

Lane Code

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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.

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“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; Ordinance 22-02, 2.8.22)

### **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.

(Ordinance 22-02, 2.8.22)

### **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.

(Ordinance 22-02, 2.8.22)

### **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

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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.

(Ordinance 22-02, 2.8.22)

### **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

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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

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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.
    - 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.

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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.

(Ordinance 22-02, 2.8.22)

### **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.

(Ordinance 22-02, 2.8.22)

**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.

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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.

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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).

(Ordinance 22-02, 2.8.22)

### **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.

(Ordinance 22-02, 2.8.22)