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MEMORANDUM

TO: Fire Protection Committee

FROM: Wally Hicks, County Legal Counsel *WH*

DATE: June 10, 2020

RE: Regulation of Fire Service Providers Ordinance

The Fire Protection Committee requested a review of an ordinance titled “Regulation of Fire Service Providers”, which is based on a draft produced by the Legal Office in 2016. The draft has been reviewed and is hereby returned with some changes. It is important, though, for the Committee to understand that a number of legal questions surrounding the larger issue of regulation remain open at this stage. Points such as the following bear further examination:

- ORS 476.280 describes entities that are affirmatively authorized to suppress fires in unprotected areas. Private companies are not mentioned, however we have found no prohibition on the provision of private fire protection services.
- ORS 816.350 allows and prohibits certain types of lights on vehicles. “Emergency vehicles” are allowed to have certain lights and sirens, but the definition of emergency vehicle (ORS 801.260) discusses vehicles, “Operated by public police, fire or airport security agencies....” Emergency vehicles are also addressed elsewhere in Oregon law. That said, the state commonly contracts with private companies that apparently use warning lights on their vehicles.
- The ordinance anticipates that the fire providers would also provide emergency medical care. However, the county has a franchise agreement with American Medical Response. That having been said, Mercy Flights also runs transport services in Josephine County, which is a matter that was directly addressed by a federal court in recent years.
- While the ordinance requires a minimum ISO rating, it is generally void of tangible performance metrics. In contrast, AMR’s contract requires responses within certain time limits, for example.
- The State Fire Marshall is charged with conducting – or delegating – fire investigations. Thus, the investigative role of private fire companies would need some clarification.
- The question of whether a new liability for the county gets created by officially sanctioning and regulating private providers (as opposed to the county’s present posture) requires significant consideration.

I encourage the Committee to work with the Public Contracting Group to examine this option, along with all other options for achieving the best possible level of fire protection.

WH:nm

Attachment: Draft Ordinance "Regulation of Fire Service Providers"

**BEFORE THE BOARD OF COMMISSIONERS FOR JOSEPHINE COUNTY
STATE OF OREGON**

ORDINANCE NO. 2020-

**AN ORDINANCE AMENDING THE COUNTY CODE (ORDINANCE NO. 2018-004) BY
ADDING CHAPTER ____, REGULATION OF FIRE SERVICE PROVIDERS**

WHEREAS, the Charter of Josephine County and state law provide the County with all the authority necessary to regulate its affairs, consistent with the Constitutions and laws of the United States and the State of Oregon; and

WHEREAS, Josephine County seeks to protect the health, safety, and welfare of its citizens, and the regulation of providers of fire services outside the boundaries of fire districts, cities and other established governmental units is essential to that protection; and

WHEREAS, this issue is of particular concern for the citizens of Josephine County and for their elected representatives; now, therefore,

The Board of County Commissioners of Josephine County ordains as follows:

Section 1.00 Chapter ____, Regulation of Fire Service Providers, is added to read as follows:

Section 2.00 Sections:

010 Title
020 Authority and Purpose
030 Jurisdiction
040 Policy Statement
050 Definitions
060 Exemptions
070 Severance

010 Title.

This chapter shall be known as Regulation of Fire Service Providers.

020 Authority and Purpose.

- 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 service providers 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. The Board further finds that such regulation is a matter of county concern, within the meaning of ORS 203.035.
- 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, including but not limited to ORS 203.035.

030 Jurisdiction.

Any legal proceeding undertaken in connection with this Ordinance must be filed and maintained in the Circuit Court of the State of Oregon for Josephine County. In the event that such proceeding is limited to federal court, the proceeding must be filed and maintained in the United States District Court for the District of Oregon, Medford Division.

040 Policy Statement.

It is the intention and the policy of Josephine County, through its Board of County Commissioners, to establish comprehensive regulations governing the conduct and operations of all providers of fire protection services within Josephine County but outside the boundaries of established fire districts, cities, and other governmental entities.

050 Definitions.

All terms contained within this Ordinance have the meanings assigned to them under the provisions of Oregon Revised Statutes, and Oregon Administrative Rules, unless specifically defined herein.

1. "All Hazard" means responses typical to fire service standards as defined by a community risk analysis, which may include the delivery of services related to fire suppression, first responder emergency medical care, vehicle extrication, hazardous materials mitigation and technical rescue.
2. "Auto Aid" means contractual agreement(s) between two or more agencies, communities or fire districts by pre-programming automatic response of the 'closest resource' that can provide efficient assistance across jurisdictional lines.
3. "BCC" means the Josephine County Board of County Commissioners.
4. "Emergency" means any incident, occurrence, or situation requiring immediate fire, rescue or medical services.
5. "Emergency Call for Service" means any notification of an emergency incident whether through 9-1-1 or any other means.
6. "Emergency Vehicle" means all vehicles designated as emergency vehicles pursuant to ORS 801.260. Fire Protection Service Providers are not permitted to operate any vehicle in violation of state law, including but not limited to ORS 801.260, 816.350, 818.250, and other applicable laws and regulations. Nothing in this Ordinance does or should be interpreted to allow, permit, or condone any such operation.

7. "Employee" includes any person employed by or acting as an agent for, worker or driver on behalf of a Provider, either for wages or as a volunteer.
8. "Firefighter" means any person trained in accordance with state and federal laws and regulations and currently certified as a firefighter in accordance with the training standards of the Oregon Department of Public Safety Standards and Training (DPSST). A firefighter may be a full-time or part-time employee or a volunteer. All firefighters must hold current certification and must be subjected to a rigorous background investigation. No provider may employ as either employee, volunteer, agent or in any other capacity any person who is not certified or certifiable under the standards of DPSST.
9. "Fire Protection Service Provider" or "Provider" means any legal entity or person who undertakes, either by contract or otherwise, to perform emergency response to structural or other fires and all-hazard emergency response services to areas outside the boundaries of Fire Protection Districts and cities.
10. "Fire Training" means training received or required for firefighters to maintain certification and proficiency in the performance of their assigned duties. All such training must be provided by or approved by DPSST.
11. "Mutual Aid" means either assistance rendered to one provider by another or an agreement to render such assistance, if necessary across jurisdictional boundaries.
12. "Person" includes an individual, partnership, corporation, association or other legal entity, including any receiver, trustee, assignee, or similar representative.
13. "Private Fire Department Standards" means those standards identified by Rogue Valley Fire Chiefs Association (RVFCA) working group, the purpose of which is to allow private fire protection providers to join mutual aid agreements with RVFCA.
14. "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, including but not limited to financial statements, reports and other documents.
15. "Rogue Valley Fire Chiefs Association" is a collation of fire protection agencies within Josephine and Jackson Counties. RVFCA provides leadership, education and support to area emergency management officials and partners by fostering collaboration among local, regional, state and federal emergency service resources. RVFCA hosts the Rogue Valley master mutual/auto aid agreement and the regional mobilization plan.
16. "Structural Private Fire Service Advisory Board" or "SPFSAB" means a committee of not less than seven nor more than eleven members appointed by the BCC. SPFSAB will review and inspect the performance, equipment, and functions of every private fire service in Josephine County, and will report to the BCC on its findings. Review and inspection will be conducted at least once each year, and as directed by the BCC.
17. "Vehicle" includes vehicles used for fire protection purposes.

18. "Volunteer" means any person who provides services to a Provider without receiving compensation in return.

060 Exemptions.

The provisions of this Ordinance do not apply to:

A. Vehicles owned or operated by the United States Government or under contract to an agency of the United States Government.

B. 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 a qualified emergency official in charge of a scene of accident or emergency directs such vehicles to be used to render temporary assistance.

C. Vehicles operated only on private property or within the confines of institutional grounds, whether or not such operation involves incidental crossing of a public street, road or highway serving the property or grounds.

070 Severance.

Should any section or provision of this ordinance be declared by a court or tribunal of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 3.00 Powers of the Board of County Commissioners

The Board of County Commissioners is authorized by this Ordinance to regulate Fire Protection Service Providers within Josephine County, and to enforce the provisions of this Ordinance. The Board of County Commissioners may 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. The Board of Commissioners may designate a person or group as its delegate for the supervision or enforcement of this Ordinance.

Section 4.00 Requirements for the Provision of Fire Protection Services

Each applicant and/or Provider shall submit to the BCC or, at the BCC's designation, SPFSAB, the following documents, on initial application and on or before July 1 of each year or at the request of BCC or SPFSAB:

A. Documents from Oregon's Secretary of State verifying that the Provider or applicant is a legal entity duly registered and licensed to conduct business in this state. If the entity is a foreign entity, the documents must show the state where the entity is headquartered, and must show all other entities associated, affiliated or holding any interest of any sort in the entity. The documents must include any business names used by the Provider or applicant, and must be accompanied by statements identifying all of the entity's board of directors, partners, managing partners and all members of the organization, as well as a

complete list of all persons and entities having any financial interest in the entity or its operations.

B. Documents demonstrating the Provider or applicant's level of all-hazard service to the community, including a map of all areas served by the Provider or applicant. Such maps must identify all station locations and list all vehicles by type and equipment, using standards established by the Oregon State Fire Marshal.

C. Documents verifying that the applicant or Provider has been given a class 8 rating by the Insurance Services Office (ISO) and a map showing all areas graded by ISO, with the ratings assigned in each area.

D. Documents demonstrating that the applicant or Provider is in compliance with all federal and state laws and administrative rules relating to occupational safety and health.

E. Documents verifying that all firefighters employed by, volunteering for, or in any way associated with the Provider or applicant are certified by the Oregon Department of Public Safety Standards and Training (DPSST), the International Fire Service Accreditation Congress (IFSAC), or the Pro-Board to at least the level of National Fire Protection Association (NFPA) Firefighter One, in addition to documents demonstrating that all such firefighters have completed the wildland S-130 and S-190 and L-180 or annual refresher training.

F. Documents verifying that the applicant or Provider has performed background investigations on all firefighters employed by, volunteering for, or in any other way associated with the applicant or Provider. All such background investigations must either be conducted by or in association with, DPSST, or be equivalent in nature and extent to the investigations conducted by DPSST.

G. Documents verifying that all of the emergency vehicles owned or operated by the applicant or Provider are properly titled and registered through Oregon's Department of Transportation; that all such vehicles are properly documented and registered as emergency vehicles; and that all emergency equipment on such vehicles is properly documented or in compliance with all applicable provisions of Oregon law and administrative regulations.

H. Documents proving that the Provider or applicant has both authorization and ability to receive notification of calls for service through the local Public Safety Answering Point, and the authorization and ability to dispatch appropriate resources in response to such calls.

I. Documents establishing that the applicant or Provider has approved use of at least one radio frequency licensed by the Federal Communications Commission and designated for public safety use.

J. Proof that the applicant or Provider has adopted and implemented the National Incident Management System (NIMS) and that the applicant or Provider operates within the National Response Framework during emergency operations.

K. Documents proving that the Provider or applicant maintains insurance coverage of a type and in an amount set by BCC through its Order.

L. Documents proving that the applicant or Provider has secured the services of a qualified Supervising Physician, has adopted approved Standing Orders, and has registered with the Oregon Health Authority as an entity responding to emergency medical incidents.

M. Documentation of all mutual aid agreements between the applicant or Provider and other providers of emergency services. Such documentation must include copies of all such agreements.

N. Each Provider must submit an annual report to BCC describing all calls for service received, all responses to such calls, and all services rendered during such responses. All such records and reports will be maintained and submitted in accordance with the National Fire Incident Reporting System (NFIRS) and National Emergency Medical Services Information System (NEMSIS).

Section 5.00 Structural Private Fire Services Advisory Board

The Structural Private Fire Services Advisory Board (SPFSAB) is hereby created with the following composition, duties, authority and responsibility:

A. The SPFSAB shall consist of no fewer than 7 nor more than 11 members. Each member shall be appointed by BCC. Four members shall be initially appointed to two-year terms, three members initially appointed to one-year terms, and additional members to three-year terms. All subsequent appointments shall be for terms of three years. SPFSAB shall elect one of its members as its Chair and one as Vice-Chair; the members so elected shall continue in those offices for one year. SPFSAB members may be re-appointed to office, and officers may be re-elected to their offices. SPFSAB shall meet at least once in each quarter, or when called upon to meet. BCC may summon meetings at any time.

B. A majority vote of a quorum is required to take any action, including making recommendations to the BCC. A quorum consists of two thirds of appointed members.

C. SPFSAB meetings are subject to public meetings and public records laws and rules. At least one member shall be assigned to record minutes of all proceedings and shall keep such records on file and available for inspection by BCC or other authority.

D. Members shall be selected as follows:

1. One member representing the Josephine County Sheriff's Office.
2. One member representing the Josephine County Fire Defense Board.
3. One member from the 9-1-1 Public Safety Answering Point (PSAP).
4. One member from the Oregon Department of Forestry.
5. The Josephine County Emergency Manager.
6. One member from each private fire service provider of all-hazard emergency services.

7. At least one member representing the general public. If more than one member from the public is appointed, such members should be selected from different locales of the area served by private fire services, such as North Valley, Murphy, Shan Creek, Foothill, Wilderville, and Fort Vannoy, as examples.
- E. One County Commissioner shall serve as ex officio member of SPFSAB, or the BCC may appoint a County employee or official to serve in that capacity.
- F. SPFSAB members shall serve at the pleasure of the BCC, and may be removed for cause at any time.
- G. SPFSAB members are public officers and must comply with all applicable provisions of Oregon law and administrative rules. No member of SPFSAB shall have any business relationship with or any financial interest in, any applicant or Provider. A failure to disclose any such relationship or interest shall result in the immediate dismissal of the member, once discovered.
- H. SPFSAB shall review each application to provide private fire services in Josephine County, and make recommendations to the BCC regarding such applications; review the performance of all applicants and Providers and report the results of such review to the BCC; investigate and report to the BCC all complaints relating to the conduct, performance of services, and general suitability of every applicant and Provider; and conduct all of the affairs of SPFSAB with the purpose of benefitting the citizens of the County.
- I. SPFSAB shall review the performance of each Provider at least once each year and more often as requested by the BCC. It is the responsibility of SPFSAB to safeguard the interests of the citizens of Josephine County by critically evaluating the performance of every Provider to make certain that the interests of the citizens are protected. Such evaluation shall include but not be limited to; compliance with standards established by ordinance, statute, rule, or best practice; cooperation and coordination between Providers and other public protection agencies; review of dispatch procedures, response times, and nature of response; effectiveness of Provider services. SPFSAB shall on each occasion of review reduce its findings to a written report and submit that report to the BCC within thirty days of its completion.

Section 6.00 Prohibited Activities

Each successful applicant for authority to provide private fire services in Josephine County shall be appointed to provide such services by BCC Order. It shall be unlawful for any person or entity to provide fire service, advertise fire services, solicit money or other compensation for fire services or membership or subscription, or attempt to do any of the foregoing unless the person or entity is authorized to do so by Order of the BCC. Each BCC Order appointing a Provider shall specify the area in which the Provider is to operate, and shall specify the rates to be charged by the Provider for services provided. Each Provider so appointed shall agree to abide by this Ordinance and any subsequent orders of the BCC, and shall require all officers, employees, agents, associates and volunteers to do

so as well. All of the following are prohibited acts for all Providers, officers, employees, agents, associates, and volunteers.

- A. Any false statement of material fact or omission of material fact in any application or any other matter related to the provision of fire services.
- B. Any charge, fee, assessment, or other imposition of money demand in excess of rates approved by the BCC.
- C. Providing unauthorized services; that is, services that are not approved by the BCC for the area in which the Provider is authorized to operate. The exception to this prohibition is a service provided in response to a request for supplemental or mutual aid, or in response to a request from an Incident Commander on the scene.
- D. Failing or refusing to notify the Public Safety Answering Point (PSAP) of the receipt of a request for emergency assistance or when a Provider is not available for dispatch.
- E. Failing or refusing to respond to a dispatch from PSAP or any other authorized dispatch center when the Provider is available for service.
- F. Falsifying, changing, defacing, or obliterating in whole or in part any license, certificate, or authorization document required under this Ordinance.
- G. Violating any federal, state or local ordinance, statute, or administrative rule.
- H. Failing to notify BCC immediately of the expiration, cancellation, termination, or any other action that invalidates the certification or authorization of any firefighter. No Provider may employ, associate with, or allow to volunteer any firefighter whose certification and licensing is not complete and up-to-date.
- I. Failing to notify BCC immediately in the event that any complaint is made against a Provider, or a Provider's officers, employees, agents or volunteers. As used here "complaint" includes any form of complaint, whether oral or written, and includes communications to state agencies, the Provider, news media, or any other agency. The term also includes legal action; any Provider who receives notice or threat of legal action must notify BCC immediately.
- J. If the BCC determines that a Provider has violated any of the provisions of this Ordinance, the BCC may impose penalties as it deems appropriate, including fines of up to \$500 per violation, and including the termination of all authorization of a Provider to operate under this Ordinance. The BCC may seek injunctive relief and may pursue contempt proceedings where appropriate. This section does not limit the actions available to BCC; the Board may pursue any legal remedy available to it.

Section 7.00 Nuisance

In addition to any other penalties, the BCC may declare any violation of this Ordinance to be a nuisance, and may pursue any legal remedies available to it.

Section 8.00 State Standards

Nothing in this Ordinance shall be construed or interpreted to establish standards or requirements for fire protection service lower or less rigorous than those established by the State of Oregon.

Section 9.00 Dispatch Exemption

Nothing in this Ordinance is intended to prohibit a 9-1-1 Agency from notifying or dispatching any other initial responder to the scene of an emergency, in addition to notifying or dispatching a fire protection Provider.

Section 10.00 Effective Date

First reading by the Board of County Commissioners this ____ day of _____, 2020.

Second reading and adoption by the Board of County Commissioners at least thirteen days after the first reading this _____ day of _____, 2020. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY
BOARD OF COMMISSIONERS

Darin J. Fowler, Chair

Daniel E. DeYoung, Vice Chair

Lily N. Morgan, Commissioner

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Wally Hicks, Legal Counsel