

Lane Code
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Chapter 5

ADMINISTRATIVE ENFORCEMENT

5.005 Definitions.

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

(1) Admissible Evidence. The standards of evidence found in LC 14.200(3) shall be applicable to hearings held for any failure to comply with Lane Code.

(2) Administrative Civil Penalty. May include a monetary penalty, restitution, costs and assessments, and an order of abatement.

(3) Case Involving Commercial Gain. 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.

(4) Failure to Comply. As defined in LC 1.010.

(5) Director. The County Administrator, the Administrator's designee, or the Manager of the Land Management Division, or the Manager's designee.

(6) Misdemeanor. As defined in LC 1.010.

(7) Hearings Officer. A hearings officer appointed under Lane Code.

(8) Responsible Person. For violations of or failure to comply with LC Chapters 5, 9, 10, 11, 13, 15, and 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 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.

(9) Section. Enforcement Section.

(10) Violation. As defined in LC 1.010. *(Revised by Ordinance No. 2-82, Effective 4.9.82; 21-83, 11.29.83; 4-85, 6.26.85; 13-86, 11.7.86; 1-93, 4.16.93; 1-00, 4.12.00; 9-07, 10.12.07)*

5.010 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. *(Revised by Ordinance No. 2-82, Effective 4.9.82; 21-83, 11.29.83; 4-85, 6.26.85; 1-00, 4.12.00)*

5.015 Organization.

(1) 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.

(2) Consistent with this chapter and other applicable law, the Director may establish rules for the performance of the functions assigned to the section. *(Revised by Ordinance No. 2-82, Effective 4.9.82; 1-93, 4.16.93; 1-00, 4.12.00)*

5.017 Establishment of Administrative Civil Penalties.

(1) 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 impose an administrative civil penalty as provided in LC 5.017(2) through (11) below. For purposes of this section, a responsible person shall mean a responsible person as defined by LC 5.005(7) above, unless otherwise defined by the specific Code provision authorizing the administrative enforcement.

(2) 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.

(3) 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.

(4) 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:

- (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, or
- (e) 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.

(5) 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. In imposing a penalty authorized by this chapter, the Director shall consider:

- (a) The responsible person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation or failure to comply;
- (b) Any prior violations of, or failures to comply with statutes, rules, orders and permits;
- (c) The gravity and magnitude of the failure to comply;
- (d) Whether the failure to comply was repeated or continuous;
- (e) Whether the cause of the failure to comply was an inadvertent, negligent or an intentional act;
- (f) The alleged responsible person's cooperativeness and efforts to correct the failure to comply;
- (g) Whether or not the case involves commercial gain; and
- (h) Any relevant rule of the Director.

(6) 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:

- (a) Reference to the particular Code provision or rule involved;
- (b) A short and plain statement of the matters asserted or charged;
- (c) A statement of the amount of the penalty or penalties imposed;
- (d) 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;
- (e) 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;
- (f) A statement of the party's right to appeal the notice of failure to comply to a hearings officer, and
- (g) A statement in substantial conformance with LC 5.040.

(7) 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. However, this fee or deposit may be waived for persons determined by the Director to be indigent. 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.

(8) 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.

(9) 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.

(10) The administrative civil penalty authorized by this section shall be in addition to:

- (a) assessments or fees for any costs incurred by the County in remediation, cleanup or abatement,
- (b) any portion of an appeal fee not previously paid, and
- (c) any other actions authorized by law.

(11) 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 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 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.

(12) 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. *(Revised by Ordinance No. 1-93, Effective 4.16.93; 1-00, 4.12.00; 16-04, 10.28.04; 9-07, 10.12.07)*

5.020 Abatement by County; Costs; Waiver; Lien.

(1) 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.

(2) 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:

- (a) The owner is indigent, as that determination is provided for in ORS 151.485;
- (b) The owner is living on the property from which the nuisance is to be abated; and
- (c) The nuisance is incapable of being remediated by the owner.

(3) 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.

(4) 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).

(5) 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.

(6) The lien provided for in LC 5.020(4) shall be enforced in the manner prescribed in LC 5.017(11). *(Revised by Ordinance No. 2-82, Effective 4.9.82; 21-83, 11.29.83; 4-85, 6.26.85; 13-86, 11.7.86; 1-00, 4.12.00)*

5.030 Hearing.

(1) 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.

(2) 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, 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.

(3) 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.

(4) 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.

(5) Monetary penalties collected pursuant to the provisions of this chapter shall be paid to the Enforcement Section.

(6) 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.

(7) 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. *(Revised by Ordinance No. 15-80, Effective 7.23.80; 2-82, 4.9.82; 4-85, 6.26.85; 1-93, 4.16.93; 2-95, 4.28.95; 1-00, 4.12.00)*

5.035 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. *(Revised by Ordinance No. 1-00, Effective 4.12.00)*

5.040 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 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 Chapters 6, 7, and 9.120 through 9.995, the Director or designee may impose upon the responsible person, an administrative civil penalty as provided by LC 5.017.

(1) 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.

(2) 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.

(3) 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.

(4) 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. *(Revised by Ordinance No. 15-80, Effective 7.23.80; 2-82, 4.9.82; 4-85, 6.26.85; 9-85, 11.6.85; 13-86, 11.7.86; 3-89, 5.12.89; 1-93, 4.16.93; 1-00, 4.12.00)*

5.055 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. *(Revised by Ordinance No. 19-72, Effective 10.13.72)*

PROHIBITED NOISE

5.600 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. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99)*

5.605 Definitions.

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

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

Manager. The Manager of the Land Management Division of the Department of Public Works, or the Manager's designee.

Noise Sensitive Unit. 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. Includes, in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.

Plainly Audible Sound. 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: Includes but is 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. Includes automobiles, motorcycles, motorbikes, trucks, buses and snowmobiles. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99)*

5.610 Sound Measurement.

(1) 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.

(2) 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.

(3) 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.

(4) All measurements made pursuant to this subchapter shall comply with the provisions of this section. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99; 6-03, 10.9.03)*

5.615 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:

(1) 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:

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

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

(2) 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.

(3) 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. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99; 1-00, 4.12.00)*

5.620 Exceptions.

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

(1) 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.

(2) 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.

(3) 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:

(a) 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

(b) 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.

(4) Sound caused by bona fide use of emergency warning devices and alarm systems authorized by LC 3.400 through 3.460.

(5) 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.

(6) Sounds caused by commercial, industrial, agricultural, timber harvesting, utility or construction organizations or workers during their normal operations.

(7) 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.

(8) Sounds caused by motor vehicles operated on any highway and subject to ORS 815.250. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99)*

5.625 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.

(1) 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.

(2) Review Considerations. The Manager shall consider:

(a) The nature and duration of the sound emitted.

(b) Whether the public health, safety or welfare is endangered.

(c) Whether compliance with the provision would produce no benefit to the public.

(d) Whether previous permits have been issued and the applicant's record of compliance.

(3) Time Duration of Variance. A variance may be granted for a specific time interval only.

(4) 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 34.100 when that decision is reduced to writing and signed.

(5) **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. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99)*

5.630 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. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99)*

5.635 Initiation of Administrative Enforcement Proceeding by Private Party.

(1) 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.

(2) The filing of the complaint is subject to LC 5.010, and must contain at least:

(a) The name and address of the person bringing the action, and the name and address of the defendant.

(b) 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.

(c) 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.

(3) Upon the filing of a complaint under this section, the Manager shall cause a summons to be delivered to the defendant.

(4) The Manager may, acting in his or her sole discretion, amend a complaint filed under the provisions of this section.

(5) The hearings officer shall dismiss a complaint filed under this section upon motion from either the Manager or the defendant if:

(a) 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

(b) Another citizen initiated complaint has been brought against the defendant named in the complaint by reason of the same conduct alleged. *(Revised by Ordinance No. 4-89, Effective 5.11.89; 5-99, 7.28.99; 1-00, 4.12.00)*

NUISANCE

5.700 Purpose.

The purpose of LC 5.700 through 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 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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-00, 4.12.00; 7-02, 6.14.02)*

5.705 Exemptions.

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

(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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-00, 4.12.00; 7-02, 6.14.02)*

5.710 Definitions.

For the purposes of LC 5.700 through 5.750, the following words and phrases shall mean:

Director. 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. 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. Any discharge to the storm water system that is not composed entirely of storm water, or as determined by EPA Storm Water Phase II Final Rule, with the following exceptions:

- (a) Discharges from NPDES permitted industrial sources;
- (b) Fire fighting 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;

- (s) De-chlorinated swimming pool discharges;
- (t) Street wash water.

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 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, 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.

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

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.

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 and defined as a nuisance in LC 5.720 through 5.750.

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

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.

Responsible Person. 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. Organic material that decomposes and gives rise to foul or offensive odors, or foul or offensive by-products.

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.

Storm Water Sewer System, Storm Water System. 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. 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. 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. 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. A vehicle without a license plate or with an expired license plate.

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

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.

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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-93, 4.16.93; 1-00, 4.12.00; 7-02, 6.14.02; 1-04, 4.9.04)*

5.720 Nuisances Vegetation.

(1) 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:

(a) 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:

(i) 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.

(ii) 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.

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

(c) 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.

(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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-93, 4.16.93; 1-00, 4.12.00; 7-02, 6.14.02)*

5.725 Nuisance Storage of Tires.

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

(a) 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.

(b) The storage of 10 or more used tires on private or public property not described in 5.725(1)(a) above, unless the tires are used for agricultural or landscaping purposes.

(c) 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.

(2) 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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-93, 4.16.93; 1-00, 4.12.00)*

5.730 Nuisance Vehicle Storage.

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

(a) 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.

(b) Storing or permitting the storing of more than three inoperable vehicles upon private property within the County and not described in 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 ft. from any property line, or unless it is stored on the premises in connection with a lawfully conducted business.

(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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-93, 4.16.93; 1-00, 4.12.00)*

5.740 Accumulation, Collection or Storage of Solid Waste or Waste.

(1) 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.

(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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-93, 4.16.93; 1-00, 4.12.00)*

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

(1) 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.

(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. *(Revised by Ordinance No. 11-87, Effective 9.17.87; 1-93, 4.16.93; 1-00, 4.12.00)*

5.747 Illicit Discharge.

For the purpose of this section, the following requirements shall apply within the Eugene and Springfield Urban Growth Boundaries as defined at LC 10.600-10 and 10.600-20, and outside the respective incorporated city limits.

(1) No responsible person shall allow an illicit discharge from his or her premises to flow out on or under a public way.

(2) No responsible person shall 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.

(3) No person shall 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 shall be 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.

(4) Every establishment or place where the substances prohibited in subsection (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.

(5) No responsible person shall 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.

(6) A failure to comply with this section shall be 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. *(Revised by Ordinance No. 1-04, Effective 9.4.04)*

5.750 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. *(Revised by Ordinance No. 7-02, Effective 6.14.02)*

5.990 Failure to Comply.

(1) 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.

(2) 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.

(4) 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.

(5) 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.

(6) A person who violates this section commits a Class B Infraction. *(Revised by Ordinance No. 8-81, Effective 6.3.81; 2-82, 4.9.82; 21-83, 11.29.83; 11-87, 9.17.87; 6-89, 5.24.89; 1-93, 4.16.93; 5-99, 7.28.99; 1-00, 4.12.00; 4-00, 5.10.00)*