephine County.

**SECTION 4. DEFINITIONS**

Unless specifically defined herein to have a different meaning the words and phrases in this Ordinance shall have the meaning provided in ORS and OAR.

- A. Other specific definitions include:
  - 1. "BCC" means the Josephine County Board of Commissioners.

2. "Emergency" means any incident, occurrence, or situation requiring immediate fire, rescue or medical services.
3. "Emergency Call for Service" means any notification of an emergency incident via 9-1-1 or other means.
4. "Emergency Vehicle" means all vehicles designated as emergency vehicles pursuant to ORS 801.260
5. "Employee" means an employee, agent, worker, or driver employed or volunteering on behalf of a franchisee.
6. "Fire Protection Services Board" or "Fire Board" means the advisory committee that provides advice to the BCC on matters relating to the Fire Protection Services Ordinance, the provision of fire protection services, regulation of its franchisees, and all related matters.
7. "Fire Fighter" means a person involved in performing structural fire department/agency duties and responsibilities. A fire fighter may be a full-time, part-time or volunteer member of a fire department/agency and may occupy any position or rank within the fire department/agency.
8. "Fire Protection Agency" means any legal entity or person who contracts to perform structural fire protection services not within the boundary of a Fire Protection District or a city.
9. "Fire Training" means training received or required by fire fighters to maintain proficiency in the performance of their assigned duties.
10. "Franchise" means an authorization, issued by the Board of County Commissioners, for the person or legal entity whose name appears thereon to do business as a "franchisee" in Josephine County.
11. "Person" means an individual, partnership, corporation, association or any other legal entity, including any receiver, trustee, assignee, or similar representative.
12. "Records" means any information, whether written or oral, whether recorded or stored electronically or by any other means, regarding the fire protection service agency, its operations and employees and includes financial statements, reports and documents.
13. "Vehicle" means vehicles used for fire protection service purposes.
14. "Volunteer" means any person who provides services for a franchisee without receiving material consideration; i.e., payment.

## **SECTION 5. EXEMPTIONS**

The provisions of the Ordinance and Rules adopted pursuant thereto do not apply to:

- A. U.S. Government. Vehicles owned or operated by the United States Government or under contract to an agency of the United States Government.
- B. Public Catastrophe. Vehicles used to render temporary assistance in case of a major catastrophe or emergency with which the fire protection agencies of the County are unable to cope, or when directed to be used to render temporary assistance by the individual in charge of the scene of an accident or emergency.
- C. Institutional Vehicles. Vehicles operated solely on private property or within the confines of institutional grounds, whether or not the incidental crossing of any public street, road or highway serving the property or grounds is involved.

## **SECTION 6. POWERS OF THE BOARD OF COUNTY COMMISSIONERS**

The BCC has the authority to assign, modify or revoke franchises for fire protection service within Josephine County. Josephine County has assigned a 4 tier system comprised of the components listed in Section A:

- A. Franchise Area
  - 1. The BCC, has legislative authority regarding matters relating to the provision of fire protection services in unincorporated areas not within the boundaries of a municipal or rural fire district;
  - 2. The Administrator, who is a county employee designated by order of the BCC to administer this Ordinance;
  - 3. The Fire Protection Services Board (Fire Board), created as an advisory board to monitor the providers' performance against the terms of the County franchise agreement and the standards set forth in this Ordinance, established Rules, as well as other local, State and Federal rules and laws;
  - 4. The franchisee.
- B. Rules and Licenses. The BCC shall have the authority to approve rules and to take action concerning licenses in accordance with the provisions of this Ordinance.
- C. Emergency Rules. The BCC may adopt emergency rules. When the BCC finds that immediate action is required, the BCC may adopt emergency rules without notice. Such rules shall expire automatically 120 days after their adoption by the BCC.
- D. Other Powers. The BCC shall also have the authority to:
  - 1. Establish franchise fees, rates and other charges. The BCC shall review the recommendations of the Fire Board and determine whether to allow, disallow, or modify the recommendations of the Fire Board within 60 days. Where no final action has been taken by the BCC within 60 days, the recommended rate schedule shall become effective unless and until rescinded by the governing body.

2. Convene the Fire Board;
  3. Audit records to assure compliance with this Ordinance;
  4. Perform all other acts necessary to implement and enforce the provisions of this Ordinance.
  5. Perform any act necessary to ensure that fire protection service providers comply with all applicable provisions of federal and state law and administrative rules, as well as local ordinances and rules.
- E. Administration: The BCC shall appoint an Administrator. The Administrator, under the supervision of the BCC and with assistance of the Fire Board, shall be responsible for the administration of this Ordinance. To carry out the duties imposed by this Ordinance, the Administrator, or persons authorized by the Administrator, is hereby authorized to enter on the premises of any service provider regulated by this Ordinance at reasonable times and in a reasonable manner to determine compliance with this Ordinance and regulations promulgated pursuant thereto. The Administrator shall also have access to records pertaining to fire protection service operations of any person regulated by this Ordinance. These records shall be made available within five (5) working days to the Administrator at the person's place of business, or copies made and provided as requested by the Administrator.

## **SECTION 7. FIRE PROTECTION SERVICES BOARD**

The Fire Protection Services Board (Fire Board) is a board created by this Ordinance with the following composition, duties and responsibilities:

- A. The Fire Board is an Advisory Board consisting of at least six members. Members shall be appointed by the BCC for three (3) year terms with the following conditions:
  1. Initial terms shall be one (1), two (2) or three (3) years being determined by order of original appointment. The terms of office shall be staggered with one-third of the members appointed each year.
  2. The Fire Board shall choose its own Chair. The terms of the Chair and Vice-Chair shall be for one (1) year with the ability to be re-elected.
  3. The Fire Board shall meet quarterly or when called upon by its Chair or Vice Chair or as called by the Administrator. The Chair or any two members of the Fire Board may call an emergency meeting with twenty-four (24) hours' notice to other members of the Fire Board.
  4. Each franchisee and the Sheriff shall be permitted to recommend one person for membership on the Fire Board. The BCC shall appoint such recommended person to the Fire Board.

- B. A majority vote of members present at an official meeting is required to pass motions.
- C. A quorum consisting of a majority of appointed members will be required to conduct an official meeting.
- D. Fire Board meetings are subject to the Oregon Public Meetings and Public Records laws as set out in ORS Chapter 192.
- E. The Fire Board shall include members representing the following:
1. One member representing the Josephine County Sheriff's Office;
  2. One member representing the Josephine County Fire Defense Board;
  3. One member representing the Grants Pass Department of Public Safety;
  4. One 9-1-1 Public Safety Answering Point (PSAP) representative;
  5. Two members representing the general public; and
  6. Members who represent franchisees.
- F. Ex-Officio Members: The Board of County Commissioners' liaison to the County Emergency Services Department may serve as an ex-officio member of the Fire Board; the BCC may appoint other County employees or officials to serve as ex-officio members.
- G. Members shall be appointed by the BCC. The Fire Board may appoint or approve designation of alternates to serve in the absence of persons appointed to the Fire Board. A designated alternate attending a meeting in the place of a regularly appointed member shall have the right to vote in the place of the absent member.
- H. Fire Board members are public officers and are therefore required to comply with the provisions of ORS Chapter 244 and OAR Chapter 199.
- I. The Fire Board shall have the following powers and duties:
- Review and make recommendations to the Administrator regarding all applications for franchises, including initial franchise, amendment to a franchise agreement, or renewal of a franchise.
1. Provide for on-going input to the BCC from fire protection service consumers, providers and the fire department community.
  2. Periodically review the performance of franchisees within Josephine County.
  3. Periodically review the Fire Protection Services Ordinance and Rules, and make recommendations to the BCC including, but not limited to:

- a. Reviewing standards established in the plan and make recommendations regarding improvement and/or new standards;
  - b. Monitor coordination between fire protection franchisee service resources and other emergency providers;
  - c. Review dispatch procedures and compliance;
  - d. Review and make recommendations to the BCC concerning the establishment of administrative rules.
  - e. Make recommendations as it deems necessary for the adjustment of rates charged for fire protection services. The Fire Board shall make available for inspection copies of audits, franchisee returns and other similar financial reports utilized in preparing the recommendations. The recommendations shall include a proposed rate schedule. Upon completion of the recommendations the Fire Board shall submit the same, together with the proposed rate schedule, to the BCC.
- J. The Fire Board will review this Ordinance, the Rules and the needs of the community for possible recommended revisions and/or amendments. The BCC maintain ultimate authority in terms of granting, amending, and/or revocation of franchises.

## **SECTION 8. ADOPTION OF RULES**

- A. Rulemaking Generally: The BCC may, on its own motion, or upon written recommendation from the Fire Board, adopt, amend, or repeal administrative rules deemed necessary to achieve the purposes of, and further implement, this Ordinance. Such rules may be adopted as provided for in this Ordinance. Rules adopted pursuant to the provisions of this Ordinance shall have the force of law.
- B. Prior to adoption, amendment or repeal of any rule the BCC shall:
1. Make copies of the notice of intended rulemaking available to the public. Such notice shall be made at least 30 days prior to the intended action.
  2. Send notice of the intended rulemaking to the Fire Board prior to intended action.
  3. Send notice to every person, city, or district that has notified the county in writing of its desire to be consulted.
  4. Comply with the rule-making process as described in the Oregon Revised Statutes.

## **SECTION 9. GRANTING OF FIRE PROTECTION SERVICE FRANCHISE**

- A. The BCC may enter into franchise agreements upon finding that the applicant has met all requirements of applicable law, this ordinance and agreed upon minimum operational standards.
- B. Any person desiring to provide fire protection service within Josephine County and not within incorporated city limits or fire district boundaries shall submit an

application, in a form prescribed by the County, to the BCC. The application may be referred to the Fire Board for its comment and recommendation regarding whether a fire protection franchise service agreement shall be made and entered into by the BCC with the applicant.

C. The application required by subsection A above shall include, without limitation by enumeration, the following:

1. The name, address and phone number of the applicant;
2. The name and phone number of the individual responsible person(s) applying for the Fire Protection Service Franchise Agreement, if applicable;
3. Documentation verifying that the applicant is a legal entity entitled to conduct business in the State of Oregon. Included shall be any assumed business names under which the applicant operates,
4. A map identifying the location(s) of station(s) and proposed service area(s);
5. A list of all vehicles, by type (as identified by the Oregon State Fire Marshal's Mobilization Plan), their manufacture date, use for fire suppression service delivery and proof of each vehicle's designation as an "emergency vehicle" by the State of Oregon.
6. A list of all officers and personnel by rank and position, together with pertinent licenses, certifications, educational background and DPSST number.
7. A description of the minimum DPSST and other applicable third party validated training certifications for all;
  - i. Firefighters,
  - ii. Vehicle and/or Apparatus operators,
  - iii. Fire Officers,
  - iv. Chief Officers.
8. Copies of any and all agreements or contracts with DPSST and the Oregon State Fire Marshal;
9. Copies of all field operating guidelines, policies and procedures applicable to the delivery of fire suppression services;
10. A description of the current deployment or service delivery model fire suppression services including (if applicable):
  - i. Minimum 24 hour on-duty staffing, by station, or;
  - ii. Minimum on-call or reserve force on stand-by;
  - iii. Response alert methodology, to include the manner(s) by which the applicant will become aware of events that likely require it to respond;
  - iv. Minimum number of first alarm firefighters dispatched;
  - v. Minimum apparatus (by number and type) dispatched on first alarm;

- vi. Plans for concurrent fires, and/or fires of greater magnitude than can be handled by first alarm resources, i.e.; second alarm, third alarm and greater;
  - vii. Estimated response times for the coverage area;
  - viii. Minimum personnel on scene for structure fires.
11. Copies of all mutual aid and automatic aid agreements related to the delivery of fire suppression services;
  12. Comprehensive description of the type and scope of all services to be delivered by the applicant, inclusive of applicable standards and credentials. Services to be delivered beyond the scope of structural firefighting will be evaluated separately for approval in respect to all applicable established licensures, certification, industry standards and laws;
  13. Satisfactory proof of workers compensation, including all personnel, inclusive of volunteers. Coverage shall be in amounts not less than required by applicable state law;
  14. Documentation verifying the applicant maintains minimum insurance as follows:
    - i. Comprehensive general liability coverage in the amount of \$2,000,000 per occurrence and \$3,000,000 general aggregate;
    - ii. General business automobile combined single limit liability in the amount of \$2,000,000;
    - iii. Professional/Malpractice coverage in the amount of \$1,000,000 per occurrence and \$3,000,000 general aggregate;
    - iv. Employment Practices coverage combined single limit in the amount of \$1,000,000.
  15. Documentation of a Public Protection Classification of eight (8) or better, issued by the Insurance Services Office;
  16. Documentation verifying applicant has a minimum of one (1) FCC frequency licensed for public safety use;
  17. If the applicant provides Emergency Medical Services (EMS), documentation verifying that such services are supervised by an EMS Supervising Physician, in accordance with state statutes;
  18. Current rate structure and any anticipated changes to said rate structure; and
  19. An application fee as determined by the BCC.

D. Each application shall be reviewed by the BCC for conformity with the requirements of applicable Oregon law and regulations and the minimum standards described in Appendix ## as herein adopted or subsequently amended to include, without limitation by enumeration:

1. Vehicle, equipment and apparatus standards;
  2. Training standards;
  3. OSHA standards;
  4. Insurance requirements standards;
  5. Licensing and certification standards;
  6. State and regional fire service standards and guidelines.
- E. Additionally, the BCC may consider whether the applicant is a locally operated business, and whether the applicant will have a program to provide service to customers who demonstrate economic hardship. Such considerations shall not be singularly determinative of whether the application is approved.
- F. The BCC may enter into a franchise agreement only after a public hearing on the proposed franchise. The Franchisee shall be notified by mail of the public hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded. The BCC may award the franchise, modify the proposed franchise agreement or take no action.
- G. No franchise or award thereof shall be deemed final until the franchise agreement, containing the terms and conditions thereof are executed by the BCC.
- H. The initial franchise agreement of a Fire Protection Service Agency shall be valid for a period of two (2) years. Thereafter the franchise agreement may be renewed for increments not to exceed five (5) years.
- I. Not less than 90 days prior to the expiration of the franchise agreement, the Fire Protection Service Agency shall submit to the BCC an application for renewal. The application shall include the information required by subsection C above.
- J. As of one year following the adoption of this ordinance, no person shall provide fire protection services in Josephine County unless the BCC has issued a license and signed a franchise agreement with that person pursuant to this section.

## **SECTION 10. INTERGOVERNMENTAL AGREEMENTS**

The BCC may enter into intergovernmental agreements as authorized by Oregon Law, with any other jurisdiction to provide for the cooperative regulation and control of any aspect of fire protection franchise service agency operation. Such agreements may provide for the delegation of any and all powers of the BCC to an entity provided for in the intergovernmental agreement, except for the powers to enter into or revoke a franchise agreement.

## **SECTION 11. FRANCHISE AGREEMENT TERMS**

The terms of any franchise agreement entered into under the terms of this ordinance shall include all the terms required under this ordinance and with the minimum operational standards, as amended or modified in such franchise agreement. Such terms may be incorporated specifically or by reference. In addition to any other terms, the franchise

agreement shall provide for a charge or franchise fee payable quarterly by the agency to Josephine County. The agreement shall also include mutually agreeable terms regarding performance audits, inspection of applicable agency records, and inspection of vehicles, apparatus and equipment. The terms shall not discriminate for or against any agency on the basis of any impermissible or illegal reason.

## **SECTION 12. PROHIBITED ACTIVITIES**

### **A. Operational Prohibitions:**

1. **Services.** It shall be unlawful for any person to do business or operate fire protection service in Josephine County without having a franchise issued by Josephine County to operate such service.
2. **Vehicle.** No person shall operate a vehicle as an emergency vehicle that is not designated an emergency vehicle by the State of Oregon, as well as any rules adopted by Josephine County.

**B. Violations of this ordinance shall be punishable by a fine of \$500 per incident. Additionally, the county may file a complaint in the Circuit Court against the person responsible for violating this ordinance. If the court finds that violation has occurred, the county may move the court to enjoin the person from committing further violations, which acts would then be punishable by contempt.**

### **C. Related Prohibitions. No fire protection service provider, or said providers' employee, agent or representative shall:**

1. **False Statements.** Make a false statement of a material fact, or omit disclosure of a material fact, in an application for a license or in any matter relating directly to the provision of fire protection services.
2. **Overcharging.** Charge for services not performed, make duplicate charges for the same service, or charge rates exceeding those on file with BCC.
3. **Unauthorized services.** Perform services unless authorized by this Ordinance and the rules adopted pursuant to this Ordinance or the franchise agreement. This prohibition does not apply when:
  - i. The response is for supplemental or mutual aid;
  - ii. An Incident Commander requests additional assistance in response to an incident.
4. **Transfer of Agreement.** Transfer of a Franchise Agreement may be made only with the written application to and approval of the BCC. The BCC shall determine the process for transfer of assignment to a new provider. The application shall be reviewed in accordance with the provisions of this Ordinance.
5. **Failure to Notify.** Fail or refuse to promptly inform the 9-1-1 Center of receipt of a request for emergency assistance or when a franchisee becomes unavailable to respond to dispatch orders.
6. **Non-Response.** Fail or refuse to respond to a dispatch from the 9-1-1 Center or other authorized dispatch center when franchisee is available for service.
7. **Falsifying Licenses, Etc.** Intentionally falsify, deface, or obliterate any license or certificate required under this Ordinance.
8. **Violation of Law.** Violate any Federal, State, County, or Municipal law, or any rule adopted pursuant to those laws.

## **SECTION 13. SUSPENSION OR REVOCATION OF FRANCHISE, APPEALS & PENALTIES**

- A. The BCC, at its sole option, may suspend or terminate a franchise upon giving not less than thirty (30) days notice to the franchise, if five (5) or more Major Defaults, as defined in Appendix ## which is incorporated herein, occur within any consecutive twelve (12) month period, regardless of whether the franchisee has timely cured such Major Defaults as set forth below.
  
- B. If a Major Default occurs, the franchisee shall have thirty (30) days from receipt of notice from the BCC of such Major Default to correct that Major Default or provide the BCC with an acceptable plan to correct the Major Default. If the BCC finds that the Major Default has been corrected or the plan to correct such Major Default is deemed acceptable within that thirty day period, then the franchise Agreement remains in full force and effect. If the Major Default has not been corrected or the plan to correct is unacceptable, the BCC may suspend the franchise for cause upon giving not less than thirty (30) days written notice to the franchisee. If the franchisee does not agree with the decision of the BCC, then the decision on determining if the Major Default has indeed occurred or if it has been corrected will be made through a mediation process mutually agreed upon by the BCC and the franchisee pursuant to the Commercial Rules of the American Arbitration Association.
  
- C. Violations of this agreement, including but not limited to, failure by the franchisee to materially perform any covenant, condition or agreement to be performed by it pursuant to this Agreement, that are not listed as Major Defaults in Appendix ##, shall be remedied within thirty (30) days of written notification from the BCC. Any violation left uncorrected for more than thirty (30) days after written notification may be declared a Major Default and the procedure set forth above shall apply.

## **SECTION 14. NUISANCE**

In addition to penalties provided by Section 15, violation of any of the provisions of this Ordinance is declared to be a nuisance and may be regarded as such in all actions, suits and proceedings. Pursuant to the provisions of ORS Chapter 682 and OAR Chapter 333, this Ordinance shall be enforceable by the Health Authority of the State of Oregon, Department of Human Resources. In addition, Josephine County may undertake any appropriate action to enforce the provisions of this Ordinance and the administrative rules adopted pursuant to this Ordinance.

## **SECTION 15. STATE STANDARDS**

Nothing in this ordinance, or the rules adopted pursuant to it, shall be construed to establish requirements for fire protection service lower than those established, now or hereafter, by the State of Oregon.

## **SECTION 16. DELEGATION**

The BCC may delegate any or all of its functions under this Ordinance, or rules adopted hereunder to the Fire Board or any other entity deemed suitable by the BCC, except for the powers to enter into or revoke a franchise agreement. Decisions of such delegation shall be final unless and until reversed by the BCC.

**SECTION 17. DISPATCH EXEMPTION**

Nothing in this Ordinance is intended to prohibit a 911 Agency from notifying or dispatching any other initial responder to the scene of an emergency, in addition to notifying or dispatching a fire protection franchise service provider.

**SECTION 18. SEVERANCE CLAUSE**

If any portion of this ordinance is for any reason held invalid or unconstitutional, by a Court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect. Subtitles used for sections, subsections, and other parts of this Ordinance are for convenience of reference only and do not constitute a part of this Ordinance nor an expression of legislative intent.

**SECTION 19. EFFECTIVE DATE**

First reading by the Board of County Commissioners this \_\_\_\_ day of \_\_\_\_\_, 2015. Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this day of \_\_\_\_\_. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
K. O. Heck, Chair

\_\_\_\_\_  
Cherryl Walker, Vice Chair

\_\_\_\_\_  
Simon Hare, Commissioner

ATTEST:

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Wally Hicks, Legal Counsel