

Chapter 5

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Chapter 5

PUBLIC PROTECTION

OFFENSES

5.000 Oregon Criminal Code Adopted.

(1) ORS, Chapters 161, 162, 163, 164, 165, 166, and 167, except for any provisions classified as a felony under state law, are adopted by reference. Violation of an adopted provision of those chapters is an offense against this city.

(2) The provisions of ORS chapter 161, relating to defenses, burden of proof, general principles of criminal liability, parties, and general principles of justification apply to offenses defined and made punishable by sections 5.000 to 5.110.

(3) Except where the context clearly indicates a different meaning, definitions appearing in the general definitional and other particular sections of chapters adopted by subsection (1) above are applicable throughout sections 5.000 to 5.110.

5.010 Drinking in Certain Public Places.

(1) It is unlawful for any person to drink or consume any alcoholic liquor or have in their possession any bottle, can or other receptacle containing any alcoholic liquor which has been opened, or a seal broken, or the contents of which have been partially removed, while in or upon any public street, alley, public boat landing, docks and other attendant facilities, school grounds or municipal buildings. However, the city council or its designee may permit the service and consumption of alcoholic liquors in any public place or within designated municipal buildings on such terms and conditions as the council may provide. Nothing in this section shall be deemed to prohibit drinking of alcoholic liquor in any establishment wherein the same may be sold for on-premises consumption under the laws of

the state, or when a permit has been granted by the city council.

(2) Drinking in certain public places is a violation and is punishable by a fine of not more than \$100.

5.015 Interfering in Emergencies.

(1) Whenever a threat to the public health or safety is created by any fire, explosion, accident, cave-in, or similar emergency, catastrophe or disaster, or by riot, presence of an armed person, hostage being held, or other disturbance, officers of the police, fire or public works departments may restrict or deny access to the area where such threat exists, for the duration of the threat, when the presence of a person in the area would constitute a danger to themselves, or when the officer reasonably believes that the presence of the person would substantially interfere with the performance of the police or other emergency services. Any person refusing to obey the direction of an officer who has denied or restricted access to the area where a threat exists may be found guilty of interfering in emergencies.

[Section 5.015(1) amended by Ordinance No. 1459, adopted August 28, 2000.]

(2) Interfering in emergencies is a class C misdemeanor.

5.020 Discharge of Weapons.

(1) No person other than a peace officer shall fire or discharge a gun or other weapon, including spring or air actuated pellet guns, air guns, BB guns, or other weapons which propel a projectile by use of gunpowder or other explosive or jet or rocket propulsion.

(2) No person may shoot a sling-shot, bow and arrow or an instrument of any similar type or throw a dagger, spear, stiletto

or an instrument of any other type.

(3) The provisions of this section shall not be construed to prohibit the firing or discharging of a weapon by any person in defense or protection of his property, person or family or at firing ranges approved in writing by the chief of police.

5.025 Fireworks.

The following sections of the Oregon Fireworks Law are adopted by reference and made a part of sections 5.000 to 5.110: ORS 480.110, 480.120, 480.130, 480.140(1), 480.150 and 480.170.

5.030 Violating Privacy of Another.

No person other than a peace officer performing a lawful duty shall enter upon land or into a building used in whole or in part as a dwelling not his own without permission of the owner or person entitled to possession thereof, and while so trespassing look through or attempt to look through a window, door or transom of the dwelling or that part of the building used as a dwelling with the intent to violate the privacy of any other person.

5.035 Children Confined in Vehicles.

(1) No person who has under his control or guidance a child under eight years of age shall lock or confine, or leave the child unattended, or permit the child to be locked or confined, or left unattended in a vehicle for a period of time longer than fifteen consecutive minutes.

(2) It is lawful and the duty of a policeman or other peace officer finding a child confined in violation of the terms of this section, to enter the vehicle and remove the child, using such force as is reasonably necessary to effect an entrance to the vehicle where the child may be confined in order to remove the child.

5.040 Endangering Welfare of Minor.

(1) No person shall:

(a) Knowingly sell, or cause to be sold, tobacco in any form to a person under eighteen years of age;

(b) Employ a person under eighteen years of age in or about a cardroom, poolroom, billiard parlor, or in any establishment at which any alcoholic liquor is sold for on-premises consumption.

(2) No person shall solicit, aid, abet, or cause a person under eighteen years of age to:

(a) Violate a law of the United States, or a state, or to violate a city or county ordinance;

(b) Run away or conceal himself from a person or institution having lawful custody of the minor.

5.045 Places of Amusement.

(1) No person under eighteen years of age shall enter, visit, or loiter in or about a public cardroom, poolroom, or billiard parlor.

(2) No person operating or assisting in the operation of a public cardroom, poolroom, or billiard parlor shall permit a person under 18 years of age to engage in a game of cards, pool, billiards, dice, or games of chance, for amusement or otherwise.

(3) This section shall not apply to playing billiards in a recreational facility. As used in this section, "recreational facility" means an area, enclosure or room in which facilities are offered to the public to play billiards or pool for amusement only, and;

(a) Is clean, adequately supervised, adequately lighted and ventilated.

(b) No alcoholic liquor is sold or consumed.

(c) Where access does not require passing through a room where alcoholic liquor is sold or consumed.

5.050 Providing Liquor to Person Under Twenty-one. ORS

471.410(2) and (3) are adopted by this reference and made a part of sections 5.000 to 5.110.

5.055 Purchase or Possession of Liquor by Person Under Twenty-one. ORS 471.430 is

adopted by this reference and made a part of sections 5.000 to 5.110.

5.060 Providing Premises for the Consumption of Alcohol by Minors Prohibited. No person

who owns or is in control of a premises shall knowingly allow a minor to consume alcoholic liquor on the premises except as provided in section 5.050. Violation of this section is punishable as a Class A misdemeanor.

5.065 Obstructing Governmental Administration.

(1) No person shall intentionally obstruct, impair or hinder the administration of law or other governmental function by means of intimidation, force or physical interference or obstacle.

(2) This section shall not apply to the obstruction of unlawful governmental action or interference with the making of an arrest.

5.070 Tampering With Public Records.

No person shall, without lawful authority, knowingly destroy, mutilate, conceal, remove, make a false entry in or falsely alter any public record.

5.075 False Reports.

(1) No person shall knowingly initiate a false alarm or report which is transmitted to a fire department or law enforcement agency or other organization that deals with emergencies involving danger to life or property.

(2) No person shall knowingly make or file with the police department or with the city attorney or a police officer engaged in his official duties a false, misleading or unfounded statement or report concerning the violation or alleged violation of a city ordinance or the commission or alleged commission of a crime.

5.080 Police and Fire Communications.

No person shall operate any generator or electromagnetic wave or cause a disturbance of such magnitude as to interfere with the proper functioning of any City radio communication system.

[Section 5.080 amended by Ordinance No. 1459, adopted August 28, 2000.]

5.085 Failure to Appear on Citation.

No person shall willfully fail to appear before the municipal court pursuant to a citation issued and served under authority of ORS 133.045 to 133.080, 133.110 and 156.050, and a complaint is filed.

5.090 Failure to Appear in the Second Degree.

(1) A person commits the crime of failure to appear in the second degree if, having by court order been released from custody upon a release agreement or security agreement or continued on release on his own recognizance upon the condition he will subsequently appear personally in connection with a charge against him of having committed a misdemeanor or viola-

tion, he intentionally fails to appear as required.

(2) Violation of this section is a Class A misdemeanor.

5.095 Soliciting to Violate Code.

No person shall solicit, employ or engage another, or confederate with another to violate a provision of sections 5.000 to 5.110.

5.100 Attempt to Commit Offense.

A person who attempts to commit any of the offenses mentioned in sections 5.000 to 5.110 or any other ordinance of the city, but who for any reason is prevented from consummating such act, shall be deemed guilty of an offense.

5.105 Indecent Conduct.

(1) It is unlawful for any person to masturbate, urinate, defecate or copulate in a public place or a premises open to the public, or in a place visible from a public place or premises open to the public.

(2) Violation of this section shall be a class A infraction.

5.110 Possession of Marijuana.

Any person who knowingly or intentionally is in unlawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500 and not more than \$1,000.

CURFEW FOR MINORS

5.150 Hours of Curfew.

(1) No minor under the age of eighteen years shall be in or upon any street,

park or other public place between the hours specified in this section, unless:

(a) The minor is accompanied by a parent, guardian or other person twenty-one years of age or over and authorized by the parent or by law to have such care and custody of the minor.

(b) The minor is engaged in a school activity or lawful employment that makes it necessary to be in or upon the street, park or other public place during the hours specified in this section.

(c) The minor is emancipated under ORS 109.550 to 109.565.

(2) For minors under the age of fourteen years who have not begun high school, the curfew is between 9:15 p.m. and 6:00 a.m. of the following morning, except that on any day immediately preceding a day for which no public school is scheduled in the city, the curfew is between 10:15 and 6:00 a.m. of the following morning. For children fourteen years of age or older who have begun high school, the curfew is between 10:15 p.m. and 6:00 a.m. of the following morning, except that on any day immediately preceding a day for which no public school is scheduled in the city, the curfew is between 12:00 midnight and 6:00 a.m. of the following morning.

5.155 Parental Responsibility.

No parent, guardian or person having the care and custody of a minor under the age of eighteen years shall allow such minor to be in or upon any street, highway, park, alley or other public place, except between the hours specified in section 5.150 and except as otherwise provided in that section. Violation of this section shall be deemed to be a class A infraction.

5.160 Custody of Minors Violating

Curfew. Any minor who violates section 5.150 shall be taken into custody as provided in ORS 419.569 and may be subjected to further proceedings as provided in ORS 419.472 through 419.597, 419.800 through 419.839 and 419.990(2).

PROHIBITED TOUCHING

5.200 Designated.

A person commits the offense of prohibited touching if:

- (1) He engages in or agrees to engage in sexual contact in return for a fee; or
- (2) He pays or offers or agrees to pay a fee to engage in sexual contact.
- (3) As used in subsections (1) and (2) of this section, "sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

5.205 Promoting Prohibited Touching.

A person commits the offense of promoting prohibited touching if, with intent to promote prohibited touching, he knowingly:

- (1) Owns, controls, manages, supervises or otherwise maintains a place or enterprise where prohibited touching takes place; or
- (2) Induces or causes a person to engage in prohibited touching or remain in a place where prohibited touching takes place; or
- (3) Receives or agrees to receive money or other property, other than compensation for personally rendered prohibited touching services, pursuant to an agreement or understanding that the money or other property is derived from a prohibited touching

activity; or

- (4) Engages in any conduct that institutes, aids or facilitates an enterprise of prohibited touching.

5.210 Nudity in Massage.

(1) As used in this section, the following words shall have the meanings given to them in this section:

(a) Massage. Pressure on, friction against, stroking and kneading the body by manual or mechanical means, and gymnastics, with or without appliances such as vibrators, infrared heat, sunlamps and external baths for the purpose of maintaining good physical condition.

(b) Massage business. The operation of an establishment where massage is given.

(c) Nudity. Uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernible turgid state. For the purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

(d) Practice of massage. The performance of massage for compensation, either as the owner of or as an employee in a massage business.

(2) A person commits the offense of nudity in massage if:

(a) He appears in a state of nudity while engaged in the practice of massage; or

(b) He, as a principal, agent, officer or employee of a massage business, appears in a state of nudity in any portion of a massage establishment

where massage is given or where there is any patron of the establishment; or

(c) He, as a principal, agent, officer or employee of a massage business, causes, permits, aids or abets any violation of this section by any agent or employee of the massage business.

5.215 Nuisances Declared.

Any places where prohibited touching, promoting prohibited touching or nudity in massage is conducted or carried on as described in sections 5.200 to 5.210 is declared a nuisance and may be enjoined and abated as described in section 5.220.

5.220 Nuisance--Suit in Equity.

Whenever a nuisance exists under section 5.215, the city attorney may maintain a suit in equity in the name of the city perpetually enjoining such nuisance and for its abatement. Such suit may be brought regardless of whether any individuals have been convicted under the provisions of sections 1.205 to 1.255.

DOGS

5.250 Definitions.

As used in sections 5.250 to 5.340, the following words and phrases shall have the meanings ascribed to them in this section:

Owner of property. Any person who has legal or equitable interest in said real property or who has a possessory interest therein, or who resides on the property, or is a guest of any person who owns, rents, or leases said property.

Running at large. Off or outside the premises belonging to the person having the control, custody or possession of the dog while the dog is not under the complete control of such person by means of an ade-

quate leash, or is within a vehicle of such person.

Keeping a dog. Harboring, caring for, exercising control over, or knowingly permitting any dog to remain on the premises occupied by the person.

Dangerous dog. Any dog which bites any human being, dog, cat or livestock, or which chronically demonstrates menacing behavior toward human beings, dogs, cats or livestock. For purposes of this section, "menacing behavior" shall include, but not be limited to, baring of teeth, charging at a victim, growling in a threatening manner or approaching a victim within ten feet while barking.

Permit. For purposes of sections 5.250 to 5.340, conduct by the keeper of a dog which is intentional, deliberate, careless, inadvertent or negligent.

5.255 Enforcement.

It shall be the duty of the chief of police or any other designated police officer, or the dog control officer of the city to enforce the provisions of sections 5.250 to 5.340.

5.260 Violations.

It shall be a violation for a keeper of any dog to:

(1) Permit any such dog to run at large, as defined in section 5.250, upon any public street, highway or public place, or upon private property owned by a person or persons other than the keeper of the dog within the corporate limits of the city.

(2) Permit a dog to chase a vehicle or person.

(3) Permit a dog to scatter garbage.

(4) Permit a dog to damage or destroy property of persons other than the keeper of the dog.

(5) Permit any dog to cause unreasonable annoyance, alarm or noise disturbance at any time of the day or night by repeated barking, whining, howling or other like sounds which may be heard beyond the boundary of the keeper's property.

(6) Keep a dangerous dog. It shall be an affirmative defense that a dog bites, attacks, or menaces a trespasser on the property of its keeper or anyone wrongfully assaulting that dog or its keeper.

(7) To leave a dog unattended for more than 24 consecutive hours without adequate food, water, shelter, care or supervision. Shelter shall include a structure or other means of protection from the weather and injury.

(8) Physically mistreat any dog, either by deliberate abuse or neglect to furnish adequate care, including medical attention.

5.265 Removal of Animal Wastes.

Any person in physical possession and control of a dog shall remove excrement or other solid waste deposited by the dog in any area not designed to receive such wastes, including but not limited to public areas such as streets, sidewalks, parking strips, public parks and any private property owned by a person or persons other than the person in physical possession and control of the dog within the corporate limits of the city.

5.270 Rabies Inoculation Required.

All dogs must be inoculated against rabies, unless specifically exempted by rule of the State of Oregon Health Division or State Department of Agriculture. Rabies certificates shall be current through November of the current year.

5.275 Licensing.

Every person keeping a dog which

has a set of permanent canine teeth shall, not later than March 1st of each year, or within 30 days from the date the person becomes the keeper of the dog, obtain from the city manager, a license for the dog by paying to the city manager a license fee and furnishing a current certificate of rabies inoculation for the dog. The license fee shall be established periodically by motion of the West Linn city council. The keeper of the licensed dog shall attach the license tag issued for the dog to a collar, which collar shall be worn by the dog at all times when not in the immediate possession of the keeper of the dog. If the person fails to obtain the license within the time provided by this section, then the license fee shall be in an amount equivalent to the regular license fee, plus an additional amount equivalent to the penalty established by motion of the West Linn city council.

5.280 Conditions for Reduction of License Fees Issued After July 1st of Each Calendar Year.

(1) Notwithstanding any other provision of sections 5.250 to 5.340, if a dog license is issued pursuant to section 5.275 after July 1st, the person keeping the dog shall pay the rate set forth in section 5.275 unless that person can establish by evidence satisfactory to the chief of police or a designee that

(a) The person moved into the city after July 1st;

(b) The dog acquired permanent canine teeth after July 1st;

(c) The person had acquired the dog after July 1st and the dog had not previously been kept within the city.

(2) In the event that the conditions set forth above are met, a license fee charged for the remainder of the calendar year shall be one-half the charge established

by section 5.275.

5.285 Impounding.

Any member of the police department or the dog control officer of the city is authorized to impound any dog found running at large as defined in section 5.250 or that is found to be unlicensed.

5.290 Seizing Certain Dogs.

A dog found biting a person or which has bitten any person may be summarily seized by any person and promptly delivered to any member of the police department or the dog control officer for impounding. The West Linn police department or the dog control officer may allow impoundment of the dog in the keeper's home if the person is bitten on a part of the body below the neck.

5.295 Destroying Certain Dogs.

A dog which is rabid shall be destroyed. Any person may summarily kill a rabid dog.

5.300 Pound Regulations.

(1) Whenever a dog is impounded under the authority of section 5.250 to 5.340 and the keeper of such dog is known, that person shall be given notice of the impounding by personal service or mailing the notice by regular mail, to the keeper's last known address. The keeper of such dog shall have at least five days from the date of impoundment to claim the dog and pay the redemption fee hereinafter provided and if he fails to claim the dog within such time and pay the fees hereinafter provided, the dog shall be disposed of as hereunder provided.

(2) When a dog is impounded under the authority of sections 5.250 to 5.340, the keeper thereof is unknown, a notice shall be posted in three public places

in or about the city. The notice shall contain a general description of the impounded dog, showing breed, sex, color, and markings and shall designate the date upon which the described dog shall be disposed of unless otherwise claimed and redeemed. Such date shall not be less than five days after impounding the dog; if no claim or redemption by the keeper of the described dog is made within the time fixed by the notice, such dog shall be disposed of as hereinafter provided.

(3) Any dog impounded for having bitten a person shall not be released until after expiration of a 10-day period to allow an appropriate health check.

(4) Any dog impounded under authority of sections 5.250 to 5.340 may be released to the keeper thereof upon payment to the city manager of the following charges:

(a) A redemption fee of twenty dollars for the first impound in a calendar year and \$25 for all other impounds during the same calendar year;

(b) The actual cost of boarding a dog; and

(c) All applicable license fees and penalties if said dog is not licensed.

(5) If an impounded dog is not claimed by its keeper within the time limits fixed above, it may be released to any person on payment to the city manager of the fees and charges fixed in subsection (4) of this section and subject to the claim of the keeper of such dog upon reimbursement of the fees and charges so paid; provided, that the claim of such keeper is made within one month after the date of impounding. Upon releasing any dog to a person other than its keeper, the police department or dog control officer shall obtain and keep a written receipt from such person acknowledging that such person holds the dog subject to the claim of the keeper upon reimbursement of the fees

and charges paid.

(6) If no claim or redemption by the keeper of the described dog is made within the time fixed by the applicable notice and if no person claims the impounded dog pursuant to subsection (5) of this section, such dog shall be sold, given away or humanely killed at the expiration of such time.

5.305 Record of Impound.

The police department or the dog control officer shall make in triplicate a detailed record of each dog impounded showing the date and time impounded, description of the dog, name and address of the keeper, if known, and the name and address of the person to whom the dog is released, date of release, or date and method of other disposal. The original of such records shall be retained with the kennels, the duplicate copy shall be kept by the police department and the triplicate copy shall be filed with the city manager.

5.310 Finders of Lost Dogs.

A person who finds a dog within the city limits may surrender the animal to the city or retain its possession subject to surrender upon demand of the city or the keeper of the dog. Records of reported findings shall be retained by the city and made available for public inspection.

5.315 Interference with Officers.

It is unlawful for any person to interfere in any way with any police officer or the dog control officer of the city engaged in seizing or impounding any dog under authority of sections 5.250 to 5.340.

5.320 Injured or Sick Dogs.

(1) The member of the police department or the dog control officer of the

city who impounds any dog which is in need of medical attention, may, at their discretion, authorize the necessary medical attention, or have the dog humanely killed.

(2) The member of the police department, or the dog control officer of the city, shall make a diligent effort to locate the keeper of a dog in need of medical attention before authorizing such medical attention or disposal of said dog.

(3) Should the member of the police department or the dog control officer of the city authorize the necessary medical attention, the keeper of the dog shall be liable for the costs of the medical treatment rendered to the animal.

5.325 Duties of a Driver of Motor Vehicle.

(1) Any person operating a motor vehicle upon premises open to the public who runs over, strikes, injures, maims or kills any dog shall:

- (a) Immediately stop;
- (b) Make a reasonable effort to determine the nature of the injuries;
- (c) Render reasonable aid to the dog, if injured;
- (d) Make due and diligent inquiry to determine and notify the keeper of the dog;
- (e) Notify the city of the injury or death, if unable to contact the keeper.

(2) The requirements of this section for a driver to stop and attend to an injured dog depend upon the specific traffic hazards existing at the time of the accident.

5.330 Poisonous Food.

No person shall knowingly place food of any description containing poisonous or other injurious ingredients in any area reasonably likely to be accessible to animals other than rodents.

5.335 Kennels Prohibited.

It is unlawful for dog kennels to exist or operate in any area of the city other than areas which are zoned for such a use. For purposes of this section, any property where more than four dogs are kept, whether such animals are kept as personal property of the property owner or as a business venture, is deemed to be a kennel. A person may have more than four dogs and not be deemed a kennel, if one of the dogs is a female with a litter under the age of six months.

5.340 Penalties.

(1) Any person convicted of a violation of section 5.315 or section 5.330 shall be subject to imprisonment for not more than six months or a fine not to exceed \$1,000 or both.

(2) Any person convicted of a violation of section 5.325 shall be subject to a fine not to exceed \$250.

(3) Any person convicted of a violation of subsections (1) through (6) of section 5.260 shall be subject to a fine not to exceed \$500; and the court, in its discretion, may also order the removal of the dog from the city of West Linn, restitution for damages or any other remedy within the power of the court. Further, for violation of section 5.260(6), the court may order destruction of the dog involved. Destruction of a dog may be ordered if:

- (a) A dog, whether or not confined, causes the serious injury or death of any person; or
- (b) A dog, while at large, kills any domestic animal;
- (c) A dog engages in or is found to have been trained to engage in exhibitions of fighting; or
- (d) A dog repeats behavior such as aggressively biting or causing

physical injury to any person or domestic animal.

(4) Except as where otherwise provided, any person convicted of a violation of any provisions of sections 5.250 to 5.335 shall be subject to a fine not to exceed \$500. Each day's violation of a provision of sections 5.250 to 5.335 constitutes a separate offense.

NUISANCES

5.400 Definitions.

For purposes of sections 5.400 to 5.530, except where the context indicates otherwise, the following terms shall have the meanings given to them in this section:

Offensive. A condition that impacts the appearance of an area and offends the surrounding neighbors, or is a fire or health hazard. This definition applies to the word "offends."

Person in charge of property. An agent, occupant, lessee, contract purchaser, or person, other than the owner, having possession or control of the property.

Public place. A building, place, or accommodation, whether publicly or privately owned, open and available to the general public.

Surrounding neighbors. Any two people of separate residences of property adjacent to, contiguous with or directly across the street from the offending property or condition.

5.405 Animals--Communicable

Disease. No person may permit an animal or bird owned or controlled by him to be at large within the city if the animal or bird is afflicted with a communicable disease.

5.410 Dangerous Animals.

No person may permit his wild or

domesticated dangerous animal to run at large.

5.415 Livestock and Poultry.

(1) No person may maintain a pigsty, slaughterhouse or tannery, or permit livestock or poultry owned by him to run at large within the city. This section shall not apply to cats, dogs or other household pets.

(2) Livestock, poultry and other animals and fowl running at large in the city shall be taken up and impounded by a police officer and disposed of in accordance with the procedure provided by ordinance for the disposition of abandoned vehicles.

5.420 Removal of Carcasses.

No person may permit any fowl or animal carcass owned by him or under his control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of such carcass.

5.425 Nuisances Affecting Public Health.

No owner or person in charge of property may permit or cause a nuisance affecting public health. The following are nuisances affecting public health, and may be abated as provided in sections 5.400 to 5.530:

(1) Privies. An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Department of Environmental Quality regulations;

(2) Debris on Private Property. Accumulations of debris, rubbish, manure and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city;

(3) Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests;

(4) Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes, or other substances placed in or near such water in a manner that will cause harmful material to pollute the water;

(5) Food. Decayed or unwholesome food which is offered for human consumption;

(6) Odor. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition;

(7) Surface Drainage. Drainage of liquid wastes from private premises;

(8) Attractive Nuisances. No owner or person in charge of property may permit any condition (such as pits) or accumulation of items (such as vehicles, equipment, lumber) which is likely to be inviting or alluring to children and which could cause injury to them. This section shall not apply to authorized construction if reasonable safeguards are maintained.

5.430 Abandoned Iceboxes.

No person may leave in a place accessible to children an abandoned, unattended or discarded icebox, refrigerator or similar container which has an airtight door with a snap lock, lock, or other mechanism which may not be released for opening from the inside, without first removing such lock or door from such icebox, refrigerator or similar container.

5.435 Scattering Rubbish.

No person may throw, dump or deposit upon public or private property an injurious or offensive substance or any kind

of rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench, detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.

5.440 Junk.

(1) "Junk," as used in this section, means and shall include used motors and motor parts, abandoned or unusable motor vehicles including trucks, tractors, trailers, parts removed from vehicles, household appliances, scrap iron, tin, plastic, glass and paper.

(2) It is determined and declared that the keeping of any junk out of doors on any street, lot or premises within the city, or in a building that is not wholly or entirely enclosed except doors for use for ingress and egress, is a nuisance and is unlawful.

(3) It is unlawful for any owner or person in charge of property to keep or allow to be kept any junk out of doors on any street, or on any lot or premises within the city, or in a building that is not wholly or entirely enclosed except doors used for ingress and egress.

(4) The provisions of this section shall not apply to junk kept in a duly licensed junkyard or automobile wrecking house.

5.445 Maintaining Inoperable Vehicles on Private Property Prohibited.

(1) It is unlawful for any person to maintain any inoperable vehicle on private property for a period of time in excess of one month.

(2) For the purposes of this section, "inoperable vehicle" means any vehicle which has no current state vehicle license and which cannot be moved without being either repaired or dismantled or which is no longer safely usable for the purposes

for which it was manufactured. This definition shall not include any vehicle kept in a building when not in use or any vehicles kept on the premises of a business lawfully engaged in wrecking, junking or repair of vehicles.

(3) Any owner of an inoperable vehicle or any person maintaining such a vehicle on premises under his control for a period of time in excess of one month shall be liable to abatement proceedings by the city as maintaining a public nuisance.

5.450 Logs, Firewood and Building Materials.

(1) Logs may be stored on the property for a period not to exceed sixty days if said storage pile is not otherwise a public nuisance pursuant to section 5.425.

(2) Firewood. Firewood may be stored outdoors on any property so long as it is neatly stacked and is not a public nuisance pursuant to section 5.425, nor offensive to the surrounding neighbors.

(3) Building Material. Building material, including lumber, pipe, roofing material or other material required for an in-progress construction project, may be stored in a manner not offensive to surrounding neighbors for a period of time not to exceed 90 days from the start of the project. Permits may be issued for longer periods if the size of the project requires it, there is a valid building permit for the project, and the project is under active construction.

5.455 Garbage.

All garbage shall be contained in a closed container stored in a manner not offensive to surrounding neighbors. Other trash and debris shall be removed within ten days from the date of deposit, except that leaves and trimmings may be stored in a manner not offensive to surrounding

neighbors.

5.460 Blocking Public Right-of-Way

Prohibited. None of the items mentioned in sections 5.400 to 5.530 shall be placed in the public right-of-way without a permit from the city.

5.465 Trees.

(1) No owner or person in charge of property that abuts any street or sidewalk may permit trees or bushes on his/her property to interfere with street or sidewalk traffic. It shall be the duty of an owner or person in charge of property that abuts a street or sidewalk to keep all trees and bushes on his/her premises and on the adjoining parking strip trimmed to a height of not less than 7 1/2 feet above the sidewalk level, and over the street area at an elevation of not less than 11 feet above the street level. However, on any street designated as an arterial or one-way street, and where parking has been prohibited, limbs of trees shall be pruned to a height of not less than 14 feet above the street level.

(2) No owner or person in charge of property may allow to stand any dead or decaying tree that is a hazard to the public or to persons or property on or near the property.

5.470 Noxious Vegetation.

No owner or person in charge of property shall permit noxious vegetation upon public or private property.

(1) The term "noxious vegetation" does not include vegetation that constitutes an agricultural crop, unless that vegetation is a fire hazard, a health hazard or a traffic hazard and it is vegetation within the meaning of subsection B of this section. The term "noxious vegetation" does not include vegetation that is part of the natural topo-

graphic condition of city or state parks and greenway areas.

(2) The term "noxious vegetation" includes:

(a) Weeds more than ten inches high;

(b) Grass more than ten inches high and not within the exceptions stated in subsection (1) of this section;

(c) Poison oak, poison ivy or similar vegetation;

(d) Dead trees, dead bushes, stumps and any other thing likely to cause a fire;

(e) Vegetation that is a fire hazard;

(f) Blackberry bushes that extend into a public thoroughfare or across a property line;

(g) Vegetation that is a health hazard;

(h) Vegetation that is a health hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous;

(i) Trees, bushes, weeds, grass or debris on property, or on the adjoining street or public right-of-way, which interfere with street or sidewalk traffic. This includes:

(i) Trees and bushes on the property and on the adjoining right-of-way which are not trimmed to a height of not less than 7 1/2 feet above the sidewalk level, over the street area at an elevation of not less than 11 feet above the street level and to a height of not less than 14 feet above the street level on any street designated as an arterial or one-way street, and where parking has been prohibited.

(ii) Hedges, shrubs, etc.,

which are not trimmed to allow a minimum of three feet of horizontal clearance between the edge of pavement and the hedges, shrubs, or other vegetation.

5.475 Drainage.

(1) No owner or person in charge of any building or structure may suffer or permit rainwater, ice or snow to fall from such building or structure onto a street or public sidewalk, or to flow across such sidewalk.

(2) The owner or person in charge of property shall install and maintain in a proper state of repair adequate drainpipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across or upon the sidewalk.

5.477 Erosion

(1) No owner or person in charge of any project, building, structure, or parcel of land may intentionally or inadvertently allow any visible or measurable erosion which has entered, or is likely to enter, a public storm drainage facility or any surface water body as determined by the following criteria:

(A) Deposition of soil, sand, dirt, dust, mud, rock, gravel, refuse, or any other organic or inorganic material exceeding one cubic foot in volume in a public right of way or public property, or into the City surface water drainage system either by direct deposit, dropping, discharge, or as a result of erosion; or

(B) Flow of water over bare soils, turbid, or sediment laden flows, or bare soil slopes, where the flow of water is not filtered or captured on the property owner's parcel of land; or

(C) Earth slides, mud flows, land slumping, slope failure, or other earth

movement that leaves, or is likely to leave, the property of origin.

2. Owners and persons in charge of any project, building, structure, or parcel of land shall be solely responsible for the cleanup of sidewalks, roadways, natural drainage ways, and adjacent properties of any debris, soil, dirt and foreign materials originating or derived from their building, structure or parcel of land.

[Section 5.477 added by Ordinance No. 1382, adopted October 23, 1995; amended by Ordinance No. 1453, adopted June 12, 2000.]

5.480 Radio and Television Interference.

(1) No person may operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception; provided, that the radio or television receiver interfered with is of good engineering design.

(2) This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

5.485 Unnecessary Noise.

[Section 5.485 repealed by Ordinance No. 1496, amending the West Linn Municipal Code by adding new Section 5.487 entitled Sound Levels and Noise, adopted on August 20, 2003.]

5.487 Sound Levels and Noise.

Purpose. The City Council of the City of West Linn finds that low and moderate ambient noise levels are a

significant City amenity. They find further that the level of noise that exists in a community directly affects the livability of the community and the health, comfort and welfare of its residents. It is, therefore, the express intent and purpose of this ordinance to establish noise level standards that protect and improve the quality of life of West Linn's residents at work, rest and play and that can be objectively measured and enforced.

Terminology. All terminology used in this ordinance, not defined below, shall be in accordance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

Measurement of Sound.

(A) All measurements called for in this ordinance shall be made with a sound level meter in good operating condition, meeting the requirement of a Type 1 or Type 2 sound meter, capable of both fast and slow response and meeting ANSI Standard S1.4-1983(R1990) and S1.4A-1985.

(B) All sound measurement readings shall be taken in accordance with the rules of location and distance established in this ordinance and following the procedures set forth in the *Sound Measurement Procedures Manual (NPCS-1)* or successor publication available from the Oregon Department of Environmental Quality. Where the rules of measurement and distance established in this ordinance differ from those of the (NPSI-1) Manual, the provisions of this ordinance shall take precedence.

(C) When the location or distance prescribed in this ordinance for measurement would result in misleading or

inaccurate results, measurement may be taken at other locations or distances using appropriate correction factors.

Definitions.

A-Scale (dBA). The sound level in decibels measured using the A-weighting system as specified in ANSI S1.4-1983(R1990) and S1.4A-1985 for sound level meters. The A-weighting system corrects for the fact that the sensitivity of the human ear varies with pitch, being more sensitive to higher pitch sound.

Deleted: com

Automobile Intensive Business. Any business that services, repairs or fuels automobiles or other on-road vehicles or that employs a drive-through window or that generates or is intended to generate more than 50 vehicle roundtrips in any one business day.

Ambient Noise Level. The total noise associated with a given environment, being a composite of sounds from many sources both near and distant. For the purposes of this ordinance ambient noise levels shall be measured using the A-Scale and in accordance with the standards of the Sound Measurement Procedures Manual.

Amplifying Equipment. Public address systems, musical instruments, and other similar sound-producing devices which are electronically amplified.

City. The City of West Linn, Oregon, or the area within the territorial city limits of the City of West Linn, Oregon, and such territory outside of this city over which the city has jurisdiction or control by virtue of ownership, or any Constitutional or Charter provision, or by law.

Construction. Any and all activity necessary or incidental to the erection, demolition, assembling, altering, installing, repair or equipping of buildings, roadways and utilities. It shall include land clearing, grading, excavating and filling before, during or following such activity.

Decibel (db). A logarithmic unit of sound measurement equal to 10 times the log (base 10) of the ratio of a sound pressure being measured, to a reference sound pressure. A 10 db increase is equivalent to a doubling of loudness, while a 20 db increase would be equivalent to four times as loud as a reference sound. A 3 db increase is twice the sound power, while a 6 db increase is twice the sound pressure. (See sound pressure level definitions.)

Table I - Examples of Decibel Levels:

10 db light whisper	60 db noisy office
20 db quiet conversation	70 db normal traffic, quiet train
30 db normal conversation	80 db rock concert, subway
40 db light traffic	90 db heavy traffic, thunder
50 db typewriter, loud conversation	100 db jet plane at takeoff

Domestic Power Tools. Any mechanically powered saw, drill, sander, grinder, lawn or garden tool, or similar device generally used out of doors in, or impacting, residential areas.

Dynamic or Compression Braking Device (commonly called "Jake" brakes). A device used primarily on trucks and buses to convert the motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the

use of wheel brakes.

Emergency Work. Work performed to restore property to a safe condition following severe inclement weather or natural disasters; work required to restore public utilities or to protect persons or property from imminent exposure to danger.

Frequency. The time rate of repetition of a periodic phenomenon, measured in Hertz (Hz), (cycles per second) -- in the case of sound, the pitch.

Impulse Sound. A single pressure peak or a single burst (multiple pressure peaks) for a duration of less than one second as measured on a peak unweighted sound pressure measuring instrument.

Light Household Maintenance. Work done on a house or apartment that does not require a building permit or other planning approval.

Narrow Band Sound. Sound characterized by normal listeners as having a predominant pitch or series of pitches; sound described by such listeners as "whine," "hiss," "toot," or "wail"; a sound whose frequencies occupy an octave band or less.

Noise Sensitive Building. A building which is devoted, in whole or in part, to a noise sensitive use.

Noise Sensitive Use. Any use which is adversely affected by ambient sound or noise, as in the use of real property for residential occupancy, schools, churches, public libraries, or hospitals. This definition includes any place where people normally sleep.

Octave Band. An interval in Hertz between two frequencies having a ratio of two to one. For purposes of this ordinance, octave band sound pressure levels will be measured at the following center frequencies: 31.5, 63, 125, 250, 500, 1000, 2000, 4000, and 8000 Hz.

Off-Road Recreational Vehicle. Any motor vehicle, including watercraft, used off public roads for recreational purposes. When a road vehicle is operated off-road, the vehicle shall be considered an off-road recreational vehicle if it is being operated for recreational purposes.

Period of Observation (Enforcement). For the purposes of enforcement of this ordinance, the "Period of Observation" need be no longer than the minimum period of time necessary to determine if a violation of a "Statistical Noise Level" has occurred, and is reported as an "L number." The L number designates the recommended period of observation as a percentage of the testing time (generally one hour). Thus, L50 = 30 minutes; L10 = six minutes; and L1 = 36 seconds. For example, if after testing for one minute, it is noted that an L1 "Statistical Noise Level" has been met or exceeded for 40 seconds, it is not necessary to test for a longer period of time to determine that a violation has occurred.

Period of Observation (General Testing Time). A duration of sixty minutes. A longer time period may be used if required by special circumstances.

Person. The United States government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality,

industry, co-partnership, association, firm, trust, estate or any other legal entity whatever.

Plainly Audible Sound. Any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to understandable spoken speech, comprehension of whether a voice is raised or normal, or comprehensible musical rhythms and bass lines.

Public Road. Any street, alley, road, highway, freeway, thoroughfare, urban trail, or section thereof used by the public or dedicated or appropriated to public use.

Sound Level. The "Sound Pressure Level" obtained by the use of a sound level meter. When the level is specified in dBA, the "A" weighting frequency network is employed. Otherwise, the linear un-weighted sound pressure level is understood.

Sound Pressure Level. Twenty times the logarithm to the base 10 of the ratio of the root-mean-square pressure of the sound to the reference pressure. Sound Pressure Level is given in decibels (dB). The reference pressure is 20 micropascals (20 micronewtons per square meter). (See Decibel.)

Statistical Noise Level. The "Sound Level" which is equal to or is exceeded a stated percentage of the time within the "Period of Observation." An L10 = 60 dBA means that within the "Period of Observation," 60 dBA can be equaled or exceeded only 10 percent of the time; i.e., six minutes total within any given hour.

Vehicle Roundtrip. For the purposes of this ordinance, a "Vehicle Roundtrip" constitutes entering and exiting a place of business or entering the parking facility associated with or available to a business, parking and then later unparking the vehicle and exiting the parking facility.

Warning Device. Any device which signals an unsafe or potentially dangerous situation.

Working Hours. The hours during which people are ordinarily present at any workplace.

Workplace. Any place where people normally perform labor or pursue an occupation, either for remuneration or as volunteers.

MAXIMUM PERMISSIBLE SOUND LEVELS.

Noise Sensitive Use. Except as specifically provided elsewhere in this ordinance, no person shall cause or permit the creation or continuance of any sound in excess of the limits set forth in Table 1 as measured at the property line of any "Noise Sensitive Use."

TABLE 1

Allowable Sound Levels at Noise Sensitive Use Property Line

Type of Sound	7 a.m. to 7 p.m.	7 p.m. to 7 a.m.
Statistical Noise	L50 = 55 dBA	L50 = 45 dBA
	L10 = 60 dBA	L10 = 50 dBA
	L1 = 70 dBA	L1 = 55 dBA
Impulse Sound	95 dB	80 dB

Interior Levels. Whenever a noise sensitive use is contained within the same building as a noise source, measurement of that noise source shall be made within the confines of the noise sensitive use. In such situations the maximum allowable noise levels as established in Table 1 shall be decreased by 10 dBA (or 10 dB in the case of impulse sounds) for both measurement and enforcement.

Narrow Band Sound. When the City Council, Planning Director, or Planning Commission has reasonable cause to believe that an existing or prospective noise source is causing or is likely to cause a "Narrow Band Sound" that is grating, annoying, irritating or which interferes with the comfort and rest of the citizens or is contrary to the purpose statement of this ordinance but which would not register on the A-weighted scale as being in violation of Table 1, then the following criteria shall apply. No person shall cause or permit the creation or continuance of any narrow band sound for a period of longer than 10 minutes in any hour that meets or exceeds the levels in Table 2 at the following octave band frequencies:

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TABLE 2

<u>Center Frequency</u>	<u>Unweighted Sound Level</u>	
	<u>7 a.m. to 7 p.m.</u>	<u>7 p.m. to 7 a.m.</u>
31.5 Hz	68 dB	65 dB
63 Hz	65 dB	62 dB
125 Hz	61 dB	56 dB
250 Hz	55 dB	50 dB
500 Hz	52 dB	46 dB
1000 Hz	49 dB	43 dB
2000 Hz	46 dB	40 dB
4000 Hz	43 dB	37 dB
8000 Hz	40 dB	34 dB

New Noises Sources. Any new commercial or industrial development subject to approval or review by any City department or elective or appointed body shall not receive such approval if it would violate this ordinance.

Ambient Degradation Associated With New Noise Sources. Any new commercial or industrial development located on a previously unused industrial or commercial site shall not cause or permit the operation of a noise source if the noise levels generated or indirectly caused by that noise source would increase the ambient statistical noise levels, L50 or L10, by more than 5 dBA in any one hour. In some instances the ambient degradation standard may establish lower allowable dBA levels than those established in Table 1, and in those instances the lower level shall apply. The purpose of this rule is to support the intent of this ordinance to preserve existing low ambient noise levels wherever they exist within the City.

PROHIBITED NOISE MAKING ACTS

The following noise producing actions are deemed by their uniquely intrusive nature to violate the intent and purpose of this ordinance and to have a materially detrimental effect on the peace, ease, repose and livability of the City irrespective of the maximum sound levels established previously in Tables 1 and 2. No person, therefore, shall cause or permit the creation or continuance of any prohibited noise making action, subject to the penalties established in this ordinance.

Amplified Sounds. The playing or use of any radio, phonograph, tape player, CD player, television set, stereo system, or amplifying equipment such as to be plainly audible at the property edge of any noise sensitive use between the hours of 7 p.m. and 7 a.m. or in cases where the noise source and noise sensitive use share a common wall or are in the same building as is plainly audible within the noise sensitive use. (See Plainly Audible Sound.)

Animals. Owning, possessing or harboring any dog or other animal that barks, bays, cries, howls or makes any other loud or noticeably annoying noise continuously for a period of 15 minutes in any hour except for animals provoked by a person trespassing, threatening to trespass, or unambiguously taunting the animal.

Burglar Alarms. Owning, installing or causing to be installed any anti-theft alarm system that produces an audible alarm on any building or any motor vehicle unless such alarm shall automatically cease sounding after 15 minutes. Existing systems shall be altered to conform to this section if the City or any of its officers receives a written complaint from a person disturbed by a non-conforming alarm. Non-conforming alarm owners shall have 60 calendar days to bring such alarm into compliance after receipt of written notification of its non-compliance.

Compression Braking. The use of any compression or dynamic braking device, commonly referred to as "Jake Brakes," for reasons other than to avoid imminent danger to persons or property, with the exception of vehicles traveling in transit through the City on I-205.

Idling Engines on Motor Vehicles. Allowing any motor vehicle with a Gross Vehicle Weight Rating (GVWR) of 8,000 pounds or greater to idle for more than fifteen (15) consecutive minutes between the hours of 7 p.m. and 7 a.m. if such idling produces sound in excess of 45 dBA at the property line of any noise sensitive use.

Leaf Removal. Removal or collection of leaf material by commercial or

paid operators between 7 p.m. and 7 a.m. weekdays and 7 p.m. and 8 a.m. weekends and federal holidays. Includes collection and removal by sweeping, blowing or vacuum equipment.

Shouting, Yelling, Screaming. No person shall shout, yell, scream or make other loud vocal utterances such that they are plainly audible at the property line of a noise sensitive use between the hours of 7 p.m. and 7 a.m. Excepted are those persons warning another of a danger or in danger themselves or in real physical distress.

Sirens, Horns, Clarions. The sounding of any horn, siren or other such device anywhere in the City limits except as a necessary warning of danger.

Tampering. The removal or rendering inoperative by any person other than for the purposes of maintenance, repair, or replacement, of any noise control device or element of, especially but not limited to the following:

(A) Any product manufactured to meet specified noise emission limits under Federal law pursuant to the Noise Control Act of 1972 (PL 92-574).

(B) Motor vehicles of model year 1975 and subsequent that were sold new in the State of Oregon. These vehicles include all trucks, buses, automobiles, motorcycles and snowmobiles excepting those racing vehicles used only in sanctioned racing events pursuant to OAR, Chapter 340, Section 35-025, Noise Control Regulations for the Sale of New Motor Vehicles.

Unnecessary Vehicle Noise.

1. Causing the squealing of tires by excessive acceleration or speed except to avoid imminent danger to person or property.
2. Revving of an engine excessively or in a way unnecessary to the operation of the vehicle.
3. The playing of a radio or other vehicle sound system must meet the requirements of ORS 815.232 or shall be deemed in violation of this ordinance.

[ORS 815.232 Unreasonable sound amplification from a vehicle; penalty.

(1) A person commits the offense of causing unreasonable sound amplification from a vehicle if the person operates, or permits the operation of, any sound amplification system which is plainly audible outside of a vehicle from 50 or more feet when the vehicle is on a public highway or on premises open to the public, unless that system is being operated to request assistance or warn of a hazardous situation.

(2) Subsection (1) of this section does not apply to:

(a) Vehicles being operated outside of an urban growth boundary;

(b) Emergency vehicles as defined in ORS 801.260;

(c) Vehicles operated by utilities defined under ORS 757.005, 758.505 or 759.005, or telecommunications carriers as defined in ORS 133.721;

(d) Sound systems of vehicles used for advertising, or in parades, political or other special events, except that the use of sound systems on those vehicles may be prohibited by a local authority by ordinance or resolution;

(e) Audio alarm systems installed in vehicles; or

(f) Federal Communications

Commission licensed two-way radio communications systems.

(3) As used in subsection (1) of this section, "plainly audible" means any sound for which the information content of that sound is unambiguously communicated to the listener including, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal or comprehensible musical rhythms or vocal sounds.

(4) The offense described in this section, causing unreasonable sound amplification from a vehicle, is a Class D traffic violation. (1991 c.601 Sec.3; 1995 c.383 Sec.27; 1999 c.1093 Sec.19)]

EXEMPTIONS

The following sounds or noise producing actions are deemed to be of such importance to the community as to be exempted from the provisions of this ordinance within the limits established below.

1. Unamplified sounds, including those of unamplified musical instruments, produced at sporting events sponsored by any school located within the boundaries of the City. Sirens, air-horns, whistles (excepting those used by officials), cannons, and other mechanical noise making devices are not considered to be unamplified and are, therefore, subject to the provisions of this ordinance.

2. Sounds associated with construction that occurs between the hours of 7 a.m. and 7 p.m. local time on weekdays and 9 a.m. and 5 p.m. Saturdays. Construction may occur at times other than those listed above provided that it is in conformance with the provisions of this ordinance. Construction shall include the building of noise berms or barriers.

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3. The use of domestic power tools for lawncare, landscaping, leaf removal and/or collection, and gardening during either of the following two time periods:

(A) The hours of 7 a.m. and dusk local time during weekdays when performed by paid professional gardeners or landscapers.

(B) The hours of 7 a.m. and dusk local time weekdays and 8 a.m. and dusk weekends and federal holidays when performed by the homeowner or other unpaid person.

4. The sounds produced by domestic power tools engaged in hobbycraft and light household maintenance (that done by homeowners or others provided that they are unpaid) between the hours of 7 a.m. and 7 p.m. weekdays and 8 a.m. and 5 p.m. weekends and federal holidays.

5. Sounds produced by the performance of emergency work, vehicles or equipment, including police, fire and ambulance.

6. Sounds produced by the tires or motor to propel or retard any vehicle (excepting "Unnecessary Vehicle Noises" as listed previously) on the public right of way or upon a commercial property provided that said vehicle is in compliance with ORS 483.449 and OAR 340-35-030. Automobile intensive businesses, because of the accumulative negative effect they have on ambient noise levels, are not so exempted and must be in compliance with the maximum permitted noise levels as established in Table 1.

7. Sounds produced by the loading, unloading, opening or otherwise handling of boxes, crates, containers, garbage cans or other similar objects between the hours of 7 a.m. and 7 p.m. local time on weekdays and 8 a.m. and 5 p.m. weekends and federal holidays.

8. Sounds caused by parades, fireworks displays, and other special events for which a permit has been obtained from the City, within hours as may be imposed as a condition for the issuance of the permit.

9. Sounds made by warning devices operating continuously for three minutes or less.

PENALTIES

First Offense: Persons found in violation of the provisions of this ordinance shall upon a first offense receive a warning to cease such activity or alter such equipment as is causing the violation. Persons receiving such a warning will receive a written notice of first offense warning, the receipt of which is not an appealable legal action.

Second and Subsequent Offenses: Persons found in violation of the provisions of this ordinance for a second time and any subsequent times (for the same type of offense) shall be fined not less than \$250 and not more than \$500 for each offense. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of this ordinance occurs.

Injunction: The City Attorney, acting in the name of the City, may maintain an action or proceeding in a court of competent

jurisdiction to compel compliance with or restraining injunction the violation of any provision of this ordinance as additional remedy.

PRODUCT SELECTION

When two or more products, including supplies, materials, and equipment are being considered for purchase by a City bureau, and excessive sound levels are a factor, the product which has the lowest sound level shall be selected for purchase, provided that:

(A) Fitness and quality are judged to be equal; and

(B) The procurement cost of such product not exceed the total cost required to purchase a competing product and reduce the sound emission level of that competing product to the lowest level of the product being considered; and

(C) The total cost of the purchase being considered not exceed 115 percent of the cost prior to silencing of the most advantageous product of the types being considered; and

(D) The quieter product will produce at least 15 dBA less sound level than the most cost advantageous product of the types being considered.

VARIANCES

1) Variances may be granted to any person from any requirement of this ordinance if findings are made that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate

compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source or because of the unavailability of feasible technology or control methods.

2) Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances. Temporary variances may be issued for a period not to exceed six months and may be renewed once.

3) Permanent variances may only be granted for uses that existed prior to the adoption of this ordinance and then only if compliance would prove so costly as to seriously threaten the economic viability of the person requesting the variance.

4) Variances shall be heard and decided in the manner set forth in the City of West Linn Community Development Code for Type 2 land use variances.

ENFORCEMENT

The City Council of the City of West Linn shall have the prerogative to appoint or authorize any City personnel deemed appropriate to enforce the provisions of this ordinance including, but not limited to, the City police and the Planning Code enforcement officer. Other governmental entities, such as the Clackamas County Sheriff's Department, may be requested to enforce this ordinance when appropriate.

When responding to noise complaints at businesses, residences, or at locations where groups or organizations have gathered, the owner, manager, or adult person in charge shall be held responsible

for maintaining an acceptable noise level. This shall not apply to organized athletic events. When complaints are received at the above location, those responding to enforce this ordinance shall seek out the responsible person to contact.

Additional to Other Law: The provisions of this ordinance shall be cumulative and non-exclusive 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.

Severability: If any provision or section of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this ordinance which shall remain in full force and effect.

[New Section 5.487 added by Ordinance No. 1496, adopted on August 20, 2003.]

5.490 Notices and Advertisements.

(1) No person may affix or cause any placard, bill, advertisement or poster to be affixed upon real or personal property, including motor vehicles, or public or private property, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regulating the use of and the location of signs and advertising.

(2) No person, either as principal or

agent, may scatter, or cause any placards, advertisements or other similar material to be scattered on public property.

5.495 Infractions--Public Nuisance Declaration--Abatement.

(1) The acts, conditions or objects specifically enumerated and defined in sections 5.405 to 5.490 are declared to be Class A infractions and public nuisances, and such acts, conditions or objects as a public nuisance may be abated by any of the procedures set forth in sections 5.400 to 5.530.

(2) All violations of Sections 8.000 to 8.175 and 8.300 to 8.315 are declared to be public nuisances and may be abated as set forth in Sections 5.400 to 5.530. All violations of the Community Development Code and all violations of any order or condition of approval issued pursuant to the Community Development Code are declared to be public nuisances and may be abated as provided in Sections 5.400 to 5.530. All violations of Section 3.300 are declared to be public nuisances and may be abated as provided in Section 5.400 to 5.530. All unresolved violations of the provisions specified in this section are deemed to be current and ongoing nuisances. A violation that involves a physical change to property is considered resolved only when the property is restored to its previous condition.

(3) In addition to the nuisances listed in subsections (1) and (2) of this section, all activities or man-made conditions on a property that have an unreasonable adverse effect on other properties may be declared a nuisance by the council and abated as provided in Sections 5.400 to 5.530. A declaration of a nuisance under this subsection shall be supported by findings relating to the nature of the nuisance, the effect on other properties, whether permits were necessary

and were obtained, and the effect on the natural environment.

(4) In addition to those nuisances specifically enumerated within sections 5.400 to 5.530, every other thing, substance or act which is determined by the council to be injurious or detrimental to the public health, safety or welfare of the city is declared to be a nuisance and may be abated as provided in section 5.400 to 5.530.

[Section 5.495, Subsection (2), amended by Ordinance No. 1449 adopted May 22, 2000; Subsection (2) amended and new subsections (3) and (4) added by Ordinance No. 1485, adopted April 17, 2002.]

5.500 Notice--Posting and Mailing--Contents.

(1) Upon determination by the city manager that a nuisance exists as defined in sections 5.400 to 5.530, a notice shall be posted on the premises where the nuisance exists, declaring and describing the nuisance, providing information regarding protest rights, and informing whether an opportunity to abate will be provided. The persons responsible for the nuisance include the owners of the property, any person in charge of the property, and any person who created the nuisance whether or not the person had the approval of the owner or person in charge of the property. A person who purchases real property from a person responsible for the nuisance shall also be considered a person responsible for the nuisance if:

- (a) The nuisance was in whole or in part on the property;
- (b) The nuisance was created to benefit the property being purchased; or
- (c) The new owner purchased with actual or implied knowledge that the seller

was responsible for the nuisance.

(2) At the time of posting, the city manager shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the owner, the person in charge of the property, any person with an ownership or security interest in the property, and any other person responsible for the nuisance at the last known address of the owner or other person. The city manager may cause a copy of the notice to be recorded with the county recorder in the property records of any real property owned by all persons responsible for the nuisance. Any person purchasing property for which a notice has been recorded shall be deemed to have knowledge that the seller was responsible for the nuisance. In determining in which property records, if any, the notice should be filed, the city manager shall consider the City's needs to adequately secure any lien that may be filed if the City abates the nuisance.

(3) The notice declaring the nuisance shall contain:

(a) A description of the real property by street address or otherwise, on which such nuisance exists;

(b) A description of the nuisance;

(c) A statement that the owner, other person in charge of the property or other person responsible for the nuisance may protest the abatement by giving notice to the City Manager within ten days from the date of the notice;

(d) A direction to the persons responsible for the nuisance to abate the nuisance within ten days from the date of the notice; and

(e) A statement that unless such nuisance is removed to the satisfaction of the City, the City may abate the nuisance

and the cost of abatement shall be a lien against the property and against property of any person responsible for the nuisance;

(4) In the event that the City Manager determines that the person responsible for the nuisance should not be given the opportunity to abate the nuisance; the notice shall not include the statements required by Subsections (3)(d) and (e) and shall instead include a statement that the City Manager has determined that the person responsible for the nuisance should not be given the opportunity to abate the nuisance and a statement that unless a protest is filed within 10 days from the date of the notice, the City shall abate the nuisance and the cost of abatement shall be a lien against the property and against property of any person responsible for the nuisance.

(5) The notice may also contain conditions relating to the abatement, including conditions that the work be performed by qualified persons, conditions disqualifying certain individuals from performing the work, conditions that necessary permits be obtained, or other conditions intended to ensure that the nuisance will be properly abated.

(6) Upon completion of the posting and mailing, the person posting and mailing the notice shall execute and file a certificate stating the date and place of such mailing and posting.

(7) An error in the name or address of any person entitled to notice shall not make the notice void and in such a case the posted notice shall be sufficient.

(8) The City Manager may determine that the person responsible for the nuisance should not be given the opportunity to abate only if the City Manager finds that the person responsible for the nuisance is unlikely to properly abate the

nuisance. The determination that a person is unlikely to properly abate the nuisance shall be based on findings as to one of the following:

(a) whether the person acted intentionally and whether the nuisance is egregious; or

(b) whether the person had knowledge that the action was a violation of state law, or city code; or

(c) whether the person has the professional expertise to perform the abatement.

[Section 5.500 amended by Ordinance No. 1485, adopted April 17, 2002.]

5.505 Abatement--By Owner or Other Person Responsible for the Nuisance.

(1) Unless the City Manager has determined that the person responsible for the nuisance should not be given the opportunity to abate the nuisance, within ten days after the posting and mailing of the notice as provided in section 5.500, the owner, person in charge of the property or other person responsible for the nuisance shall remove the nuisance in accordance with the notice or show that no nuisance exists. Any person removing the nuisance shall notify the City Manager before removing the notice and shall allow the City to inspect during and on completion of the removal. The notification shall state how the nuisance will be removed, when it will be removed, and who will be performing the removal.

(2) A person protesting that no nuisance exists shall file with the city manager a written statement specifying the basis for the protest within 10 days of the posting of the notice.

(3) The statement shall be referred to the council as a part of the

council's regular agenda at the council's next regularly scheduled meeting. If the protest is received less than four days before the next regularly scheduled meeting, the City Manager may schedule the protest to be heard at a subsequent council meeting. At the time set for consideration of the protest, the person protesting the notice of nuisance may appear and be heard by the council, and the council shall thereupon determine whether or not a nuisance in fact exists and whether a person other than the property owner is responsible for the nuisance. Such determination shall be entered in the official minutes of the council. The Council may impose conditions relating to the abatement, including conditions that the work be performed by qualified persons, conditions disqualifying certain individuals from performing the work, conditions that necessary permits be obtained, or other conditions intended to ensure that the nuisance will be properly abated.

(4) Council determination shall be required only in those cases where a written statement of protest has been filed.

(5) If the council determines that a nuisance does in fact exist, the person responsible for the nuisance shall, within 10 days after such council determination, abate such nuisance, unless the Council determines that the person responsible for the nuisance should not be given the opportunity to abate or unless the Council decision allows a period of time greater than 10 days. The Council may determine that the person responsible for the nuisance should not be given the opportunity to abate only if the Council finds that the person responsible for the nuisance is unlikely to properly abate the nuisance. The determination that a person is unlikely to

properly abate the nuisance shall be based on findings as to one of the following:

(a) whether the person acted intentionally and whether the nuisance is egregious; or

(b) whether the person had knowledge that the action was a violation of state law or city code; or

(c) whether the person has the professional expertise to perform the abatement.

(6) If no protest is filed with the city manager within the time allowed, a nuisance shall be deemed to exist and the city may proceed to abate said nuisance and collect the costs incurred by the City in abating the nuisance by the methods set forth in sections 5.510 to 5.525.

[Section 5.505 amended by Ordinance No. 1485, adopted April 17, 2002.]

5.510 Abatement--By City.

(1) If the nuisance has not been abated within the time allowed or if it is determined that the persons responsible for the nuisance should not be afforded the opportunity to abate, the city may cause the nuisance to be abated.

(2) The city officer charged with abatement of such nuisance shall have the right at reasonable times to enter into or upon property to investigate or cause the removal of a nuisance. However, before entering upon private property, the city officer shall obtain the consent of an occupant or a warrant of the municipal court authorizing entry for the purpose of inspection or removal, except when an emergency exists.

(3) No warrant shall be issued under sections 5.400 to 5.530 until an affidavit has been filed with the municipal court, showing probable cause for entry into or upon private property, by stating the pur-

pose and extent of the proposed entry, citing sections 5.400 to 5.530 as the basis for the entry into or upon private property, and setting forth relevant facts to support the issuance of the warrant to enter, inspect and abate.

(4) No person shall interfere with or attempt to prevent a city officer from entering upon private premises and inspecting or removing any nuisance when an emergency exists or the city officer exhibits a warrant authorizing entry.

(5) The city manager shall keep an accurate record of the expense incurred by the city in declaring and abating the nuisance and shall include therein any charges for administrative overhead.

[Section 5.510 amended by Ordinance No. 1485, adopted April 17, 2002.]

5.515 Abatement--Assessment of Costs.

(1) The city manager, by registered or certified mail, postage prepaid, shall forward to all persons responsible for the nuisance, a notice stating:

(a) The total cost of declaring and abating the nuisance, including administrative overhead;

(b) That the cost as indicated will be assessed to and become a lien against property of persons responsible for the nuisance unless paid within 30 days from the date of the notice;

(c) That any person responsible for the costs may file a notice of objection to the costs with the city manager not more than ten days from the date of the notice.

(2) Upon the expiration of ten days after the date of the notice, the council in the regular course of business shall hear and determine the costs to be assessed. If no

objections are received, the council shall adopt the City Manager's statement of costs.

(3) If the costs are not paid within 30 days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens and, upon such entry being made, shall constitute a lien upon property of all persons responsible for the nuisance. The City Council may, as part of its determination of the costs, order that the costs shall not become a lien on certain property if it finds that the property and the property owner should not be responsible for payment of the abatement costs.

(4) The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the rate of nine percent per year. Such interest shall commence to run from date of the entry of the lien in the lien docket.

(5) An error in the name of any person to whom notice is sent shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against property of the person responsible for the nuisance.

[Section 5.515 amended by Ordinance No. 1485, adopted April 17, 2002.]

5.520 Liability.

The city shall not be liable to any person for any loss or injury to person or property growing out of any casualty or accident happening to such person or property on account of a property owner, lessee or occupant of property who fails or neglects to promptly comply with the duties imposed by this section. The city shall be exempt from all liability, including but not limited to

common-law liability that it might otherwise incur to an injured party as a result of the city's negligent failure to abate a nuisance. If any property owner, lessee or occupant, by his or her failure or neglect to perform any duty required of him or her by the terms of this section, contributes in causing injury or damages, they shall reimburse the city for all damages or injury it has sustained or has been compelled to pay in such case, including but not limited to reasonable attorney fees for the defense of the same, and such payments as may be enforced in any court having jurisdiction.

5.525 Summary Abatement.

The procedure provided by sections 5.400 to 5.530 is not exclusive but is in addition to procedure provided by other ordinances, and the health officer, the chief of the fire department or chief of police may proceed summarily to abate a health or other nuisance which unmistakably exists and from which there is imminent danger to human life or property.

5.527 Remedies Cumulative

The remedies and procedures for nuisances provided in Sections 5.535 to 5.530 are in addition to all other remedies and procedures provided by law. Nothing in Sections 5.535 to 5.530 shall limit or restrict in any way the City's right to obtain a remedy by means of a civil infraction action, a criminal action, a civil lawsuit, or any other form of procedure to obtain a remedy.

[Section 5.527 added by Ordinance No. 1485, adopted April 17, 2002.]

5.530 Separate Violations.

(1) Each day's violation of a provision of sections 5.400 to 5.530 constitutes a

separate offense.

(2) The abatement of a nuisance is not a penalty for violating sections 5.400 to 5.530 but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance.

5.535 Judicial Review

Judicial review of the decision of the Council declaring a nuisance shall be on the record by writ of review pursuant to ORS Chapter 34 and not otherwise.

[Section 5.535 added by Ordinance No. 1485, adopted April 17, 2002.]

PARKS AND RECREATIONAL FACILITIES

5.550 Hours--Establishment.

The parks director is delegated authority to establish hours of operation for all city parks and recreational facilities including boat ramps and boat landings. Hours of operation, when established, shall be posted for public view.

5.555 Hours--Violation.

Violation of parks and recreational facilities closing hours by any person shall constitute a class B infraction, punishable upon conviction by fine not to exceed \$250.

5.560 Vehicles and Horses Prohibited in City Parks.

It shall be unlawful for any person to operate a motor vehicle or to ride or lead a horse within the boundaries of the public parks of the city. This prohibition shall not apply to designated public streets or public parking areas.

FIRE HAZARDS

5.600 Combustible Vegetation Pro-

hibited. It is unlawful for the owner or occupant of any property or premises within the city to allow or permit any vegetation which has dried out to the extent of becoming readily combustible to remain on said property when such dry and combustible vegetation lies within one hundred feet of any building or structure.

5.605 Vegetation Defined.

Vegetation. As used in sections 5.600 to 5.615, means any growth which, when allowed to dry normally during the summer and fall dry season becomes combustible and thereby becomes a fire hazard. This shall include but not be limited to: grass, weeds, vines, brush, scrub trees, and landscape plantings, should they be allowed to go unattended to the point of becoming a fire hazard.

5.610 Fire Chief Determination--Notice.

Upon the determination of the fire chief that a fire hazard exists, and upon written notification to the owner and the occupant of the premises that such fire hazard does exist, it shall be required that the owner or occupant cut and remove all vegetation lying within 100 feet of any building or structure whether such building or structure lies on the property of the owner or occupant or on the property of another. Such vegetation shall be kept clean and free from said premises throughout the dry seasons of the year.

5.615 Removal by City. In the event that the owner or occupant of the premises fails or refuses to cut and remove such vegetation within five days of notification to do so, or in the event the owner or occupant cannot be located, the city may cause such clearing and removal of vegeta-

tion to be done and assess the cost thereof as a lien against the property.

EXPLOSIVES

5.650 Purpose.

It is the intention of the council that sections 5.650 to 5.725 shall supplement and shall be uniformly interpreted with the laws and regulations of the United States and the state, so far as possible, to avoid an undue burden on commerce.

5.655 Definitions.

As used in sections 5.650 to 5.725, except where the context clearly indicates a different meaning, the following words mean:

Explosives. Chemical compounds, mixtures, or devices, the primary or common purpose of which is to function by explosion with substantially instantaneous release of gas or heat, including but not limited to Class A and Class B explosives as classified by the Interstate Commerce Commission, nitrocarbonitrates and fireworks as defined by ORS 480.110, but excluding dangerous articles such as flammable liquids, flammable solids, compressed flammable or nonflammable gases, oxidizing material, corrosive liquids, poisonous liquids or gases, radioactive materials, and small arms ammunition.

The Interstate Commerce Commission classifies explosives as follows:

(1) Class A: Explosives having detonating or otherwise maximum hazard such as dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder, blasting caps, and detonating primers.

(2) Class B: Explosives having flammable hazard, such as propellant explosives (including some smokeless pow-

ders), photographic flash powders, and some special fireworks;

(3) Class C: Explosives including certain types of manufactured articles which contain Class A or Class B explosives, or both, as components but in restricted quantities, such as small arms ammunition, common fireworks, cordeau detonant, and explosive rivets.

5.660 Applicability.

(1) Except as sections 5.650 to 5.725 may conflict with the regulations, laws and Constitution of the United States and the state, it shall apply to the interstate and intra-state commerce.

(2) Sections 5.650 to 5.725 shall not apply to:

- (a) The armed forces of the United States or the militia of any state.
- (b) The use of explosives.

5.665 Storage--Permit Required.

No person may store any explosives unless a permit is first obtained from the city council. A revocable permit valid for one year may be issued by the city council.

5.670 Storage--Application for Permit.

Written application for a permit or for renewal of a permit to store explosives shall be made to the city manager on forms provided by the city. The application shall be accompanied by a permit fee in an amount to be set by resolution of the city council, which shall be returned to the applicant if the application is denied. The city manager shall refer the application to the city council at the next regular council meeting.

5.675 Storage--Consideration of Application. The council may either

grant or deny the application for a permit, taking into consideration:

(1) The congestion of persons, the type of buildings, the volume of vehicular traffic, and the topography in the vicinity of the storage area;

(2) The condition and construction of the structure or magazine used or to be used for storage of explosives and the applicable fire zone regulations;

(3) The adequacy of water supply in the storage area;

(4) "The American Table of Distances for Storage of Explosives," published by the Institute of Makers of Explosives, September 30, 1955;

(5) Any other factors relevant to public safety.

5.680 Issuance of Storage Permit.

In granting a permit, the council may limit the quantity of explosives which may be stored by the applicant and may prescribe in the permit the terms and conditions the council considers necessary for the protection of the public from the dangers of explosion. The city manager shall issue the permit as directed by the council.

5.685 Overnight Storage Limitations.

No permit may be granted to store or keep over 50 pounds of explosives or over 500 blasting caps any place within the city between the hours of 6:00 p.m. and 7:00 a.m. of the following day.

5.690 Revocation of Permit.

The council may revoke a permit if:

(1) Conditions considered in granting the permit change at the storage area or in the vicinity and the public is endangered by the storage of explosives as authorized by the permit;

(2) The permittee is convicted of a violation of sections 5.650 to 5.725;

(3) The permittee is convicted for violation of federal or state laws or regulations relating to safety in storing and transporting explosives.

5.695 Hearing on Denial or Revocation of Permit. Before denying or revoking a permit, the council shall give written notice of its proposed action to the applicant or permittee. If, within ten days after the date of such notice, a hearing is requested by the applicant or permittee, the council shall fix a time within the next 30 days in which it shall hear the objections of the applicant or permittee to the denial or revocation of the permit. Thereafter the decision of the council shall be final.

5.700 Inspections.

It shall be the duty of the fire chief to enforce the provisions of sections 5.650 to 5.725 relating to storage, and he shall regularly inspect buildings where explosives are stored to determine whether storage practices conform to the provisions of sections 5.650 to 5.725 and the limitations imposed by the permit.

5.705 Transportation--General

Applicability. Every motor vehicle transporting explosives shall be operated in compliance with sections 5.650 to 5.725 unless federal or state laws and regulations impose a greater affirmative obligation or a greater restraint, or unless compliance would prevent full compliance with federal or state laws or regulations by persons subject there-

to.

5.710 Transportation--Operation of the Vehicle. Persons shall operate motor vehicles transporting explosives with the highest degree of care to decrease the probability of danger to life and property in the following manner:

(1) The vehicle shall be driven only upon Highway 212 and Highway 43 passing through the city, except when delivering or receiving explosives off said highways, in which event the vehicle shall be driven upon a route prearranged with the chief of police to avoid, whenever possible, congested streets, heavy traffic, bus routes, viaducts, dangerous crossings, and any dwellings, buildings, or places where persons work, congregate, or assemble;

(2) Except when passing, the vehicle shall be kept at least 300 feet behind other motor vehicles transporting explosives moving in the same direction;

(3) The vehicle shall not be driven near fires of any kind burning on or near a street until passage can be made safely.

5.715 Transportation--Competent Person to Attend Vehicle. When transporting explosives the vehicle shall be attended by a competent person whose primary duty is to attend the vehicle. Such person shall be within sight of and in close proximity to the vehicle and shall have on his person the appropriate keys for starting the vehicle. Vehicles are deemed unattended when left in care of a person on duty in the regular course of another business such as service station attendants, motel operators, or merchant patrolmen. The police are authorized to move unattended vehicles to a safe place, and to enter premises at any time to remove an unattended vehicle loaded with explosives.

5.720 Transportation - Parking and Stopping Restricted.

(1) Except as provided in this section, no person may park a vehicle loaded with explosives in the city for any purpose, and no person may stop such a vehicle for any reason except momentarily to comply with moving traffic laws.

(2) A person may park an attended vehicle for the sole purpose of, and while physically engaged in, loading or unloading explosives from the vehicle, or changing drivers.

(3) No person may refuel a vehicle within the city except in extreme emergency and then only with enough fuel to enable it to proceed to the first refueling point beyond the city. The engine of the vehicle shall be stopped during refueling.

5.725 Transportation--Disabled Vehicles.

(1) If a vehicle transporting explosives is disabled, the driver shall immediately cause notice to be given to the police and fire departments.

(2) The fire chief shall determine whether or not the vehicle may be moved, and where it may be repaired when loaded.

(3) If the disabled vehicle is moved when loaded with explosives, it shall be moved with a police escort to a location where repairs can be made without endangering life or property.

(4) If transfer of the explosives is imperative, persons making the transfer shall employ adequate safety measures under the supervision of the fire and police departments.

BLASTING

5.750 Permit Required.

It is unlawful for any person, company, or corporation, without first having received a permit from the City Manager as hereafter provided for, to explode or cause to be exploded any gunpowder, dynamite, giant powder, nitroglycerin, or other explosive for the purpose of blasting out rock, gravel, earth, or other substance within the corporate limits of the city.

5.755 Permit Affidavit.

The City Manager, after notifying mayor and council, shall have power and authority to issue a permit for blasting but before so doing shall require the person, company, or corporation to whom the permit is to be issued to make application in the form of affidavit and containing the following information:

(1) The name and address of the person, company, or corporation applying for said permit, and the name and address of the blaster or of the person who will actually supervise the blasting;

(2) Location where it is desired to use the explosives;

(3) The maximum quantity and kind of explosives to be used at one time and the length of time over which the blasting will continue;

(4) The experience and qualifications of the blaster or person who will supervise the blasting operation;

(5) Facts sufficient to establish the financial responsibility of any individual bondsman or the bonding company who will provide the bond as hereinafter provided for.

(6) A blasting plan prepared and signed by a certified and licensed blasting consultant.

[Section 5.755, amended by Ordinance No. 1509 adopted October 6, 2004.]

5.758 Notification Required.

The contractor is responsible for providing adequate notification to the affected residents of the City of West Linn.

(1) The affected area includes all properties located within 1,000 feet of the blasting area.

(2) The contractor is responsible for notifying all property owners in the affected area.

(3) The contractor is responsible for notifying all Neighborhood Associations in the affected area and attending a regularly scheduled Neighborhood Association meeting to discuss the blasting plan and answer questions.

(4) The contractor is responsible for notifying the city, county, and state police/Tualatin Valley Fire and Rescue District and receive their concurrence.

[Section 5.758, added by Ordinance No. 1509 adopted October 6, 2004.]

5.760 Insurance Requirements.

The City Manager, before issuing a permit for blasting, shall require the person, company, or corporation to whom the permit is issued to execute and deliver a certificate of liability insurance to include X,C,U coverage in a form to be approved by the city in an amount not less than \$1,000,000, or in such additional amount as may be reasonable under all of the circumstances then existing. Said certificate of insurance shall state on its face that the underlying liability insurance policy includes coverage for indemnification of the city, its officers, agents, and employees and the owners of all property within said city from loss or damage that might result from such blasting and coverage to indemnify, hold harmless, and defend the city, its officers, agents, and employees in and from any cost, attorney's fees or judgments incurred or rendered in

any and all suits or actions brought against it as a result in whole or in part from said blasting. The certificate shall also state that the insurance company must give the city a minimum of ten days' notice of cancellation of the required liability insurance coverage. The City Manager shall have the power and authority to limit the force of the explosions to be made and if it is deemed to be in the public interest, after examining the information contained in the application for a blasting permit and after examining all of the pertinent circumstances surrounding the proposed blasting, may then refuse to issue such permit.

5.765 Revocation of Permit.

The City Manager shall have the power to revoke any permit heretofore or hereafter issued under the provisions hereof for failure to comply with any of the provisions of sections 5.750 to 5.785, or for any other reasonable cause.

5.770 Revocations or Denial of Permit--Hearing.

Any person, company, or corporation who makes application for a permit to blast under the terms of sections 5.750 to 5.785 and whose application is denied by the City Manager, or whose permit is revoked by the City Manager under the terms hereof may, within ten days thereafter, file notice of appeal to the City Council with the City Manager, and the City Council shall, within 30 days thereafter, grant a hearing to the appealing party. On appeal, the City Council shall have the same power and authority hereunder as the City Manager.

5.775 Nonliability of City.

By the passage of the ordinance codified in sections 5.750 to 5.785 or the issuance of any permit hereunder, the city

assumes no responsibility for any damage caused by the person, company, or corporation blasting with the said city.

5.780 General Regulations.

All persons blasting in the city pursuant to the permit duly issued by the City Manager or otherwise shall, as a minimum precaution, comply with the following regulations:

(1) Blasting operations shall not be conducted within the city limits between the hours of 4:00 p.m. and 8:00 a.m., nor at any time on a Sunday or legal holiday.

(2) All individuals will possess the appropriate state and federal licenses.

(3) No person shall handle explosives in connection with blasting operations who is not the person named in the application for permit, either as the blaster or supervisor, except for persons under the direct supervision of said supervisor.

(4) No person shall handle explosives while under the influence of intoxicating liquors or narcotics.

(5) Persons authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution to insure the safety of the general public and workmen.

(6) When blasting is done in congested areas or in close proximity to a structure, railway, or highway, the blast shall be covered before firing with a mat constructed so that it is capable of preventing fragments from being thrown.

(7) At least three minutes before firing a blast, warning of a blast shall be given by causing a competent man carrying a red flag to be stationed at a reasonable distance from the blast, at each avenue of approach or point of danger.

(8) Electric blasting caps only shall be used as the detonating agent for blasting

operations in congested districts, or on highways, or adjacent to highways open to traffic.

(9) No person shall attempt to use dynamite that is frozen.

(10) When blasting caps are used they shall be securely attached to the safety fuse with a standard cap crimper. All priming shall be done at least 50 feet from any magazine.

(11) Blasting caps shall be inserted in the explosives only as required for each round of blasting.

(12) Blasting caps shall not be inserted in the explosives first without first making a hole in the cartridge with a sharpened stick or standard cap crimper.

(13) All drill holes shall be sufficiently large to freely admit the insertion of the cartridges of explosives.

(14) Tamping shall be done only with wooden rods without metal parts.

(15) Holes shall be stemmed with earth or sand. Rock chips, gravel, or similar material shall not be used for tamping the bore holes. No holes shall be loaded except those to be fired at the next round of blasting. After charging, all remaining explosives shall be immediately returned to a safe storage magazine.

(16) Drilling shall not be started until all remaining butts of old holes are examined with a wooden stick for exploded charges, and if any are found, same shall be re-fired before work proceeds.

(17) No person shall be allowed to deepen drill holes which have contained explosives.

(18) Explosives shall not be extracted from a hole that has once been charged or has misfired unless it is impossible to detonate the unexploded charge by insertion of a fresh additional primer or by drilling a hole in close proximity and at a safe distance from the unexploded charge.

(19) If there are any misfires while using cap and fuse, all persons shall remain away from the charge for at least two hours. If electric blasting caps are used and a misfire occurs, this waiting period may be reduced to 30 minutes. Misfires shall be handled under the direction of the person in charge of the blasting and all wires shall be carefully traced and search made for unexploded charges.

(20) Blasters, when testing circuit to charged holes, shall use sufficient lead-in wires to be at a safe distance and shall use only approved type of testers. No tests of circuits in charged holes shall be made until all persons are at a safe distance.

(21) The blaster shall cause a sufficient warning to be sounded and shall cause all persons to retreat to a safe shelter before he sets off blast and shall also see that none return until he reports it safe for them to do so.

(22) Only the person making wire connections in electrical firing shall fire the shot. All connections should be made from bore hole back to firing machine, and the lead-in wires connected to the blasting machine only when the charge is to be fired.

(23) Empty boxes, which have previously contained high explosives, shall not be used for any purpose, but shall be destroyed by burning in the open air.

(24) No person shall smoke while handling explosives or in the vicinity thereof.

(25) No open flame lamp or light shall be used in the vicinity of explosives.

(26) Containers of explosives shall not be opened in any magazine, or within 50 feet of any magazine. In opening containers, wooden wedges and either wood, fiber, or rubber mallets shall be used. No metal tools except brass shall be used for opening any containers of explosives.

(27) Explosives shall not be stored

overnight or during weekends within the city limits.

[Section 5.780, amended by Ordinance No. 1509 adopted October 6, 2004.]

5.785 Application Fee.

All applications for permits to blast under the provision of sections 5.750 to 5.785 shall be made in writing and filed with the City Manager and shall be accompanied by an application fee in an amount to be set by resolution of the City Council.