

AGENDA COVER MEMO

DATE: February 9, 2004 (Date of memo)
February 25, 2004 (1st Reading)
March 10, 2004 (2nd Reading/Public Hearing)

TO: Lane County Board of Commissioners

DEPT.: Lane County Public Works, Engineering Division

PRESENTED BY: Sonny Chickering, County Engineer

AGENDA ITEM TITLE: 1) ORDINANCE 1-04 -- IN THE MATTER OF AMENDING CHAPTER 5 OF LANE CODE TO ADOPT DEFINITIONS AND REGULATIONS PERTAINING TO ILLICIT DISCHARGES INTO THE COUNTY STORMWATER SYSTEM FOR APPLICATION TO THE URBANIZABLE LANDS WITHIN THE EUGENE-SPRINGFIELD URBAN GROWTH BOUNDARY; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (LC 5.710 AND LC 5.747)

AND

2) ORDINANCE 2-04 -- IN THE MATTER OF AMENDING CHAPTER 9 OF LANE CODE TO ADOPT EUGENE REGULATIONS PERTAINING TO EROSION PREVENTION FOR APPLICATION TO THE URBANIZABLE LANDS WITHIN THE EUGENE URBAN GROWTH BOUNDARY; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (LC 9.945)

I. MOTION

MOVE 1ST READING OF ORDINANCES 1-04 AND 2-04 AND SET 2ND READING/PUBLIC HEARING FOR MARCH 10, 2004 AT THE REGULAR BOARD OF COMMISSIONERS MEETING.

II. ISSUE OR PROBLEM

Lane County's right-of-way network is also the County stormwater sewer system ("stormwater system"), consisting of roads, ditches, channels, pipes, and culverts, designed not only to accommodate transportation but to collect naturally occurring precipitation and storm water runoff. In overseeing use of the system, Lane County must comply with federal Clean Water Act, National Pollutant Discharge Elimination System (NPDES) requirements administered by the Environmental Protection Agency (EPA). Recent amendments to the Clean Water Act

known as the Storm Water Phase II Final Rules require erosion control measures and restrict discharge of any foreign liquid or material ("illicit discharges") into the County stormwater system, within areas of certain population densities.

The proposed regulations to be adopted by the two attached Ordinances would comply with the Phase II Final Rule. Regulations adopted under Ordinance 1-04 would be enforced by Lane County and would only apply within the Eugene-Springfield urban growth boundary (UGB), outside the city limits. Regulations adopted under Ordinance 2-04 would apply within Eugene's UGB and be enforced by the City of Eugene. (An explanation of this division of authority may be found below in Section III.B., Ordinance Provisions.)

III. DISCUSSION

A. Background

According to a 1996 EPA survey, approximately 40 percent of U.S. water bodies are polluted and do not meet water quality standards, and a leading source of the pollution is stormwater runoff. Stormwater discharges in urbanized areas are of particular concern because of the higher concentration of pollutants found in discharges in more densely populated areas.

The Clean Water Act, initially adopted in 1972, is the federal mechanism for improving water quality by regulating discharges of pollutants into the waters of the United States. It gives EPA the authority to implement pollution control programs such as setting wastewater standards for industry and setting water quality standards for all contaminants in surface waters. The Act makes it unlawful for any person to discharge any pollutant from a "point source" (i.e. specific source) into navigable waters, unless an NPDES permit is obtained.

In 1987 Congress reauthorized and comprehensively amended the Clean Water Act, to achieve a goal of making the nation's waters "fishable and swimmable" by reducing pollution that is discharged into the stormwater system. Many of the Act's regulatory, permit, and enforcement programs were revised to better address water quality degradation. To implement the revisions, the EPA adopted the Storm Water Phase I and II Final Rules. The Rules apply to municipal stormwater systems such as Lane County's. Phase I requires Lane County and other entities to obtain state Department of Environmental Quality (DEQ) permits for construction projects involving 5 or more acres. Phase II is the subject of the attached proposed Code changes.

The Phase II Final Rule covers all city and county stormwater systems that are defined as "small" systems, or systems serving populations of less than 100,000, that are located within an "urbanized area" (UA), including Lane County's (the majority of Lane County's population is otherwise served by city stormwater systems). A UA is defined by the federal government based upon Census Blocks, residential population, and population density.

The EPA is targeting UAs for stormwater pollutant discharge control because they constitute the largest and most dense areas of settlement under federal Census definitions for population centers. (UAs are used for several purposes. For example, the federal government has used UAs to calculate allocations for transportation funding.)

Under the federal definition, UAs do not recognize jurisdictional boundaries. As such the entire UA area is looked upon as one unit under the EPA's Phase II Final Rule. To comply, the County must therefore take two sets of actions:

- 1) adopt regulations prohibiting illicit discharges (unless conditionally permitted by the Oregon DEQ) consistent with the Phase II Final Rule; and
- 2) establish Intergovernmental Agreements (IGAs) with the Cities of Eugene and Springfield to spell out how the Counties and Cities will coordinate potentially overlapping operations to comply with the Phase II Final Rule requirements.

Attached proposed Ordinances 1-04 and 2-04 address #1 above. Regarding #2 above, on March 12, 2003, by Order No. 03-3-12-4, the Commissioners formally approved Public Works' request to move forward with IGA execution, and County staff are working with Eugene and Springfield staff to craft the IGAs. A copy of that Board Order is included as Attachment 3.

B. Analysis

In Lane County, the federally defined UA area where the Phase II Final Rule applies generally coincides with the Eugene-Springfield UGB. Attachment 2 shows the UA boundary compared to the Eugene-Springfield UGB. For ease of implementation, and given there will inevitably be population fluctuations, enforcement of the Phase II requirements within and consistent with the UGB boundary is proposed. The Cities of Eugene and Springfield support this approach and it will comply with the Phase II requirements.

Ordinance Provisions

The EPA Phase II Rule generally takes a two-pronged approach to promoting water quality improvement: 1) it prohibits pollutant ("illicit") discharges into stormwater systems; and 2) requires erosion control measures to limit polluted runoff associated with construction activity. The attached proposed Ordinances meet the requirements as follows:

- Ordinance 1-04 would apply to "Illicit Discharges" into the portion of the County public right-of-way (stormwater system) located inside the Eugene-Springfield UGB (and outside the corresponding city limits). The new County regulations would be adopted into Lane Code Chapter 5, Administrative Enforcement. The regulations would prohibit any illicit discharge onto County public roads (and into the stormwater system), unless approved by the Oregon DEQ.
- Ordinance 2-04 would add a provision to Lane Code Chapter 9, Environment and Health, to delegate authority to the City of Eugene to apply the City's existing Erosion Control regulations to construction activity inside the Eugene UGB and outside the city limits, as part of their building permit program. As you are probably aware, the County delegated its authority for regulating construction activities within the Eugene-Springfield urban growth boundaries to the Cities of Eugene and Springfield (Lane Code 11.025-026).

Ordinance 2-04 only applies to the City of Eugene. A similar ordinance for application within the City of Springfield UGB will be brought to the Commissioners at a future date, once Springfield is ready to do so.

Costs

The costs to implement the two Ordinances include the following:

- Costs associated with County administration and enforcement of Illicit Discharge regulations (Ordinance 1-04). Also, City staff routinely work with citizens outside the city limits and inside the urban growth boundary in the course of overseeing construction activities. Since illicit discharging into the County right-of-way may occur from properties that City staff visit in the course of carrying out this oversight, the City may also charge the County from time to time for assistance in the urban growth boundary area outside of city limits, to educate people and reduce the incidence of illicit discharge offenses.

- Staff time to develop the ordinances and coordinate with the City of Eugene in developing and executing the IGA (Ordinance 2-04). Also, the City will charge the County to implement Ordinance 2-04 outside the city limits and inside the urban growth boundary. PW Engineering staff anticipate charges from the City will be relatively insignificant overall but will represent a significant cost savings to the County in that the County does not need to develop and implement its own erosion control program.

Since the County will use Road Fund monies to pay the City for these charges, billings from the City will be closely monitored to ensure they are entirely associated with County rights-of-way.

C. Alternatives/Options

1. Adopt Ordinances 1-04 and 2-04.
2. Do not adopt Ordinances 1-04 and 2-04.

D. Recommendations

Alternative 1 is recommended.

E. Timing

An emergency clause is not necessary.

IV. IMPLEMENTATION/FOLLOW-UP

Upon adoption and effective date of the Ordinances, the City of Eugene will be responsible for implementing and enforcing Ordinance 2-04. Under Ordinance 1-04, the County Public Works Engineering Division will become responsible for administration of the (nonconstruction-related) illicit discharge regulations outside the Eugene city limits and inside the UGB. As mentioned earlier in this memo, this will occur to some degree in cooperation with City staff.

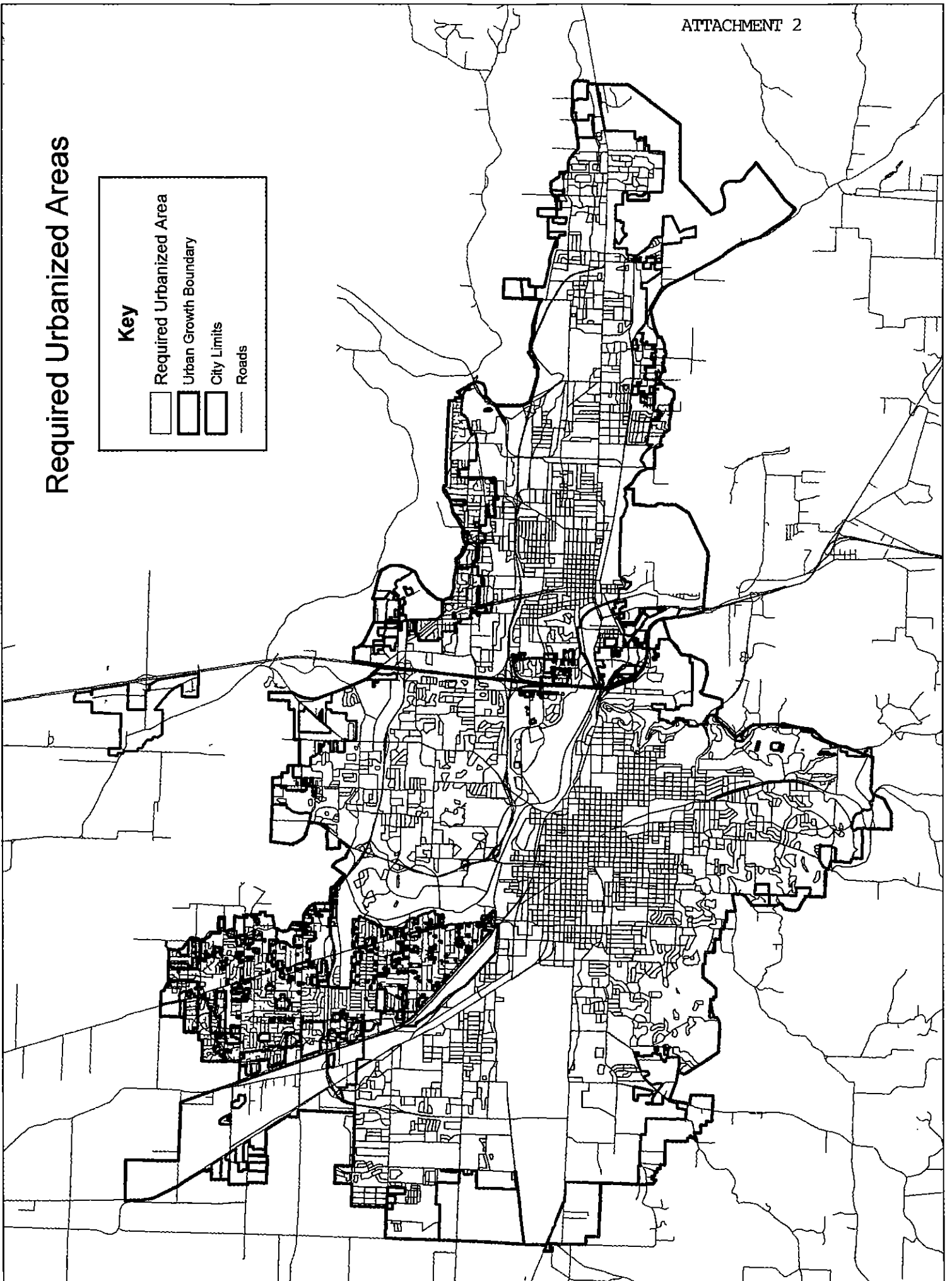
V. ATTACHMENTS

1. Ordinances 1-04 and 2-04, and Attachments
2. Map of area where Phase II Final Rule must be implemented under EPA requirements ("Required Urbanized Area"), compared with Eugene-Springfield UGB.
3. Board Order 03-3-12-4.

Required Urbanized Areas

Key

- Required Urbanized Area
- Urban Growth Boundary
- City Limits
- Roads



IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 1-04

IN THE MATTER OF AMENDING CHAPTER 5 OF LANE CODE TO ADOPT DEFINITIONS AND REGULATIONS PERTAINING TO ILLICIT DISCHARGES INTO THE COUNTY STORMWATER SYSTEM FOR APPLICATION TO THE URBANIZABLE LANDS WITHIN THE EUGENE AND SPRINGFIELD URBAN GROWTH BOUNDARIES (LC 5.710, LC 5.747)

WHEREAS, the Board of County Commissioners of Lane County must comply with certain federal regulations pertaining to the Clean Water Act, National Pollutant Discharge Elimination System (NPDES), known as the Environmental Protection Agency Storm Water Phase II Final Rule; and

WHEREAS, a public hearing before the Board of County Commissioners occurred on the ____ day of _____, 2004, and the Board is now ready to take action;

NOW, THEREFORE, The Board of County Commissioners of Lane County ordains as follows:

Chapter 5 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

REMOVE THESE SECTIONS

5.710
as located on pages 5-11 through 5-12
(a total of 2 pages)

NONE

INSERT THESE SECTIONS

5.710
as located on pages 5-11 through 5-
(a total of ____ pages)

5.747
as located on page 5-6
(a total of ____ pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of this change and addition is to adopt definitions and regulations pertaining to illicit discharges into the county stormwater system for application to the urbanizable lands within the Eugene and Springfield Urban Growth Boundaries (LC 5.710, 5.747).


ENACTED this _____ day of _____ 2004.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 2-17-04 lane county


OFFICE OF LEGAL COUNSEL

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL

(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)*

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.

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)*

(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)*

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.

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)*