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CLATSOP CIRCUIT COURT

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TRIAL COURT ADMINISTRATOR

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLATSOP

CLATSOP COUNTY DISTRICT
ATTORNEY,

Plaintiff,

v.

CITY OF ASTORIA,

Defendant.

Case No. 11-2430

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

1.

The plaintiff, Clatsop County District Attorney, Joshua Marquis, is now, and at all relevant times has been, the duly elected District Attorney of the Eighteenth Judicial District of Oregon with his principal office located at 749 Commercial St., Astoria, Oregon.

2.

The defendant, City of Astoria, is a duly incorporated city under Oregon law and is located entirely within Clatsop County, Oregon.

3.

The defendant has established a municipal court where it directs the prosecution of driving under the influence of intoxicants (DUI) cases that arise within the defendant's boundaries. The Astoria Municipal Court is not a court of record under ORS 221.342.

4.

The City Attorney for the City of Astoria prosecutes individuals cited for driving under the influence of intoxicants under ORS 813.010, a class A misdemeanor under subsection (4), into the Astoria Municipal Court.

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5.

Plaintiff alleges that defendant has refused to relinquish control of the prosecution of driving under the influence of intoxicants cases that arise within the defendant's boundaries. Plaintiff seeks a judgment under ORS 28.010 declaring that the Clatsop County District Attorney has exclusive authority to direct the prosecution of all driving under the influence of intoxicants cases, and state-law criminal charges arising out of the same criminal episode, that arise within the City of Astoria. Plaintiff seeks supplemental relief under ORS 28.080 enjoining the defendant, and its officers, agents, and employees:

a) from citing individuals charged with driving under the influence of intoxicants, or any state-law criminal charges arising out of the same criminal episode, to the Astoria Municipal Court;

b) from prosecuting individuals charged with driving under the influence of intoxicants, or any state-law criminal charges arising out of the same criminal episode, in the Astoria Municipal Court; and,

c) ordering that the defendant immediately dismiss all future driving under the influence of intoxicants charges, or any state-law criminal charges arising out of the same criminal episode, filed in the Astoria Municipal Court and refer those cases to the plaintiff's office.

6.

On April 2, 2010, the plaintiff wrote to the City of Astoria Mayor, Willis Van Dusen, asking to take over the prosecution of all driving under the influence of intoxicants cases being prosecuted by the defendant in Astoria Municipal Court. The mayor did not send a written reply.

7.

In August, 2010, the plaintiff again asked the Astoria City Council to direct the filing of all driving under the influence of intoxicants cases to the Clatsop County Circuit Court for prosecution by plaintiff's office.

1 8.

2 On October 18, 2010, the Astoria City Council, acting on behalf of the defendant, issued
3 Resolution No. 10-28 declining the plaintiff's request "that the Astoria City Council direct
4 prosecution of all citations for Driving Under the Influence of Alcohol made by the Astoria
5 Police Department be sent to the Clatsop County Circuit Court."

6 9.

7 On January 27, 2011, the Astoria City Council, acting on behalf of the defendant, issued
8 a letter addressed to the Citizens of Astoria informing them of the defendant's refusal to transfer
9 the prosecution of all pending and future driving under the influence of intoxicants cases to the
10 plaintiff's office.

11 10.

12 On July 1, 2011, plaintiff wrote to the Astoria Chief of Police, Peter Curzon, "directing
13 that effective September 1, 2011, all DUII cases committed in the county be filed with the
14 Circuit Court of Clatsop County and the reports sent to my office for review and prosecution."

15 11.

16 On July 13, 2011, the Astoria City Attorney, acting on behalf of the defendant, sent an
17 email to plaintiff stating "The police department is required to cite cases consistently with an
18 established policy. Not wherever they want."

19 12.

20 It is the defendant's policy, and the written policy of the Astoria Police Department,
21 Police Manual - Policy 323, to cite individuals charged with driving under the influence of
22 intoxicants into the Astoria Municipal Court.

23 13.

24 On September 7, 2011, plaintiff wrote to the Astoria City Attorney directing him "to
25 dismiss all DUII charges (along with any state-law criminal charges arising out of the same
26 criminal episode as the DUII) on future cases that are cited into Astoria Municipal Court."

1 14.

2 In the letter of September 7, 2011, plaintiff stated that the City Attorney's office must
3 begin dismissing all driving under the influence cases as of September 14, 2011, and that the
4 City Attorney should confirm in writing that the defendant would comply with the plaintiff's
5 directive.

6 15.

7 In the letter of September 7, 2011, plaintiff stated that the City Attorney's failure to
8 confirm acceptance of plaintiff's directive by September 14, 2011 would constitute a refusal to
9 comply.

10 16.

11 Following the expiration of the plaintiff's September 14, 2011 deadline, defendant has
12 continued to cite driving under the influence of intoxicants cases into municipal court and has
13 continued to prosecute those new cases.

14 17.

15 On September 16, 2011, the City Attorney responded on behalf of defendant to plaintiff's
16 September 7, 2011 demand letter stating "I met with the Astoria City Council, who have directed
17 me to continue prosecution of DUII cases filed in Astoria Municipal Court."

18 18.

19 The defendant believes that under ORS 221.339 it has concurrent jurisdiction with the
20 plaintiff to prosecute driving under the influence of intoxicants charges that arise within the City
21 of Astoria.

22 19.

23 The defendant has refused to comply with the plaintiff's directive that the defendant
24 relinquish control over the prosecution of all driving under the influence of intoxicants cases that
25 arise within the City of Astoria.

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20.

Plaintiff is the public prosecutor of Clatsop County with the statutory and constitutional right to direct and control the prosecution of all offenses within his jurisdiction, except where expressly limited by law.

21.

A justiciable dispute exists between the parties concerning the plaintiff's authority to control the prosecution of all driving under the influence of intoxicants cases that are brought and cited in Clatsop County, regardless of whether the alleged offenses occur within the defendant's borders. State-law criminal charges arising out of the same episode should be included in the declaration to avoid statutory or constitutional jeopardy issues.

DEMAND FOR RELIEF

(Declaratory Judgment)

22.

Plaintiff seeks a declaration of the rights of the parties stating that as the public prosecutor of Clatsop County, plaintiff has the exclusive authority to direct and control the prosecution of all driving under the influence of intoxicants charges that arise within the plaintiff's jurisdiction, including those driving under the influence intoxicants charges, or any state-law criminal charges arising out of the same criminal episode, that originate within the City of Astoria.

23.

(Supplemental Relief)

Plaintiff seeks supplemental relief under ORS 28.080 enjoining the defendant, and its officers, agents, and employees from citing individuals charged with driving under the influence of intoxicants, or any state-law criminal charges arising out of the same criminal episode, into the Astoria Municipal Court.

1 24.

2 Plaintiff seeks further supplemental relief enjoining the defendant, and its officers,
3 agents, and employees, and the Astoria City Attorney's Office, from prosecuting individuals
4 charged with driving under the influence of intoxicants, or any state-law criminal charges arising
5 out of the same criminal episode, in Astoria Municipal Court.

6 25.

7 Plaintiff seeks further supplemental relief in the form of an order directing the defendant
8 and the Astoria City Attorney's Office to immediately dismiss all future driving under the
9 influence of intoxicants cases, or any state-law criminal charges arising out of the same criminal
10 episode, filed in its Municipal Court, and referring those cases to the plaintiff's office for
11 prosecution in Clatsop County Circuit Court.

12 26.

13 (Costs)

14 Plaintiff seeks an order under ORS 28.100 allowing an award of its reasonable costs.

15 DATED this 23rd day of September, 2011.

16 Respectfully submitted,

17 JOHN R. KROGER
18 Attorney General

19 

20 THOMAS CASTLE #890321
21 Assistant Attorney General
22 Trial Attorney
23 Tel (503) 947-4700
24 Fax (503) 947-4794
25 thomas.castle@doj.state.or.us
26 Of Attorneys for Plaintiff