

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 22-02

IN THE MATTER OF AMENDING LANE CODE  
CHAPTERS 2, 5, 6, AND 9 TO MODERNIZE AND  
UPDATE GENERAL ORGANIZATION FUNCTIONS,  
PROCEDURES, AND PROCESSES, AND ADOPTING  
A SAVINGS AND SEVERABILITY CLAUSE AND  
DECLARING AN EMERGENCY

**WHEREAS**, Lane Code Chapters 2, 5, 6, and 9 need to be updated to modernize functions, procedures, and processes; and

**WHEREAS**, the Board of County Commissioners has conducted a public hearing and is ready to take action;

**NOW, THEREFORE**, the Board of County Commissioners of Lane County **ORDAINS** as follows:

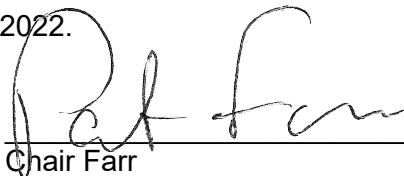
Lane Code Chapters 2, 5, 6, and 9 are hereby amended by making the deletions and additions as depicted in Exhibit A to this Ordinance, which is attached and incorporated by this reference.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion constitutes a separate, distinct and independent provision, and such holding does not affect the validity of the remaining portions hereof.

Nothing herein is intended to, nor acts to amend, replace, or otherwise conflict with any other ordinances of Lane County or any other Code or statutory provisions unless expressly so stated.

An emergency is hereby declared to exist and this ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency, and for the immediate preservation of the public peace, health, and safety, takes effect immediately.

**ENACTED** this 8th day of February 2022.



Chair Farr

Lane County Board of Commissioners



Recording Secretary for this Meeting of the Board

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- A. The Office shall have all those functions deemed necessary by the Board.
- B. Specifically, the Office shall have the following functions in addition to those responsibilities noted in LC 2.110 above:
  - 1. Community relations functions, to include internal publications, external communications, media liaison, community organization liaison, advisory committee liaison, citizen assistance, information center, publication coordination and graphics support services.
  - 2. Agenda management, Clerk of the Board functions and support staff functions for the Board.
  - 3. Intergovernmental relations staff functions for the Board.
  - 4. Development and maintenance of the Lane County Administrative Procedures Manual.
  - 5. Coordination of Justice Services, as supervised by the County Administrator.
  - 6. Community and Economic Development functions as supervised by the County Administrator.
- C. Other functions assigned by the Board as reflected in the Lane Manual.
- D. The Assistant County Administrator is authorized to perform County Administrator functions as assigned by the County Administrator.

(Ordinance 13-83, 5.27.83; Ordinance 17-83, 10.1.83; Ordinance 5-85, 7.10.85; Ordinance 8-86, 7.25.86; Ordinance 17-90, 1.18.91; Ordinance 12-92, 10.14.92; Ordinance 8-07, 9.14.07)

**2.010.015 ~~5.010.005~~ – County Community Corrections Agency Defined; Functions.**

- A. The division of Parole and Probation is part of Lane County's community corrections agency, as referenced in various Oregon statutes.**
- B. As a county community corrections agency, a primary duty of the Lane County parole and probation department and its officers includes, but is not limited to, the control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders.**

**(Ordinance 15-02, 04.17.15)**

**2.015 – COUNTY PERFORMANCE AUDITOR**

**2.015.005 - County Performance Auditor.**

- A. The position of County Performance Auditor is created.
- B. The County Performance Auditor may be appointed or dismissed by the Board of Commissioners after the Performance Audit Committee, as defined by the Lane Manual, has had an opportunity to provide advice and a recommendation.
- C. When a vacancy in the position of County Performance Auditor occurs, the Board of Commissioners will endeavor to fill the vacancy as soon as is practicable.

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## **2.070 – ACCELERATION OF REDEMPTION FOR WASTE OR ABANDONMENT**

### **2.070.930 – Definitions.**

For purposes of LC 2.070.930 through LC 2.070.965 below, the following words and phrases shall have the meaning ascribed to them by this section:

“Abandonment” means property that is not occupied by the former owner or any interested party for a period of six consecutive months, and the property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.

“Board” means the Lane County Board of Commissioners.

“County” means Lane County, Oregon.

“Department” means the Lane County Department of Assessment and Taxation.

“Foreclosed property” means real property for which Lane County has obtained judgment for delinquent taxes pursuant to ORS 312.090.

“Former owner” means the person or entity who appears in the records of Lane County and who, by a general judgment issued by a circuit court pursuant to the foreclosure process foreclosing delinquent taxes under ORS 312.100, sold property to Lane County for the amount of the delinquent taxes and interest stated in the general judgment. “Former owner” includes any person or entity rightfully in possession of the property, and any person or entity acting under the permission or control of such former owner.

“Interested party” means any person or entity that appears in the records of Lane County to have a lien or other interest in the property for a period of six consecutive months.

“Owner” means Lane County for all properties listed in a general judgment that has been issued by the Lane County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.

“Parties” means Lane County and any person or entity entitled to notice of a public hearing provided for in this chapter.

“Property” means any real property including improvements that are affixed, incidental or appurtenant to land, including but not limited to any premises, room, house, building or structure or any separate part or portion thereof, except mobile homes not owned by the former owner, which is listed in a general judgment executed by the Lane County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.

“Records of the County” means “Records of the County,” as defined in ORS 312.125(7).

“Redemption period” means the two-year period described in ORS 312.120.

“Tax collector” means the person or officer who by law is charged with the duty of collecting taxes assessed upon real property in Lane County, Oregon, including the director of the Lane County Assessment and Taxation Department, or his or her designee.

“Waste” means the destruction, material alteration or deterioration of land or improvements thereon, resulting in or threatening to result in substantial loss of value to the property, whether

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caused directly by the former owner or permitted to be done by others through failure of the former owner to supervise such property.

#### 2.070.935 – Authority.

The tax foreclosure statutes provide for a two-year redemption period between the time that tax delinquent property is sold to the County and the time a deed can be issued to the County. If waste of the property is committed, or if the property is abandoned, however, prior to the two-year redemption period, state law allows the County to authorize the redemption period to be accelerated. ORS 312.122.

#### 2.070.940 – Allegation of Waste or Abandonment.

Any property subject to tax foreclosure that the County believes is subject to waste or abandonment during the two-year redemption period may be deeded to the County on an accelerated schedule, following notice and hearing, as set forth in this section.

#### 2.070.945 – Hearing Required.

If property is believed to be subjected to waste or abandonment, the County shall set a hearing before the Board to determine whether the property should be deeded to the County on an accelerated schedule.

#### 2.070.950 – Hearing Notice Requirements.

- A. **Time for Giving Notice.** The County must provide notice of hearing before the Board of Commissioners not less than thirty days prior to the date set for the hearing to determine whether the property should be deeded to the County on an accelerated schedule.
- B. **Content of Notice.** The notice shall contain:
  - 1. The date, time, and place of the hearing;
  - 2. The date of the judgment entered pursuant to ORS 312.090;
  - 3. The normal date of expiration of the redemption period under ORS 312.120;
  - 4. Warning that if the County determines that the property is subjected to waste or abandonment, the property will be deeded to the county immediately after the expiration of thirty days from the date of such determination and all rights and interests are forfeited forever, unless it is sooner redeemed by the former owner or any interested party;
  - 5. A legal description of the property and a tax account number; and
  - 6. The name of the former owner as it appears on the latest tax roll.
- C. **Service of Notice.** The required notice shall be given by both certified mail and by regular first-class mail and shall be addressed as follows:

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1. **Service to former owners.** The notice shall be addressed to the former owner or owners, as reflected in the county records of deeds, at the true and correct address of the former owner as appearing on the instrument of conveyance under ORS 93.260 or as furnished under ORS 311.555 or as otherwise ascertained by the tax collector pursuant to ORS 311.560.
2. **Service to lienholder or person or entity other than the former owner,** having or appearing to have a lien or other interest in the property. The notice shall be addressed to the lienholder, person or entity at the address that the County knows or after reasonable inquiry has reason to believe to be the address at which the lienholder, person or entity will most likely receive actual notice. If the lienholder is a corporation or a limited partnership, the county shall be considered to have made reasonable inquiry if the notice is mailed to the registered agent or last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of corporations division of the secretary of state's office, or if the corporation or limited partnership is not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership.

**2.070.955 – Conduct of Hearing.**

- A. **Staff presentation.** Staff or representative for Department shall present evidence, oral or written, to the Board, demonstrating why the property is subjected to waste or abandonment and should be deeded to the County.
- B. **Public participation.** Any other person or entity may present evidence, oral or written, addressing whether the property is subjected to waste or abandonment.
- C. **Final Rebuttal.** The Department shall have the final opportunity to respond to evidence presented during the hearing, so long as the Department's final rebuttal does not include new evidence that might be relied upon by the Board in rendering its decision.

**2.070.960 – Decision.**

- A. **Finding of Waste or Abandonment.** If the Board determines that the County has demonstrated by a preponderance of the evidence, that either waste has been committed on the property during the redemption period, or that the property is subjected to abandonment, the Board shall adopt a written order.
  1. **Contents of Written Order.** The written order shall include the following:
    - a. Findings explaining how a preponderance of the evidence supports the conclusion that either waste has been committed on the property during the redemption period, or that the property is subjected to abandonment.
    - b. Provide that any rights of possession the former owner or interested party may have in the property are forfeited;
    - c. Direct the property be deeded to the County by the tax collector on the 31<sup>st</sup> day after the date of the board decision, unless it is sooner redeemed by the former owner or any interested party.

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- d. **Provide that, pursuant to ORS 312.122(2)(c), all rights of redemption with respect to the property described in the deed shall terminate on the execution of the deed to the County.**
- 2. **Recording of Order. A copy of the written order shall be recorded in the deed records of Lane County.**
- B. **Finding of No Waste or Abandonment. If the board determines that neither waste nor abandonment has occurred on or regarding the property during the redemption period, the board shall adopt a written order so finding.**
- C. **Notice of Decision. A copy of the written order shall be mailed by first-class mail to the former owner and any interested party requesting a copy of the written order.**

#### **2.070.965 – Appeal.**

**Review of the board's decision shall be by writ of review, pursuant to ORS Chapter 34.**

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## **Chapter 5 – ADMINISTRATIVE ENFORCEMENT**

~~5.015~~**5.015** ~~See 6.225~~ – PROHIBITED NOISE

~~5.020~~**5.020** ~~See 9.570~~ – NUISANCE

~~5.020.045~~**5.020.045** ~~See 9.021~~ – ILLICIT DISCHARGE

~~5.005~~**025** – GENERALLY

### ~~5.005~~**025.005** – Definitions.

For purposes of this chapter, the following terms are defined as follows:

~~“Admissible Evidence” means the standards of evidence found in LC 14.200(3) shall be applicable to hearings held for any failure to comply with Lane Code.~~

~~“Case Involving Commercial Gain” means any compliance case where the failure to comply involves a property or structure being used for commercial or industrial purposes, or where the failure to comply involves an activity that generates revenue or income.~~

**“Abatement” means any action taken to remove or alleviate a nuisance, including, but not limited to, demolition, removal, repair, cleaning, boarding, and securing or replacement of property.**

**“Administrative citation” means a citation issued by a County official in response to any code violation that imposes fines or penalties associated with the code violation.**

**“Administrative civil penalty” means a financial penalty imposed for restitution for code violation.**

**“Assessment lien” or “code enforcement lien” means a lien recorded with the County recorder’s office for the purposes of collecting outstanding administrative citation fines, civil penalties, and administrative costs imposed as part of a cost recovery for an administrative code enforcement action.**

**“Board” means the Lane County Board of Commissioners.**

**“Building” means something that is framed, erected, constructed or placed to stand temporarily or permanently on a tract of land. This definition specifically includes a mobile home, manufactured home and accessories thereto, gas or liquid storage tanks principally above ground and revetments, rip-rap, boat docks or bridges.**

**“Code” means Lane Code, unless otherwise specified.**

**“County” means Lane County, Oregon.**

**“Department” means any department or subdivision of the County, including, but not limited to County Administration, Operations/Finance, Public Works, PW/Land Management, PW/Parks, HH/Public Health, or any subsequently established county department.**

**“Director” means the County Administrator, the Administrator’s designee, or the Public Works Director, Manager of the Land Management Division, or the Manager’s designee or the Health and Human Services Director, or their designees.**



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“Enforcement ~~e~~**Officer**” means the person authorized by the Director or designee to enforce particular provisions of the Lane Code under which administrative enforcement is authorized.

“Failure to Comply” means ~~as defined in LC 1.010~~**any failure to comply with an ordinance where the ordinance does not specify that it is punishable by a fine or incarceration, but which is subject to administrative enforcement.**

“Hearings ~~Officer~~**Official**” means a ~~Hearings officer~~**Hearings official** appointed ~~under Lane Code by a Director or their designee to conduct appeal hearings provided for under LC 5.025.035.~~

“Misdemeanor” means ~~as defined in LC 1.010~~**a violation of an ordinance specifically remediable by incarceration.**

“Notice of failure to comply” means a written notice issued by a code Enforcement Officer that informs a responsible party that the assessment of fines will begin to accrue and provides information regarding the right to appeal.

“Operate” or “engage in” includes to carry on, keep, conduct, maintain, or cause or allow to be kept or maintained.

“Order to Comply” means a written order issued by a code Enforcement Officer that informs a responsible party that a code violation has occurred or is ongoing; lists the required compliance actions the responsible party must undertake to remedy the code violation; provides a timeline by which compliance is required; and provides the possible consequences that may result for failure to remedy the code violation.

“Owner” means a person on the title to real property as shown on the latest assessment records in the office of the Lane County Tax Assessor. Owner also includes a person whose name does not appear in the latest tax assessment records, but who presents to the County a recorded copy of a deed or contract of sale signed by the owner of record as shown in the Lane County Tax Assessor’s records. The term shall include any part owner, joint owner, tenant in common, or joint tenant, or the whole or a part of such building or land. The term also includes the person who holds title to a recreational vehicle or manufactured home.

“Person” unless it otherwise appears from the context used, means any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district or other special district, the State of Oregon, its political subdivisions and/or instrumentalities thereof, or any other entity which is recognized by law as the subject of rights or duties.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips. The term “premises” shall include recreational vehicles.

“Recreational Vehicle” means a vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motorhomes, travel trailers and truck campers.

“Property owner” means the record owner of real property, as listed on the current Lane County Tax Assessor’s records.

“Regulations” means these regulations, and rules or regulations promulgated pursuant to sections of the Lane Code ~~which that~~ authorize imposition of an administrative civil penalty.

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“Repeat or repetitive failure to comply” means a failure to comply which is similar to another failure to comply by the responsible person within the preceding ~~two~~**five** years.

“Responsible Person” means for violations of or failure to comply with LC Chapter 5, LC Chapter 9, LC Chapter 10, LC Chapter 11, LC Chapter 13, LC Chapter 15, and LC Chapter 16, the owner of a building or property where a violation or failure to comply has occurred, the person in charge of the building or property, the violator or the person, **or parent or legal guardian of a person**, failing to comply with the ordinance, and where such person works for a contractor, either as an employee, subcontractor, or independent contractor, the contractor and/or other employer; and any licensee, permittee, or agent, manager, or person in charge. When a building is owned by an entity that is registered with the Oregon Secretary of State, that entity’s registered agent is deemed a responsible person.

~~“Section” means Enforcement Section.~~

**“State” means the State of Oregon.**

**“Street” means all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, parkways, or other public ways that have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.**

**“Tenant” or “occupant,” as applied to a building or land, means any person who occupies the whole or part of such building or land, whether alone or with others.**

“Violation” means ~~as defined in LC 1.010~~**a violation of an ordinance specifically remediable by a fine, but which does not provide for punishment by a term of incarceration.**

(Ordinance 2-82, 4.9.82; Ordinance 21-83, 11.29.83; Ordinance 4-85, 6.26.85; Ordinance 13-86, 11.7.86; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00; Ordinance 9-07, 10.12.07)

#### **5.025.010 – Applicability**

**The provisions of this Chapter apply to Lane Code Chapters 6, 9, 10, 11, 13, 15, and 16, or portions thereof, as specified in those chapters.**

#### **5.025.015 – Authority**

- A. The following officers and employees are authorized to enforce the provisions of this code, pursuant to LC 5.025.010 through LC 5.025.040, against any person regardless of whether a permit, certificate, license, or other form of authorization has been issued: Public Works Director, Land Management Division Manager, Planning Director, Building Official, Sheriff, Health and Human Services Director or their designees, or Enforcement Officer. These officers and employees may investigate, order corrective action, issue citations and stop work orders, and otherwise use these provisions to enforce the applicable chapters of Lane Code.**
- B. County Enforcement Officers and authorized employees are authorized to enter upon any property or premises to ascertain whether the provisions of the Lane Code or applicable state codes are being complied with and to make any examinations, inspections, and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be conducted in a reasonable manner. If an owner, occupant or agent refuses permission to enter or inspect, the authorized personnel and/or**

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Enforcement Officer may seek an administrative inspection warrant as set forth in LC 5.025.020.

#### 5.025.020 – Inspection Warrant

##### A. Grounds for Issuance of Inspection Warrants; Affidavit.

1. **Affidavit.** An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance, or regulation requiring or authorizing the inspection or investigation, the property to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.
2. **Cause.** Cause shall be deemed to exist if there is probable cause to believe that a condition of nonconformity with any of the Lane Code provisions listed in LC 5.025.010 exists with respect to the designated property, or an investigation is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with those regulations.

##### B. Procedure for Issuance of Inspection Warrant.

1. **Examination.** Before issuing an inspection warrant, the Lane County Circuit Court or Justice Court judge may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.
2. **Issuance.** If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
3. **Police Assistance.** In issuing an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and assist the Director or representative of the department inspecting the property in any way necessary to complete the inspection.

##### C. Execution of Inspection Warrants.

1. **Occupied Property.** On occupied property, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request.
2. **Unoccupied Property.** In executing an inspection warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's

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authority and purpose, but may promptly enter the property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the warrant shall be conspicuously posted upon the property.

3. Return. An inspection warrant must be executed within 10 working days of its issue and returned to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.

### 5.025.025 – Administrative Remedies

#### A. Failure of Compliance.

1. Order to Comply. Whenever an Enforcement Officer determines that a failure to comply with the Lane Code or applicable state code pertaining to real property exists, the Enforcement Officer may issue an Order to Comply to a responsible person. Each and every day a failure to comply continues to exist after the date specified in the Order to Comply shall constitute a separate failure to comply. An Order to Comply shall include the following information:
  - a. The name of the property's record owner;
  - b. Street address or property identification;
  - c. The code sections that have been violated;
  - d. A description of the property condition that violates the applicable codes;
  - e. A list of necessary corrections to bring the property into compliance;
  - f. A deadline or specific date to correct the failure to comply listed in the Order to Comply, and that penalties, not to exceed \$2,000 per violation per day, will begin accruing if not remedied by that date;
  - g. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline including, but not limited to: issuance of a Notice of Failure to Comply, civil injunction, administrative abatement, administrative civil penalties, revocation of permits, recording of a lien on the property, and withholding of future permits.
2. Service of Order to Comply. The Order to Comply must be served on the property owner by regular and certified mail at the address shown on the current Lane County assessment records, and on the responsible person, if not the property owner, by one of the following methods:
  - a. Personal service. Personally delivered to the responsible person at their place of residence.
  - b. Mail. By regular and certified mail, return receipt requested. For service by certified mail, service will be deemed made on the date signed by the responsible person. For service by regular mail, service will be deemed received three days after the date mailed if to an address within this state and seven days after the date mailed if to an address outside of this state.

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- c. Posting. Where the responsible person cannot be located, by posting a sign in a prominent location on the property where the failure to comply occurred.
- 3. Notice of Failure to Comply. Where a responsible person fails to remedy an alleged violation within the time provided in an Order to Comply, an Enforcement Officer may issue a Notice of Failure to Comply to each person to whom the Order to Comply was issued. A Notice of Failure to Comply shall include the following information:
  - a. The name of the property's record owner;
  - b. Street address or map and tax lot number;
  - c. The code sections that have been violated;
  - d. A description of the property condition that violates the applicable codes;
  - e. The date on which the Order to Comply was issued and the date by which correction was to be made;
  - f. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline, including but not limited to: civil injunction; administrative abatement by the County, including actual costs and administrative costs of such abatement; administrative civil penalties, the date the penalties will begin accruing on a daily basis at the stated amount until proof of correction is received; revocation of permits; withholding future permits; and recording a lien on the property;
  - g. A brief description of the procedure to appeal the Notice of Failure to Comply, including time limitations.
- 4. Service of Notice of Failure to Comply. The Notice of Failure to Comply shall be served as provided in LC 5.025.025A.
- 5. Notwithstanding LC 5.025.025A.1, 2, and 3, the Director may issue a Notice of Failure to Comply without having issued an Order to Comply where the City of Springfield or the City of Eugene notifies the County that enforcement actions under LC 9.021 could not be resolved, or where the Director determines that the failure to comply reasonably appears to:
  - a. Pose an immediate threat to public health, safety or welfare, or
  - b. Be immediately remediable by a person in charge of the property, or
  - c. Be the same act or condition that served as the basis for a previous order to comply, or
  - d. Be done deliberately by a responsible person who had knowledge that the actions in question would constitute a failure to comply.
- 6. Appeal. Appeal of a Notice of Failure to Comply may be filed pursuant to LC 5.025.035.

**B. Administrative Citation.**

**1. General Provisions.**

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- a. Any person who has committed a violation of any provision of the Lane Code Chapters 6, 9, 10, 11, 13, 15, and 16 or applicable state code may be issued an administrative citation by an Enforcement Officer as provided in this chapter.
  - b. Each and every day a violation of the Lane Code exists constitutes a separate and distinct offense for which an administrative citation may issue.
2. Contents of Administrative Citation. The administrative citation shall include the following information:
  - a. The date and location of the violations and the approximate time the violations were observed.
  - b. The code sections violated and how the sections are violated.
  - c. A description of the action required to correct the violations.
  - d. If applicable, a statement requiring the responsible person to immediately correct the violations and an explanation of the consequences of failure to correct the violations.
  - e. The amount of administrative civil penalty imposed for the violations.
  - f. Directions how the penalty shall be paid, the time period by which it shall be paid, and the consequences of failure to pay the penalty.
  - g. Notice of the right to appeal.
  - h. The signature of the Enforcement Officer and, where possible, the signature of the responsible person. However, failure to locate or obtain the signature of the responsible person shall not affect the validity of the citation.
3. Service.
  - a. In the case of a business, the Enforcement Officer shall attempt to locate the business owner and issue the business owner an administrative citation. If the Enforcement Officer can only locate the manager of the business or the person in apparent charge of the business, the administrative citation may be issued to such person, who may sign or receive the administrative citation as agent for the responsible person or owner of the business. A copy of the administrative citation shall also be mailed to the business owner or responsible person in the manner prescribed by LC 5.025.025A.2.
  - b. Once the responsible person is located, the Enforcement Officer shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.
  - c. If the Enforcement Officer is unable to locate the responsible person for the violation, then the administrative citation shall be mailed to the responsible person in the manner prescribed in LC 5.025.025A.2.
  - d. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by LC 5.025.025A.2.



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4. **Classification of Violations.** Unless the Lane Code provides otherwise, fines and penalties for violations shall be as set forth in ORS Chapter 153 (2021). An unclassified violation is a Class B violation.
  5. **Appeal.** Appeal of the administrative citation may be filed pursuant to LC5.025.035.
  - C. **Abatement.** Any violation of the Lane Code provisions subject to enforcement under this Chapter constituting a nuisance may be abated as set forth in LC 9.570 through LC 9.592 nuisance provisions. Nothing in Lane Code Chapter 5 or Lane Code Chapter 9 is deemed to limit or otherwise modify the ability of the County to abate nuisances through alternative remedies as provided for under the law.
  - D. **Cumulative Remedies.** The administrative enforcement remedies provided by this Chapter are not exclusive, but are in addition to other remedies – civil, equitable, or criminal – afforded to the County under the law.
- 5.025.030 – Administrative Civil Penalties.**
- A. **Determination of Civil Penalties.**
    1. Civil penalties begin to accrue on the date identified in the Order to Comply or any other written correspondence advising the responsible person of the existence of a failure to comply. In no event shall civil penalties start to accrue later than the date the responsible person is deemed to have received the Notice of Failure to Comply.
    2. The assessment of civil penalties shall end when all action required by the Order to Comply has been completed.
    3. In determining the amount of the civil penalty to be assessed on a daily rate, an Enforcement Officer may consider some or all of the following factors:
      - a. The duration of the violation.
      - b. The frequency or recurrence of the violation.
      - c. The seriousness of the violation.
      - d. The history of the violation.
      - e. The responsible person's conduct after issuance of the notice and order.
      - f. The good faith effort by the responsible person to comply.
      - g. The impact of the violation upon the community.
    4. The Director has incorporated the factors into a matrix that are found at LM 5.005.020.
- 5.025.035 – Appeal.**
- A. **Filing of Appeal.**
    1. Appeals shall be filed in writing, by mailing or delivering a written appeal, on a designated appeal form, no later than 10 calendar days after receipt of the determination or notice being challenged. Assessment of civil penalties shall cease accruing on the date an appeal is filed. Failure to file a timely appeal shall constitute a waiver of the right to an appeal hearing.

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2. Appeals shall be accompanied by the required fee and shall contain the following information:
    - a. Name or names of appellants(s);
    - b. A brief statement setting forth the action or decision being appealed;
    - c. A concise statement of the error alleged and the reasons the action or decision was in error;
    - d. The signature of the appellant(s), the appellant(s) telephone number and mailing address.
  3. Upon receiving the appeal, the Director or their designee shall (1) schedule an appeal hearing with the Hearings Official, and (2) provide notice of such hearing.
  4. Written notice of the date, time and place of the hearing shall be served at least ten calendar days prior to the date of the hearing on the person appealing the notice by any one of the methods listed in LC 5.025.025A.2.
- B. Conduct of Appeal Hearing.**
1. Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply.
  2. The Hearings Official shall preside over the hearing and may set reasonable rules of procedure designed to facilitate orderly and efficient presentation of evidence and a fair hearing process. The Hearings Official may rule on requests for continuation and other motions relevant to the substance and procedure of the hearing.
  3. The County bears the burden of proof at an administrative enforcement hearing to establish the existence of a violation or failure to comply with applicable provisions of the Lane Code and of the reasonableness of any civil penalty provided for by the Enforcement Officer.
  4. The standard of proof to be used by the Hearings Official in deciding the issues at an administrative enforcement hearing is a preponderance of the evidence standard.
  5. Each party shall have the opportunity to be represented by a lawyer, to cross-examine witnesses, and to present evidence in support of their case.
  6. The responsible person may be represented by a lawyer at the responsible person's expense so long as written notice is provided to the Hearings Official at least four days prior to the date scheduled for the hearing. Even if represented, the responsible person must appear in person at the hearing. For purposes of this subsection, the term "in person" shall include any form of remote participation allowed by the Hearings Official.
  7. All testimony at the hearing shall be under oath, and each party shall have the right to call and examine witnesses, introduce exhibits and cross-examine opposing witnesses on any matter relevant to the issues. The Hearings Official also has the authority to subpoena people and records, order rulings on violations, assess fines and order liens to be placed upon property.
- C. Authority of Hearings Official.**



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1. The Hearings Official, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed by the Hearings Official to be relevant (necessary) to the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena.
2. The Hearings Official shall retain jurisdiction over the subject matter of an administrative enforcement hearing for the purposes of granting a continuance, ensuring compliance with an administrative enforcement order, modifying an administrative enforcement order, or where extraordinary circumstances exist, granting a new hearing.
3. Where a responsible person has not corrected a failure to comply within the time specified by the Enforcement Order or Notice of Failure to Comply, the Hearings Official may order corrective action be achieved by the County and costs assessed to the responsible person.

**D. Final Decision.**

1. Once all evidence and testimony are completed, the Hearings Official shall issue an administrative enforcement order that affirms or rejects the Enforcement Officer's Administrative Citation or Notice of Failure to Comply or which modifies the daily rate or duration of the civil penalties. The Hearings Official may decrease the total amount of civil penalties and costs that are assessed by the Officer's Notice of Failure to Comply.
2. The Hearings Official may issue an administrative enforcement order that requires the responsible person to cease from violating the Lane Code or applicable state codes and to make necessary corrections.
3. As part of the administrative enforcement order, the Hearings Official may establish specific deadlines for the payment of civil penalties and costs and condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines.
4. The Hearings Official may issue an administrative enforcement order that imposes additional civil penalties that will continue to be assessed until the responsible person complies with the Hearing Official's decision and corrects the violation.
5. The Hearings Official may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.
6. The final order shall include a statement that the responsible person may seek judicial review by filing a petition for a writ of review with the Lane County Circuit Court within 60 days of the date of the decision.
7. A copy of the final written order resolving the appeal shall be mailed to appellant(s) within 10 working days of the hearing.
8. Order becomes final on the 60<sup>th</sup> day after issuance, unless appealed pursuant to LC 5.025.035.

**E. Further appeal.**

Judicial review of an administrative enforcement order may be sought through filing a writ of review in Lane County Circuit Court, pursuant to ORS Chapter 34 (2021).

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**5.025.040 – Collection of Civil Penalties and Related Costs.**

- A. The Director or their designee may collect all civil penalties and related administrative costs by the use of all appropriate legal means.
- B. Unless otherwise ordered by the Hearings Official, civil penalties are due immediately on the date the Order becomes final.
- C. Upon determination by the Director or their designee that the administrative penalty, administrative cost, or other debt incurred by the County has not been satisfied in full within sixty days of the date it was imposed and/or has not been successfully challenged, a lien shall attach to any affected real property for the amount of the civil penalty, cost, or debt.
- D. The lien referenced in LC5.025.040C attaches when the Order is mailed to the responsible person.
- E. An order granting a violator time within which to pay a civil penalty does not affect the County's lien. The lien is for the full amount of civil penalty imposed, together with accrued interest, regardless of when payment is due.

~~**5.005.010 – Establishment of Administrative Enforcement Procedures.**~~

~~In furtherance of, and pursuant to, the Lane County Home Rule Charter, administrative enforcement procedures are hereby established for the purpose of providing for the remediation of any failure to comply with County ordinances, except for those ordinances providing for punishment by fine or incarceration. It is further intended that a civil administrative process be established to provide a convenient and practical forum for the administrative hearing and determination of cases arising out of any failure to comply with County ordinances, and for the hearing and determination of factual issues as may be relevant in connection with, but not limited to, nuisance abatement and license and permit revocation proceedings.~~

~~(Ordinance 2-82, 4.9.82; Ordinance 21-83, 11.29.83; Ordinance 4-85, 6.26.85; Ordinance 1-00, 4.12.00)~~

~~**5.005.015 – Organization.**~~

~~A. The Section shall consist of one or more hearings officers and supporting clerical staff. The hearings officers shall be funded by contract with the County and shall be appointed by and shall be subject to removal by the Board.~~

~~B. Consistent with this chapter and other applicable law, the Director may establish rules for the performance of the functions assigned to the section.~~

~~(Ordinance 2-82, 4.9.82; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00)~~

~~**5.005.017 – Establishment of Administrative Civil Penalties.**~~

~~A. When the Director determines that a responsible person has failed to comply with any provision of a chapter of this Code that contains a provision authorizing administrative enforcement, the Director may include a monetary penalty, restitution, costs and assessments, and an order of abatement.~~

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~~B.— Prior to imposing an administrative civil penalty under this section the Director shall pursue reasonable attempts to secure voluntary correction. Upon failure to secure voluntary correction, the Director may issue an order to comply to one or more of the responsible persons. Except where the Director determines that LC 5.017(4) applies, the time for correction shall not be less than five calendar days.~~

~~C.— Following the date by which the correction must be completed as required by an order to comply, the Director shall determine whether such correction has been completed. If the required correction has not been completed by the date specified in the order, the Director may issue a notice of failure to comply to each person to whom an order to comply was issued. Each day the failure to comply continues to exist after the date specified in an order to comply shall constitute a separate failure to comply.~~

~~D.— Notwithstanding LC 5.017(2) above, the Director may issue a notice of failure to comply without having issued an order to comply or made attempts to secure voluntary correction, where the Director determines that the failure to comply reasonably appears to:~~

- ~~1.— Pose an immediate threat to public health, safety or welfare, or~~
- ~~2.— Be immediately remediable by a person in charge of the property, or~~
- ~~3.— Be the same act or condition that served as the basis for a previous order to comply, or~~
- ~~4.— Be done deliberately by a responsible person who had knowledge that the actions in question would constitute a failure to comply, or~~
- ~~5.— Be a single incident identified by the relevant provision of the Lane Code as meriting the imposition of an administrative civil penalty for such a single failure to comply, which shall be evidenced by the classification of a failure to comply as described in LC 5.040.~~

~~E.— Except for cases involving commercial gain, no monetary penalty imposed under this section shall exceed \$1,000 per day. For cases involving commercial gain, no monetary penalty imposed under this section shall exceed \$2,500 per day.~~

~~— The amount of the monetary penalty will be determined in accordance with the following formula, as described herein:~~

~~1.— The dollar amount of the assessment is calculated by multiplying the amount of the BASE (subsection (a)) by the MULTIPLIER (subsection (b)) and multiplying that by \$15. Notwithstanding this formula, the maximum assessment for a violation for a single day shall be \$1,000 except as provided for cases involving commercial gain in paragraph (b) below or cases involving assemblies as described in paragraph (c) below:~~

~~a.— The BASE is the sum of "H" plus "P" plus "R" plus "C" plus "E" where:~~

~~(1) — "H" is the history of the responsible person taking all feasible steps of procedures necessary or appropriate to correct the failure to comply. The value of "H" shall be:~~

~~(i) — 0, if the responsible person has taken a major, active role in attempting to resolve the failure to comply. There must have been a physical effort that resulted in significant improvement. Verbal communication is not sufficient by itself, but it may be considered a part of the necessary effort.~~

~~(ii) — 1, if the person has made minor attempts to correct the failure to comply, but not significant improvement resulted. Verbal communication is not sufficient by itself, but it may be considered as a part of the necessary effort.~~

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~~(iii) — 4, if the person took little or no action whatsoever. This includes verbal contact or assurances that the problem will be resolved, but with no noticeable physical effort to correct the failure to comply.~~

~~(2) — "P" is the number of prior failures to comply or violations of the code provision upon which the current failure to comply is based. This number is based on prior similar complaints verified as valid, whether or not further enforcement action occurred. The value of "P" shall be:~~

~~(i) — 1, if the present failure to comply is the first failure to comply within the past two years.~~

~~(ii) — 2, if the present failure to comply is the second similar occurrence within the past two years.~~

~~(iii) — 4, if the present failure to comply is the third or subsequent similar occurrence within the past two years.~~

~~(3) — "R" is the nature of the occurrence, considering whether it was repeated or continuous as opposed to a single occurrence. The value for "R" shall be:~~

~~(i) — 1, if the failure to comply was a one-time occurrence.~~

~~(ii) — 2, if the failure to comply was repeated or continuous in nature.~~

~~(4) — "C" is whether the cause of the failure to comply was an inadvertent, negligent, or a reckless or intentional act. The value of "C" shall be:~~

~~(i) — 1, if the failure to comply was unavoidable accident or caused by others. This category is used when the monetary penalty is assessed either (a) against a person who is responsible for the property, such as an owner, but who was not physically in charge of the property when the failure to comply occurred; or (b) against someone who did cause the failure to comply but could not have reasonably foreseen that the failure to comply would occur.~~

~~(ii) — 2, if the failure to comply was caused by a responsible person's negligence. Negligence is the failure to exercise the care that a prudent person would exercise under the circumstances. This category is used where someone either caused the failure to comply by carelessness or was negligent in taking the necessary corrective steps within the allowed time period.~~

~~(iii) — 4, if the failure to comply was due to reckless or intentional acts. A reckless act is marked by a lack of proper caution, or carelessness or consequences. An intentional act is an act done by intention or design.~~

~~(5) — "E" is the responsible person's cooperativeness and efforts directed toward correcting the failure to comply. The value of "E" shall be:~~

~~(i) — 0, if the person was cooperative resulting in the need for minimal enforcement effort on the part of the enforcement officer.~~

~~(ii) — 2, if the person was not cooperative.~~

~~b. — The MULTIPLIER is the product of "A" multiplied by "G" where:~~

~~(1) — "A" is the number of prior enforcement actions taken against this responsible person by Lane County, whether at this property or another, and whether for this type of failure to comply or another. The value of "A" shall be:~~

~~(i) — 1, if this failure to comply is the first enforcement action against this responsible person.~~

~~(ii) — 2, if there has been one prior enforcement action taken against this person within the past three years.~~

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~~(iii) 3, if this failure to comply is at least the third enforcement action taken against this responsible person within the past three years.~~

~~(2) "G" is the immediacy and magnitude of the failure to comply. This factor is evaluated at the time the enforcement officer initiates compliance efforts. The value of this factor does not decrease if, after enforcement action is initiated, County efforts reduce the gravity of the occurrence or the responsible person makes corrections only at the insistence of the enforcement officer. The value of "G" shall be:~~

~~(i) 1, for a failure to comply which is not an immediate threat to health, safety or the general welfare and has only minor potential consequences. These situations pose non-immediate threats to lives or property such that the failure to comply can be tolerated while corrective action is taken.~~

~~(ii) 2, for a failure to comply which is significant, but does not pose an immediate threat to health, safety or the general welfare. These occurrences pose significant potential consequences, though the threat is not immediate. These situations can be tolerated for a limited period of time with interim measures taken to minimize the threat. For purposes of this factor, a failure to comply shall be considered significant if it occurs on property subject to the provisions of LC Chapter 10 and LC 16.210 through LC 16.400.~~

~~(iii) 3, for a failure to comply which is substantial and poses an immediate threat to health, safety or the general welfare. These situations pose immediate threats to lives such that the threat cannot be tolerated. Action must be taken immediately to prevent occupancy of the premises or to remove the hazard.~~

~~2. In cases involving commercial gain, the dollar amount of the assessment calculated using the formula in paragraph (1) above shall be multiplied by a factor of three (3) provided that the maximum assessment for a failure to comply of a single day for a case involving commercial gain shall be \$2,500.~~

~~3. In cases involving unlicensed assemblies as defined in LC 3.995(3)(c) monetary penalties shall not be calculated using the formula provided in LC 5.017. Instead, a set fine of \$5,000 shall be assessed for the first 24 hour period the unlicensed assembly occurs and an additional \$2,500 fine shall be assessed for each subsequent 24 hour period the unlicensed assembly continues. The maximum assessment for any unlicensed assembly shall be \$10,000 per individual organizer. For all other offenses related to licensed assemblies, whether for commercial gain or not, the monetary penalties shall be calculated using the formula provided in LC 5.017(5)(b).~~

~~F. The notice of failure to comply shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. The notice may be in the form of a summons and complaint for those failures to comply subject to LC 5.017(4). Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside of this state. A notice of failure to comply shall include:~~

~~1. Reference to the particular Code provision or rule involved;~~

~~2. A short and plain statement of the matters asserted or charged;~~

~~3. A statement of the amount of the penalty or penalties imposed;~~

~~4. The date on which the order to comply was issued and the date by which correction was to be made, or, if the penalty is to be imposed pursuant to LC 5.017(4) above, a short and plain statement of the basis for concluding that said subsection applies;~~

~~5. Where appropriate, a statement that abatement is required and that failure to abate the act or condition may result in continued administrative penalties, accruing on a daily basis at the stated amount until proof of completion of abatement is received;~~

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~~6.— A statement of the party's right to appeal the notice of failure to comply to a hearings officer, and~~

~~7.— A statement in substantial conformance with LC 5.040.~~

~~G.— Any person who is issued a notice of failure to comply may appeal the penalty to a hearings officer. All appeals shall be submitted in writing to, and received by, the Director within 10 days of when notice is deemed received. Appeals shall be accompanied by the necessary fee or deposit. The appeal fee or deposit shall be refunded within 60 days if the appeal is upheld by the hearings officer. Filing of an appeal shall not cause the penalty to cease accruing on a daily basis. In the event the appeal is not upheld by the hearings officer, the accrued penalty and any portion of the appeal fee not previously paid shall immediately become due and payable, and the penalty shall thereafter continue to accrue until such time as the responsible person submits to the Director proof of having abated the act or condition constituting the failure to comply. The provisions of LC 5.030 shall govern any requested hearing.~~

~~H.— Any administrative civil penalty imposed shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the notice of failure to comply to a hearings officer pursuant to, and within the time limits established by LC 5.017(7) above. The hearings officer shall issue an order of civil penalty upon the civil penalty becoming final. If the responsible person appeals the civil penalty to the hearings officer, the civil penalty shall become final, if at all, upon issuance of the hearings officer's decision affirming the imposition of an administrative civil penalty and containing an order of civil penalty. An order of civil penalty shall include a statement identifying an amount of daily penalty that will continue to accrue until the failure to comply is rectified. An order of civil penalty may authorize the Director to take action to abate the failure to comply pursuant to LC 5.020.~~

~~I.— Any person who pays the monetary penalty within 10 days of when it was ordered shall only be required to pay 90 percent thereof. Failure to pay a penalty imposed hereunder within ten days after the penalty becomes final as provided in LC 5.017(8) above shall constitute a failure to comply with this section. Each day after the initial 10-day period for payment that the penalty is not paid shall constitute a separate failure to comply. The Director is also authorized to collect the penalty by any administrative or judicial action or proceeding authorized by LC 5.017(11) below, other provisions of this Code or state statutes, and may enforce delinquent liens or assessments pursuant to ORS 223.510.~~

~~J.— The administrative civil penalty authorized by this section shall be in addition to:~~

- ~~1.— Assessments or fees for any costs incurred by the County in remediation, cleanup or abatement;~~
- ~~2.— Any portion of an appeal fee not previously paid; and~~
- ~~3.— Any other actions authorized by law.~~

~~K.— If an administrative civil penalty is imposed on a responsible person because of a failure to comply with any provision of this Code resulting from a prohibited act, use or condition on real property, and notice thereof has been sent by certified mail and first class mail to the person listed on the County tax records as the owner of the property, and the penalty remains unpaid 60 days after such penalty becomes final, the hearings officer's order of civil penalty may be recorded, as a lien, in the County Clerk's Lien Record. At the time such an assessment is made, the Director shall notify all previously notified, the responsible person and the aforementioned owner that the penalty has been assessed against the real property upon which the failure to comply occurred, and has been entered in the County Clerk's Lien Record. The lien may be enforced in the same manner as a judgment, or as a lien for street improvements, and shall bear interest at the rate prescribed in ORS 82.010. The interest shall commence from the date of the hearings officer's order of civil penalty. The lien shall be given priority over all liens except those for taxes and assessments. The County may sell or assign said lien, any such assignment to be made without recourse to the County.~~



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~~L.—In addition to enforcement mechanisms authorized elsewhere in this Code, failure to pay an administrative civil penalty imposed pursuant to LC 5.017(8) above shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or licenses.~~

~~(Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00; Ordinance 16-04, 10.28.04; Ordinance 9-07, 10.12.07; Ordinance 15-06, 8.15.15)~~

#### ~~5.005.020—Abatement by County; Costs; Waiver; Lien.~~

~~A.—If an order of abatement has been issued by the hearings officer and, 10 days following the notice mailed pursuant to LC 5.017(11) specifying said abatement, the act or condition remains unabated, the Director may cause abatement of the nuisance. Accurate record of the abatement costs shall be kept and shall include a surcharge of 25% of the cost of the abatement for administrative overhead. A billing for the amount of the costs shall be forwarded by certified or registered mail, return receipt requested, to the owner. Payment shall be due to the Director within 30 days from the date of the billing.~~

~~B.—The cost of abatement may be waived for indigent persons, if upon timely application it appears to the Director that the following conditions are met:~~

- ~~1.—The owner is indigent, as that determination is provided for in ORS 151.485;~~
- ~~2.—The owner is living on the property from which the nuisance is to be abated; and~~
- ~~3.—The nuisance is incapable of being remediated by the owner.~~

~~C.—Applications for waiver of abatement costs shall be filed with the Director on forms supplied by the county within ten days from the date of notice of the amount of cost of abatement. All information required to be given on the forms shall be supplied by and verified by the applicant. An application for waiver of nuisance abatement costs must be submitted for each cost of abatement notice sent to the applicant.~~

~~D.—The Director shall file a lien against the property if payment is not made as provided in LC 5.020(1) or waived under LC 5.020(2).~~

~~E.—The lien provided for in LC 5.020(4) shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate accruing from the date billing is sent to the owner of property.~~

~~F.—The lien provided for in LC 5.020(4) shall be enforced in the manner prescribed in LC 5.017(11).~~

~~(Ordinance 2-82, 4.9.82; Ordinance 21-83, 11.29.83; Ordinance 4-85, 6.26.85; Ordinance 13-86, 11.7.86; Ordinance 1-00, 4.12.00)~~

#### ~~5.005.030—Hearing.~~

~~A.—Every hearing to determine whether a failure to comply has occurred shall be held before a hearings officer. The County must prove the failure to comply by a preponderance of the evidence. The hearing shall be limited to admissible evidence. The hearings officer may prescribe by rule or regulation the procedures for the conduct of the hearings in conformity with applicable state statutes.~~

~~B.—The hearings officer has the authority to administer oaths and take testimony of witnesses. Upon the request of the person alleged to have committed the failure to comply, or upon his or her own motion,~~

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~~the hearings officer may issue subpoenas in accordance with the Oregon Rules of Civil Procedure, which shall apply to procedural questions not otherwise addressed by this chapter or by rule of the hearings officer. If the person alleged to have committed the failure to comply desires that witnesses be ordered to appear by subpoena, he or she must so request in writing at any time before five days prior to the scheduled hearing. A \$15 deposit for each witness shall accompany each request, such deposit to be refunded as appropriate if the witness cost is less than the amount deposited. Subject to the same five-day limitation, the complaining County officer or County Counsel, as appropriate, may also request of the hearings officer that certain witnesses be ordered to appear by subpoena. The hearings officer may waive the five-day limitation for good cause. Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases. If an administrative civil penalty is declared in the final order, the order shall also provide that the person ordered to pay the monetary penalty shall also pay any witness fees attributable to the hearing.~~

~~C.—The person alleged to have committed the failure to comply shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence on his or her behalf, but cannot be compelled to do so.~~

~~D.—After due consideration of the evidence and arguments, the hearings officer shall determine whether the failure to comply alleged in the notice of failure to comply has been established. When the failure to comply has not been established, an order dismissing same shall be entered. When the determination is that the failure to comply has been established, an appropriate order shall be entered in the records. A copy of the order shall be delivered to the person named in the order personally or by mail or to their attorney of record. Any motion to reconsider the order of the hearings officer must be filed within 10 days of the original order.~~

~~E.—Monetary penalties collected pursuant to the provisions of this chapter shall be paid to the Enforcement Section.~~

~~F.—Hearings shall be conducted at locations determined by the Director. Should the conduct of the hearings outside the Eugene area appear to be economically practical, the Director shall give strong consideration to scheduling hearings in other locations.~~

~~G.—A tape recording shall be made of the hearing unless waived by both parties, which tape shall be retained for at least 90 days following the hearing or final judgment on appeal.~~

~~(Ordinance 15-80, 7.23.80; Ordinance 2-82, 4.9.82; Ordinance 4-85, 6.26.85; Ordinance 1-93, 4.16.93; Ordinance 2-95, 4.28.95; Ordinance 1-00, 4.12.00)~~

#### ~~5.005.035 – Classification of Violations.~~

~~Violations shall be classified as set forth in this code. Unless the ordinance provides otherwise, fines and penalties for violations shall be as set forth in ORS Chapter 153.~~

~~(Ordinance 1-00, 4.12.00)~~

#### ~~5.005.040 – Classification of Failure to Comply.~~

~~A failure to comply with Lane Code provisions allowing for administrative enforcement, unless provided otherwise, shall be classified for the purposes of establishing administrative civil penalties into one of the following categories with the following monetary penalties. Any failure to comply not otherwise classified in this code shall be an unclassified failure to comply and, where no specified monetary penalty is~~



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~~provided, an unclassified failure to comply shall be subject to a monetary penalty not to exceed \$1,000 per day. In addition to, and not in lieu of any other enforcement mechanism authorized by this Code, when the Director determines that a person has failed to comply with any provision of Lane Code except LC Chapter 6, LC Chapter 7, and LC 9.120 through LC 9.995, the Director or designee may impose upon the responsible person, an administrative civil penalty as provided by LC 5.017.~~

~~A.— Class 1 Failure to Comply. For a Class 1 failure to comply, the monetary penalty shall be no less than \$100, nor more than \$500 for a first occurrence. For a second Class 1 failure to comply occurring within 12 months from the date of the first occurrence the monetary penalty shall be no less than \$200, nor more than \$500. For a third Class 1 failure to comply occurring within a 12-month period from the date of the first occurrence, the monetary penalty shall be \$500.~~

~~B.— Class 2 Failure to Comply. For a Class 2 failure to comply, the monetary penalty shall be no less than \$50, nor more than \$250 for a first occurrence. If the responsible person had a prior occurrence of a Class 1 or 2 failure to comply within 12 months from the date of the first occurrence, the monetary penalty shall be no less than \$100 nor more than \$250. If the responsible person had two prior occurrences for a Class 1 or 2 failure to comply within a 12-month period from the date of the first occurrence, the monetary penalty shall be \$250.~~

~~C.— Class 3 Failure to Comply. For a Class 3 failure to comply the monetary penalty shall be no less than \$10, nor more than \$150 for a first occurrence. If the responsible person had a prior occurrence of a Class 1, 2 or 3 failure to comply within 12 months from the date of the first occurrence, the fine shall be no less than \$40, nor more than \$150. If the responsible person had two prior occurrences of a Class 1, 2 or 3 failure to comply within 12 months of the date of the first offense, the monetary penalty shall be \$150.~~

~~D.— Class 4 Failure to Comply. For a Class 4 failure to comply the monetary penalty shall be \$25 for the first occurrence, \$35 for the second occurrence, \$45 for the third occurrence, and \$55 for each subsequent occurrence within any 12-month period of time.~~

~~(Ordinance 15-80, 7.23.80; Ordinance 2-82, 4.9.82; Ordinance 4-85, 6.26.85; Ordinance 9-85, 11.6.85; Ordinance 13-86, 11.7.86; Ordinance 3-89, 5.12.89; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00)~~

#### ~~5.005.055—Employee Misconduct.~~

~~The hearings officer shall report to the Director any evidence or allegations of misconduct or negligence by County employees which, in the hearings officer's opinion, are substantially based on fact. A copy of the report shall also be sent to the employee involved.~~

~~(Ordinance 19-72, 10.13.72)~~

#### ~~5.010—County Community Corrections~~

##### ~~5.010.005—County Community Corrections Agency Defined; Functions.~~

~~A.—The division of Parole and Probation is part of Lane County's community corrections agency, as referenced in various Oregon statutes.~~

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~~B. — As a county community corrections agency, a primary duty of the Lane County parole and probation department and its officers includes, but is not limited to, the control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders.~~

~~(Ordinance 15-02, 04.17.15)~~

### ~~5.015 — Prohibited Noise~~

#### ~~5.015.005 — Findings and Purpose.~~

~~The Board of Commissioners of Lane County finds that excessive sound can and does constitute a hazard to the health, safety, welfare and quality of life of citizens of the County. While certain activities essential to the economic, social, political, educational and technical advancements of the citizens of the County necessarily require the production of sounds which may offend, disrupt, intrude or otherwise create hardship among the citizenry, unregulated sound is a nuisance and some limitation and regulation must be imposed upon the production of excessive sound to reduce the deleterious effects of those sounds. It is, therefore, the policy of Lane County, Oregon, to prevent and regulate excessive sound wherever it is deemed to be harmful to the health, safety, welfare and quality of life of the citizens of Lane County. This subchapter shall be liberally construed to effectuate that purpose.~~

~~(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99)~~

#### ~~5.015.010 — Definitions.~~

~~For purposes of this subchapter the following terms and definitions shall apply unless the context requires otherwise:~~

~~—— “Idling Speed” means that speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.~~

~~—— “Manager” means the Manager of the Land Management Division of the Department of Public Works, or the Manager’s designee.~~

~~—— “Noise Sensitive Unit” means any building or portion thereof, vehicle, boat or other structure adapted or used for the overnight accommodation of persons, including, but not limited to individual residential units, individual apartments, trailers, hospitals and nursing homes.~~

~~—— “Person” means including in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.~~

~~—— “Plainly Audible Sound” means any sound which is clearly distinguishable from other sounds, such as, but not limited to, sound for which the information content of that sound is unambiguously communicated to the listener, understandable spoken speech, comprehension of whether a voice is raised or normal, or comprehensible musical rhythms.~~

~~—— “Sound Producing Device” means including but not limited to:~~

~~—— A. Loudspeakers, public address systems.~~

~~—— B. Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems including those installed in a vehicle.~~

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~~— C. Musical instruments, amplified or unamplified.~~

~~— D. Sirens, bells or steam whistles attached to a stationary device.~~

~~— E. Vehicle engines or exhausts discharging into open air, when the vehicle is not on a public right-of-way, particularly when the engine is operated above idling speed.~~

~~— F. Vehicle tires, when caused to squeal by excessive speed or acceleration.~~

~~— G. Domestic tools, including electric drills, chain saws, lawn mowers, electric saws, hammers and similar tools, but only between 10:00 p.m. and 7:00 a.m. of the following day.~~

~~— H. Heat pumps, air conditioning units and refrigeration units, including those mounted on vehicles.~~

~~— "Vehicle" means automobiles, motorcycles, motorbikes, trucks, buses and snowmobiles.~~

~~(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99)~~

#### 5.015.020—Sound Measurement.

~~A. If sound measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this subchapter, a sound level meter shall contain at least an A-weighted and C-weighted scale and both fast and slow meter response capability and the capability to perform time averaged sound measurement. A fast setting shall be utilized unless a different setting shall be called for elsewhere in this Code.~~

~~B. If measurements are made, personnel making those measurements shall have completed training in the techniques of sound measurement and the use of the sound level meter from the Oregon Department of Environmental Quality personnel or other competent training personnel. Measurement procedures consistent with that training shall be followed.~~

~~C. Measurements may be made at or within the boundary of the property on which a noise sensitive unit which is not the source of the sound is located, or within a noise sensitive unit which is not the source of the sound.~~

~~D. All measurements made pursuant to this subchapter shall comply with the provisions of this section.~~

~~(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99; Ordinance 6-03, 10.9.03)~~

#### 5.015.025—Failure to Comply.

~~A failure to comply, pursuant to LC 5.005(3), shall occur whenever any person produces or permits to be produced, with a sound producing device, sound which:~~

~~A. When measured at or within the boundary of the property on which a noise sensitive unit which is not the source of the sound is located, or, within a noise sensitive unit which is not the source of the sound, exceeds:~~

~~1. 50 dB, A at any time between 10:00 p.m. and 7:00 a.m. of the following day, or~~

~~2. 60 dB, A at any time between 7:00 a.m. and 10:00 p.m. of the same day, or~~

~~B. Is plainly audible at any time between 10:00 p.m. and 7:00 a.m. of the following day:~~

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~~1. Within a noise sensitive unit which is not the source of the sound, or~~

~~2. On a public right-of-way at a distance of 50 feet or more from the source of the sound.~~

~~C. If a measurement of the sound is made, LC 5.615(1) above shall supersede LC 5.615(2) above and shall be used to determine if a failure to comply exists.~~

~~(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99; Ordinance 1-00, 4.12.00)~~

### ~~5.015.030 Exceptions.~~

~~Notwithstanding LC 5.615 above, the following exceptions from this subchapter are permitted when conditions therefore are met:~~

~~A. Sounds caused by organized athletic, religious, educational, civic or other group activities, when such activities are conducted on property generally used for such purposes, including stadiums, parks, schools, churches, athletic fields, race tracks, airports and waterways between the hours of 7:00 a.m. and 11:00 p.m. of the same day; provided, however, that this exception shall not impair the Manager's power to declare that such events or activities violate other applicable laws, ordinances or regulations.~~

~~B. Sound caused by emergency work reasonably necessary to prevent injury to persons or property, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, whether or not such work is performed by a public or private agency, upon public or private property.~~

~~C. Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations. Notwithstanding anything within LC 5.600 et seq. to the contrary, it shall be unlawful for any railroad "retarder" as that is defined in 40 CFR 201.1(y), to be used, unless such retarder has shielding sufficient to prevent both:~~

~~1. Impulse sounds, defined as a single pressure peak or a single burst (multiple pressure peaks), as measured on a C weighted meter with fast response, and~~

~~2. Sounds in octave bands of 2000 Hz and above,~~

~~— where either of such sounds exceed either 10 dB,A between the hours of 10:00 p.m. and 7:00 a.m. of the following day, or 12 dB,A between the hours of 6:00 p.m. to 10:00 p.m., over the ambient noise level within a sound sensitive unit with a window ajar and measured from no closer than three (3) feet of the window. The ambient noise level is the total of all noise in the environment, other than noise from railroad operations, averaged over 10 minutes in dB,A.~~

~~D. Sound caused by bona fide use of emergency warning devices and alarm systems authorized by LC 3.400 through LC 3.460.~~

~~E. Sound caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9:00 a.m. and 4:00 p.m. of the same day, excluding weekends, unless such permit expressly authorizes otherwise.~~

~~F. Sounds caused by commercial, industrial, agricultural, timber harvesting, utility or construction organizations or workers during their normal operations.~~

~~G. Sounds caused by a sound producing device used by a person pursuant to a variance issued by the Manager as provided in LC 5.625.~~

~~H. Sounds caused by motor vehicles operated on any highway and subject to ORS 815.250.~~

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(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99)

~~5.015.035 – Variances.~~

~~Any person who is planning the use of a sound producing device which may violate any provision of this subchapter may apply to the Manager for a variance from such provision.~~

~~A. — Application. The application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought and any other supporting information which the Manager may reasonably require.~~

~~B. — Review Considerations. The Manager shall consider:~~

- ~~1. — The nature and duration of the sound emitted.~~
- ~~2. — Whether the public health, safety or welfare is endangered.~~
- ~~3. — Whether compliance with the provision would produce no benefit to the public.~~
- ~~4. — Whether previous permits have been issued and the applicant's record of compliance.~~

~~C. — Time Duration of Variance. A variance may be granted for a specific time interval only.~~

~~D. — Manager's Action. Within 10 days of receiving the application, the Manager shall deny it, approve it, or approve it subject to conditions. The Manager's decision shall be final for purposes of filing for review under ORS 34.010 through ORS 34.100 when that decision is reduced to writing and signed.~~

~~E. — Revocation. The Manager may at any time before or during the operation of a variance granted by the Manager revoke the variance for good cause.~~

(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99)

~~5.015.040 – Subchapter Additional to Other Law.~~

~~The provisions of this subchapter shall be cumulative and nonexclusive and shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on such subject. In the case of an adjudicated conflict between the provisions of this subchapter and any Federal statute or regulation promulgated thereunder, such statute or regulation shall supersede the provisions of this subchapter and may be enforced, to the fullest extent allowed by law, by Lane County.~~

(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99)

~~5.015.045 – Initiation of Administrative Enforcement Proceeding by Private Party.~~

~~A. — A person other than the Manager or designee may commence an administrative enforcement proceeding for any failure to comply with LC 5.600 et seq., by filing a complaint with the Manager.~~

~~B. — The filing of the complaint is subject to LC 5.010, and must contain at least:~~

- ~~1. — The name and address of the person bringing the action, and the name and address of the defendant.~~

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~~2.— A statement or designation of the failure to comply that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which this is alleged to have occurred.~~

~~3.— A certificate signed by the complainant stating that the complainant believes that the named defendant committed the failure to comply as specifically identified in the complaint and that the complainant has reasonable grounds for that belief. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. Complaints filed under this section are subject to the penalties provided in ORS 153.990 for false certification.~~

~~C.— Upon the filing of a complaint under this section, the Manager shall cause a summons to be delivered to the defendant.~~

~~D.— The Manager may, acting in his or her sole discretion, amend a complaint filed under the provisions of this section.~~

~~E.— The hearings officer shall dismiss a complaint filed under this section upon motion from either the Manager or the defendant if:~~

~~1.— The Manager has brought or intends to bring a proceeding against the defendant named in the complaint by reason of the same conduct alleged, or~~

~~2.— Another citizen initiated complaint has been brought against the defendant named in the complaint by reason of the same conduct alleged.~~

~~(Ordinance 4-89, 5.11.89; Ordinance 5-99, 7.28.99; Ordinance 1-00, 4.12.00)~~

#### ~~5.020—Nuisance~~

##### ~~5.020.005—Purpose.~~

~~The purpose of LC 5.700 through LC 5.750 is to regulate the accumulation of waste, solid waste, tires, inoperable vehicles and vegetation on public and private property. The remedies provided for failure to comply with LC 5.700 through LC 5.750 shall not be exclusive and shall be in addition to other remedies provided by law. The County expressly reserves the right to seek abatement through separate civil proceedings in addition to and not in lieu of administrative enforcement under this chapter. Nothing contained herein shall preclude civil actions alleging failure to comply with the provisions of this chapter constitute negligence per se.~~

~~(Ordinance 11-87, 9.17.87; Ordinance 1-00, 4.12.00; Ordinance 7-02, 6.14.02)~~

##### ~~5.020.010—Exemptions.~~

~~Unless specifically provided otherwise, LC 5.700 through LC 5.750 does not apply to:~~

~~A.— Disposal sites operated in compliance with regulations promulgated by the Environmental Quality Commission, Department of Environmental Quality, or other ordinances or regulations of the County.~~

~~B.— Outdoor storage of inoperable or unregistered vehicles when the land has a zoning district which permits or conditionally permits outdoor storage of inoperable or used vehicles and the vehicles are stored in accordance with applicable provisions.~~

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~~C. Property located within the corporate limits of incorporated cities.~~

~~(Ordinance 11-87, 9.17.87; Ordinance 1-00, 4.12.00; Ordinance 7-02, 6.14.02)~~

#### ~~5.020.015 Definitions.~~

For the purposes of LC 5.700 through LC 5.750, the following words and phrases have the meanings ascribed to them:

——“Director” means the Director of Public Works, the Director's designee, or the Manager of the Land Management Division, or the Manager's designee.

——“Certificate of Fitness” means a certificate issued for a particular property by the Oregon Health Division following a satisfactory site characterization by a licensed drug laboratory decontamination contractor, sampling and testing by an independent, third party approved by the Oregon Health Division, and any necessary contamination reduction of the property by such licensed contractor. The certificate authorizes removal of the property from the State Building Codes Division's "Unfit for Use" listing and allows reuse of the property.

——“Illicit Discharge” means any discharge to the storm water system that is not composed entirely of storm water, with the following exceptions:

——A. Discharges from NPDES permitted industrial sources;

——B. Firefighting activities;

——C. Water line flushing;

——D. Landscape irrigation;

——E. Diverted stream flows;

——F. Rising ground water;

——G. Uncontaminated ground water infiltration;

——H. Uncontaminated pumped ground water;

——I. Discharges from potable water sources;

——J. Foundation drains;

——K. Air conditioning condensation;

——L. Irrigation water;

——M. Springs;

——N. Water from crawl space pumps;

——O. Footing drains;

——P. Lawn watering;

——Q. Individual residential car washing;

——R. Flows from riparian habitats and wetlands;



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~~— S. De-chlorinated swimming pool discharges;~~

~~— T. Street wash water.~~

~~— “Inoperable Vehicle” means a vehicle which:~~

~~— A. Has been left on private property for more than 30 days; and~~

~~— B. Has broken or missing window(s); or broken or missing windshield; or a missing wheel(s), or a missing tire(s); or lacks an engine or will not run; or lacks a transmission or the transmission is inoperable; and~~

~~— C. The vehicle is over three years old.~~

~~— D. For purposes of this section, a showing that the vehicle(s) in question is unlicensed and, if operated on a public highway of this state, would be in violation of one or more of the following provisions: ORS 815.020, ORS 815.100, ORS 815.125, ORS 815.155, ORS 815.160, ORS 815.170, ORS 815.180, ORS 815.195, ORS 815.235, ORS 815.245 through ORS 815.260, ORS 815.270, and ORS 815.295 constitutes a rebuttable presumption that it is inoperable.~~

~~— “Motor Vehicle” means a vehicle that is self-propelled or designed for self-propulsion.~~

~~— “Noxious Vegetation” mean including:~~

~~— A. Weeds more than 10 inches high.~~

~~— B. Grass more than 10 inches high unless that vegetation is an agricultural crop and does not create a fire hazard or traffic hazard.~~

~~— C. Poison Oak or Poison Ivy.~~

~~— D. Tansy Ragwort.~~

~~— E. Blackberry bushes that extend into a public thoroughfare or across a property line.~~

~~— F. Thistle.~~

~~— “Nuisance” means including but not limited to any annoying, unpleasant, or obnoxious condition or practice causing an unreasonable threat to the public health, safety and welfare and defined as a nuisance in LC 5.720 through LC 5.750.~~

~~— “Person” means including individuals, corporations, associations, firms, partnerships and joint stock companies.~~

~~— “Person in Charge of Property” means an owner, agent, occupant, lessee, tenant, contract purchaser, or other responsible person having possession or control of the property or the supervision of a construction project on the property.~~

~~— “Responsible Person” means as defined in LC 5.005(7), and includes:~~

~~— A. The person in charge of property on which the nuisance exists or which abuts a public way where a nuisance exists.~~

~~— B. The person who causes the nuisance to come into or continue in existence.~~

~~— “Putrescible Material” means organic material that decomposes and gives rise to foul or offensive odors, or foul or offensive by-products.~~



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—“Solid Waste” means including all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, waste paper and cardboard, grass clipping, composts, sewer sludge, residential, commercial, and industrial appliances, equipment and furniture, discarded or inoperable vehicles, vehicle parts or vehicle tires, manure, vegetable or animal solid and semisolid waste and dead animals. The term Solid Waste does not include:

—A. Materials used for fertilizer or for other productive purposes on land in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential nonagricultural purposes.

—B. Septic tank and cesspool pumping or chemical toilet waste;

—C. Reusable beverage containers as defined in ORS 459A.725.

—D. Source separated principal recyclable materials as defined in ORS Chapter 459 and the Rules promulgated thereunder, which have been purchased or exchanged for fair market value.

—“Storm Water Sewer System”, “Storm Water System” means, for purposes of this chapter, a drain and collection system, including roads, ditches, channels, pipes, and culverts, designed and/or operated by Lane County for the sole purpose of collecting rain and other naturally occurring precipitation or storm water runoff. The Storm water sewer system is not a combined sewer system and does not include conveyance of any wastewater.

—“Storm Water”, “Storm Water Runoff” means water that washes off or runs off the land as a result of naturally occurring precipitation, such as a snow or rainstorm, which does not infiltrate into the soil.

—“Tire” means the band of material used on the circumference of a wheel which forms the tread that comes in contact with the surface of the road.

—“Unfit for Use” means a designation by the Oregon Health Division that means that the property has been found to be, or there are reasonable grounds to believe that the property was, the site of illegal drug manufacture and may be contaminated with hazardous chemicals or substances and therefore is not fit to use until appropriate site assessment and any necessary contamination reduction procedures have been performed by a licensed drug laboratory decontamination contractor.

—“Unregistered Vehicle” means a vehicle without a license plate or with an expired license plate.

—“Vegetation” means plant life, including but not limited to, trees, shrubs, flowers, weeds and grass.

—“Vehicle” means any device in, upon, or by which any person or property is or may be transported, or drawn upon a public highway, and includes vehicles that are propelled or powered by any means, but does not include a device propelled by human power.

—“Waste” means useless unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of Solid Waste or Waste, may from time to time have value and thus be utilized, shall not remove them from the definition.

(Ordinance 11-87, 9.17.87; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00; Ordinance 7-02, 6.14.02; Ordinance 1-04, 4.9.04; Ordinance 1-12; 3.15.12)

#### 5.020.020 – Nuisances Vegetation.

A. Any vegetation that creates the following conditions on any public or private property shall constitute a nuisance and no person responsible shall cause or permit such conditions to exist:

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1. ~~—Vegetation that is a hazard to pedestrian or vehicular use of any sidewalk or street by obstructing passage or vision. The hazards include, but are not limited to:~~
    - a. ~~—Vegetation that encroaches upon or overhangs a pedestrian way or adjacent parking strip lower than nine feet or encroaches upon or overhangs a street lower than 15 feet.~~
    - b. ~~—Vegetation which obstructs motorist or pedestrian view of traffic signs and signals, street lights and name signs, or other safety fixtures or markings placed in the public way.~~
  2. ~~—Vegetation that is an obstruction of access to a use of any public facilities placed within the public way.~~
  3. ~~—Noxious vegetation on public or private property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987. No owner or person in charge of such property may allow noxious vegetation to be on the property or encroach into the right-of-way of a public thoroughfare abutting on the property.~~
    - B. ~~—A failure to comply with this section shall be cause for a responsible person to be subject to the administrative enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.~~
- ~~(Ordinance 11-87, 9.17.87; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00; Ordinance 7-02, 6.14.02)~~

### 5.020.025 – Nuisance Storage of Tires.

- A. ~~The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist:~~
    1. ~~The storage of 4 or more used tires on private or public property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987, unless the tires are used for agricultural or landscaping purposes.~~
    2. ~~The storage of 10 or more used tires on private or public property not described in LC 5.725(1)(a) above, unless the tires are used for agricultural or landscaping purposes.~~
    3. ~~Notwithstanding the above, the storage of tires on private property is permitted if the property owner is conducting a legally operated business that normally deals in tires, or if the tires are completely enclosed within a building and do not constitute a fire hazard or health hazard.~~
  - B. ~~Failure to comply with this section shall be cause for a responsible person to be subject to the administrative civil penalty procedures set forth in this chapter. The imposition of a monetary penalty does not relieve a responsible person of the duty to abate the nuisance.~~
- ~~(Ordinance 11-87, 9.17.87; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00)~~

### 5.020.030 – Nuisance Vehicle Storage.

- A. ~~The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist:~~

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1. ~~Storing or permitting to be stored in excess of 90 days within any consecutive 12-month period an unregistered or inoperable vehicle or portion thereof, or two or more unregistered or inoperable vehicles at any one time on any private property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987, unless the vehicle is completely enclosed within a building, or is not visible from any public way and is located more than 200 feet from any property line, or unless it is stored on the premises of a business enterprise dealing in used vehicles lawfully conducted within the County.~~

2. ~~Storing or permitting the storing of more than three inoperable vehicles upon private property within the County and not described in LC 5.730(1)(a) above, unless the vehicle is completely enclosed within a building, or is not visible from any public way and is located more than 200 feet from any property line, or unless it is stored on the premises in connection with a lawfully conducted business.~~

B. ~~A failure to comply with this section shall be cause for a responsible person to be subject to the administrative enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.~~

~~(Ordinance 11-87, 9.17.87; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00)~~

### ~~5.020.035 – Accumulation, Collection or Storage of Solid Waste or Waste.~~

A. ~~Any accumulation, collection or storage of solid waste or waste, shall constitute a nuisance and no person responsible shall cause or permit such condition to exist unless the person responsible is licensed by lawful authority to operate a business specifically for those purposes.~~

B. ~~A failure to comply with this section shall be cause for a responsible person to be subject to the administrative enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.~~

~~(Ordinance 11-87, 9.17.87; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00)~~

### ~~5.020.040 – An Abandoned, Discarded, or Unattended Icebox, Refrigerator, or Other Container with a Compartment.~~

A. ~~Any abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and an airtight door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside shall constitute a nuisance and no person responsible shall cause or permit such condition to exist.~~

B. ~~A failure to comply with this section shall be cause for a responsible person to be subject to the administrative enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.~~

~~(Ordinance 11-87, 9.17.87; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00)~~

### ~~5.020.045 – Illicit Discharge.~~

~~LC 5.747(1) through LC 5.747(6) below apply outside the Eugene Urban Growth Boundary as defined by LC 10.600-20, and outside the Springfield Urban Growth Boundary as defined by LC 10.600-10.~~

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~~A.— A responsible person shall not allow an illicit discharge from his or her premises to flow out on or under a public way.~~

~~B.— A responsible person shall not place or cause to be placed a substance which is harmful to or has a tendency to clog the County storm water system or permit such substance in the control of such person to enter the County storm water system.~~

~~C.— A person shall not discharge, or cause to be discharged, any substance other than storm water, except discharges authorized by written approval of the Oregon Department of Environmental Quality (DEQ) or the Director. The Director may deny approval to discharge into the County storm water system if the discharge poses a threat to health, safety, public welfare, or the environment, or is otherwise prohibited by law. The Director may withdraw approval to discharge if the Director determines that a discharge poses a threat to health, safety, public welfare, or the environment, or is otherwise prohibited by law. Any person lawfully discharging pursuant to a National Pollutant Discharge Elimination System permit as of March 10, 2004 is deemed to have received written approval from the Director. Such approval may be withdrawn if the Director determined that the discharge poses a threat to health, safety, public welfare, of the environment, or is otherwise prohibited by law.~~

~~D.— Every establishment or place where the substances prohibited in LC 5.747(2) above is or may be produced is hereby required to install such necessary catch basin traps or other devices for the purpose of preventing such substance from entering the County storm water system. Where the Director reasonably believes that any such substance may be produced, the Director may require any responsible person to furnish to the County plans prepared by a registered engineer showing the proposed method of elimination. Such device shall be approved only if tests and subsequent engineering data establish that a desirable standard of removal is produced.~~

~~E.— A responsible person shall not allow storm water to flow out on or under a public way in a manner that creates a traffic or other hazard for those lawfully using the public way or that creates a hazard to improvements within the public way.~~

~~F.— A failure to comply with this section is cause for a responsible person to be subject to enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.~~

~~G.— Lane County has adopted the following Illicit Discharge regulations to be applied by the City of Springfield on urbanizable land within the Springfield Urban Growth Boundary as set forth in LC 10.600-10.~~

~~1.— The Springfield Illicit Discharge regulations as adopted by the Lane County Board of Commissioners as part of Ordinance No. 3-10~~

~~2.— The Lane County Land Management Division will maintain and make available to the public copies of the applicable Illicit Discharge regulations.~~

~~H.— Lane County has adopted the following Illicit Discharge regulations to be applied by the City of Eugene on urbanizable land within the Eugene Urban Growth Boundary as set forth in LC 10.600-20.~~

~~1.— The Eugene Illicit Discharge regulations as adopted by the Lane County Board of Commissioners as part of Ordinance 01-12.~~

~~2.— The Lane County Land Management Division will maintain and make available to the public copies of the applicable Illicit Discharge regulations.~~

~~(Ordinance 1-04, 9.4.04; 3-10, 7.9.10; Ordinance 1-12, 3.15.12)~~

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~~5.020.050 — Properties Declared "Unfit for Use" Due to Illegal Drug Manufacturing Contamination.~~

~~A. — Property placed on the Oregon Health Division "unfit for use list" pursuant to ORS 453.879 because it has been used for the manufacture of illegal drugs shall be considered a nuisance 90 days after it has been listed and shall remain a nuisance until such time as it is issued a "Certificate of Fitness" by the Oregon Health Division, and no responsible person shall cause or permit such a condition to exist.~~

~~B. — A failure to comply with this section shall be cause for a responsible person to be subject to the administrative enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.~~

~~(Ordinance 7-02, 6.14.02)~~

~~5.020.055 — Failure to Comply.~~

~~A. — A person who fails to comply with any provision of Lane Code shall be subject to administrative enforcement pursuant to LC Chapter 5, except for those provisions which are specified to be violations, or which specify incarceration as a penalty. A notice of failure to comply may be signed, issued and served by any designated agent of the County.~~

~~B. — A person who fails to comply with LC 5.600 et seq. is subject to a monetary penalty of not less than \$500 for a first failure to comply and \$1,000 for each subsequent failure to comply committed within one year of the first occurrence. However, the hearings officer may suspend up to \$400 of the monetary penalty to be paid for a first offense upon receiving from the person who has failed to comply a signed, verified statement that said person agrees not to cause any further failure to comply with LC 5.600 et seq. within the following year, and further stating that if it is determined that said person should so fail to comply, the suspended portion of the monetary penalty amount be then due and payable, in addition to any amounts to be due for the subsequent failures to comply. Persons who fail to comply with LC 5.600 et seq. are also subject to the administrative civil penalty procedures set forth in this chapter. Any enforcement proceedings allowed herein may be commenced by the Manager. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance. For purposes of this subsection a separate failure to comply will be deemed to have occurred for every occurrence that is more than 15 minutes from the previous failure to comply.~~

~~C. — Dog owners shall renew the dog license before it becomes delinquent. A late fee of \$10 will be charged if the license is renewed after it has become delinquent.~~

~~D. — A license tag issued to the dog shall be attached securely to a collar or harness on the dog for which it is issued. If a license is lost, the owner shall obtain a duplicate license tag upon satisfactory proof of loss and payment of the required fee.~~

~~E. — A person who violates this section commits a Class B Infraction.~~

~~(Ordinance 8-81, 6.3.81; Ordinance 2-82, 4.9.82; Ordinance 21-83, 11.29.83; Ordinance 11-87, 9.17.87; Ordinance 6-89, 5.24.89; Ordinance 1-93, 4.16.93; Ordinance 5-99, 7.28.99; Ordinance 1-00, 4.12.00; Ordinance 4-00, 5.10.00)~~

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## **6.225 - Prohibited Noise**

### **6.225.005 - Prohibited Noise Definitions**

For purposes of this subchapter the following terms and definitions apply unless the context requires otherwise:

“Idling Speed” means that speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.

“Manager” means the Manager of the Land Management Division of the Department of Public Works, or the Manager's designee.

“Noise Sensitive Unit” means any building or portion thereof, vehicle, boat or other structure adapted or used for the overnight accommodation of persons, including, but not limited to individual residential units, individual apartments, trailers, hospitals and nursing homes.

“Person” means in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.

“Plainly Audible Sound” means any sound which is clearly distinguishable from other sounds, such as, but not limited to, sound for which the information content of that sound is unambiguously communicated to the listener, understandable spoken speech, comprehension of whether a voice is raised or normal, or comprehensible musical rhythms.

“Sound Producing Device” means including but not limited to:

- A. Loudspeakers, public address systems.
- B. Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems including those installed in a vehicle.
- C. Musical instruments, amplified or unamplified.
- D. Sirens, bells or steam whistles attached to a stationary device.
- E. Vehicle engines or exhausts discharging into open air, when the vehicle is not on a public right-of-way, particularly when the engine is operated above idling speed.
- F. Vehicle tires, when caused to squeal by excessive speed or acceleration.
- G. Domestic tools, including electric drills, chain saws, lawn mowers, electric saws, hammers and similar tools, but only between 10:00 p.m. and 7:00 a.m. of the following day.
- H. Heat pumps, air conditioning units and refrigeration units, including those mounted on vehicles.

“Vehicle” means automobiles, motorcycles, motorbikes, trucks, buses and snowmobiles.

### **6.225.010 - Prohibitions**

- A. **Sound Producing Devices.** No person shall create or assist in creating or permit the continuance of noise from a sound producing device, by the following acts, or in excess of the following limits:



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1. **When measurement made. When measured at or within the boundary of the property on which a noise sensitive unit--which is not the source of the sound--is located, or within a noise sensitive unit which is not the source of the sound,**
  - a. exceeds 50 dBA between the hours of 10:00 p.m. and 7:00 a.m. of the following day.
  - b. exceeds 60 dBA between the hours of 7:00 a.m. and 10:00 p.m. of the same day.
2. **When measurement not made. Is plainly audible at any time between 10:00 p.m. and 7:00 a.m. of the following day**
  - a. Within a noise sensitive unit which is not the source of the sound, or
  - b. On a public right of way at a distance of 50 feet or more from the source of the sound.

### 6.225.013 - Liability of Person in Control of Property

- A. A person in control of property is liable and subject to penalties to the same extent as a person who violates any of the provisions of this Ordinance if such person:
  1. Has actual knowledge of the violation at the time it occurs;
  2. Has the actual ability and legal right to prevent the violation by ejecting a person creating the noise from the property, removing or causing the termination of the operation of the noise-producing device or activity, or otherwise preventing the violation; and
  3. Fails, refuses, or neglects to prevent the violation.
- B. Nothing in this section renders any person in control of property liable for noise violations by trespassers or other persons using the property without the implied or express consent of the person in control of the property, nor does anything in this chapter require a person in control of property to assume a substantial risk of physical injury to prevent a violation.

### 6.225.015 - Exemptions

The provisions of this subchapter do not apply to:

- A. Sounds caused by organized athletic, religious, educational, civic or other group activities, when such activities are conducted on property generally used for such purposes, including stadiums, parks, schools, churches, athletic fields, race tracks, airports and waterways between the hours of 7:00 a.m. and 11:00 p.m. of the same day; provided, however, that this exemption does not impair the Manager's power to declare that such events or activities violate other applicable laws, ordinances or regulations.
- B. Sound caused by emergency work reasonably necessary to prevent injury to persons or property, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, whether or not such work is performed by a public or private agency, upon public or private property.
- C. Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations. Notwithstanding anything within LC 6.225.005 et seq. to the contrary, it is unlawful for any railroad "retarder" as that is defined in 40 CFR 201.1(y), to be used, unless such retarder has shielding sufficient to prevent both:

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1. **impulse sounds, defined as a single pressure peak or a single burst (multiple pressure peaks), as measured on a C weighted meter with fast response, and**
  2. **sounds in octave bands of 2000 Hz and above, where either of such sounds exceed either 10 dBA between the hours of 10:00 p.m. and 7:00 a.m. of the following day, or 12 dBA between the hours of 6:00 p.m. to 10:00 p.m., over the ambient noise level within a sound sensitive unit with a window ajar and measured from no closer than three (3) feet of the window. The ambient noise level is the total of all noise in the environment, other than noise from railroad operations, averaged over 10 minutes in dBA.**
- D. **Sound caused by bona fide use of emergency warning devices and alarm systems authorized by LC 3.400 through LC 3.445.**
- E. **Sound caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9:00 a.m. and 4:00 p.m. of the same day, excluding weekends, unless such permit expressly authorizes otherwise.**
- F. **Sounds caused by commercial, industrial, agricultural, timber harvesting, utility or construction organizations or workers during their normal operations.**
- G. **Sounds caused by a sound producing device used by a person pursuant to a variance issued by the Manager as provided in LC 6.225.020.**
- H. **Sounds caused by motor vehicles operated on any highway and subject to ORS 815.250.**

**6.225.020 - Variances**

**Any person who owns or controls any sound producing device or other sound source, or who is engaged in or planning any activity which violates, will violate, or may violate any provision of this chapter, or any property owner or person in control of property on which such sound source is located or such activity is planned, may apply to the Manager for a variance.**

- A. **Application. Applications for a noise variance shall be made to the Manager, and must include:**
1. **The provision from which the variance is sought,**
  2. **The period of time the variance is to apply,**
  3. **The reason for which the variance is sought,**
  4. **An application fee, which may be waived by the Manager if they find that the imposition of the fee would constitute a substantial financial hardship to the applicant.**
- B. **Review Considerations. In considering a request for a variance, the Manager may approve or deny the application, based on consideration of the following factors:**
1. **The potential nature and duration of the sound caused or to be caused by the device or activity;**
  2. **The protection of the health, safety, and welfare of citizens, and the potential effect of the sound on the sleep, peace, quiet, comfort or repose of other persons;**
  3. **The feasibility and cost of noise abatement and the financial ability of the owner, occupant or other person producing noise or in control of property to comply with this chapter;**



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4. **The loss or inconvenience which would result to any party in interest from the denial of the variance;**
  5. **The past, present, and future patterns of land use;**
  6. **Whether previous variances have been granted and the applicant's record of compliance with the terms and restrictions of any previous variances;**
  7. **In the case of a person requesting a variance for a heating or cooling device, any special medical requirements for continued use of the device must be considered**
  8. **Whether compliance with the provision would produce no benefit to the public.**
- C. Decision.**
1. **Within ten days of receiving the application, the Manager must deny, approve, or approve it with conditions.**
  2. **The decision must indicate a specific time interval for which the variance is approved.**
  3. **The decision may impose such conditions or restrictions as are deemed reasonably necessary to ensure the peace, quiet, repose, health, welfare, and safety of the residents of the County and to effectuate the purposes of this chapter.**
- D. Notification. Notice of variance determinations where the sound source will be on private property shall be provided as follows:**
1. **Notice of variance determinations must be provided to property owners and residents within 500 feet of the property where the sound will be generated.**
  2. **Notice of the variance determination must include:**
    - a. **A description of the location of the property for which the variance is sought by street address or, if there is no street address, by legal description or other description reasonably calculated to apprise persons receiving the notice of the location of the property;**
    - b. **A general description of the variance requested and the type of sound-producing activity or device which is proposed; and**
    - c. **A statement that an appeal may be filed with the Lane County Circuit Court pursuant to ORS 34.010 through ORS 34.100.**
- E. Revocation. At any time before or during the operation of any variance granted by the Manager, the Manager may revoke the variance for good cause.**

**6.225.025 - Sound Measurement**

- A. **If sound measurements are made, they must be made with a sound level meter. The sound level meter must be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this subchapter, a sound level meter shall contain at least an A-weighted and C-weighted scale and both fast and slow meter response capability and the capability to perform time averaged sound measurement. A fast setting must be utilized unless a different setting is called for elsewhere in this Code.**

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- B. If measurements are made, personnel making those measurements must have completed training in the techniques of sound measurement and the use of the sound level meter from the Oregon Department of Environmental Quality personnel or other qualified acoustical sound engineer. Measurement procedures consistent with that training must be followed.**
- C. Measurements may be made at or within the boundary of the property on which a noise sensitive unit which is not the source of the sound is located, or within a noise sensitive unit which is not the source of the sound.**

**6.225.030 - Remedies**

- A. Administrative Enforcement. A person who violates any provision of LC 6.225.005 through LC 6.225.025 is subject to administrative enforcement pursuant to LC Chapter 5, and/or abatement pursuant to the nuisance abatement procedures set forth in LC Chapter 9.**
- B. Remedies Cumulative. The provisions of this subchapter are cumulative and nonexclusive and do not affect any other claim, cause of action or remedy; nor, unless specifically provided, do the provisions of this subchapter repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but are additional to existing legislation and common law on such subject. In the case of an adjudicated conflict between the provisions of this subchapter and any Federal statute or regulation promulgated thereunder, such statute or regulation supersede the provisions of this subchapter and may be enforced, to the fullest extent allowed by law, by Lane County.**

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**REGULATIONS AND ENFORCEMENT****9.020 Illegal Dumping and Penalty**

(1) Any person who throws, places, or disposes of, or directs or permits another person to throw, place, or dispose of refuse, electronic waste, yard debris, construction/demolition debris, or hazardous waste upon private land without the permission of the landowner, or upon public lands, public places, or in public waters, other than in receptacles provided for the purpose of collecting such waste, commits the violation of illegal dumping.

(2) A person is presumed to have participated in illegal dumping in violation of LC 9.020(1) where that person's name or other indicia of identity, indicia that would ordinarily denote a person's ownership of the item, such as a name or an addressee on an envelope, is found on an item that has been illegally thrown, placed, or disposed of on public or private land, or in public waters. A person may rebut ~~this the~~ presumption **in this section** by providing the County with evidence that establishes that the person was ~~not~~ likely **not** responsible for the illegal dumping of the item in violation of LC 9.020(1).

(3) Illegal Dumping is a Class A violation, **pursuant to ORS Chapter 153.** ~~The presumptive fine for the violation of LC 9.020(1) is four hundred and thirty five dollars (\$435.00). However, fines associated with the violation of LC 9.020(1) may range from a minimum of two hundred and twenty dollars (\$220.00) to a maximum of two thousand dollars (\$2,000.00) depending on the severity and nature of the violation.~~ Repeated violations may be subject to the maximum fine even if the individual violations are not severe. Fines are to be determined by the enforcement officer at the time a violation is identified. *(Revised by Ordinance No. 13-07, Effective 1.11.08; 6-12, 11.17.12)*

**9.021 Illicit Discharge**

(1) **Definitions.** For the purposes of this section, the following words and phrases have the following ascribed meanings:

(a) **Director.** The Director of the Department of Public Works or the Director's designee.

(b) **Illicit Discharge.** Any discharge to the stormwater system that is not composed entirely of stormwater, as determined by the Environmental Protection Agency Stormwater Phase II Final Rule, as it may be modified from time to time. The following non-stormwater discharges are not categorized by Oregon Department of Environmental Quality (DEQ) to be an Illicit Discharge, unless they become a source of pollutants:

(i) A discharge regulated under a separate DEQ National Pollutant Discharge Elimination System (NPDES) permit.

(ii) A discharge that originates from emergency firefighting activities or fire hydrant flushing.

(iii) Uncontaminated water line flushing.

(iv) Landscape irrigation, only if pesticides and fertilizers are applied in accordance with the manufacturer's instructions.

(v) Diverted stream flows.

(vi) Uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)) to separate storm sewers;

(vii) Rising groundwaters.

(viii) Uncontaminated pumped groundwater.

(ix) Potable water sources (including potable groundwater monitoring wells and draining and flushing of municipal potable water storage reservoirs).

(x) Start up flushing of groundwater wells.

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(xi) Foundation footing and crawlspace drains (where flows are not contaminated [i.e., process materials or other pollutant]);

(xii) Uncontaminated air conditioning condensation or compressor condensate.

(xiii) Irrigation water, only if pesticides and fertilizers are applied in accordance with the manufacturer's instructions).

(xiv) Springs.

(xv) Lawn watering.

(xvi) Individual residential car washing.

(xvii) Charity car washing (provided that chemicals, soaps, detergents, steam or heated water are not used. Washing is restricted to the outside of the vehicle, no engines, transmissions or undercarriages).

(xviii) Flows from riparian habitats and wetlands.

(xix) De-chlorinated swimming pool discharges including hot tubs (heated water must be cooled for at least 12 hours prior to discharge).

(xx) Street and pavement wash waters (provided that chemicals, soaps, detergents, steam or heated water are not used).

(xxi) Routine external building wash-down (provided that chemicals, soaps, detergents, steam or heated water are not used).

(xxii) Water associated with dye testing activity.

(xxiii) Discharges of treated water from investigation, removal and remedial actions selected or approved by DEQ pursuant to ORS Chapter 465.

(c) Illicit connection.

(i) Any surface or subsurface drain or conveyance that allows an illicit discharge to enter the stormwater system, including but not limited to, (a) any conveyances that allow any illicit discharge to enter the stormwater system and (b) any connections to the stormwater system from indoor drains and sinks. The above activities are considered illicit connections regardless of whether the drain, conveyance, or connection was previously allowed, permitted, or approved by a government agency; or

(ii) Any drain or conveyance connected from a commercial or industrial land use to the stormwater system that has not been documented in plans, maps, or equivalent records and approved by the County through the Facility Permits process.

(d) **Non-stormwater Discharge.** Any discharge to the public storm drainage, groundwater and surface water systems that is not composed entirely of stormwater.

(e) Person in Charge of Property. An owner, agent, occupant, lessee, tenant, contract purchaser, or other responsible person having possession or control of the property or the supervision of a construction project on the property.

(f) Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sand, soil, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

(g) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips. The term "premises" shall include recreational vehicles.

(h) Public Way. Any property over which the public has acquired a right of use or passage through dedication, grant, use, or conduct. Public ways include, but are not limited to, "public roads," as defined in LC 15.010(41), easements, and drainage ways.

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(i) **Recreational Vehicle**. A vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motor homes, travel trailers and truck campers.

(j) **Responsible Person**. As defined in LC 5.025.005, and including: (a) The person in charge of property from which the discharge emanates, and (b) The person who directly or indirectly causes the discharge.

(k) **Stormwater Sewer System, Stormwater System, Storm Drainage System**. For purposes of this chapter, a drain and collection system owned, operated, or under the control of Lane County for the sole purpose of collecting naturally occurring precipitation or stormwater runoff, including roads, ditches, channels, pipes, and culverts, catch basins, manholes. The stormwater sewer system is not a combined sewer system and does not include conveyance of any wastewater.

(l) **Storm Water, Stormwater, Stormwater Runoff, Storm Water Runoff**. Water that washes off or runs off the land as a result of naturally occurring precipitation, such as a snow or rainstorm, which does not infiltrate into the soil, as determined by the Environmental Protection Agency Stormwater Phase II Final Rule, as it may be modified from time to time.

### (2) Purpose and Scope

The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the County, protect groundwater and waters of the state to which stormwater systems discharge, through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable under Federal and Oregon law.

### (3) Applicability

(a) This section applies to illicit discharges and to discharges from illicit connections, when such discharges occur on property located outside the Urban Growth Boundaries of the cities of Springfield and Eugene, as defined in LC 10.600-10 and LC 10.600-20, respectively.

(b) For areas within the City of Springfield Urban Growth Boundary, the Lane County Board of Commissioners has adopted the City of Springfield's illicit discharge regulations as part of Ordinance No. 3-10. Those regulations shall be applied by the City of Springfield within the Springfield Urban Growth Boundary as set forth in LC 10.600-10.

(c) For areas within the City of Eugene Urban Growth Boundary, the Lane County Board of Commissioners has adopted the City of Eugene's illicit discharge regulations as part of Ordinance No. 01-12. Those regulations shall be applied by the City of Eugene within the Eugene Urban Growth Boundary as set forth in LC 10.600-10.

(d) The County retains the right to enforce the adopted regulations in 9.021(3)(b) and (c), pursuant to LC 5.030(1)(e), where compliance cannot be obtained by the cities.

### (4) Requirements and Prohibitions

#### (a) Prohibited Discharges:

(i) No person may place or cause to be placed in the County Stormwater Sewer System a substance which is harmful to water quality or has a tendency to clog the County Stormwater Sewer System. No person, within the person's ability to control, may permit a substance that is harmful to or has a tendency to clog the County Stormwater Sewer System, to enter the County Stormwater System.

(ii) No person may allow an illicit discharge from his or her premises to flow out, on, or under a public way or public property.

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(iii) No person may permit any discharge from an illicit connection to flow out, on, or under a public way or public property.

(b) Exceptions to Prohibited Discharges. Except as provided in this subsection (b), no person may discharge or cause to be discharged into the County Storm Water System, any substance other than stormwater:

(i) Discharges authorized by written approval of the Oregon Department of Environmental Quality or the Director.

(ii) Discharges pursuant to a National Pollutant Discharge Elimination System permit issued on or before March 10, 2004, which are deemed to have received written approval from the Director.

(iii) The foregoing exceptions notwithstanding, the Director may deny or withdraw approval for discharge, including the approval under subsection (ii) immediately preceding, if the Director determines that discharge poses a threat to health, safety, public welfare, or the environment, or is otherwise prohibited by law.

**(5) Enforcement**

(a) Illicit Discharge is a Class A violation, pursuant to ORS Chapter 153.

(b) A person who violates any provision of LC 9.021 is subject to administrative enforcement pursuant to LC Chapter 5 and Chapter 15, and abatement pursuant to the nuisance abatement procedures set forth in LC Chapter 9. Abatement or correction under those provisions may include installation of infrastructure as necessary to prevent illicit discharges from entering the public way or public property. Repeated violations may be subject to the maximum fine even if the individual violations are not severe. Fines are to be determined by the enforcement officer at the time a violation is identified.



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### NUISANCE

#### 9.570 Purpose.

The purpose of LC 9.570 through 9.592 is to regulate the accumulation of waste, solid waste, tires, inoperable vehicles and vegetation on public and private property.

#### 9.572 Exemptions.

Unless specifically provided otherwise, LC 9.570 through 9.592 does not apply to the following:

(1) Disposal sites operated in compliance with regulations promulgated by the Environmental Quality Commission, Department of Environmental Quality, or other ordinances or regulations of the County.

(2) Outdoor storage of inoperable or unregistered vehicles when the land has a zoning district which permits or conditionally permits outdoor storage of inoperable or used vehicles and the vehicles are stored in accordance with applicable provisions.

(3) Property located within the corporate limits of incorporated cities.

#### 9.574 Definitions.

For the purposes of LC 9.570 through 9.592, the following words and phrases have the meanings ascribed to them:

(1) Abandoned Structure. A vacant structure that is an attractive nuisance.

(2) Attractive Nuisance. Buildings, structures, or premises that are in an unsecured, derelict or dangerous condition, including but not limited to: (a) Unguarded machinery, equipment, or other devices which are attractive, dangerous and accessible to children; (b) Lumber, logs, or pilings placed or stored in a manner so as to be attractive, dangerous and accessible to children; (c) An open pit, quarry, cistern, or other excavation without safeguards or barriers to prevent such places from being used by children; or (d) An open, vacant structure which is attractive, dangerous and accessible to children or which is used for habitation by trespassers. "Attractive Nuisance" does not include authorized construction projects with reasonable safeguards to prevent injury or death to playing children.

(3) Certificate of Fitness. A certificate issued for a particular property by the Oregon Health Division following a satisfactory site characterization by a licensed drug laboratory decontamination contractor, sampling and testing by an independent, third party approved by the Oregon Health Division, and any necessary contamination reduction of the property by such licensed contractor. The certificate authorizes removal of the property from the State Building Codes Division's "Unfit for Use" listing and allows reuse of the property.

(4) Debris. An accumulation of decomposed animal or vegetable matter, garbage, rubbish, manure, offal, ashes, discarded containers, waste, paper, debris, trash, hay, grass, straw, weeds, litter, rags, or other refuse matter or substance which by itself in conjunction with other substances is deleterious to public health or comfort, or is unsightly, or creates an offensive odor.570-

(5) Derelict Structure. A building or structure that is unfit for human habitation, poses an incipient hazard, or is detrimental to public health, safety, or welfare as a result of one or more of the following conditions: (a) is unoccupied or unsecured; (b) is partially constructed; (c) is an abandoned structure or attractive nuisance; (d) is in condition of deterioration; (e) has an infestation of pests; (f) has doors or windows boarded over; or (g) other condition that in the opinion of the health officer is detrimental to public health, safety, or welfare.



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(6) **Director**. The Director of Public Works, the Director's designee, or the Manager of the Land Management Division, or the Manager's designee.

(7) **Emergency**. A sudden or unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

(8) **Imminent Threat**. Serious harm that is relatively certain to occur within a short timeframe (immediate as opposed to remote) if the nuisance is not remedied.

(9) **Inoperable Vehicle**. A vehicle which: (a) Has been left on private property for more than 30 days; and (b) Has broken or missing window(s); or broken or missing windshield; or a missing wheel(s), or a missing tire(s); or lacks an engine or will not run; or lacks a transmission or the transmission is inoperable; and (c) The vehicle is over three years old. (d) For purposes of this section, a showing that the vehicle(s) in question is unregistered and, if operated on a public highway of this state, would be in violation of one or more of the following provisions: ORS 815.020, 815.100, 815.125, 815.155, 815.160, 815.170, 815.180, 815.195, 815.235, 815.245 through 815.260, 815.270, and 815.295 constitutes a rebuttable presumption that it is inoperable.

(10) **Motor Vehicle**. A vehicle that is self-propelled or designed for self-propulsion.

(11) **Noxious Vegetation**: Includes: (a) Weeds more than 10 inches high. (b) Grass more than 10 inches high unless that vegetation is an agricultural crop and does not create a fire hazard or traffic hazard. (c) Poison Oak or Poison Ivy. (d) Tansy Ragwort. (e) Blackberry bushes that extend into a public thoroughfare or across a property line. (f) Thistle.

(12) **Nuisance**. Includes, but is not limited to any annoying, unpleasant, or obnoxious condition or practice causing an unreasonable threat to the public health, safety and welfare, including activities defined as a nuisance in LC 9.576 through 9.590.

(13) **Person**. Includes individuals, corporations, associations, firms, partnerships and joint stock companies.

(14) **Person in Charge of Property**. An owner, agent, occupant, lessee, tenant, contract purchaser, or other responsible person having possession or control of the property or the supervision of a construction project on the property.

(15) **Premises**. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips. The term "premises" shall include recreational vehicles.

(16) **Putrescible Material**. Organic material that decomposes and gives rise to foul or offensive odors, or foul or offensive by-products.

(17) **Recreational vehicle**. A vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motor homes, travel trailers and truck campers.

(18) **Repeat Offender**. A responsible person who has caused to come into or continue in existence a nuisance similar to a nuisance for which the person was responsible within the past five years.

(19) **Responsible Person or Person Responsible**. As defined in LC 5.025.005, including: (a) The person in charge of property on which the nuisance exists or which abuts a public way where a nuisance exists. (b) The person who directly or indirectly causes the nuisance to come into or continue in existence.

(20) **Rodent-proof**. Any building, structure or part thereof is "rodent-proof" when it is constructed of concrete, metal or some equally impermeable material and in a manner that excludes rats and mice.

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(21) **Solid Waste**. Solid Waste includes all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, waste paper and cardboard, grass clipping, composts, sewer sludge, residential, commercial, and industrial appliances, equipment and furniture, discarded or inoperable vehicles, vehicle parts or vehicle tires, manure, vegetable or animal solid and semisolid waste and dead animals. The term Solid Waste does not include: (a) Materials used for fertilizer or for other productive purposes on land in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential nonagricultural purposes. (b) Septic tank and cesspool pumping or chemical toilet waste; (c) Reusable beverage containers as defined in ORS 459A.725. (d) Source separated principal recyclable materials as defined in ORS Chapter 459 and the Rules promulgated thereunder, which have been purchased or exchanged for fair market value.

(22) **Tire**. The band of material used on the circumference of a wheel which forms the tread that comes in contact with the surface of the road.

(23) **Unfit for Human Habitation**. A building or structure that, as found by the enforcement officer, is unfit for human habitation due to unsanitary conditions, infestation, accumulation of filth or contamination; lack of required ventilation, illumination, or sanitary or heating facilities; or is not connected to approved water or electricity, such that habitation would be injurious to the health, safety, or welfare of the occupants.

(24) **Unfit for Use**. A designation by the Oregon Health Division that means that the property has been found to be, or there are reasonable grounds to believe that the property was, the site of illegal drug manufacture and may be contaminated with hazardous chemicals or substances and therefore is not fit to use until appropriate site assessment and any necessary contamination reduction procedures have been performed by a licensed drug laboratory decontamination contractor.

(25) **Unoccupied**. Not legally occupied.

(26) **Unsecured**. Unlocked or otherwise open to entry.

(27) **Unregistered Vehicle**. A vehicle without a license plate or with an expired license plate.

(28) **Vegetation**. Plant life, including but not limited to, trees, shrubs, flowers, weeds and grass.

(29) **Vehicle**. Any device in, upon, or by which any person or property is or may be transported, or drawn upon a public highway, and includes vehicles that are propelled or powered by any means, but does not include a device propelled by human power.

(30) **Waste**. Waste is useless unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of Solid Waste or Waste, may from time-to-time have value and thus be utilized, shall not remove them from the definition.

### 9.576 Nuisance Vegetation.

Any vegetation that creates the following conditions on any public or private property shall constitute a nuisance and no person responsible shall cause or permit such conditions to exist:

(1) Vegetation that is a hazard to pedestrian or vehicular use of any sidewalk or street by obstructing passage or vision. The hazards include, but are not limited to:

(a) Vegetation that encroaches upon or overhangs a pedestrian way or adjacent parking strip lower than nine feet or encroaches upon or overhangs a street lower than 15 feet.

(b) Vegetation which obstructs motorist or pedestrian view of traffic signs and signals, street lights and name signs, or other safety fixtures or markings placed in the public way.

(2) Vegetation that is an obstruction of access to a use of any public facilities placed within the public way.

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(3) Noxious vegetation on public or private property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987. No owner or person in charge of such property may allow noxious vegetation to be on the property or encroach into the right-of-way of a public thoroughfare abutting on the property.

### 9.580 Nuisance Storage of Tires.

The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist:

(1) The storage of 4 or more used tires on private or public property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987, unless the tires are used for agricultural or landscaping purposes.

(2) The storage of 10 or more used tires on private or public property not described in 9.580(1)(a) above, unless the tires are used for agricultural purposes.

(3) Notwithstanding the above, the storage of tires on private property is permitted if the property owner is conducting a legally operated business that normally deals in tires, or if the tires are completely enclosed within a building and do not constitute a fire hazard or health hazard.

### 9.582 Nuisance Vehicle Storage.

The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist:

(1) Storing or permitting to be stored in excess of 90 days within any consecutive 12 month period an unregistered or inoperable vehicle or portion thereof, or two or more unregistered or inoperable vehicles at any one time on any private property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987, unless the vehicle is completely enclosed within a building, or is not visible from any public way and is located more than 200 feet from any property line, or unless it is stored on the premises of a business enterprise dealing in used vehicles lawfully conducted within the County.

(2) Storing or permitting the storing of more than three inoperable or more than ten operable vehicles upon private property within the County and not described in 9.582(1) above, unless the vehicle is completely enclosed within a building, or is not visible from any public way and is located more than 200 ft. from any property line, or unless it is stored on the premises in connection with a lawfully conducted business.

### 9.584 Accumulation, Collection, Storage, or Disposal of Solid Waste or Waste.

(1) The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist: Any accumulation, collection, storage, or disposal of solid waste, waste, garbage, liquid waste, refuse, rubbish, sewage sludge, demolition materials or fill dirt, if any of the aforementioned materials are offensive or hazardous to the public health and safety.

(2) The following conditions are presumed to be offensive or hazardous to the public health and safety:

(a) Accumulation of any material capable of providing vector or rodent harborage or which may create a fire hazard;

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(b) Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition;

(3) This section shall not apply where the person responsible is licensed by lawful authority to conduct the otherwise unpermitted activity.

### **9.586 An Abandoned, Discarded, or Unattended Icebox, Refrigerator, or Other Container with a Compartment.**

Any abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and an airtight door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside shall constitute a nuisance and no person responsible shall cause or permit such condition to exist.

### **9.588 Derelict Structure.**

Derelict structures shall constitute a nuisance, and no person responsible shall cause or permit a derelict structure to exist on any premises.

### **9.590 Properties Declared "Unfit for Use" Due to Illegal Drug Manufacturing Contamination.**

(1) Property placed on the Oregon Health Division "unfit for use list" pursuant to ORS 453.879 because it has been used for the manufacture of illegal drugs shall be considered a nuisance 90 days after it has been listed and shall remain a nuisance until such time as it is issued a "Certificate of Fitness" by the Oregon Health Division, and no responsible person shall cause or permit such a condition to exist.

(2) A failure to comply with this section shall be cause for a responsible person to be subject to the administrative enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.

### **9.592 Enforcement**

#### **(1) Abatement**

##### **(a) Notice.**

(i) If the Director or their designee is satisfied that a nuisance exists, a notice shall be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.

(ii) At the time of posting, a copy of the notice shall be forwarded by regular and certified mail, postage prepaid, to the person responsible at the last known address of such person. For service by certified mail, service will be deemed made on the date signed by the responsible person. For service by regular mail, service will be deemed received three days after the date mailed if to an address within this state and seven days after the date mailed if to an address outside of this state.

##### **(iii) The notice to abate shall contain:**

(aa) A description of the real property, by street address or map and tax lot number, on which the nuisance exists.

(bb) A direction to abate the nuisance within 10 days from the date of the notice.

(cc) A description of the nuisance.

(dd) A statement that unless the nuisance is removed, the County may abate the nuisance and the cost of abatement will be charged to the person responsible.

(ee) A statement that failure to abate a nuisance may warrant imposition of a fine.

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(ff) A statement that the person responsible may protest the order to abate by filing an appeal as provided in LC 9.592(3).

(iv) If the person responsible is not the owner, an additional notice shall be sent to the owner stating that the cost of abatement not paid by the Person Responsible may be assessed to and become a lien on the property.

(v) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

(b) Abatement by the Person Responsible.

(i) Within 10 days after the posting and receipt of mailing of such notice, the Responsible Person shall remove the nuisance or file a written appeal requesting a hearing under LC 9.592(3).

(ii) If, on appeal, the Hearings Official determines that a nuisance does in fact exist, the Responsible Person shall abate the nuisance within 10 days after the Hearings Official's determination.

(c) Joint Responsibility. If more than one person is a Responsible Person, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the County in abating the nuisance.

(d) Abatement by the County.

(i) If the nuisance has not been abated by the Responsible Person within 10 days of the date of posting or receipt of the notice of the nuisance where no hearing is requested, or within 10 days of the Hearings Official's determination on appeal, the Director or their designee may cause the nuisance to be abated.

(ii) The officer charged with abatement of the nuisance shall have the right at reasonable times to enter into or upon premises to investigate or cause the removal of a nuisance. If access is denied, the officer may obtain an administrative inspection warrant, pursuant to LC 5.025.

(iii) The Director or their designee shall keep an accurate record of the expense incurred by the County in physically abating the nuisance and shall include 25 percent of those expenses for administrative overhead.

(e) Assessment of Costs.

(i) The Director or their designee, by registered or certified mail, postage prepaid, shall forward to the Person Responsible a notice stating:

(aa) The total cost of abatement, including the administrative overhead.

(bb) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(cc) That if the owner or Responsible Person objects to the cost of the abatement as indicated, they may file an appeal as provided in LC 9.592(3).

(ii) If the costs of the abatement are not paid within 30 days from the date of the notice, or the date of the hearings official's determination where an appeal is filed, the costs of abatement shall constitute a lien on the property from which the nuisance was removed or abated.

(iii) The lien shall bear interest at the rate prescribed in ORS 82.010. The interest shall commence to run from the date of recording of the lien.

(iv) An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property.

(2) Summary Abatement

(a) Authorization.



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(i) If the Director or their designee determines that a nuisance creates an imminent threat to the occupants of the property or to the public health and safety, the County may proceed with summary abatement, as set forth in this section.

(ii) The County may also proceed with summary abatement where the Responsible Person is a repeat offender.

### (b) Pre-Abatement Notice.

(i) If the Director or their designee is satisfied that a nuisance creates an imminent threat as set forth in subsection (2)(a)(i) above, then the Director shall cause a notice to be mailed to the Responsible Person or owner, and posted on the premises or at the site of the nuisance if reasonable under the circumstances.

(ii) The notice of summary abatement shall contain:

(aa) A description of the real property, by street address or map and tax lot number, on which the nuisance exists.

(bb) A description of the nuisance, and, if authorized under subsection (2)(a)(i) above, an explanation why it constitutes an imminent threat

(cc) The date the abatement will occur,

(dd) A statement that the cost of abatement will be charged to the person responsible, and that if not paid, may become a lien on the property.

(ee) A statement that the dangerous condition may warrant imposition of a fine.

(c) Scope of Abatement by County. The County may abate the nuisance to the extent necessary to alleviate the immediate threat, including but not limited to:

(i) Order immediate vacation of the property

(ii) Post the premises as unsafe, substandard, or dangerous

(iii) Board, fence, or secure the building or site.

(iv) Raze and grade

(v) Conduct emergency repairs

(vi) Take any other action appropriate under the circumstances

### (d) Post-Abatement Notice.

(i) Following abatement by the County, the Director or their designee shall cause a second notice to be posted and mailed as provided for in subsection (2)(b)(i) above.

(ii) The post-abatement notice shall contain:

(aa) A description of the actions taken by the County and the reasons for the actions

(bb) A statement of the costs of abatement, including the administrative fee set forth in subsection (1)(d)(iii) above, and that the County intends to collect

(cc) A statement that the person responsible may protest the County's actions and/or the assessed costs by filing a written appeal within 10 days of the date of the notice.

### (3) Appeals

(a) Appeals shall be filed in writing, by mailing or delivering a written appeal no later than 10 calendar days after receipt of the determination or notice being challenged. Failure to file a timely appeal shall constitute a waiver of the right to an appeal hearing.

(b) Appeals shall contain the following information:

(i) Name or names of appellant(s)

(ii) A brief statement setting forth the action or decision being appealed

(iii) A concise statement of the error alleged and the reasons the action or decision was in error

(iv) The signature of the appellant(s), the appellant(s) telephone number and mailing address

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- (v) **The applicable appeal fee.**
- (c) **Upon receiving the appeal, the Director or their designee shall (1) schedule an appeal hearing with the Hearings Official, and (2) provide notice of such hearing.**
- (d) **The appeal hearing shall be conducted pursuant to the procedures set forth in LC 5.040(2) and (3).**
- (e) **A copy of the final written order resolving the appeal shall be mailed to appellant(s) within 10 working days of the hearing**
- (f) **The written order shall be final and conclusive on the 61st calendar day after the date of mailing of the order.**
- (4) Cumulative Remedies. The abatement procedures provided by this ordinance are in addition to and not in lieu of any other procedures or remedies provided by law, including administrative remedies provided in LC Chapter 5, as well as equitable relief and damages.**



- A. The Office shall have all those functions deemed necessary by the Board.
- B. Specifically, the Office shall have the following functions in addition to those responsibilities noted in LC 2.110 above:
  - 1. Community relations functions, to include internal publications, external communications, media liaison, community organization liaison, advisory committee liaison, citizen assistance, information center, publication coordination and graphics support services.
  - 2. Agenda management, Clerk of the Board functions and support staff functions for the Board.
  - 3. Intergovernmental relations staff functions for the Board.
  - 4. Development and maintenance of the Lane County Administrative Procedures Manual.
  - 5. Coordination of Justice Services, as supervised by the County Administrator.
  - 6. Community and Economic Development functions as supervised by the County Administrator.
- C. Other functions assigned by the Board as reflected in the Lane Manual.
- D. The Assistant County Administrator is authorized to perform County Administrator functions as assigned by the County Administrator.

(Ordinance 13-83, 5.27.83; Ordinance 17-83, 10.1.83; Ordinance 5-85, 7.10.85; Ordinance 8-86, 7.25.86; Ordinance 17-90, 1.18.91; Ordinance 12-92, 10.14.92; Ordinance 8-07, 9.14.07)

#### **2.010.015 - County Community Corrections Agency.**

- A. The division of Parole and Probation is part of Lane County's community corrections agency, as referenced in various Oregon statutes.
- B. As a county community corrections agency, a primary duty of the Lane County parole and probation department and its officers includes, but is not limited to, the control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders.

(Ordinance 15-02, 04.17.15)

#### **2.015 – COUNTY PERFORMANCE AUDITOR**

##### **2.015.005 - County Performance Auditor.**

- A. The position of County Performance Auditor is created.
- B. The County Performance Auditor may be appointed or dismissed by the Board of Commissioners after the Performance Audit Committee, as defined by the Lane Manual, has had an opportunity to provide advice and a recommendation.
- C. When a vacancy in the position of County Performance Auditor occurs, the Board of Commissioners will endeavor to fill the vacancy as soon as is practicable.
- D. The County Performance Auditor is the Chief Performance Auditor of the County and is responsible to the Board of Commissioners for the operation of the performance audit function.

## **2.070 – ACCELERATION OF REDEMPTION FOR WASTE OR ABANDONMENT**

### **2.070.930 – Definitions.**

For purposes of LC 2.070.930 through LC 2.070.965 below, the following words and phrases shall have the meaning ascribed to them by this section:

“Abandonment” means property that is not occupied by the former owner or any interested party for a period of six consecutive months, and the property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.

“Board” means the Lane County Board of Commissioners.

“County” means Lane County, Oregon.

“Department” means the Lane County Department of Assessment and Taxation.

“Foreclosed property” means real property for which Lane County has obtained judgment for delinquent taxes pursuant to ORS 312.090.

“Former owner” means the person or entity who appears in the records of Lane County and who, by a general judgment issued by a circuit court pursuant to the foreclosure process foreclosing delinquent taxes under ORS 312.100, sold property to Lane County for the amount of the delinquent taxes and interest stated in the general judgment. “Former owner” includes any person or entity rightfully in possession of the property, and any person or entity acting under the permission or control of such former owner.

“Interested party” means any person or entity that appears in the records of Lane County to have a lien or other interest in the property for a period of six consecutive months.

“Owner” means Lane County for all properties listed in a general judgment that has been issued by the Lane County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.

“Parties” means Lane County and any person or entity entitled to notice of a public hearing provided for in this chapter.

“Property” means any real property including improvements that are affixed, incidental or appurtenant to land, including but not limited to any premises, room, house, building or structure or any separate part or portion thereof, except mobile homes not owned by the former owner, which is listed in a general judgment executed by the Lane County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.

“Records of the County” means “Records of the County,” as defined in ORS 312.125(7).

“Redemption period” means the two-year period described in ORS 312.120.

“Tax collector” means the person or officer who by law is charged with the duty of collecting taxes assessed upon real property in Lane County, Oregon, including the director of the Lane County Assessment and Taxation Department, or his or her designee.

“Waste” means the destruction, material alteration or deterioration of land or improvements thereon, resulting in or threatening to result in substantial loss of value to the property, whether caused directly by the former owner or permitted to be done by others through failure of the former owner to supervise such property.

**2.070.935 – Authority.**

The tax foreclosure statutes provide for a two-year redemption period between the time that tax delinquent property is sold to the County and the time a deed can be issued to the County. If waste of the property is committed, or if the property is abandoned, however, prior to the two-year redemption period, state law allows the County to authorize the redemption period to be accelerated. ORS 312.122.

**2.070.940 – Allegation of Waste or Abandonment.**

Any property subject to tax foreclosure that the County believes is subject to waste or abandonment during the two-year redemption period may be deeded to the County on an accelerated schedule, following notice and hearing, as set forth in this section.

**2.070.945 – Hearing Required.**

If property is believed to be subjected to waste or abandonment, the County shall set a hearing before the Board to determine whether the property should be deeded to the County on an accelerated schedule.

**2.070.950 – Hearing Notice Requirements.**

- A. Time for Giving Notice. The County must provide notice of hearing before the Board of Commissioners not less than thirty days prior to the date set for the hearing to determine whether the property should be deeded to the County on an accelerated schedule.
- B. Content of Notice. The notice shall contain:
  - 1. The date, time, and place of the hearing;
  - 2. The date of the judgment entered pursuant to ORS 312.090;
  - 3. The normal date of expiration of the redemption period under ORS 312.120;
  - 4. Warning that if the County determines that the property is subjected to waste or abandonment, the property will be deeded to the county immediately after the expiration of thirty days from the date of such determination and all rights and interests are forfeited forever, unless it is sooner redeemed by the former owner or any interested party;
  - 5. A legal description of the property and a tax account number; and
  - 6. The name of the former owner as it appears on the latest tax roll.
- C. Service of Notice. The required notice shall be given by both certified mail and by regular first-class mail and shall be addressed as follows:
  - 1. Service to former owners. The notice shall be addressed to the former owner or owners, as reflected in the county records of deeds, at the true and correct address of the former owner as appearing on the instrument of conveyance under ORS 93.260 or as furnished under ORS 311.555 or as otherwise ascertained by the tax collector pursuant to ORS 311.560.
  - 2. Service to lienholder or person or entity other than the former owner, having or appearing to have a lien or other interest in the property. The notice shall be addressed to the lienholder,

person or entity at the address that the County knows or after reasonable inquiry has reason to believe to be the address at which the lienholder, person or entity will most likely receive actual notice. If the lienholder is a corporation or a limited partnership, the county shall be considered to have made reasonable inquiry if the notice is mailed to the registered agent or last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of corporations division of the secretary of state's office, or if the corporation or limited partnership is not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership.

**2.070.955 – Conduct of Hearing.**

- A. Staff presentation. Staff or representative for Department shall present evidence, oral or written, to the Board, demonstrating why the property is subjected to waste or abandonment and should be deeded to the County.
- B. Public participation. Any other person or entity may present evidence, oral or written, addressing whether the property is subjected to waste or abandonment.
- C. Final Rebuttal. The Department shall have the final opportunity to respond to evidence presented during the hearing, so long as the Department's final rebuttal does not include new evidence that might be relied upon by the Board in rendering its decision.

**2.070.960 – Decision.**

- A. Finding of Waste or Abandonment. If the Board determines that the County has demonstrated by a preponderance of the evidence, that either waste has been committed on the property during the redemption period, or that the property is subjected to abandonment, the Board shall adopt a written order.
  - 1. Contents of Written Order. The written order shall include the following:
    - a. Findings explaining how a preponderance of the evidence supports the conclusion that either waste has been committed on the property during the redemption period, or that the property is subjected to abandonment.
    - b. Provide that any rights of possession the former owner or interested party may have in the property are forfeited;
    - c. Direct the property be deeded to the County by the tax collector on the 31<sup>st</sup> day after the date of the board decision, unless it is sooner redeemed by the former owner or any interested party.
    - d. Provide that, pursuant to ORS 312.122(2)(c), all rights of redemption with respect to the property described in the deed shall terminate on the execution of the deed to the County.
  - 2. Recording of Order. A copy of the written order shall be recorded in the deed records of Lane County.
- B. Finding of No Waste or Abandonment. If the board determines that neither waste nor abandonment has occurred on or regarding the property during the redemption period, the board shall adopt a written order so finding.

- C. Notice of Decision. A copy of the written order shall be mailed by first-class mail to the former owner and any interested party requesting a copy of the written order.

**2.070.965 – Appeal.**

Review of the board's decision shall be by writ of review, pursuant to ORS Chapter 34.

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## **Chapter 5 – ADMINISTRATIVE ENFORCEMENT**

### **5.015 See 6.225 – PROHIBITED NOISE**

### **5.020 See 9.570 – NUISANCE**

### **5.020.045 See 9.021 – ILLICIT DISCHARGE**

### **5.025 – GENERALLY**

#### **5.025.005 – Definitions.**

For purposes of this chapter, the following terms are defined as follows:

“Abatement” means any action taken to remove or alleviate a nuisance, including, but not limited to, demolition, removal, repair, cleaning, boarding, and securing or replacement of property.

“Administrative citation” means a citation issued by a County official in response to any code violation that imposes fines or penalties associated with the code violation.

“Administrative civil penalty” means a financial penalty imposed for restitution for code violation.

“Assessment lien” or “code enforcement lien” means a lien recorded with the County recorder’s office for the purposes of collecting outstanding administrative citation fines, civil penalties, and administrative costs imposed as part of a cost recovery for an administrative code enforcement action.

“Board” means the Lane County Board of Commissioners.

“Building” means something that is framed, erected, constructed or placed to stand temporarily or permanently on a tract of land. This definition specifically includes a mobile home, manufactured home and accessories thereto, gas or liquid storage tanks principally above ground and revetments, rip-rap, boat docks or bridges.

“Code” means Lane Code, unless otherwise specified.

“County” means Lane County, Oregon.

“Department” means any department or subdivision of the County, including, but not limited to County Administration, Operations/Finance, Public Works, PW/Land Management, PW/Parks, HH/Public Health, or any subsequently established county department.

“Director” means the County Administrator, the Public Works Director, or the Health and Human Services Director, or their designees.

“Enforcement Officer” means the person authorized by the Director or designee to enforce particular provisions of the Lane Code under which administrative enforcement is authorized.

“Failure to Comply” means any failure to comply with an ordinance where the ordinance does not specify that it is punishable by a fine or incarceration, but which is subject to administrative enforcement.

“Hearings Official” means a Hearings Official appointed by a Director or their designee to conduct appeal hearings provided for under LC 5.025.035.

“Misdemeanor” means a violation of an ordinance specifically remediable by incarceration.



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“Notice of failure to comply” means a written notice issued by a code Enforcement Officer that informs a responsible party that the assessment of fines will begin to accrue and provides information regarding the right to appeal.

“Operate” or “engage in” includes to carry on, keep, conduct, maintain, or cause or allow to be kept or maintained.

“Order to Comply” means a written order issued by a code Enforcement Officer that informs a responsible party that a code violation has occurred or is ongoing; lists the required compliance actions the responsible party must undertake to remedy the code violation; provides a timeline by which compliance is required; and provides the possible consequences that may result for failure to remedy the code violation.

“Owner” means a person on the title to real property as shown on the latest assessment records in the office of the Lane County Tax Assessor. Owner also includes a person whose name does not appear in the latest tax assessment records, but who presents to the County a recorded copy of a deed or contract of sale signed by the owner of record as shown in the Lane County Tax Assessor’s records. The term shall include any part owner, joint owner, tenant in common, or joint tenant, or the whole or a part of such building or land. The term also includes the person who holds title to a recreational vehicle or manufactured home.

“Person” unless it otherwise appears from the context used, means any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district or other special district, the State of Oregon, its political subdivisions and/or instrumentalities thereof, or any other entity which is recognized by law as the subject of rights or duties.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips. The term “premises” shall include recreational vehicles.

“Recreational Vehicle” means a vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motorhomes, travel trailers and truck campers.

“Property owner” means the record owner of real property, as listed on the current Lane County Tax Assessor’s records.

“Regulations” means these regulations, and rules or regulations promulgated pursuant to sections of the Lane Code that authorize imposition of an administrative civil penalty.

“Repeat or repetitive failure to comply” means a failure to comply which is similar to another failure to comply by the responsible person within the preceding five years.

“Responsible Person” means for violations of or failure to comply with LC Chapter 5, LC Chapter 9, LC Chapter 10, LC Chapter 11, LC Chapter 13, LC Chapter 15, and LC Chapter 16, the owner of a building or property where a violation or failure to comply has occurred, the person in charge of the building or property, the violator or the person, or parent or legal guardian of a person, failing to comply with the ordinance, and where such person works for a contractor, either as an employee, subcontractor, or independent contractor, the contractor and/or other employer; and any licensee, permittee, or agent, manager, or person in charge. When a building is owned by an entity that is registered with the Oregon Secretary of State, that entity’s registered agent is deemed a responsible person.

“State” means the State of Oregon.

“Street” means all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, parkways, or other public ways that have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

“Tenant” or “occupant,” as applied to a building or land, means any person who occupies the whole or part of such building or land, whether alone or with others.

“Violation” means a violation of an ordinance specifically remediable by a fine, but which does not provide for punishment by a term of incarceration.

(Ordinance 2-82, 4.9.82; Ordinance 21-83, 11.29.83; Ordinance 4-85, 6.26.85; Ordinance 13-86, 11.7.86; Ordinance 1-93, 4.16.93; Ordinance 1-00, 4.12.00; Ordinance 9-07, 10.12.07)

### **5.025.010 – Applicability**

The provisions of this Chapter apply to Lane Code Chapters 6, 9, 10, 11, 13, 15, and 16, or portions thereof, as specified in those chapters.

### **5.025.015 – Authority**

- A. The following officers and employees are authorized to enforce the provisions of this code, pursuant to LC 5.025.010 through LC 5.025.040, against any person regardless of whether a permit, certificate, license, or other form of authorization has been issued: Public Works Director, Land Management Division Manager, Planning Director, Building Official, Sheriff, Health and Human Services Director or their designees, or Enforcement Officer. These officers and employees may investigate, order corrective action, issue citations and stop work orders, and otherwise use these provisions to enforce the applicable chapters of Lane Code.
- B. County Enforcement Officers and authorized employees are authorized to enter upon any property or premises to ascertain whether the provisions of the Lane Code or applicable state codes are being complied with and to make any examinations, inspections, and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be conducted in a reasonable manner. If an owner, occupant or agent refuses permission to enter or inspect, the authorized personnel and/or Enforcement Officer may seek an administrative inspection warrant as set forth in LC 5.025.020.

### **5.025.020 – Inspection Warrant**

- A. Grounds for Issuance of Inspection Warrants; Affidavit.
  - 1. Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance, or regulation requiring or authorizing the inspection or investigation, the property to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.

2. Cause. Cause shall be deemed to exist if there is probable cause to believe that a condition of nonconformity with any of the Lane Code provisions listed in LC 5.025.010 exists with respect to the designated property, or an investigation is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with those regulations.
- B. Procedure for Issuance of Inspection Warrant.
1. Examination. Before issuing an inspection warrant, the Lane County Circuit Court or Justice Court judge may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.
  2. Issuance. If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
  3. Police Assistance. In issuing an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and assist the Director or representative of the department inspecting the property in any way necessary to complete the inspection.
- C. Execution of Inspection Warrants.
1. Occupied Property. On occupied property, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request.
  2. Unoccupied Property. In executing an inspection warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, but may promptly enter the property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the warrant shall be conspicuously posted upon the property.
  3. Return. An inspection warrant must be executed within 10 working days of its issue and returned to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.

#### **5.025.025 – Administrative Remedies**

- A. Failure of Compliance.
1. Order to Comply. Whenever an Enforcement Officer determines that a failure to comply with the Lane Code or applicable state code pertaining to real property exists, the Enforcement Officer may issue an Order to Comply to a responsible person. Each and every day a failure to comply continues to exist after the date specified in the Order to Comply shall constitute a separate failure to comply. An Order to Comply shall include the following information:
    - a. The name of the property's record owner;

- b. Street address or property identification;
  - c. The code sections that have been violated;
  - d. A description of the property condition that violates the applicable codes;
  - e. A list of necessary corrections to bring the property into compliance;
  - f. A deadline or specific date to correct the failure to comply listed in the Order to Comply, and that penalties, not to exceed \$2,000 per violation per day, will begin accruing if not remedied by that date;
  - g. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline including, but not limited to: issuance of a Notice of Failure to Comply, civil injunction, administrative abatement, administrative civil penalties, revocation of permits, recording of a lien on the property, and withholding of future permits.
2. Service of Order to Comply. The Order to Comply must be served on the property owner by regular and certified mail at the address shown on the current Lane County assessment records, and on the responsible person, if not the property owner, by one of the following methods:
- a. Personal service. Personally delivered to the responsible person at their place of residence.
  - b. Mail. By regular and certified mail, return receipt requested. For service by certified mail, service will be deemed made on the date signed by the responsible person. For service by regular mail, service will be deemed received three days after the date mailed if to an address within this state and seven days after the date mailed if to an address outside of this state.
  - c. Posting. Where the responsible person cannot be located, by posting a sign in a prominent location on the property where the failure to comply occurred.
3. Notice of Failure to Comply. Where a responsible person fails to remedy an alleged violation within the time provided in an Order to Comply, an Enforcement Officer may issue a Notice of Failure to Comply to each person to whom the Order to Comply was issued. A Notice of Failure to Comply shall include the following information:
- a. The name of the property's record owner;
  - b. Street address or map and tax lot number;
  - c. The code sections that have been violated;
  - d. A description of the property condition that violates the applicable codes;
  - e. The date on which the Order to Comply was issued and the date by which correction was to be made;
  - f. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline, including but not limited to: civil injunction; administrative abatement by the County, including actual costs and administrative costs of such abatement; administrative civil penalties, the date the penalties will begin accruing on a daily basis at the stated amount until proof of correction is received; revocation of permits; withholding future permits; and recording a lien on the property;
  - g. A brief description of the procedure to appeal the Notice of Failure to Comply, including time limitations.

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4. Service of Notice of Failure to Comply. The Notice of Failure to Comply shall be served as provided in LC 5.025.025A.
  5. Notwithstanding LC 5.025.025A.1, 2, and 3, the Director may issue a Notice of Failure to Comply without having issued an Order to Comply where the City of Springfield or the City of Eugene notifies the County that enforcement actions under LC 9.021 could not be resolved, or where the Director determines that the failure to comply reasonably appears to:
    - a. Pose an immediate threat to public health, safety or welfare, or
    - b. Be immediately remediable by a person in charge of the property, or
    - c. Be the same act or condition that served as the basis for a previous order to comply, or
    - d. Be done deliberately by a responsible person who had knowledge that the actions in question would constitute a failure to comply.
  6. Appeal. Appeal of a Notice of Failure to Comply may be filed pursuant to LC 5.025.035.
- B. Administrative Citation.
1. General Provisions.
    - a. Any person who has committed a violation of any provision of the Lane Code Chapters 6, 9, 10, 11, 13, 15, and 16 or applicable state code may be issued an administrative citation by an Enforcement Officer as provided in this chapter.
    - b. Each and every day a violation of the Lane Code exists constitutes a separate and distinct offense for which an administrative citation may issue.
  2. Contents of Administrative Citation. The administrative citation shall include the following information:
    - a. The date and location of the violations and the approximate time the violations were observed.
    - b. The code sections violated and how the sections are violated.
    - c. A description of the action required to correct the violations.
    - d. If applicable, a statement requiring the responsible person to immediately correct the violations and an explanation of the consequences of failure to correct the violations.
    - e. The amount of administrative civil penalty imposed for the violations.
    - f. Directions how the penalty shall be paid, the time period by which it shall be paid, and the consequences of failure to pay the penalty.
    - g. Notice of the right to appeal.
    - h. The signature of the Enforcement Officer and, where possible, the signature of the responsible person. However, failure to locate or obtain the signature of the responsible person shall not affect the validity of the citation.
  3. Service.
    - a. In the case of a business, the Enforcement Officer shall attempt to locate the business owner and issue the business owner an administrative citation. If the Enforcement Officer can only locate the manager of the business or the person in apparent charge of the

business, the administrative citation may be issued to such person, who may sign or receive the administrative citation as agent for the responsible person or owner of the business. A copy of the administrative citation shall also be mailed to the business owner or responsible person in the manner prescribed by LC 5.025.025A.2.

- b. Once the responsible person is located, the Enforcement Officer shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.
  - c. If the Enforcement Officer is unable to locate the responsible person for the violation, then the administrative citation shall be mailed to the responsible person in the manner prescribed in LC 5.025.025A.2.
  - d. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by LC 5.025.025A.2.
- 4. Classification of Violations. Unless the Lane Code provides otherwise, fines and penalties for violations shall be as set forth in ORS Chapter 153 (2021). An unclassified violation is a Class B violation.
- 5. Appeal. Appeal of the administrative citation may be filed pursuant to LC5.025.035.
- C. Abatement. Any violation of the Lane Code provisions subject to enforcement under this Chapter constituting a nuisance may be abated as set forth in LC 9.570 through LC 9.592 nuisance provisions. Nothing in Lane Code Chapter 5 or Lane Code Chapter 9 is deemed to limit or otherwise modify the ability of the County to abate nuisances through alternative remedies as provided for under the law.
- D. Cumulative Remedies. The administrative enforcement remedies provided by this Chapter are not exclusive, but are in addition to other remedies – civil, equitable, or criminal – afforded to the County under the law.

#### **5.025.030 – Administrative Civil Penalties.**

- A. Determination of Civil Penalties.
  - 1. Civil penalties begin to accrue on the date identified in the Order to Comply or any other written correspondence advising the responsible person of the existence of a failure to comply. In no event shall civil penalties start to accrue later than the date the responsible person is deemed to have received the Notice of Failure to Comply.
  - 2. The assessment of civil penalties shall end when all action required by the Order to Comply has been completed.
  - 3. In determining the amount of the civil penalty to be assessed on a daily rate, an Enforcement Officer may consider some or all of the following factors:
    - a. The duration of the violation.
    - b. The frequency or recurrence of the violation.
    - c. The seriousness of the violation.
    - d. The history of the violation.
    - e. The responsible person's conduct after issuance of the notice and order.

- f. The good faith effort by the responsible person to comply.
  - g. The impact of the violation upon the community.
4. The Director has incorporated the factors into a matrix that are found at LM 5.005.020.

**5.025.035 – Appeal.**

**A. Filing of Appeal.**

1. Appeals shall be filed in writing, by mailing or delivering a written appeal, on a designated appeal form, no later than 10 calendar days after receipt of the determination or notice being challenged. Assessment of civil penalties shall cease accruing on the date an appeal is filed. Failure to file a timely appeal shall constitute a waiver of the right to an appeal hearing.
2. Appeals shall be accompanied by the required fee and shall contain the following information:
  - a. Name or names of appellants(s);
  - b. A brief statement setting forth the action or decision being appealed;
  - c. A concise statement of the error alleged and the reasons the action or decision was in error;
  - d. The signature of the appellant(s), the appellant(s) telephone number and mailing address.
3. Upon receiving the appeal, the Director or their designee shall (1) schedule an appeal hearing with the Hearings Official, and (2) provide notice of such hearing.
4. Written notice of the date, time and place of the hearing shall be served at least ten calendar days prior to the date of the hearing on the person appealing the notice by any one of the methods listed in LC 5.025.025A.2.

**B. Conduct of Appeal Hearing.**

1. Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply.
2. The Hearings Official shall preside over the hearing and may set reasonable rules of procedure designed to facilitate orderly and efficient presentation of evidence and a fair hearing process. The Hearings Official may rule on requests for continuation and other motions relevant to the substance and procedure of the hearing.
3. The County bears the burden of proof at an administrative enforcement hearing to establish the existence of a violation or failure to comply with applicable provisions of the Lane Code and of the reasonableness of any civil penalty provided for by the Enforcement Officer.
4. The standard of proof to be used by the Hearings Official in deciding the issues at an administrative enforcement hearing is a preponderance of the evidence standard.
5. Each party shall have the opportunity to be represented by a lawyer, to cross-examine witnesses, and to present evidence in support of their case.
6. The responsible person may be represented by a lawyer at the responsible person's expense so long as written notice is provided to the Hearings Official at least four days prior to the date scheduled for the hearing. Even if represented, the responsible person must appear in person at the hearing. For purposes of this subsection, the term "in person" shall include any form of remote participation allowed by the Hearings Official.



7. All testimony at the hearing shall be under oath, and each party shall have the right to call and examine witnesses, introduce exhibits and cross-examine opposing witnesses on any matter relevant to the issues. The Hearings Official also has the authority to subpoena people and records, order rulings on violations, assess fines and order liens to be placed upon property.

C. Authority of Hearings Official.

1. The Hearings Official, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed by the Hearings Official to be relevant (necessary) to the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena.
2. The Hearings Official shall retain jurisdiction over the subject matter of an administrative enforcement hearing for the purposes of granting a continuance, ensuring compliance with an administrative enforcement order, modifying an administrative enforcement order, or where extraordinary circumstances exist, granting a new hearing.
3. Where a responsible person has not corrected a failure to comply within the time specified by the Enforcement Order or Notice of Failure to Comply, the Hearings Official may order corrective action be achieved by the County and costs assessed to the responsible person.

D. Final Decision.

1. Once all evidence and testimony are completed, the Hearings Official shall issue an administrative enforcement order that affirms or rejects the Enforcement Officer's Administrative Citation or Notice of Failure to Comply or which modifies the daily rate or duration of the civil penalties. The Hearings Official may decrease the total amount of civil penalties and costs that are assessed by the Officer's Notice of Failure to Comply.
2. The Hearings Official may issue an administrative enforcement order that requires the responsible person to cease from violating the Lane Code or applicable state codes and to make necessary corrections.
3. As part of the administrative enforcement order, the Hearings Official may establish specific deadlines for the payment of civil penalties and costs and condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines.
4. The Hearings Official may issue an administrative enforcement order that imposes additional civil penalties that will continue to be assessed until the responsible person complies with the Hearing Official's decision and corrects the violation.
5. The Hearings Official may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.
6. The final order shall include a statement that the responsible person may seek judicial review by filing a petition for a writ of review with the Lane County Circuit Court within 60 days of the date of the decision.
7. A copy of the final written order resolving the appeal shall be mailed to appellant(s) within 10 working days of the hearing.
8. Order becomes final on the 60<sup>th</sup> day after issuance, unless appealed pursuant to LC 5.025.035.

E. Further appeal.

Judicial review of an administrative enforcement order may be sought through filing a writ of review in Lane County Circuit Court, pursuant to ORS Chapter 34 (2021).

**5.025.040 – Collection of Civil Penalties and Related Costs.**

- A. The Director or their designee may collect all civil penalties and related administrative costs by the use of all appropriate legal means.
- B. Unless otherwise ordered by the Hearings Official, civil penalties are due immediately on the date the Order becomes final.
- C. Upon determination by the Director or their designee that the administrative penalty, administrative cost, or other debt incurred by the County has not been satisfied in full within sixty days of the date it was imposed and/or has not been successfully challenged, a lien shall attach to any affected real property for the amount of the civil penalty, cost, or debt.
- D. The lien referenced in LC5.025.040C attaches when the Order is mailed to the responsible person.
- E. An order granting a violator time within which to pay a civil penalty does not affect the County's lien. The lien is for the full amount of civil penalty imposed, together with accrued interest, regardless of when payment is due.

## **6.225 - Prohibited Noise**

### **6.225.005 - Prohibited Noise Definitions**

For purposes of this subchapter the following terms and definitions apply unless the context requires otherwise:

“Idling Speed” means that speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.

“Manager” means the Manager of the Land Management Division of the Department of Public Works, or the Manager's designee.

“Noise Sensitive Unit” means any building or portion thereof, vehicle, boat or other structure adapted or used for the overnight accommodation of persons, including, but not limited to individual residential units, individual apartments, trailers, hospitals and nursing homes.

“Person” means in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.

“Plainly Audible Sound” means any sound which is clearly distinguishable from other sounds, such as, but not limited to, sound for which the information content of that sound is unambiguously communicated to the listener, understandable spoken speech, comprehension of whether a voice is raised or normal, or comprehensible musical rhythms.

“Sound Producing Device” means including but not limited to:

- A. Loudspeakers, public address systems.
- B. Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems including those installed in a vehicle.
- C. Musical instruments, amplified or unamplified.
- D. Sirens, bells or steam whistles attached to a stationary device.
- E. Vehicle engines or exhausts discharging into open air, when the vehicle is not on a public right-of-way, particularly when the engine is operated above idling speed.
- F. Vehicle tires, when caused to squeal by excessive speed or acceleration.
- G. Domestic tools, including electric drills, chain saws, lawn mowers, electric saws, hammers and similar tools, but only between 10:00 p.m. and 7:00 a.m. of the following day.
- H. Heat pumps, air conditioning units and refrigeration units, including those mounted on vehicles.

“Vehicle” means automobiles, motorcycles, motorbikes, trucks, buses and snowmobiles.

### **6.225.010 - Prohibitions**

- A. Sound Producing Devices. No person shall create or assist in creating or permit the continuance of noise from a sound producing device, by the following acts, or in excess of the following limits:

1. When measurement made. When measured at or within the boundary of the property on which a noise sensitive unit--which is not the source of the sound--is located, or within a noise sensitive unit which is not the source of the sound,
  - a. exceeds 50 dBA between the hours of 10:00 p.m. and 7:00 a.m. of the following day.
  - b. exceeds 60 dBA between the hours of 7:00 a.m. and 10:00 p.m. of the same day.
2. When measurement not made. Is plainly audible at any time between 10:00 p.m. and 7:00 a.m. of the following day
  - a. Within a noise sensitive unit which is not the source of the sound, or
  - b. On a public right of way at a distance of 50 feet or more from the source of the sound.

#### **6.225.013 - Liability of Person in Control of Property**

- A. A person in control of property is liable and subject to penalties to the same extent as a person who violates any of the provisions of this Ordinance if such person:
  1. Has actual knowledge of the violation at the time it occurs;
  2. Has the actual ability and legal right to prevent the violation by ejecting a person creating the noise from the property, removing or causing the termination of the operation of the noise-producing device or activity, or otherwise preventing the violation; and
  3. Fails, refuses, or neglects to prevent the violation.
- B. Nothing in this section renders any person in control of property liable for noise violations by trespassers or other persons using the property without the implied or express consent of the person in control of the property, nor does anything in this chapter require a person in control of property to assume a substantial risk of physical injury to prevent a violation.

#### **6.225.015 - Exemptions**

The provisions of this subchapter do not apply to:

- A. Sounds caused by organized athletic, religious, educational, civic or other group activities, when such activities are conducted on property generally used for such purposes, including stadiums, parks, schools, churches, athletic fields, race tracks, airports and waterways between the hours of 7:00 a.m. and 11:00 p.m. of the same day; provided, however, that this exemption does not impair the Manager's power to declare that such events or activities violate other applicable laws, ordinances or regulations.
- B. Sound caused by emergency work reasonably necessary to prevent injury to persons or property, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, whether or not such work is performed by a public or private agency, upon public or private property.
- C. Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations. Notwithstanding anything within LC 6.225.005 et seq. to the contrary, it is unlawful for any railroad "retarder" as that is defined in 40 CFR 201.1(y), to be used, unless such retarder has shielding sufficient to prevent both:
  1. impulse sounds, defined as a single pressure peak or a single burst (multiple pressure peaks), as measured on a C weighted meter with fast response, and

2. sounds in octave bands of 2000 Hz and above, where either of such sounds exceed either 10 dBA between the hours of 10:00 p.m. and 7:00 a.m. of the following day, or 12 dBA between the hours of 6:00 p.m. to 10:00 p.m., over the ambient noise level within a sound sensitive unit with a window ajar and measured from no closer than three (3) feet of the window. The ambient noise level is the total of all noise in the environment, other than noise from railroad operations, averaged over 10 minutes in dBA.
- D. Sound caused by bona fide use of emergency warning devices and alarm systems authorized by LC 3.400 through LC 3.445.
- E. Sound caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9:00 a.m. and 4:00 p.m. of the same day, excluding weekends, unless such permit expressly authorizes otherwise.
- F. Sounds caused by commercial, industrial, agricultural, timber harvesting, utility or construction organizations or workers during their normal operations.
- G. Sounds caused by a sound producing device used by a person pursuant to a variance issued by the Manager as provided in LC 6.225.020.
- H. Sounds caused by motor vehicles operated on any highway and subject to ORS 815.250.

#### **6.225.020 - Variances**

Any person who owns or controls any sound producing device or other sound source, or who is engaged in or planning any activity which violates, will violate, or may violate any provision of this chapter, or any property owner or person in control of property on which such sound source is located or such activity is planned, may apply to the Manager for a variance.

- A. Application. Applications for a noise variance shall be made to the Manager, and must include:
  1. The provision from which the variance is sought,
  2. The period of time the variance is to apply,
  3. The reason for which the variance is sought,
  4. An application fee, which may be waived by the Manager if they find that the imposition of the fee would constitute a substantial financial hardship to the applicant.
- B. Review Considerations. In considering a request for a variance, the Manager may approve or deny the application, based on consideration of the following factors:
  1. The potential nature and duration of the sound caused or to be caused by the device or activity;
  2. The protection of the health, safety, and welfare of citizens, and the potential effect of the sound on the sleep, peace, quiet, comfort or repose of other persons;
  3. The feasibility and cost of noise abatement and the financial ability of the owner, occupant or other person producing noise or in control of property to comply with this chapter;
  4. The loss or inconvenience which would result to any party in interest from the denial of the variance;
  5. The past, present, and future patterns of land use;
  6. Whether previous variances have been granted and the applicant's record of compliance with the terms and restrictions of any previous variances;

7. In the case of a person requesting a variance for a heating or cooling device, any special medical requirements for continued use of the device must be considered
  8. Whether compliance with the provision would produce no benefit to the public.
- C. Decision.
1. Within ten days of receiving the application, the Manager must deny, approve, or approve it with conditions.
  2. The decision must indicate a specific time interval for which the variance is approved.
  3. The decision may impose such conditions or restrictions as are deemed reasonably necessary to ensure the peace, quiet, repose, health, welfare, and safety of the residents of the County and to effectuate the purposes of this chapter.
- D. Notification. Notice of variance determinations where the sound source will be on private property shall be provided as follows:
1. Notice of variance determinations must be provided to property owners and residents within 500 feet of the property where the sound will be generated.
  2. Notice of the variance determination must include:
    - a. A description of the location of the property for which the variance is sought by street address or, if there is no street address, by legal description or other description reasonably calculated to apprise persons receiving the notice of the location of the property;
    - b. A general description of the variance requested and the type of sound-producing activity or device which is proposed; and
    - c. A statement that an appeal may be filed with the Lane County Circuit Court pursuant to ORS 34.010 through ORS 34.100.
- E. Revocation. At any time before or during the operation of any variance granted by the Manager, the Manager may revoke the variance for good cause.

#### **6.225.025 - Sound Measurement**

- A. If sound measurements are made, they must be made with a sound level meter. The sound level meter must be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this subchapter, a sound level meter shall contain at least an A-weighted and C-weighted scale and both fast and slow meter response capability and the capability to perform time averaged sound measurement. A fast setting must be utilized unless a different setting is called for elsewhere in this Code.
- B. If measurements are made, personnel making those measurements must have completed training in the techniques of sound measurement and the use of the sound level meter from the Oregon Department of Environmental Quality personnel or other qualified acoustical sound engineer. Measurement procedures consistent with that training must be followed.
- C. Measurements may be made at or within the boundary of the property on which a noise sensitive unit which is not the source of the sound is located, or within a noise sensitive unit which is not the source of the sound.

#### **6.225.030 - Remedies**

## Lane Code

- A. Administrative Enforcement. A person who violates any provision of LC 6.225.005 through LC 6.225.025 is subject to administrative enforcement pursuant to LC Chapter 5, and/or abatement pursuant to the nuisance abatement procedures set forth in LC Chapter 9.
- B. Remedies Cumulative. The provisions of this subchapter are cumulative and nonexclusive and do not affect any other claim, cause of action or remedy; nor, unless specifically provided, do the provisions of this subchapter repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but are additional to existing legislation and common law on such subject. In the case of an adjudicated conflict between the provisions of this subchapter and any Federal statute or regulation promulgated thereunder, such statute or regulation supersede the provisions of this subchapter and may be enforced, to the fullest extent allowed by law, by Lane County.



## REGULATIONS AND ENFORCEMENT

### 9.020 Illegal Dumping and Penalty

(1) Any person who throws, places, or disposes of, or directs or permits another person to throw, place, or dispose of refuse, electronic waste, yard debris, construction/demolition debris, or hazardous waste upon private land without the permission of the landowner, or upon public lands, public places, or in public waters, other than in receptacles provided for the purpose of collecting such waste, commits the violation of illegal dumping.

(2) A person is presumed to have participated in illegal dumping in violation of LC 9.020(1) where that person's name or other indicia of identity, indicia that would ordinarily denote a person's ownership of the item, such as a name or an addressee on an envelope, is found on an item that has been illegally thrown, placed, or disposed of on public or private land, or in public waters. A person may rebut the presumption in this section by providing the County with evidence that establishes that the person was likely not responsible for the illegal dumping of the item in violation of LC 9.020(1).

(3) Illegal Dumping is a Class A violation, pursuant to ORS Chapter 153. Repeated violations may be subject to the maximum fine even if the individual violations are not severe. Fines are to be determined by the enforcement officer at the time a violation is identified. *(Revised by Ordinance No. 13-07, Effective 1.11.08; 6-12, 11.17.12)*

### 9.021 Illicit Discharge

(1) Definitions. For the purposes of this section, the following words and phrases have the following ascribed meanings:

- (a) Director. The Director of the Department of Public Works or the Director's designee.
- (b) Illicit Discharge. Any discharge to the stormwater system that is not composed entirely of stormwater, as determined by the Environmental Protection Agency Stormwater Phase II Final Rule, as it may be modified from time to time. The following non-stormwater discharges are not categorized by Oregon Department of Environmental Quality (DEQ) to be an Illicit Discharge, unless they become a source of pollutants:
  - (i) A discharge regulated under a separate DEQ National Pollutant Discharge Elimination System (NPDES) permit.
  - (ii) A discharge that originates from emergency firefighting activities or fire hydrant flushing.
  - (iii) Uncontaminated water line flushing.
  - (iv) Landscape irrigation, only if pesticides and fertilizers are applied in accordance with the manufacturer's instructions.
  - (v) Diverted stream flows.
  - (vi) Uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)) to separate storm sewers;
  - (vii) Rising groundwaters.
  - (viii) Uncontaminated pumped groundwater.
  - (ix) Potable water sources (including potable groundwater monitoring wells and draining and flushing of municipal potable water storage reservoirs).
  - (x) Start up flushing of groundwater wells.
  - (xi) Foundation footing and crawlspace drains (where flows are not contaminated [i.e., process materials or other pollutant]);
  - (xii) Uncontaminated air conditioning condensation or compressor condensate.
  - (xiii) Irrigation water, only if pesticides and fertilizers are applied in accordance with the manufacturer's instructions).
  - (xiv) Springs.
  - (xv) Lawn watering.

(xvi) Individual residential car washing.

(xvii) Charity car washing (provided that chemicals, soaps, detergents, steam or heated water are not used. Washing is restricted to the outside of the vehicle, no engines, transmissions or undercarriages).

(xviii) Flows from riparian habitats and wetlands.

(xix) De-chlorinated swimming pool discharges including hot tubs (heated water must be cooled for at least 12 hours prior to discharge).

(xx) Street and pavement wash waters (provided that chemicals, soaps, detergents, steam or heated water are not used).

(xxi) Routine external building wash-down (provided that chemicals, soaps, detergents, steam or heated water are not used).

(xxii) Water associated with dye testing activity.

(xxiii) Discharges of treated water from investigation, removal and remedial actions selected or approved by DEQ pursuant to ORS Chapter 465.

(c) Illicit connection.

(i) Any surface or subsurface drain or conveyance that allows an illicit discharge to enter the stormwater system, including but not limited to, (a) any conveyances that allow any illicit discharge to enter the stormwater system and (b) any connections to the stormwater system from indoor drains and sinks. The above activities are considered illicit connections regardless of whether the drain, conveyance, or connection was previously allowed, permitted, or approved by a government agency; or

(ii) Any drain or conveyance connected from a commercial or industrial land use to the stormwater system that has not been documented in plans, maps, or equivalent records and approved by the County through the Facility Permits process.

(d) Non-stormwater Discharge. Any discharge to the public storm drainage, groundwater and surface water systems that is not composed entirely of stormwater.

(e) Person in Charge of Property. An owner, agent, occupant, lessee, tenant, contract purchaser, or other responsible person having possession or control of the property or the supervision of a construction project on the property.

(f) Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sand, soil, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

(g) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips. The term “premises” shall include recreational vehicles.

(h) Public Way. Any property over which the public has acquired a right of use or passage through dedication, grant, use, or conduct. Public ways include, but are not limited to, “public roads,” as defined in LC 15.010(41), easements, and drainage ways.

(i) Recreational Vehicle. A vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motor homes, travel trailers and truck campers.

(j) Responsible Person. As defined in LC 5.025.005, and including: (a) The person in charge of property from which the discharge emanates, and (b) The person who directly or indirectly causes the discharge.

(k) Stormwater Sewer System, Stormwater System, Storm Drainage System. For purposes of this chapter, a drain and collection system owned, operated, or under the control of Lane County for the sole purpose of collecting naturally occurring precipitation or stormwater runoff, including roads, ditches, channels, pipes, and culverts, catch basins, manholes. The stormwater sewer system is not a combined sewer system and does not include conveyance of any wastewater.

(1) Storm Water, Stormwater, Stormwater Runoff, Storm Water Runoff. Water that washes off or runs off the land as a result of naturally occurring precipitation, such as a snow or rainstorm, which does not infiltrate into the soil, as determined by the Environmental Protection Agency Stormwater Phase II Final Rule, as it may be modified from time to time.

(2) Purpose and Scope

The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the County, protect groundwater and waters of the state to which stormwater systems discharge, through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable under Federal and Oregon law.

(3) Applicability

(a) This section applies to illicit discharges and to discharges from illicit connections, when such discharges occur on property located outside the Urban Growth Boundaries of the cities of Springfield and Eugene, as defined in LC 10.600-10 and LC 10.600-20, respectively.

(b) For areas within the City of Springfield Urban Growth Boundary, the Lane County Board of Commissioners has adopted the City of Springfield's illicit discharge regulations as part of Ordinance No. 3-10. Those regulations shall be applied by the City of Springfield within the Springfield Urban Growth Boundary as set forth in LC 10.600-10.

(c) For areas within the City of Eugene Urban Growth Boundary, the Lane County Board of Commissioners has adopted the City of Eugene's illicit discharge regulations as part of Ordinance No. 01-12. Those regulations shall be applied by the City of Eugene within the Eugene Urban Growth Boundary as set forth in LC 10.600-10.

(d) The County retains the right to enforce the adopted regulations in 9.021(3)(b) and (c), pursuant to LC 5.030(1)(e), where compliance cannot be obtained by the cities.

(4) Requirements and Prohibitions

(a) Prohibited Discharges:

(i) No person may place or cause to be placed in the County Stormwater Sewer System a substance which is harmful to water quality or has a tendency to clog the County Stormwater Sewer System. No person, within the person's ability to control, may permit a substance that is harmful to or has a tendency to clog the County Stormwater Sewer System, to enter the County Stormwater System.

(ii) No person may allow an illicit discharge from his or her premises to flow out, on, or under a public way or public property.

(iii) No person may permit any discharge from an illicit connection to flow out, on, or under a public way or public property.

(b) Exceptions to Prohibited Discharges. Except as provided in this subsection (b), no person may discharge or cause to be discharged into the County Storm Water System, any substance other than stormwater:

(i) Discharges authorized by written approval of the Oregon Department of Environmental Quality or the Director.

(ii) Discharges pursuant to a National Pollutant Discharge Elimination System permit issued on or before March 10, 2004, which are deemed to have received written approval from the Director.

(iii) The foregoing exceptions notwithstanding, the Director may deny or withdraw approval for discharge, including the approval under subsection (ii) immediately preceding, if the Director determines that discharge poses a threat to health, safety, public welfare, or the environment, or is otherwise prohibited by law.

(5) Enforcement

(a) Illicit Discharge is a Class A violation, pursuant to ORS Chapter 153.

(b) A person who violates any provision of LC 9.021 is subject to administrative enforcement pursuant to LC Chapter 5 and Chapter 15, and abatement pursuant to the nuisance abatement procedures set forth in LC Chapter 9. Abatement or correction under those provisions may include installation of infrastructure as necessary to prevent illicit discharges from entering the public way or public property. Repeated violations may be subject to the maximum fine even if the individual violations are not severe. Fines are to be determined by the enforcement officer at the time a violation is identified.

## NUISANCE

### 9.570 Purpose.

The purpose of LC 9.570 through 9.592 is to regulate the accumulation of waste, solid waste, tires, inoperable vehicles and vegetation on public and private property.

### 9.572 Exemptions.

Unless specifically provided otherwise, LC 9.570 through 9.592 does not apply to the following:

- (1) Disposal sites operated in compliance with regulations promulgated by the Environmental Quality Commission, Department of Environmental Quality, or other ordinances or regulations of the County.
- (2) Outdoor storage of inoperable or unregistered vehicles when the land has a zoning district which permits or conditionally permits outdoor storage of inoperable or used vehicles and the vehicles are stored in accordance with applicable provisions.
- (3) Property located within the corporate limits of incorporated cities.

### 9.574 Definitions.

For the purposes of LC 9.570 through 9.592, the following words and phrases have the meanings ascribed to them:

- (1) Abandoned Structure. A vacant structure that is an attractive nuisance.
- (2) Attractive Nuisance. Buildings, structures, or premises that are in an unsecured, derelict or dangerous condition, including but not limited to: (a) Unguarded machinery, equipment, or other devices which are attractive, dangerous and accessible to children; (b) Lumber, logs, or pilings placed or stored in a manner so as to be attractive, dangerous and accessible to children; (c) An open pit, quarry, cistern, or other excavation without safeguards or barriers to prevent such places from being used by children; or (d) An open, vacant structure which is attractive, dangerous and accessible to children or which is used for habitation by trespassers. "Attractive Nuisance" does not include authorized construction projects with reasonable safeguards to prevent injury or death to playing children.
- (3) Certificate of Fitness. A certificate issued for a particular property by the Oregon Health Division following a satisfactory site characterization by a licensed drug laboratory decontamination contractor, sampling and testing by an independent, third party approved by the Oregon Health Division, and any necessary contamination reduction of the property by such licensed contractor. The certificate authorizes removal of the property from the State Building Codes Division's "Unfit for Use" listing and allows reuse of the property.
- (4) Debris. An accumulation of decomposed animal or vegetable matter, garbage, rubbish, manure, offal, ashes, discarded containers, waste, paper, debris, trash, hay, grass, straw, weeds, litter, rags, or other refuse matter or substance which by itself in conjunction with other substances is deleterious to public health or comfort, or is unsightly, or creates an offensive odor.570-
- (5) Derelict Structure. A building or structure that is unfit for human habitation, poses an incipient hazard, or is detrimental to public health, safety, or welfare as a result of one or more of the following conditions: (a) is unoccupied or unsecured; (b) is partially constructed; (c) is an abandoned structure or attractive nuisance; (d) is in condition of deterioration; (e) has an infestation of pests; (f) has doors or windows boarded over; or (g) other condition that in the opinion of the health officer is detrimental to public health, safety, or welfare.
- (6) Director. The Director of Public Works, the Director's designee, or the Manager of the Land Management Division, or the Manager's designee.
- (7) Emergency. A sudden or unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.
- (8) Imminent Threat. Serious harm that is relatively certain to occur within a short timeframe (immediate as opposed to remote) if the nuisance is not remedied.

(9) Inoperable Vehicle. A vehicle which: (a) Has been left on private property for more than 30 days; and (b) Has broken or missing window(s); or broken or missing windshield; or a missing wheel(s), or a missing tire(s); or lacks an engine or will not run; or lacks a transmission or the transmission is inoperable; and (c) The vehicle is over three years old. (d) For purposes of this section, a showing that the vehicle(s) in question is unregistered and, if operated on a public highway of this state, would be in violation of one or more of the following provisions: ORS 815.020, 815.100, 815.125, 815.155, 815.160, 815.170, 815.180, 815.195, 815.235, 815.245 through 815.260, 815.270, and 815.295 constitutes a rebuttable presumption that it is inoperable.

(10) Motor Vehicle. A vehicle that is self-propelled or designed for self-propulsion.

(11) Noxious Vegetation: Includes: (a) Weeds more than 10 inches high. (b) Grass more than 10 inches high unless that vegetation is an agricultural crop and does not create a fire hazard or traffic hazard. (c) Poison Oak or Poison Ivy. (d) Tansy Ragwort. (e) Blackberry bushes that extend into a public thoroughfare or across a property line. (f) Thistle.

(12) Nuisance. Includes, but is not limited to any annoying, unpleasant, or obnoxious condition or practice causing an unreasonable threat to the public health, safety and welfare, including activities defined as a nuisance in LC 9.576 through 9.590.

(13) Person. Includes individuals, corporations, associations, firms, partnerships and joint stock companies.

(14) Person in Charge of Property. An owner, agent, occupant, lessee, tenant, contract purchaser, or other responsible person having possession or control of the property or the supervision of a construction project on the property.

(15) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips. The term "premises" shall include recreational vehicles.

(16) Putrescible Material. Organic material that decomposes and gives rise to foul or offensive odors, or foul or offensive by-products.

(17) Recreational vehicle. A vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel or seasonal use that either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to camping trailers, fifth wheel trailers, motor homes, travel trailers and truck campers.

(18) Repeat Offender. A responsible person who has caused to come into or continue in existence a nuisance similar to a nuisance for which the person was responsible within the past five years.

(19) Responsible Person or Person Responsible. As defined in LC 5.025.005, including: (a) The person in charge of property on which the nuisance exists or which abuts a public way where a nuisance exists. (b) The person who directly or indirectly causes the nuisance to come into or continue in existence.

(20) Rodent-proof. Any building, structure or part thereof is "rodent-proof" when it is constructed of concrete, metal or some equally impermeable material and in a manner that excludes rats and mice.

(21) Solid Waste. Solid Waste includes all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, waste paper and cardboard, grass clipping, composts, sewer sludge, residential, commercial, and industrial appliances, equipment and furniture, discarded or inoperable vehicles, vehicle parts or vehicle tires, manure, vegetable or animal solid and semisolid waste and dead animals. The term Solid Waste does not include: (a) Materials used for fertilizer or for other productive purposes on land in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential nonagricultural purposes. (b) Septic tank and cesspool pumping or chemical toilet waste; (c) Reusable beverage containers as defined in ORS 459A.725. (d) Source separated principal recyclable materials as defined in ORS Chapter 459 and the Rules promulgated thereunder, which have been purchased or exchanged for fair market value.

(22) Tire. The band of material used on the circumference of a wheel which forms the tread that comes in contact with the surface of the road.

(23) Unfit for Human Habitation. A building or structure that, as found by the enforcement officer, is unfit for human habitation due to unsanitary conditions, infestation, accumulation of filth or

contamination; lack of required ventilation, illumination, or sanitary or heating facilities; or is not connected to approved water or electricity, such that habitation would be injurious to the health, safety, or welfare of the occupants.

(24) Unfit for Use. A designation by the Oregon Health Division that means that the property has been found to be, or there are reasonable grounds to believe that the property was, the site of illegal drug manufacture and may be contaminated with hazardous chemicals or substances and therefore is not fit to use until appropriate site assessment and any necessary contamination reduction procedures have been performed by a licensed drug laboratory decontamination contractor.

(25) Unoccupied. Not legally occupied.

(26) Unsecured. Unlocked or otherwise open to entry.

(27) Unregistered Vehicle. A vehicle without a license plate or with an expired license plate.

(28) Vegetation. Plant life, including but not limited to, trees, shrubs, flowers, weeds and grass.

(29) Vehicle. Any device in, upon, or by which any person or property is or may be transported, or drawn upon a public highway, and includes vehicles that are propelled or powered by any means, but does not include a device propelled by human power.

(30) Waste. Waste is useless unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of Solid Waste or Waste, may from time-to-time have value and thus be utilized, shall not remove them from the definition.

### **9.576 Nuisance Vegetation.**

Any vegetation that creates the following conditions on any public or private property shall constitute a nuisance and no person responsible shall cause or permit such conditions to exist:

(1) Vegetation that is a hazard to pedestrian or vehicular use of any sidewalk or street by obstructing passage or vision. The hazards include, but are not limited to:

(a) Vegetation that encroaches upon or overhangs a pedestrian way or adjacent parking strip lower than nine feet or encroaches upon or overhangs a street lower than 15 feet.

(b) Vegetation which obstructs motorist or pedestrian view of traffic signs and signals, street lights and name signs, or other safety fixtures or markings placed in the public way.

(2) Vegetation that is an obstruction of access to a use of any public facilities placed within the public way.

(3) Noxious vegetation on public or private property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987. No owner or person in charge of such property may allow noxious vegetation to be on the property or encroach into the right-of-way of a public thoroughfare abutting on the property.

### **9.580 Nuisance Storage of Tires.**

The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist:

(1) The storage of 4 or more used tires on private or public property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987, unless the tires are used for agricultural or landscaping purposes.

(2) The storage of 10 or more used tires on private or public property not described in 9.580(1)(a) above, unless the tires are used for agricultural purposes.

(3) Notwithstanding the above, the storage of tires on private property is permitted if the property owner is conducting a legally operated business that normally deals in tires, or if the tires are completely enclosed within a building and do not constitute a fire hazard or health hazard.



**9.582 Nuisance Vehicle Storage.**

The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist:

(1) Storing or permitting to be stored in excess of 90 days within any consecutive 12 month period an unregistered or inoperable vehicle or portion thereof, or two or more unregistered or inoperable vehicles at any one time on any private property in those areas within Urban Growth Boundaries of incorporated cities or within developed and committed areas designated Community or zoned RR-5, RR-2, RR-1 or RA in the Lane County Rural Comprehensive Plan on August 1, 1987, unless the vehicle is completely enclosed within a building, or is not visible from any public way and is located more than 200 feet from any property line, or unless it is stored on the premises of a business enterprise dealing in used vehicles lawfully conducted within the County.

(2) Storing or permitting the storing of more than three inoperable or more than ten operable vehicles upon private property within the County and not described in 9.582(1) above, unless the vehicle is completely enclosed within a building, or is not visible from any public way and is located more than 200 ft. from any property line, or unless it is stored on the premises in connection with a lawfully conducted business.

**9.584 Accumulation, Collection, Storage, or Disposal of Solid Waste or Waste.**

(1) The following things, practices or conditions shall constitute a nuisance and no person responsible shall cause or permit such condition to exist: Any accumulation, collection, storage, or disposal of solid waste, waste, garbage, liquid waste, refuse, rubbish, sewage sludge, demolition materials or fill dirt, if any of the aforementioned materials are offensive or hazardous to the public health and safety.

(2) The following conditions are presumed to be offensive or hazardous to the public health and safety:

(a) Accumulation of any material capable of providing vector or rodent harborage or which may create a fire hazard;

(b) Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition;

(3) This section shall not apply where the person responsible is licensed by lawful authority to conduct the otherwise unpermitted activity.

**9.586 An Abandoned, Discarded, or Unattended Icebox, Refrigerator, or Other Container with a Compartment.**

Any abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and an airtight door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside shall constitute a nuisance and no person responsible shall cause or permit such condition to exist.

**9.588 Derelict Structure.**

Derelict structures shall constitute a nuisance, and no person responsible shall cause or permit a derelict structure to exist on any premises.

**9.590 Properties Declared "Unfit for Use" Due to Illegal Drug Manufacturing Contamination.**

(1) Property placed on the Oregon Health Division "unfit for use list" pursuant to ORS 453.879 because it has been used for the manufacture of illegal drugs shall be considered a nuisance 90 days after it has been listed and shall remain a nuisance until such time as it is issued a "Certificate of Fitness" by the Oregon Health Division, and no responsible person shall cause or permit such a condition to exist.

(2) A failure to comply with this section shall be cause for a responsible person to be subject to the administrative enforcement procedures set forth in this chapter. The imposition of a penalty does not relieve a responsible person of the duty to abate the nuisance.

**9.592 Enforcement****(1) Abatement****(a) Notice.**

(i) If the Director or their designee is satisfied that a nuisance exists, a notice shall be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.

(ii) At the time of posting, a copy of the notice shall be forwarded by regular and certified mail, postage prepaid, to the person responsible at the last known address of such person. For service by certified mail, service will be deemed made on the date signed by the responsible person. For service by regular mail, service will be deemed received three days after the date mailed if to an address within this state and seven days after the date mailed if to an address outside of this state.

(iii) The notice to abate shall contain:

(aa) A description of the real property, by street address or map and tax lot number, on which the nuisance exists.

(bb) A direction to abate the nuisance within 10 days from the date of the notice.

(cc) A description of the nuisance.

(dd) A statement that unless the nuisance is removed, the County may abate the nuisance and the cost of abatement will be charged to the person responsible.

(ee) A statement that failure to abate a nuisance may warrant imposition of a fine.

(ff) A statement that the person responsible may protest the order to abate by filing an appeal as provided in LC 9.592(3).

(iv) If the person responsible is not the owner, an additional notice shall be sent to the owner stating that the cost of abatement not paid by the Person Responsible may be assessed to and become a lien on the property.

(v) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

**(b) Abatement by the Person Responsible.**

(i) Within 10 days after the posting and receipt of mailing of such notice, the Responsible Person shall remove the nuisance or file a written appeal requesting a hearing under LC 9.592(3).

(ii) If, on appeal, the Hearings Official determines that a nuisance does in fact exist, the Responsible Person shall abate the nuisance within 10 days after the Hearings Official's determination.

(c) Joint Responsibility. If more than one person is a Responsible Person, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the County in abating the nuisance.

**(d) Abatement by the County.**

(i) If the nuisance has not been abated by the Responsible Person within 10 days of the date of posting or receipt of the notice of the nuisance where no hearing is requested, or within 10 days of the Hearings Official's determination on appeal, the Director or their designee may cause the nuisance to be abated.

(ii) The officer charged with abatement of the nuisance shall have the right at reasonable times to enter into or upon premises to investigate or cause the removal of a nuisance. If access is denied, the officer may obtain an administrative inspection warrant, pursuant to LC 5.025.

(iii) The Director or their designee shall keep an accurate record of the expense incurred by the County in physically abating the nuisance and shall include 25 percent of those expenses for administrative overhead.

**(e) Assessment of Costs.**

(i) The Director or their designee, by registered or certified mail, postage prepaid, shall forward to the Person Responsible a notice stating:

(aa) The total cost of abatement, including the administrative overhead.

(bb) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(cc) That if the owner or Responsible Person objects to the cost of the abatement as indicated, they may file an appeal as provided in LC 9.592(3).

(ii) If the costs of the abatement are not paid within 30 days from the date of the notice, or the date of the hearings official's determination where an appeal is filed, the costs of abatement shall constitute a lien on the property from which the nuisance was removed or abated.

(iii) The lien shall bear interest at the rate prescribed in ORS 82.010. The interest shall commence to run from the date of recording of the lien.

(iv) An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property.

## (2) Summary Abatement

### (a) Authorization.

(i) If the Director or their designee determines that a nuisance creates an imminent threat to the occupants of the property or to the public health and safety, the County may proceed with summary abatement, as set forth in this section.

(ii) The County may also proceed with summary abatement where the Responsible Person is a repeat offender.

### (b) Pre-Abatement Notice.

(i) If the Director or their designee is satisfied that a nuisance creates an imminent threat as set forth in subsection (2)(a)(i) above, then the Director shall cause a notice to be mailed to the Responsible Person or owner, and posted on the premises or at the site of the nuisance if reasonable under the circumstances.

(ii) The notice of summary abatement shall contain:

(aa) A description of the real property, by street address or map and tax lot number, on which the nuisance exists.

(bb) A description of the nuisance, and, if authorized under subsection (2)(a)(i) above, an explanation why it constitutes an imminent threat

(cc) The date the abatement will occur,

(dd) A statement that the cost of abatement will be charged to the person responsible, and that if not paid, may become a lien on the property.

(ee) A statement that the dangerous condition may warrant imposition of a fine.

(c) Scope of Abatement by County. The County may abate the nuisance to the extent necessary to alleviate the immediate threat, including but not limited to:

(i) Order immediate vacation of the property

(ii) Post the premises as unsafe, substandard, or dangerous

(iii) Board, fence, or secure the building or site.

(iv) Raze and grade

(v) Conduct emergency repairs

(vi) Take any other action appropriate under the circumstances

### (d) Post-Abatement Notice.

(i) Following abatement by the County, the Director or their designee shall cause a second notice to be posted and mailed as provided for in subsection (2)(b)(i) above.

(ii) The post-abatement notice shall contain:

(aa) A description of the actions taken by the County and the reasons for the actions

(bb) A statement of the costs of abatement, including the administrative fee set forth in subsection (1)(d)(iii) above, and that the County intends to collect

(cc) A statement that the person responsible may protest the County's actions and/or the assessed costs by filing a written appeal within 10 days of the date of the notice.

## (3) Appeals

(a) Appeals shall be filed in writing, by mailing or delivering a written appeal no later than 10 calendar days after receipt of the determination or notice being challenged. Failure to file a timely appeal shall constitute a waiver of the right to an appeal hearing.

(b) Appeals shall contain the following information:

- (i) Name or names of appellant(s)
- (ii) A brief statement setting forth the action or decision being appealed
- (iii) A concise statement of the error alleged and the reasons the action or decision was in error
- (iv) The signature of the appellant(s), the appellant(s) telephone number and mailing address
- (v) The applicable appeal fee.
- (c) Upon receiving the appeal, the Director or their designee shall (1) schedule an appeal hearing with the Hearings Official, and (2) provide notice of such hearing.
- (d) The appeal hearing shall be conducted pursuant to the procedures set forth in LC 5.040(2) and (3).
- (e) A copy of the final written order resolving the appeal shall be mailed to appellant(s) within 10 working days of the hearing
- (f) The written order shall be final and conclusive on the 61st calendar day after the date of mailing of the order.
- (4) Cumulative Remedies. The abatement procedures provided by this ordinance are in addition to and not in lieu of any other procedures or remedies provided by law, including administrative remedies provided in LC Chapter 5, as well as equitable relief and damages.

## FOOD HANDLER CERTIFICATE

### 9.600 Definitions.

For the purposes of this sub-chapter, the following words and phrases mean:

Authority. The Department of the State responsible for the application of ORS 624.

Board. The Lane County Board of Commissioners.

Communicable Disease. Any disease that may cause food-borne illness or may be transmitted from person to person under the conditions encountered in a food establishment.

Department. The Lane County Department of Health and Human Services.

Director. Director of the Lane County Department of Health and Human Services, or Director's duly authorized representative.

Diseased Person. As defined in ORS 624.

Employer. Any individual, sole proprietor, firm, partnership, corporation, company, association, or joint stock association, and any legal successor thereof.

Food. Any article used, or intended to be used, for food, drink, confection or condiment, whether simple or compound, thereof, and for human consumption.

Food Establishment. Any establishment that prepares, handles, offers, serves or makes available, with or without compensation, food for the general public.

Food Handler. A person employed or to be employed in a restaurant or the owner, operator or manager thereof who prepares, serves or handles food. This definition shall not include persons engaged in food handling operations or food manufacturing under the jurisdiction of the State Department of Agriculture.

Food Handler Card. The document carried by food handlers to demonstrate completion of the food handler training program set forth in ORS 624.570.

Food Handler Certificate. A certificate issued by the Department indicating that the holder of the certificate has demonstrated a minimum level of competency in the sanitary preparation, service, storage and handling of food and beverage.

Restaurant. As defined in ORS 624(9), any establishment licensed by the State under ORS Chapter 624 as a restaurant where food or drink is prepared for consumption by the public. Such an establishment is a restaurant, whether the food or drink is served or consumed on the premises or elsewhere.

Rules. Rules adopted by the Board of County Commissioners or Director and incorporated into the Lane Manual.

Temporary Restaurant. As defined in ORS 624(4), (11), and (12), any establishment where food is prepared or served for consumption by the public at public gatherings, entertainment events, food product promotions or other events, and is licensed by the State under ORS Chapter 624. Temporary Restaurant does not include an establishment where food is prepared and served, by a fraternity, social or religious organization, only to its own members and guests or a food product promotion where only a sample of food or foods are offered to demonstrate the characteristics of the food product. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 7-78, 6.9.78; 1-00, 4.12.00; 18-03, 5.31.18)*

### 9.605 Purpose and Authority.

Pursuant to ORS Chapters 431, 624, and the Home Rule Charter of Lane County, LC 9.600 through 9.690 herein are adopted for the purpose of:

(1) Preventing the spread of infectious foodborne disease and establishing a uniform health standard in Lane County for food handlers.

(2) Insuring that all food handlers possess an adequate knowledge of the sanitary principles and practices involved in the preparation, storage and service of foods and beverages.

(3) Insuring that all food handlers possess adequate knowledge of anti-choking procedures as required in ORS Chapter 624 and described in Lane County publication entitled "Anti-Choking Maneuvers" or in the Red Cross Manual 32-1138. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 7-78, 6.9.78; 1-00, 4.12.00)*

**9.610 Adoption of the State Division of Health Rules, Regulations and Statutes.**

The rules and regulations of the State Health Authority and State statutes relative to food handlers are adopted as a part of this sub-chapter and incorporated herein. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 18-03, 5.31.18)*

**9.620 Notification by Restaurant.**

All owners, operators or managers of any restaurant shall inform all food handlers that they must obtain a food handler certificate from the Department within thirty (30) days of their employment. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 18-03, 5.31.18)*

**9.625 Time in Which to Acquire Permit.**

All food handlers employed in a restaurant must obtain from the Department a food handler certificate within thirty (30) days of their employment. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 18-03, 5.31.18)*

**9.627 Time in Which to Acquire Certification of Training in Anti-Choking Maneuvers.**

All food handlers employed in a restaurant shall obtain from an agent, certified by the Department or the Department within 30 days of their employment, training in anti-choking procedures. The Director may waive in writing the training requirements of LC 9.627 in cases of undue hardship, or where the Director determines that the employee's assignment renders such training impracticable or unnecessary. *(Revised by Ordinance No. 7-78, Effective 6.9.78; 18-03, 5.31.18)*

**9.630 Examination.**

Persons making application for a food handler certificate shall demonstrate their knowledge of elementary acceptable sanitary practices in the preparation, service, storage and handling of food and beverages, by satisfactorily passing an oral or written examination conducted by the Department based on the training manual available from the Department, prepared and authorized by the Authority. Any person may take the examination any number of times either in person at the Department office, on-line or at the location of any LPHA authorized to provide training and issue food handler certificates, as provided for under ORS 624. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 18-03, 5.31.18)*

**9.635 Notification of Temporary Restaurants.**

All owners, operators or managers of any temporary restaurant shall inform all food handlers that prior to commencing actual employment the worker shall have a basic knowledge of the elementary acceptable sanitary practices in the preparation, service, storage and handling of food and beverages as contained in the Authority's training manual," available from the Department or on-line. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 18-03, 5.31.18)*

**9.640 Examination for Temporary Restaurant.**

Each temporary restaurant must designate a person, either an owner, operator, or manager, who will obtain a food handler certificate of training in anti-choking procedures prior to commencement of actual operations in the preparation, handling and serving of food or beverages. The designated owner, operator, or manager must educate and supervise all temporary food handlers in elementary acceptable sanitary practices in the preparation, service, storage and handling of food and beverages in accordance with the training manual issued by the Authority (available from the Department or on-line). The owner, operator or manager must ensure that an individual certified as having been trained in anti-choking procedures be on duty at all times the temporary restaurant is in operation. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 7-78, 6.9.78; 1-00, 4.12.00; 18-03, 5.31.18)*

**9.650 Fees.**

(1) For the purpose of partially defraying expenses involved in the training and testing of food handlers, the Department will collect a fee in advance in the amount established by order of the Board for the following applications:

- (a) Food handler certificate.
- (b) Food handler certificate renewal.
- (c) Certification of training in anti-choking procedures.

(2) All fees are non-refundable.

(3) Fees may be waived or deferred by the Department upon its determination that a person is financially indigent at the time of application.

(4) The cost of the certificate shall be uniform throughout the County and shall be in the amount set by the Board. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 7-78, 6.9.78; 18-03, 5.31.18)*

**9.660 Revocation of Permit.**

A Food Handler Certificate may be revoked by the Department upon reasonable evidence indicating repeated or continuing failure to comply with accepted procedures and practices in the preparation, service, storage, or handling of food or beverage offered for public consumption. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 1-00, 4.12.00; 18-03, 5.31.18)*

**9.665 Review.**

Any food handler whose certificate has been revoked by the Department may request that the Director conduct an administrative review. The Director shall conduct a review and notify the affected parties within ten (10) days from the revocation of the Director's findings. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 7-78, 6.9.78; 18-03, 5.31.18)*

**9.670 Food Handler Certificates.**

Food handlers shall furnish and place on file with the person in charge of all food establishment their food handler certificate, as prescribed by the Department. Such certificates shall be kept on file by the employer and open for inspection at all reasonable hours by public health officials. Such certificates shall be returned by the employer to the employees upon termination of employment and shall be valid for three years from date of issuance. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 18-03, 5.31.18)*

**9.675 Diseased Persons May Not Work.**

In accordance with ORS 624.425, no person, while infected with a communicable disease described in ORS 624.080(1) or who is a carrier of any such disease, who is afflicted with a boil, infected wound, or an acute respiratory infection, may be allowed to work in a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 1-00, 4.12.00; 18-03, 5.31.18)*

**9.680 Certificate Exclusive and Valid Throughout Lane County and the State of Oregon.**

The food handler certificate provided by the Department shall be valid in the unincorporated areas of the County and all incorporated cities in the County of Lane, and throughout the State of Oregon, for the period for which it is issued, unless said cities by separate order of their governing body separately elect not to come under the provisions of this ordinance. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 18-03, 5.31.18)*

**9.690 Effective Date.**

The provisions of this sub-chapter shall be effective September 1, 1973. All permits issued shall be valid for three years from date of issuance. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 7-78, 6.9.78)*

**TOBACCO REGULATIONS**



**9.700 Definitions.**

As used in sections 9.700 through 9.774, the following words or terms have the following meanings:

(1) Arm's Length Transaction means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding these regulations' sections 9.700 through 9.774 is not an Arm's Length Transaction.

(2) Business means any sole proprietorship, partnership, joint venture, corporation, company, association, or other entity formed for purposes that include profit-making.

(3) County or Lane County means all of Lane County, including incorporated jurisdictions and unincorporated areas.

(4) Department means the Lane County Health & Human Services Department, and any agency or Person designated by the Department to enforce or administer the provisions of sections 9.700 through 9.774.

(5) Electronic Smoking Device means any device that can be used to deliver aerosolized or vaporized nicotine, cannabinoids, or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic Smoking Device does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(6) Employee means any Person who is employed by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers services for an Employer.

(7) Employer means any Business or Nonprofit Entity that retains the service of one or more Employees.

(8) Independent Contractor means any Person who is retained with a contract by any Employer in consideration for direct or indirect monetary wages or profit.

(9) Nominal Cost means the cost of any item imposed for the transfer from one person to another for less than the total of: (1) twenty-five percent (25%) of the fair market value of the item exclusive of taxes and government fees; plus (2) all taxes and government fees previously paid and all taxes and government fees still due on the item at the time of transfer.

(10) Non-sale Distribution means to give, furnish, or cause or allow to be given or furnished, wholly or for sampling, within Lane County, a Tobacco Product at no cost or at Nominal Cost to a Person who is not a Tobacco Retailer.

(11) Person means any natural person, Business, employer, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

(12) Proprietor means a Person with an ownership or managerial interest in a business. An ownership interest is deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest is deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

(13) Self-Service Display means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the Tobacco Retailer or employee of the Tobacco Retailer and a direct person-to-person transfer between the purchaser and the Tobacco Retailer or employee of the Tobacco Retailer. A vending machine is a form of Self-Service Display.

(14) Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an Electronic Smoking Device.

(15) Tobacco Product means any product that is made from or derived from tobacco, or which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. Tobacco Product also means an Electronic Smoking Device and any component or accessory used in the preparation or consumption of tobacco products, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. Tobacco product does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(16) Tobacco Retailer means any Person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, Tobacco Products. “Tobacco Retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products sold, offered for sale, exchanged, or offered for exchange. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

### **Tobacco Products and Person under Age 21**

#### **9.705 Purpose and Findings.**

In addition to Oregon State regulations on the sale, possession, and use of tobacco and tobacco products, LC 9.700 through 9.774 are enacted to regulate the sale, possession, and use of Tobacco Products in Lane County and unincorporated Lane County to and by persons under 21 years of age.

Lane County passes LC 9.700 through 9.774 out of a desire to promote a wholesome environment where children are encouraged to make healthful choices that allow them to grow up to lead healthy, productive and prosperous lives. Nicotine is a highly addictive toxic substance, the use of which is initiated primarily by young people. Nicotine use is associated with the risk of numerous adverse health consequences, including increased susceptibility of addiction to other drugs of abuse and the use of tobacco, and with serious neurobehavioral problems and nicotine use in children of mothers that use during pregnancy. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

#### **9.710 Requirements and Prohibitions.**

(1) Sale to person under age 21 prohibited. All Persons are prohibited from selling, giving or furnishing, or causing to be sold, given or furnished, a Tobacco Product to a person under 21 years of age in any place within Lane County.

(2) Positive identification required. Tobacco Retailers in Lane County are prohibited from selling, giving or furnishing a Tobacco Product to a person who appears to be under 30 years of age without first examining the holder’s government-issued photographic identification to confirm that the recipient is at least 21 years of age.

(3) Posting of sales age signage required. All Tobacco Retailers in Lane County are required to conspicuously post a notice that is clearly visible to the seller and the purchaser at the location where Tobacco Products are available for purchase. The Department will provide a notice that reads “The sale or provision of tobacco products, tobacco paraphernalia, and electronic smoking devices to persons under the age of 21 is prohibited by law” legibly printed in red letters at least one-half inch high.

(4) Self-Service Displays of Tobacco Products are prohibited.

(5) Non-sale Distribution Prohibited. All persons are prohibited from the Non-sale Distribution of any Tobacco Products to a Person who is not a Retailer. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

#### **9.715 Possession, Distribution and Use by Person Under Age 21.**

(1) It is unlawful for any person under 21 years of age to possess, receive, purchase, sell, distribute, use or consume Tobacco Products. It is unlawful for any person under 21 years of age to have personal possession of a Tobacco Product, except when such person under 21 years of age is in a private

residence accompanied by such person's parent or legal guardian and with the consent of such parent or legal guardian.

(2) A Youth Decoy, under the terms of LC 9.752(2), may purchase, attempt to purchase or acquire Tobacco Products for the purpose of testing compliance with local law or Tobacco Retailer management policy limiting or regulating the delivery of Tobacco Products to person under 21 years of age.

(3) Notwithstanding the prohibitions of Lane Code 9.715(1) and (2), an individual who is at least 18 years of age may possess, receive, sell, distribute Tobacco Products while lawfully employed as and performing the duties of a Tobacco Retailer. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

### **9.720 Non-Retaliation.**

Under the County's enforcement efforts, Persons, Tobacco Retailers, and Employers are prohibited from intimidating, threatening any reprisal, or effecting any reprisal, for the purpose of retaliating against another Person that seeks to attain compliance with LC 9.710 to 9.725. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

### **9.725 Penalties and Enforcement.**

(1) The Department or its authorized designee may conduct random, unannounced inspections at locations where Tobacco Products are distributed to test and ensure compliance with LC 9.710 through 9.720.

(2) A Youth Decoy is exempt from the provisions of LC 9.715(1). A Youth Decoy is a natural person under the age of 21 who:

(a) Is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the Department to monitor compliance with LC 9.752;

(b) Is acting as an agent of a Person designated by the Department to monitor compliance with LC 9.752; or

(c) Is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department or the Oregon Health Authority.

(3) All penalty and enforcement provisions within this section are cumulative and in addition to any other remedies available at law or in equity.

(4) Violations of LC 9.710 and 9.720 are punishable by a civil fine per separate violation as follows:

(a) Any Person who commits a violation while not in the course of Tobacco Retailing, a fine not exceeding \$50.

(b) Any non-managerial Employee while in the course of Tobacco Retailing who commits a violation, a fine not exceeding \$50.

(c) Any managerial Employee while in the course of Tobacco Retailing, acting within the course and scope of the person's employment, who violates, or the person has supervisory authority over a person described in LC 9.725(4)(b) who violates within a twenty-four month period: after a first or second violation, a fine not exceeding five hundred dollars (\$500); and after a third or subsequent violation, a fine not exceeding one thousand dollars (\$1,000).

(d) Any Employer or owner of a Tobacco Retailing business who violates or where a person described in LC 9.725(4)(b) or (c) who violates within a twenty-four month period: after a first violation, a \$1,650 fine; after a second violation, a \$4,950 fine; after a third or subsequent violation, a \$4,950 fine for Tobacco Retailers who do not hold a license to sell Tobacco Products. Those in violation will be responsible for all costs associated with prosecutions of violations.

(5) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.710 to 9.720 constitutes a violation of those sections.

(6) In addition to any other penalty, a Tobacco Retailer who holds a license to sell Tobacco Products who violates any provision of LC 9.710 through 9.720 may be subject to license suspension or revocation.

(7) In addition to other remedies provided by this section 9.725, the County can seek appropriate, equitable relief including but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and injunctive relief.

(8) If a peace officer can see the Tobacco Product in plain sight that the person is in violation of LC 9.715(1), the peace officer may confiscate the Tobacco Product.

(9) Criminal Prosecution. Nothing in this section 9.725 will prohibit Lane County from initiating criminal proceedings for any alleged violation of LC 9.710 through 9.720. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

### **Tobacco Retail Licensing and Sale Regulations Ordinance**

#### **9.752 Requirements and Prohibitions.**

(1) A person commits a violation of these Tobacco Retail Licensing and Sale Regulations (LC 9.752 to 9.774) if the Person knowingly engages in the following conduct:

(a) Selling, offering for sale, or exchanging or offering to exchange for any form of consideration, Tobacco Products in unincorporated Lane County without first obtaining and maintaining a valid Tobacco Retailer's license under LC 9.752 to 9.774 for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.

(b) Violating any local, state, or federal law applicable to Tobacco Products or Tobacco Retailing in the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license was issued.

(c) Failing to ensure that Employees know how to comply with tobacco control laws. Tobacco Retailers can be held responsible for violations committed by Employees.

(d) Failing to prominently display a Tobacco Retailer license in a publicly visible location at the licensed location.

(e) Failing to examine the government-issued photographic identification and confirm that the holder is at least 18 years of age, before selling or transferring Tobacco Products to a natural person who appears to be under 30 years of age.

(f) Selling, giving, or furnishing, or causing to be sold, given or furnished, a Tobacco Product to a natural person who is younger than 21 years of age.

(g) Permitting a natural person who is younger than 18 years of age to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products.

(h) Engaging in Tobacco Retailing by means of a Self-Service Display.

(i) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, failing to keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this subsection constitutes Tobacco Retailing without a valid license under LC 9.772.

(j) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, displaying any advertisement relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(k) Engaging in the Non-sale Distribution of Tobacco Products.

(l) Failing to conspicuously post a tobacco health warning approved by the Department in an area visible to all customers.

(m) Failing to conspicuously post signage provided by the Department that discloses current referral information about the Oregon Tobacco Quitline 1-800-QUIT-NOW.

(n) Engaging in Tobacco Retailing within 1000 feet of any school, from other than a fixed retail location in violation of 9.754 below.

(2) Tobacco Retailer's will be eligible for an incentive program reducing the annual license fee by \$75 if they: 1) have no tobacco retail violations in the previous year and 2) use a cash register that reads the magnetic strip on drivers' licenses to verify age. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

**9.754 Limits on Eligibility for a Tobacco Retailer License.**

(1) **WITHIN 1,000 FEET OF ESTABLISHMENTS SERVING CHILDREN.** No license will be issued to a Tobacco Retailer located within 1,000 feet of any school as follows:

(a) Except as provided in subsection (b), no Tobacco Retailer license will be issued within one thousand (1,000) feet of a school as measured by a straight line from the nearest point of the property line of the lot or parcel on which the school is located to the nearest point of the property line of the parcel on which the applicant's business is located. For the purposes of this subsection, a "school" a public kindergarten, elementary, middle, junior high or high school.

(b) A Tobacco Retailer that has been in operation at a location governed by subsection (1) above consistently since October 21, 2014, is exempt from the requirements of section (1) above. A Tobacco Retailer that has been in operation at a location governed by subsection (1) above consistently since October 21, 2014, that would otherwise be ineligible to receive or renew a Tobacco Retailer license due to the creation or relocation of a school is exempt from the requirements of subsection (1) above.

(2) **MOBILE VENDING.** Tobacco Retailing is only permitted at a fixed location. For example, Tobacco Retailing by natural persons on foot or from vehicles or mobile units is prohibited. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

**9.756 Application Procedure.**

Application for a Tobacco Retailer's license must be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and will be signed by each Proprietor or an authorized agent thereof.

(1) It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. The Proprietor will also train all employees in the applicable laws, and is required to provide proof of training with annual recertification.

(2) No Proprietor may rely on the issuance of a license as a determination by the Department that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to LC 9.758, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor will be revoked pursuant to LC 9.770. Nothing in LC 9.758 will be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

(3) All applications will be submitted on a form supplied by the Department and will contain the following information:

(a) The name, address, and telephone number of each Proprietor of the business seeking a license.

(b) The business name, address, and telephone number of the single fixed location for which a license is sought.

(c) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of LC 9.752 to 9.774. If an Authorized Address is not supplied, each Proprietor will be understood to consent to the provision of notice at the business address specified in subparagraph (b) above.

(d) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, LC 9.752 to 9.774 and, if so, the dates and locations of all such violations within the previous five years.

(4) Such other information as the Department deems necessary for the administration or enforcement of LC 9.752 to 9.774 as specified on the application form required by this section.

(5) A licensed Tobacco Retailer must inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days of a change.

(6) All information specified in an application pursuant to this section is subject to disclosure under the Oregon Public Records Act or any other applicable law, subject to the laws' exemptions. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

#### **9.758 Issuance of License.**

Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by LC 9.766, the Department will issue a license to the applicant that demonstrates by substantial evidence that one or more of the following bases for denial does not exist:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information will be a violation punishable under LC 9.774.

(2) The application seeks authorization for Tobacco Retailing at a location for which LC 9.754 prohibits issuance of Tobacco Retailer licenses.

(3) The application seeks authorization for Tobacco Retailing for a Proprietor to whom LC 9.752 to 9.772 prohibits a license to be issued.

(4) The application seeks authorization for Tobacco Retailing that is prohibited or unlawful pursuant to this Code or that is unlawful pursuant to any other law. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

#### **9.760 License Renewal and Expiration.**

(1) **RENEWAL OF LICENSE.** A Tobacco Retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is one year. Each Tobacco Retailer will apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

(2) **EXPIRATION OF LICENSE.** A Tobacco Retailer's license that is not timely renewed expires at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

(a) Submit the license fee and application renewal form; and

(b) Submit a signed affidavit affirming that the Proprietor:

(i) Has not sold and will not sell or display any Tobacco Product after the license expiration date and before the license is renewed; or

(ii) Has waited the period of time required by LC 9.772 for Tobacco Retailing without a valid license before seeking renewal of the license. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

#### **9.762 Licenses Nontransferable.**

(1) A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

(2) Notwithstanding any other provision of LC 9.752 to 9.774, prior violations at a location will continue to be counted against a location and license ineligibility periods will continue to apply to a location unless:

(a) The location has been transferred to new Proprietor(s) in an Arm's Length Transaction;

and

(b) The new Proprietor(s) provide the Department with clear and convincing evidence that

the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

#### **9.764 License Conveys a Limited, Conditional Privilege.**

Nothing in LC 9.752 to 9.774 grants any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in unincorporated Lane County identified on the face of the license. Nothing in LC 9.752 to 9.774 renders

inapplicable, supersedes, or applies in lieu of any other provision of applicable law, including but not limited to, any provision of this Code, or any condition or limitation on smoking in an enclosed place of employment under ORS 433.847 and OAR 333-015-0068 or other federal or local ordinances. Obtaining a Tobacco Retailer's license does not make the Tobacco Retailer a certified smoke shop under ORS 433.847 and OAR 333-015-0068. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

#### **9.766 Fee for License.**

The fee to issue or to renew a Tobacco Retailer's license will be set annually by Order of the Board of Commissioners. The fee will be calculated so as to recover the cost of both the administration and enforcement of this Code, including the cost of issuing the license, administering the license program, Tobacco Retailer education, Tobacco Retailer inspection and compliance checks, documentation of violations, adjudications, convictions, and prosecution of violators. All fees are nonrefundable except as required by law and are permitted to be used exclusively to fund the program. Fees will not be prorated. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

#### **9.768 Compliance Monitoring.**

(1) The Department will monitor compliance with LC 9.752 to 9.774 and may designate any number of additional Persons to assist monitoring compliance. In addition, any peace officer may enforce the penal provisions of LC 9.752 to 9.774.

(2) The Department will endeavor to inspect each Tobacco Retailer at least one time per twelve month period. Nothing in this paragraph creates a right of action in any licensee or other Person against the County, Department or its agents. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

#### **9.770 Suspension or Revocation of License.**

(1) **SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a Tobacco Retailer's license will be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of LC 9.710 to 9.774 or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in LC 9.764 above.

(a) Upon a finding by a court or the Department of a first violation of LC 9.710 to 9.772 at a location within any twenty-four month period, the license will be suspended for ten days or a \$1,650 fine imposed.

(b) Upon a finding by a court or the Department of a second violation of LC 9.710 to 9.772 at a location within any twenty-four month period, the license will be suspended for thirty days or a \$4,950 fine imposed.

(c) Upon a finding by a court or the Department of a third violation of LC 9.710 to 9.772 at a location within any twenty-four-month period, the license will be suspended for thirty days.

(d) Upon a finding by a court or the Department of four or more violations of LC 9.710 to 9.772 at a location within any twenty-four month (24) period, the license will be revoked.

(2) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable to the Director of the Department and any appeal must be filed in writing with the Director within ten days of mailing of the Department's decision. If such an appeal is timely made, it will stay enforcement of the appealed action. An appeal to the Director is not available for a revocation made pursuant to subsection (3) below.

(3) **REVOCATION OF LICENSE WRONGFULLY ISSUED.** A Tobacco Retailer's license will be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 9.758 existed at the time application was made or at any time before the license issued. The decision by the Department will be the final decision.

Such a revocation will be without prejudice to the filing of a new license application. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

### **9.772 Tobacco Retailing Without a Valid License.**

(1) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person will be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

(a) After a first violation of this section at a location within any twenty-four month period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until thirty days have passed from the date of the violation.

(b) After a second violation of this section at a location within any twenty-four month period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety days have passed from the date of the violation.

(c) After of a third or subsequent violation of this section at a location within any twenty-four month period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until two years have passed from the date of the violation.

(2) Tobacco Products offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and will be forfeited after the licensee and any other owner of the Tobacco Products seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products were not offered for sale or exchange in violation of LC 9.752 to 9.772. The decision by the Department may be appealed under LC 9.770. Forfeited Tobacco Products will be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to Oregon law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(3) For the purposes of the civil remedies provided in LC 9.774 the following constitute separate violations:

(a) Each day on which a Tobacco Product is offered for sale in violation of LC 9.752 to 9.772; or

(b) Each instance in which an individual retail Tobacco Product distributed, sold, or offered for sale in violation of LC 9.752 to 9.772. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*

### **9.774 Penalties and Additional Remedies.**

(1) The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.

(2) Violations of LC 9.752 to 9.772 are punishable by a fine per violation as follows: after a first violation, a \$1,650 fine or suspension of license; after a second violation, a \$4,950 fine or suspension of license; after a third violation, a suspension of license as described in 9.770. Those in violation will be responsible for all costs associated with prosecutions of violations.

(3) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.752 to 9.772 is punishable according to 9.772 subsection (3) above.

(4) Violations of LC 9.752 to 9.772 are hereby declared to be public nuisances.

(5) In addition to other remedies provided by LC 9.752 to 9.772 or by other law, any violation of LC 9.752 to 9.772 may be remedied by a civil action including, for example, through administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15; 17-01, 4.13.17)*



**9.780 Smoke and Tobacco-free Facilities and Grounds**

To promote the long-term health and safety of Lane County employees and the public, except as otherwise allowed by law and Lane Code, smoking and the use of tobacco is not permitted at any time:

- (1) within any interior space of facilities owned or occupied by Lane County;
- (2) on all outside property or grounds owned or occupied by Lane County, including parks, natural areas, parking areas; and
- (3) in vehicles owned by Lane County or in personal vehicles when on County property.

County roads or County-owned rights of way are not subject to any tobacco restrictions contained in this policy. Lane County is committed to providing tobacco use cessation support, and to referring employees, volunteers, clients, visitors and vendors to available cessation resources such as the Oregon Tobacco Quit Line. The County Administrator will establish standards to effectively communicate this policy to employees, vendors, and the public. *(Revised by Ordinance No. 17-05, Effective 12.7.17)*

**SEWAGE FACILITIES MANAGEMENT REGULATIONS****9.800 Authority, Intent and Purpose.**

Pursuant to Oregon Revised Statutes and the Home Rule Charter of Lane County, this sub-chapter is adopted for the following purposes:

- (1) To provide a management system for the safe and sanitary collection, treatment and disposal of domestic waste for cluster units.
- (2) To provide for implementation of sewage facilities in specified areas within Lane County.
- (3) To prevent sewage facilities from becoming a financial burden or otherwise a nuisance to those citizens not directly served by such sewage facilities.
- (4) To provide a mechanism to permit sewage facilities in New Development Centers.
- (5) To assure the financial stability and the operational integrity of sewage facilities approved hereunder.
- (6) To protect the health, safety and welfare of the people of Lane County. *(Revised by Ordinance No. 3-78, Effective 3.31.78; 1-00, 4.12.00)*

**9.805 Definitions.**

For purposes of this sub-chapter, the following words and phrases shall mean:

Approval or Approved. Approved by the Board of County Commissioners.

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

Management. Any person or his heirs, successors or assigns who forms and operates a management corporation for the purposes of, and under the provisions of this sub-chapter.

Management Corporation. A private corporation which has the legal responsibility of assuring the financial stability and operational integrity of sewage facilities.

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

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

Sewage Facility. Any device or series of devices constructed for the purpose of collecting, treating or disposing of sewage, or any combination of these. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

**9.810 Scope and Applicability.**

- (1) Any sewage facility constructed after the effective date of this sub-chapter, and not otherwise approved, which is to serve more than a single parcel or more than four individual residential units using a

common sewage disposal system, except mobile home parks and tourist and travelers' facilities, shall be operated and maintained by a municipality or by an approved management corporation.

(2) This sub-chapter shall apply to subsurface and alternative systems as defined in ORS 454.605. This sub-chapter shall not apply to sewage facilities constructed or operated in accordance with a waste discharge permit issued by the Oregon Department of Environmental Quality, unless authorized by that Department.

(3) Sewage facilities approved pursuant to this sub-chapter shall be located in the following areas:

- (a) Rural Service Centers, as identified in the Comprehensive Plan for Lane County;
- (b) Minor Development Centers, as identified in the Comprehensive Plan for Lane County, which are not incorporated cities;
- (c) New Development Centers or Planned Unit Developments approved in accordance with this Code, except that such New Development Centers or Planned Unit Developments may not be located within an urban service area or an urban growth boundary of an incorporated city,
- (d) Areas determined by the Board to have identified health problems which an existing government cannot solve. *(Revised by Ordinance No. 3-78, Effective 3.31.78; 1-00, 4.12.00)*

#### **9.815 Rules and Fees.**

The Board may adopt rules for the administration and implementation of this sub-chapter. The Board may establish fees for the approval and review of proposed and existing sewage facilities under this sub-chapter. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

#### **9.820 DEQ Compliance.**

All proposed or approved sewage facilities shall comply with all applicable provisions of Oregon Revised Statutes and rules and regulations of the Oregon Department of Environmental Quality. *(Revised by Ordinance No. 3-78, Effective 3.31.78; 1-00, 4.12.00)*

#### **9.825 Management Corporation Provisions.**

(1) In the event that there is no municipality which is willing or able to construct and generate sewage facilities, a management corporation may be established for that purpose.

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

- (a) It must be incorporated.
- (b) It must have officers elected from the purchasers of property served by the management corporation.
- (c) It must have a constitution and bylaws.
- (d) There must be financial solvency on a continuous basis through a method of financing construction, maintenance, operation and emergency work related to the sewage facilities, to be exclusive of whatever additional obligations the corporation may assume in other fields. Rates must be set at a level which will provide sufficient funds for all sewerage operation maintenance costs and emergencies.
- (e) The corporation must be continuously in operation with regard to its sewerage activities, so long as there is a need for such management service. There must be built into the organization a provision allowing the eventual transfer of its sewerage responsibility to a municipality, should such a transfer become feasible.
- (f) There must be a municipality to which control and operation of the management corporation will pass in trusteeship in the event that no persons are willing to serve as officers of the corporation.
- (g) Funds collected for sewerage purposes must be kept in a separate account to be used for the sole purpose of carrying out the functions of the sewerage management system.

(h) There shall be provided the power to impose liens against property served to assure the collection of delinquent sewerage debts, and provision for the adjustment of rates from time to time to meet the cost of operation.

(i) In the event the corporation is initially run by a board of trustees, provision should generally be made for an election of corporate officers at the first annual meeting and transfer of control from the initial trustees to the newly elected board of trustees or corporate officers. Control of the management corporation must pass to the purchasers of property served by the sewage facility as rapidly as possible. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

### **9.830 Existing Statutes, Rules and Regulations - Conflicts.**

The management corporation shall be established and organized in conformance with any applicable statutes, rules and regulations. Any portion of this sub-chapter in conflict with statutes, rules or regulations limiting the authority of any management corporation will not be applicable; however, management may be required to find an acceptable substitute for the inapplicable requirement. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

### **9.835 Management Corporation Contract.**

(1) The management corporation shall operate through a contract between the management corporation and the developer. The contract shall contain, but need not be limited to, a complete description of all rights, duties, obligations and commitments of management or the management corporation, developer, and purchaser, a description of all maintenance and operation requirements, and all of the elements required by LC 9.825.

(2) The contract shall provide:

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

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

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

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

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

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

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

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

(i) For the establishment of a method for the transfer of authority to another entity acceptable to the regulatory agencies, in the event that such a transfer is necessary.

(j) For the allocation of restoration costs, as required in LC 9.855.

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

(l) That in the event of a property's connecting to an alternate sewage disposal system, the costs of such connection, if any, shall be the obligation of the property owner. *(Revised by Ordinance No. 3-78, Effective 3.31.78; 1-00, 4.12.00)*

#### **9.840 Management Corporation Contract Enforcement.**

There must be a municipality which will consent to and accept a role as a third party having standing to enforce provisions of a management corporation contract and further consent to assure the appropriate regulatory agencies in writing that these provisions will be enforced as necessary to assure, and when necessary due to default, provide proper operation, maintenance and financial stability of the sewer facility. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

#### **9.845 Financial Solvency.**

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

- (1) An accounting and audit system in accordance with any applicable statutes.
- (2) A standard maintenance and operation fee.
- (3) Fees for initial construction of sewage facilities.
- (4) Establishment of an emergency fund.
- (5) Preparation of a rate structure for service beyond routine operation and maintenance.
- (6) Fees for any routine repair work, replacement, emergency work or modification undertaken on behalf of a purchaser's installation, to cover costs of materials and labor, and other proper associated costs.
- (7) Establishment of a method of rate adjustment to maintain adequate funds. Rates shall be reviewed annually and adjusted accordingly.
- (8) Provide for the collection of delinquent payments through an acceptable method, including at least a lien on the property.
- (9) Establishment of a method of final disbursement of funds and claims at such time as the management system is dissolved.
- (10) Establishment of a method of transfer of funds and claims at such time as the management responsibilities are transferred.
- (11) Assurance that adequate operation and maintenance funds are available from the initiation of sewage system operation. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

#### **9.850 Maintenance and Operation - Management and Purchaser.**

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

- (1) Periodic inspection of facilities to determine efficiency of operation and general condition of equipment.
- (2) Record keeping of inspections, monitoring, work done, conditions found and related matters. Such records shall be maintained by the management corporation and shall be available for inspection by Lane County and appropriate regulatory agencies.
- (3) Periodic pumping of septic tanks or other storage tanks by licensed tank pumpers.
- (4) Periodic maintenance of motors, pumps and related equipment.
- (5) Replacement or repair of work or damaged equipment.
- (6) Responding to emergencies. Emergency procedures shall include provisions for:
  - (a) Notifying users, Lane County, and appropriate regulatory agencies of the emergency.
  - (b) Determining the cause of any major breakdown or of any essentially complete failure of any sewer facility to function as designed. The findings shall be submitted in writing to Lane County and appropriate regulatory agencies.

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

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

(7) Annual reporting of system maintenance and operation to Lane County and appropriate regulatory agencies. *(Revised by Ordinance No. 3-78, Effective 3.31.78; 1-00, 4.12.00)*

#### **9.855 Right to Enter on Purchaser's Property.**

Management, Lane County and appropriate regulatory agencies shall have the right to enter upon purchaser's property to perform routine inspections on work and to respond to emergency conditions. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

#### **9.860 Restoration.**

Whenever work is performed by management on purchaser's property, management shall restore all paving, planting, and other features of purchaser's property to its original condition as nearly as possible. Provision for allocation of restoration costs shall be included in the management contract. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

#### **9.865 Purchaser's Right to Perform Work.**

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

- (1) Design, materials, work to be performed, and time for completion shall be directed by management, and shall comply with all applicable regulations.
- (2) Cost of labor and materials shall be borne by purchaser.
- (3) Completed work shall be inspected and approved in writing by management, Lane County, and appropriate regulatory agencies before being placed in service.
- (4) Management may correct any improper construction performed by purchaser or require purchaser to make such corrections and may complete any work not finished by purchaser within the time limit set by management, and may bill purchaser for all labor and materials. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

#### **9.870 Approval of Management Corporations.**

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

- (1) Evidence that no municipality is willing or able to operate sewage facilities.
- (2) Proposed articles of incorporation.
- (3) Proposed management contract.
- (4) Proposed development for which facilities are planned.
- (5) Proposed schedule of implementation.
- (6) Certification by the Planning Director that the proposed development is in compliance with the existing comprehensive land use plan, zoning and subdivision ordinances, and other land use regulations applicable to the property, or that the proposed development will be in compliance.
- (7) Documentation of any necessary reviews and/or approvals by the Oregon Department of Environmental Quality or other appropriate regulatory agencies.
- (8) In addition to the above, the Board may require submission of any and all information and materials, including professional services, which it deems necessary to its review of the proposal. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

**9.875 Annual Review.**

Approved management corporations established to provide sewage facility Management Services under this sub-chapter shall be subject to an annual review by Lane County. The review will evaluate both operational and financial records for the preceding year to determine compliance with the conditions of approval. Management must submit the appropriate operational and financial records to Lane County for review by the middle of the second month following each anniversary of the corporation. *(Revised by Ordinance No. 3-78, Effective 3.31.78)*

**TREE CONSERVATION AND PROTECTION****9.900 Description and Purpose.**

It has been found necessary to adopt an ordinance regulating the cutting of trees in the area between the Eugene city limits and the Urban Growth Boundary. Provisions in this ordinance shall apply until such time as the area is annexed into the City of Eugene. *(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

**9.905 Definitions.**

As used in LC 9.910 through LC 9.940 below, the following definitions apply:

Basal Area. The cross-sectional area of a tree, measured at diameter breast height, and expressed in square feet per acre.

City Manager. The City Manager of the City of Eugene.

Caliper. The trunk diameter of young trees, usually measured at 6 inches above ground level.

Critical Root Zone. A circular area surrounding a tree, of which the center is the center of the tree trunk and the radius is the distance from the outside of the trunk to any point 12 times the diameter at breast height (DBH), which points constitute the circumference of the critical root zone. The critical root zone shall extend to a depth of five (5) feet below surface ground level.

Crown Closure or Canopy. An estimated area or space made up of the living limbs and branches of an individual tree. Crown closure is usually expressed as a percentage of the space occupied by the crown or canopy of a tree or trees and is usually stated in terms of crown or canopy density.

Crown Ratio. The estimated ratio of live limbs of a tree to its total height.

Developed Property. A lot or parcel of land upon which a building or other improvements subject to local construction regulations are located or a primary use is established.

Diameter Breast Height (DBH). The cross-sectional diameter of the trunk of a tree when measured at a point 4-1/2 feet above the base of the trunk on the uphill side.

Forester. A professional person having a minimum of a four-year degree in forestry from an accredited school and having experience in forest land management.

Groundcover. Small herbaceous and woody plants such as low-growing shrubs, ferns, mosses, wild flowers, grasses or other types of vegetation which normally cover the ground, provide root stabilization on slopes, slow surface runoff and absorb precipitation.

Land Clearance. The act of removing trees and groundcover in the course of preparing land for development. Land clearance is involved, for example, in road and driveway construction, utility excavation and building pad excavation.

Non-Woodland Area. Land in the urbanizing area composed of a parcel or a group of contiguous parcels less than 10 acres in total area and under one ownership or joint management.

Remove, Removal. Activities which include the cutting of trees and the injury and/or destruction of trees, by whatever method, on any lands subject to these provisions. Removal does not in any context include normal trimming or pruning of trees.

Person. Any individual, firm, partnership, association, corporation, company, organization, or legal entity of any kind, including governmental agencies conducting operations within the city and all tree removal companies and persons removing trees on behalf of others.

Slash. Any unutilized woody material created by tree removal, pruning, tree thinning, and/or land clearing.

Stocking. An expression of the number of trees per acre of any size at any given time.

Tree Removal Plan. An approved plan for tree removal which satisfies the requirements of LC 9.910 through 9.935 below.

Tree. Any woody perennial plant which, when mature, shall have the following characteristics: a main axis or stem commonly achieving 10 feet in height, and capable of being shaped and pruned to develop a branch-free trunk at least 9 feet in height or capable of being pruned in such a manner that the branching will grow parallel with the sidewalk or street.

Urbanizing Area. The area located between the legal city limits of the City of Eugene and the Urban Growth Boundary of the city as adopted by the Eugene-Springfield Metropolitan Area General Plan, as amended.

Woodland. Land in the urbanizing area composed of parcel or group of contiguous parcels covering 10 or more acres in total area, and under one ownership or joint management. *(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

### **9.910 Permit Required.**

(1) Except for those activities specifically permitted by LC 9.115 below, no person shall engage in or cause land clearance or tree removal within the urbanizing areas of the City of Eugene without having first obtained a Tree Removal Permit.

(2) All Tree Removal Permits issued under the provisions of this Code shall be available for inspection at the site.

(3) Permits shall fall into one of two categories:

(a) Urbanizing Area (Non-Woodland) Tree Removal Permits: permits issued for the removal of trees on Non-woodlands in the urbanizing area.

(b) Urbanizing Area (Woodland) Tree Removal Permits: permits issued for the removal of trees on Woodlands in the urbanizing area. *(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

### **9.915 Exemptions.**

The requirements and provisions of LC 9.920 through LC 9.940 below do not apply to the following activities:

(1) In urbanizing areas, the following tree removal activities are exempt from the requirement to obtain a permit:

(a) On Woodland parcels, the selective removal of five or fewer trees within any 12-month period on any single acre, as measured by standard forestry practices.

(b) On Non-Woodland parcels, the removal of five or fewer trees within any 12-month period on any single acre, as measured by standard forestry practices. Parcels of less than one acre shall be considered one acre in area for purposes of this exemption.

(2) Removal of trees having a trunk diameter of less than 8 inches DBH.

(3) Any action necessary to remove or alleviate an immediate danger to life or property; to restore utility service; or to reopen a public thoroughfare to traffic.

(4) Removal of trees and groundcover that are deemed nuisances under LC 5.720.

(5) Removal of trees or other vegetation necessary to install or maintain improvements on parklands, streets, sewers, or utilities within publicly-owned and dedicated rights-of-way or public utility easements.

(6) Tree removal within portions of a planned unit development, subdivision, or Site Review for which final approval has been obtained and in accordance with the review criteria contained in LC 9.920 below. Such removal shall be allowable only for property development directly authorized by the planned unit development, subdivision or site review approval action. *(Revised by Ordinance No. 14-90D, Effective 11.21.90)*

[Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)

### **9.920 Application Review Criteria.**

The approval, conditional approval, or denial of a request for all tree removal permits shall be based on findings by the City Manager or designee which indicate evaluation of the following criteria and standards. In addition, specific standards shall be applied to each type of permit as provided for in LC 9.935 below:

(1) The relationship of the tree removal proposal to accepted forestry practices including commercial thinning and commercial harvesting. Said forestry practice includes such considerations as the number of healthy trees in a given parcel of land will support.

(2) The condition of the trees proposed for removal, as measured by one or more of the following factors, warrants their removal:

- (a) Evidence of damage and/or disease.
- (b) Danger of falling.
- (c) General health and vigor.
- (d) Roots or crown interface with existing or proposed structures including necessary construction staging areas.
- (e) Interference with utility services.
- (f) Interference with solar access.
- (g) Pedestrian safety and/or vehicular traffic safety.
- (h) Establishment of scenic views from the property, in association with approved development activities.

(3) Tree removal shall not adversely affect the environment of the area. Factors to be reviewed include, but are not limited to, the effects on:

- (a) Scenic qualities of the area with special consideration for ridgeline and hilltop views.
- (b) The stability of nearby trees and windbreaks.
- (c) Wildlife habitat.
- (d) Soil stability.
- (e) Surface runoff volumes.
- (f) Water quality of receiving waters in the area.
- (g) Potential for fire hazard.
- (h) Noise.
- (i) Windblock.
- (j) Other environmental qualities found by the City Manager or designee to be of

relevance to the proposal.

(4) The tree removal is necessary in order to construct proposed improvements in accordance with an approved development plan.

(5) The activity will comply with tree removal standards as defined in LC 9.935 below. *(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

### **9.925 Permit Process.**

(1) Permit Required. Except for activities exempted from the requirements and provisions of this ordinance by LC 9.915 above, a tree removal permit shall be required to remove trees from any parcel of land within the urbanizing area.

(2) Decision Authority. Tree removal permits shall be approved, approved with modifications, or denied by the City Manager or his designee.

(3) Site Plan Review Procedure.

(a) Pre-application Conference. Prior to submission of an application, the applicant shall confer with the City Manager or his designee to review the application requirements.



(b) Professional Services. Prior to making a decision, the City Manager or his designee may require an applicant to employ a licensed landscape architect, forester or other specialist if one or more of those professional services is required for compliance with LC 9.920 criteria or LC 9.935 standards.

(c) Documentation of Approved Plans. After tree removal permit approval, the applicant shall provide the City Manager or his designee with three copies of the approved plan. The City shall mark them "Approved" with the date of the action. The City shall also attach the conditions of approval to the plans.

(4) Decision and Appeal.

(a) Unless the applicant agrees to a longer time period, within 10 working days of receipt of a complete and accurate application, the City Manager or designee shall approve, conditionally approve, or deny an application for a tree removal permit. The City Manager's decision shall be based on the criteria specified in LC 9.920 above.

(b) If the permit includes conditions regarding restoration or replacement of trees, the time within which the restoration or replacement work is to occur shall be set forth on the permit.

(c) Within 10 calendar days of a decision, it may be appealed by the applicant to the permitting agency. The appeal shall be filed with the City Manager on a form to be provided by the City, shall be accompanied by a fee of \$100 and must state specifically how the city manager or his designee failed to properly evaluate the proposed tree removal or make a decision consistent with the applicable criteria.

(5) Appeal Notice and Action.

(a) Appeals from the decision of the City Manager shall be heard by the City hearings official.

(b) The hearings official shall hold a hearing within 20 calendar days of the receipt of an application to appeal the City Manager's decision.

(c) At least 10 calendar days prior to the hearing, the City shall mail notice of the hearing to the applicant.

(d) Within 10 calendar days after the hearing, the hearings official shall render a decision and mail a copy to the applicant.

(e) Appeals from the decision of the hearings official may be heard by the Board of County Commissioners, provided the Board reviews the appeal application and decides to accept it for hearing. The Board is not required to accept an appeal.

(f) An appeal accepted by the Board shall be heard within 30 calendar days of the date the appeal is received by the County, provided that if a Board meeting is not scheduled within the final week of that time period, the appeal shall be heard at the next regularly scheduled Board meeting.

(g) At least 10 calendar days prior to the hearing, the County shall mail notice of the hearing to the applicant.

(h) Within 10 calendar days after the hearing, the Board of County Commissioners shall render a decision and mail a copy to the applicant. The Board of County Commissioners' decision is final.

*(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

### **9.930 Permit Requirements.**

(1) General Tree Removal Permit Requirements.

(a) A Tree Removal Permit Application and related information shall be submitted by the applicant on forms required by the County. Failure of the applicant to submit a complete application may be cause for denial of the permit request. If not the property owner, the applicant shall provide a signed form by the property owner consenting to the permit request.

(b) The application shall be accompanied by a fee of \$70.

(c) In all cases, the burden of demonstrating that applicable criteria and standards have been or can be satisfied is upon the applicant.

(d) Permit approval shall be valid for a period of 12 months from the date of final approval, unless otherwise provided for by the City Manager or designee.

(e) Conditions of approval may be made a part of the approval action by the City Manager or designee. *(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

### **9.935 Tree Removal Standards.**

All tree removal activities shall comply with the following standards, and with the General Guidelines as stated in Exhibit "A." Woodland tree removal activities only shall also comply with Woodland Forest Management Guidelines contained in Exhibit "B."

(1) General Tree Removal Standards.

(a) Wooded areas within 25 feet of the high-water mark of riparian zones, natural drainageways, wetlands, and other water features shall remain undisturbed.

(b) Unless otherwise provided for by an approved site development plan, wooded areas within 100 feet of ridgelines and hilltops shall be protected consistent with the purposes of this ordinance. Hazard trees within ridgeline and hilltop areas shall be removed as they are identified.

(c) All remaining trunks and branches shall be disposed of in a manner approved of by the appropriate fire protection authority.

(d) Burning of slash materials shall be allowed in the area lying between the city limits and the Urban Growth Boundary subject to approval by those regulatory agencies currently governing such burning (Lane Regional Air Pollution Authority, Oregon Department of Forestry, and local rural fire protection districts), and based on an assessment of criteria including but not limited to:

(i) Air quality.

(ii) Proximity of the proposed burn to developed areas.

(e) During tree removal operations, adequate fire suppression equipment, as required by the applicable fire protection authority, shall be maintained on the site. Specific fire protection may be required by the fire protection authority as a condition of approval.

(2) Urbanizing Area (Non-Woodland) Permit Standards. Permit approval shall require compliance with the General Tree Removal Standards in LC 9.935(1) above and the following specific standards:

(a) For undeveloped parcels or for developed lots which have further potential for being partitioned or subdivided, land clearing shall be limited to designed street rights-of-way, utility areas, and areas necessary to the construction of proposed buildings and structures and associated scenic views as provided by LC 9.920(2)(h) above, as depicted on an approved development plan.

(b) All areas disturbed by the tree removal operation shall be restored to their original condition to the extent practicable and consistent with the purposes of LC 9.900 through 9.940. Restoration may require grading, grass seeding or replanting trees and must be completed in accordance with an approved schedule.

(c) Where appropriate, a diversity of tree species shall be encouraged on the site.

(d) Removal operations involving the use of any mechanized or motorized equipment shall be considered equivalent to construction site sounds and shall occur pursuant to Eugene Code Section 9.644(e)(6).

(3) Urbanizing Area (Woodland) Permit Standards. Permit approval shall require compliance with the General Tree Removal Standards in LC 9.935(1) above and the following specific standards:

(a) For woodland areas intended for conversion to urban uses, land clearing shall be limited to designated street right-of-way, utility areas, and areas necessary to the construction of proposed buildings and structures and associated scenic views as provided by LC 9.920(2)(h) above, as depicted on an approved development plan.

(b) For woodland areas intended for continued use as commercial forest land, maintenance of a basal area which provides sufficient canopy cover, reproductive capacity, understory structure and wildlife habitat, in accordance with the provisions of Exhibit "B," shall be maintained within the woodland after harvesting.

(c) Temporary culverts necessary to bridge drainageways shall be removed and the drainageway restored to a reasonably natural condition following the completion of tree removal.

(d) All areas disturbed as a result of tree removal will be restored to their original condition to the extent practicable and consistent with the purposes of LC 9.900 through 9.940. Restoration may require grading, grass seeding or replanting trees and must be completed in accordance with an approved schedule.

(e) Where appropriate, a diversity of tree species shall be encouraged on the site.

(f) Tree removal operations occurring within 1000 feet of any dwelling shall be considered the equivalent of construction site sounds and shall occur pursuant to Eugene Code Section 9.644(e)(6). *(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

### **9.940 Enforcement.**

(1) Any person who removes or destroys any trees without having complied with this ordinance shall be subject to a civil penalty in an amount equal to 1.5 times the value of those trees, as computed from the International Society of Arboriculture tree value formula, or a similar method in common use, as determined by the City Manager or designee.

(2) Willful failure to comply with any provision of this code may be grounds for revocation or denial of any building, occupancy, or other permit issued to or applied for by the violator for the subject property, such grounds for revocation or denial not to extend beyond one year from the date of the failure to comply.

(3) In addition to any other remedy or penalty available for enforcing the provisions of this code, the City Manager may institute appropriate administrative or judicial action to enjoin a failure to comply with any provision of this code.

(4) Any person aggrieved by a penalty imposed or decision rendered under LC 9.940(1), (2) and (3) above may appeal the same within the time and manner as set forth in LC 9.925(4)(c) and 9.925(5) above. *(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

### **GENERAL TREE REMOVAL GUIDELINES**

(1) The proposed tree removal activity should include provisions for the conservation and protection of trees which are to remain, in accordance with the following:

(a) Prior to any development, or alteration of grade on a site for which a tree removal permit is required, trees which are not identified for removal should be protected from damage which could result from tree removal or construction activity. This standard shall not apply to commercial thinning or logging activities.

(b) On parcels for which an Urbanizing (Woodland) Tree Removal Permit is required, ribbon enclosures shall be utilized to mark groups of trees within critical root zones, drainage corridors, property line buffers, ridgeline or hilltop leave areas, or other large areas into which tree removal activities or heavy equipment will not encroach.

(c) All land disturbing activity, storage of equipment, building materials, fill soil, and all other materials should be kept within the development area and outside of the protective enclosure.

(2) Shallow-rooted trees which are to remain should be retained in sufficiently large areas and dense stands, and their critical root zone areas protected in such a manner as to protect against windthrow.

(3) Unless waived by written consent of the adjacent property owner(s), the edges of wooded areas along property lines should be maintained as buffers, except where prior development as occurred or future development is approved, including necessary ingress and egress points. Based on the environmental characteristics of the property as measured by the site evaluation factors in LC 9.920(3)(a)-(i), these buffers should be 20 feet or more in depth from the property line measuring into the subject property. Within these buffers, existing trees as defined in LC 9.905 should be maintained, except for hazard trees which may be removed as they are identified.

## EXHIBIT "A" TO LC CHAPTER 9 (LC 9.935)

## Page 1

(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)

**WOODLAND FOREST MANAGEMENT GUIDELINES**

A. Purpose. These guidelines are intended to maintain and encourage the growing of trees for future production and to provide for landowners to realize a return on investments in the property and resource. These standards are considered acceptable, provided the landowner uses good judgment; they may be altered provided sound and objective information is supplied to the city manager or designee clearly leading to the conclusion that alternative approaches or outputs are more appropriate.

B. Guidelines.

1. Retain all healthy deciduous trees.
2. Retain all healthy Ponderosa pine trees.
3. Retain all healthy conifers of 36" or greater DBH.
4. Remove all hazard trees.
5. In no case shall the naturally occurring density of tree areas be reduced below 80 square feet per acre or below 50 percent crown closure, unless the naturally occurring stand is determined to have 100 percent crown closure, in which case reduction to less than 80 square feet per acre may be considered on a case by case basis. Trees shall be well dispersed over the site.
6. Table I (Minimum Stocking) and II (Crown spacing) shall be used to achieve compliance with these guidelines.
7. Final harvesting or clear-cutting shall not exceed five percent of the acreage of any single ownership within the Urbanizing Area in any one year. For purposes of this calculation, ownerships through which the Urban Growth Boundary passes shall not include lands outside the UGB.
8. Buffers and thinning shall be used to protect offsite views of the property.
9. In circumstances of natural calamity or disaster (e.g., windstorm causing blow-down), the above guidelines may be waived or exceeded in order to provide for salvage operations.

## EXHIBIT "B" TO LC CHAPTER 9 (LC 9.935)

## Page 1

(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)

**TABLE I**

<u>Tree Diameter (DBH) (in ")</u>	<u>Basal Area/Tree</u>	<u># Trees/Acre to Maintain 80 sq. ft./Acre</u>	<u>Approximate Spacing Required*</u>
6	.196	400	10x10
8	.349	230	14x14
10	.545	145	17x17
12	.785	100	20x20
14	1.064	75	24x24
16	1.396	60	27x27
18	1.767	45	31x31

20	2.182	Recommended that a minimum of 2.640 trees per acre be left unless applicant provides sufficient information that would allow fewer trees while maintaining the 80 sq. ft. basal area.
22	3.140	
24	3.690	
26	4.280	
28	4.910	
30	5.580	An example would be complete crown closure and/or a suppressed understory.
32	6.300	
34	7.070	
36**	7.880	
38	8.730	
40		

- \*\* All trees 36-inch DBH will remain. However, landowner may make a case to be considered.  
 \* This shall be interpreted to mean Conifers only; all Deciduous trees are excluded.

#### EXHIBIT "B" TO LC CHAPTER 9 (LC 9.935)

##### Page 2

*(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

**TABLE II**Crown Spacing - Trees Per Acre

43,560 Sq. Ft./Acre = 435.6 Sq. Ft./Tree (22"-Diameter Crown)  
100 trees

Diameter Crown (in Feet)	Sq. Ft./ Tree	Trees/ Acre	(Closed Canopy)
10 78.75	553		
15 176.63	247		
20 314.00	139		
25 490.63	89		
30 706.50	62		
35 961.63	45		
40	1,256.00	35	

**EXHIBIT "B" TO LC CHAPTER 9 (LC 9.935)****Page 3**

*(Revised by Ordinance No. 14-90D, Effective 11.21.90 [Sunset 11.30.91]; 16A-91, 11.20.91 [Sunset 6.1.93]; 4-93, 5.19.93 [Sunset 12.1.94]; 11-94, 11.22.94 [Sunset 12.1.95]; 3-96, 11.1.96)*

**EROSION PREVENTION****9.945 Applicable Erosion Control Prevention Regulations.**

Lane County has adopted the following erosion control regulations to be applied by Eugene on urbanizable land within the Eugene Urban Growth Boundary, as set forth in LC 10.600-20.

(1) The Eugene Erosion Prevention regulations as adopted by the Lane County Board of Commissioners as part of Ordinance No. 2-04.

(2) Copies of the applicable erosion prevention regulations shall be on file at the Lane County Land Management Division. *(Revised by Ordinance 2-04, Effective 4.9.04)*

**9.946 Applicable Erosion Control Prevention Regulations, City of Springfield UTZ**

Lane County has adopted the following erosion control regulations to be applied by the City of Springfield on urbanizable land within the Springfield Urban Growth Boundary as set forth in LC 10.600-10.

(1) The Springfield erosion prevention regulations as adopted by the Lane County Board of Commissioners as part of Ordinance No. 2-10

(2) The Lane County Land Management Division will maintain and make available to the public copies of the applicable erosion prevention regulations. *(Revised by Ordinance 2-10, Effective 7.9.10)*

**CLEAR LAKE WATERSHED BOATING REGULATIONS****9.950 Clear Lake Watershed Boating Regulations.**

(1) Purpose. The Clear Lake Watershed has been recognized as an area deserving protection in order to maintain high water quality in Clear Lake as a domestic water supply source. The Clear Lake Watershed is made up of properties, a substantial majority of which, are in private ownership. The Clear Lake Watershed Boating Regulations are adopted to protect the water quality of the Watershed, and at the same time, protect the rights of private property owners to make reasonable use of their lands and the adjacent lakes.

(2) Applicability. These Clear Lake Watershed Boating Regulations shall apply to parcels or portions of parcels, and all subdivision lots located in whole or in part within the Clear Lake Watershed as defined in LC 16.258(2). For purposes of these Clear Lake Watershed Boating Regulations, "Lakes" shall mean Clear Lake and Collard Lake in western Lane County, Oregon.

(3) Boating shall be allowed on the Lakes, subject to the following restrictions:

(a) Boats shall be sanitized prior to being launched into the lakes to prevent introduction of foreign organisms harmful to the lakes including, but not limited to, eurasian water milfoil.

(b) Motorboat speed within 100 feet of the water supply inlet on the southwest corner of Clear Lake shall not exceed 10 mph.

(c) Motorboat operators shall provide regular maintenance of the boat motor so as not to harm the waters of the Lakes. *(Revised by Ordinance No. 6-98, Effective 12.2.98)*

## ENFORCEMENT

### 9.990 Failure to Comply.

(1) A failure to comply with any provision of this chapter, except LC 9.020 through 9.028, LC 9.120 through 9.160 and 9.900, shall constitute a Class 1 failure to comply and shall be handled in accordance with LC Chapter 5.

(2) Any person may sign a County notice of failure to comply with LC 9.035.

(3) The Director of the Lane County Department of Health and Human Services, or duly authorized representative, may sign notices of failure to comply for LC 9.200, 9.500, 9.550 and 9.600. The Director of the Lane County Department of Public Works, the Manager of the Land Management Division, or their duly authorized representative, may sign a notice of failure to comply for LC 9.117, 9.300, or 9.410. Subject to available resources, the Director of the Department of Public Safety for Lane County, or the Director's authorized representative, may issue a notice of failure to comply for persons not in compliance with LC 9.950.

(4) Each day in which a failure to comply with LC 9.554, 9.558, 9.560, or 9.564 continues constitutes a separate failure to comply.

(5) At the expiration of the period set by the County for correction of any failure to comply with LC sections 9.310 through 9.370, the County shall again inspect the dwelling. If the condition has not been corrected, the responsible owner or occupant may be cited for failure to comply.

(6) Violation of LC 9.135 shall be subject to the procedures of LC 9.145 and the penalty as specified in LC 9.150. *(Revised by Ordinance No. 20-72, Effective 10.13.72; 5-73, 8.4.73; 9-73, 8.15.73; 10-74, 8.23.74; 7-75, 5.16.75; 7-84, 7.27.84; 9-90, 1.18.91; 6-98, 12.2.98; 1-00, 4.12.00; 6-00, 7.1.00; 13-07, 1.11.08)*