

CHAPTER 4

Business Regulation

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JUNK AND SECOND HAND DEALERS AND GARAGE SALES

4.005 Findings and Purpose

(1) The Board finds that:

(a) Junk and secondhand dealers may knowingly or unknowingly be a conduit for the sale or purchase of stolen property;

(b) Such business should be regulated by requiring a license issued by the Board;

(c) Licenses for junk and secondhand dealers should be denied, suspended, or revoked when the conduct of such business presents a threat to the peace, health, or safety of the people of the county; and

(d) ORS 203.035 authorizes the regulation of junk and secondhand dealers by the county.

(2) The purpose of LCC 4.005 to 4.065 is to provide for the peace, health, and safety of citizens of the county by regulating junk and secondhand dealers and garage sales. [1994 o. 349 §1]

4.010 Definitions

As used in LCC 4.005 to 4.065, unless the context requires otherwise:

(1) "Garage sale" means a sale of secondhand articles or junk at a private residence where such sale does not occur more than twice each calendar year. "Garage sale" includes the sale of secondhand articles or junk by religious, charitable, fraternal, or other eleemosynary organizations, provided that such sales occur not more than six times each calendar year.

(2) "Junk" includes, but is not limited to, old rope, old iron, brass, copper, tin, lead, rags, empty bottles, paper bagging, scrap metals of all kinds, and other worn out or discarded material.

(3) "Junk dealer" means any person who owns and operates a junk shop, except for a person conducting a garage sale.

(4) "Junk shop" means any storeroom building, yard, enclosure, or other place where junk is sold or bought for profit or pleasure; provided however, that such definition shall not apply to automobile wreckers where automobiles are purchased and certificates of title furnished.

(5) "Secondhand articles" means any used personal property except books, including, but not limited to, used wearing apparel, tools, goods, wares, merchandise, or other articles and things usually found in a secondhand store.

(6) "Secondhand dealer" means any person who buys, sells, or otherwise deals in secondhand wearing apparel, tools, goods, wares, merchandise, or other articles and things usually found in a secondhand store, except books, or any person who goes from house to house or place to place within the county purchasing or soliciting the purchase of gold, silver, or other precious metals or jewelry. For purposes of this ordinance, a secondhand dealer shall not include a person conducting a garage sale or a person whose business is the sale of art objects, furniture, or other articles which have a value based on rarity or the time elapsed since the articles were produced.

(7) "Secondhand store" means any store, room building, yard, enclosure, or other place where secondhand articles are bought, sold, or traded for profit or pleasure.

4.015 Licenses

(1) It shall be unlawful to operate or keep any secondhand store or junk shop without first having obtained a license as provided in LCC 4.005 to 4.065.

(2) No license granted under the provisions of LCC 4.005 to 4.065 shall be assignable.

4.020 Application for License; Temporary License upon Application

(1) Application for a license shall be made upon forms provided by the Board.

(2) The application shall constitute a temporary license valid for thirty days. The application, or a copy thereof, shall be referred to the sheriff for investigation prior to issuance of a final license. If it appears to the sheriff that a final license should not be issued to the applicant, the sheriff shall notify the Board and shall set forth why, in his opinion, the applicant should be denied.

4.025 Issuance of License; Revocation of License

(1) After receiving the report of the sheriff, the Board may grant a final license to applicant.

(2) Nothing in this chapter shall be construed to create a vested right in a person to the assignment, renewal, or continuance of a license. The final authority on licenses shall be the Board which may revoke, cancel, or refuse issuance or renewal of a license as follows:

(a) Fraud or misrepresentation in its procurement;

(b) Violation of any state or federal statute involving moral turpitude, where the circumstances of the violation adversely reflect on applicant's or licensee's ability to engage in the occupation, profession, trade, or calling in a lawful manner; or

(c) Violation of federal or state law or county rule relating to the business or activity subject to the license and resulting from the conduct of such business or activity. Conviction of a crime or violation of this chapter is not required for revocation, non renewal, or refusal to issue a license.

(3) At any time the sheriff or district attorney may recommend the revocation of any license granted under LCC 4.005 to 4.065. The recommendation shall be in writing and include the reasons therefor.

(4) Whenever the Board refuses to issue, fails to renew, or revokes the license of any person, the Board shall afford the applicant or license holder an opportunity for a hearing at which witnesses and interested parties may be heard.

(5) Reapplication after revocation or suspension may be made at any time after revocation or suspension as provided in LCC 4.020.

4.030 Renewal of License

Every license issued pursuant to LCC 4.005 to 4.065 shall expire January 15 of each year and may be renewed upon payment of the fees as set forth in LCC 4.035.

4.035 Fees

The fee an annual license issued pursuant to LCC 4.015 shall be in an amount set by order of the Board of Commissioners. [1993 o.313 § 7]

4.040 Records to be Kept; Transmittal to Sheriff

(1) Except as provided in subsection (2) of this section, every licensee shall keep a record of articles offered for sale or stored upon the licensee's premises having a licensee purchase value of \$20 or more. The records shall be open to inspection of the sheriff or deputies during normal business hours and contain the following:

(a) The day and hour an article was received, pledged, or purchased;

(b) The amount loaned or price paid;

(c) A description of each article received, pledged, or purchased, including a number, word, or initial engraved on or attached to the article, and the style and number of settings;

(d) The printed name and signature of the person from whom the purchase was made;

(e) The address of the person from whom the purchase was made; and

(f) The identification number required by LCC 4.050.

(2) Licensees shall not be required to keep a record as provided in this section for the following:

(a) Property purchased from manufacturers or wholesalers having an established place of business, or secured from any person doing business and having an established place of business; and

(b) Articles of the same or similar nature purchased in bulk, lots, or groups. As used in this subsection, "bulk, lots, or groups" means at least 12 articles.

(3) Transactions excluded from record keeping by subsection (2) of this section shall be accompanied by a bill of sale or other evidence of purchase which must be shown to the sheriff or his deputy upon request during normal business hours.

4.045 Sale Postponed by Sheriff

If the sheriff has good cause to believe an article is stolen property, he may notify a licensee not to sell or otherwise dispose of any article received or purchased. In the event of such notification, the article shall not be sold or otherwise disposed of for 90 days after the date of the notice.

4.050 Articles to be Tagged

Licensees shall affix to all articles subject to record keeping, pursuant to LCC 4.040, a tag upon which shall be written an identification number in legible characters.

4.055 Licensees Prohibited from Dealing with Intoxicated Persons

Licensees shall not receive or purchase property from persons under the influence of intoxicants.

4.060 Garage Sales Permitted

Nothing in LCC 4.005 to 4.065 prohibits garage sales as defined in LCC 4.010

4.065 Penalties

(1) Any person who operates any business in violation of LCC 4.005 to 4.065 shall, upon conviction, be punished pursuant to LCC chapter 10.

(2) A failure from day-to-day to comply with this chapter shall be a separate offense for each day. [1982 o.171 §1; 1994 o.349 §2]

ENTERTAINMENT ASSEMBLIES

[4.105 to 4.160 repealed by 2017 o. 495 § 3]

LIQUOR LICENSES

4.205 Definitions

"Liquor License" means a license issued by the Oregon State Liquor Control Commission for the manufacture, distribution, sale, fermentation, distillation, or rectifying of alcoholic liquor.

4.210 Fees

Every applicant for a liquor license whose license is referred to Lincoln County for recommendation by the Oregon Liquor Control Commission shall pay a fee to the county clerk in an amount set by order of the Board of Commissioners. [1993 o.313 § 9]

CABLE TELEVISION

4.330 Exercise of Cable Television Rate Regulation Authority

(1) In accordance with the requirements of 47 USC § 543(a)(3)(A) and 47 CFR § 76.910(e)(1)(i), in exercising its regulatory authority over the rates of cable television operators, Lincoln County will follow the regulations adopted by the Federal Communications Commission pursuant to 47 USC § 543(b).

(2) In accordance with FCC Order number 94-40, MM Docket number 92-266, ¶ 62, the Lincoln County Board of Commissioners designates the Office of Lincoln County Legal Counsel as the Lincoln County Cable Administrator, and delegates authority to the Administrator to conduct cable rate regulation proceedings, and issue appropriate orders and determinations, in accordance with federal and state law and regulations.

(3) In accordance with the requirements of 47 USC § 543(a)(3)(C) and 47 CFR § 76.910(e)(1)(ii), before exercising its regulatory authority over the rates of a cable television operator, the Administrator will first hold an open public meeting in accordance with the Oregon public meetings law, ORS 192.610 to 192.690, that will provide a reasonable opportunity for consideration of the views of interested parties, including, but not limited to, the cable operator and subscribers of the cable operator.

(4) A party aggrieved by a determination or order of the Administrator may appeal to the Board of Commissioners within 15 days of the issuance of the determination or order. An appeal filed with the Board under this subsection will be heard *de novo* by the Board, but the review will be confined to the evidence and information on the record that was before the Administrator. No further evidence or information, other than legal argument by written memorandum, will be received by the Board. A party aggrieved by the Board's determination or order in an appeal under this subsection may appeal that determination or order to the FCC in accordance with 47 CFR § 76.944. [1994 o.330 §2; 1994 o.338 §1]

SHORT TERM RENTAL OF DWELLING UNITS

4.405 Findings and Purpose

(1) The Lincoln County Board of Commissioners finds that:

(a) The growth in the number of short term rental of dwelling units within the County has been accompanied by increased problems of excessive noise, spilled garbage, shortages of parking, and overcrowded accommodations;

(b) The best way to regulate these impacts is to establish conditions for operation of these rentals and to implement a licensing program by the County to ensure compliance with those standards; and

(c) The conditions established herein will allow operation of such rentals in a manner that respects and protects the livability of the neighborhoods in which these rentals are located.

(2) The purpose of LCC 4.405 through 4.460 is to provide for the peace, health, safety and livability of residents of, and visitors to, Lincoln County. This is not a land use ordinance and is not made a part of Lincoln County Code Chapter 1, Land Use Planning. [2016 o.487 § 2]

4.410 Applicability

LCC 4.405 through 4.460 shall apply to the unincorporated areas of Lincoln County. These provisions shall not apply to Bed and Breakfast Inns, Hotels, Lodges, Motels, Resorts, Recreational Vehicle Parks, Campgrounds, or other similar lodging units which are regulated by LCC Chapter 1. [2016 o.487 § 3]

4.415 Definitions

For the purpose of LCC 4.405 through 4.460

(1) "Accessory structure or accessory use" means a structure or use incidental and subordinate to the main use of a property and located on the same lot as the main use.

(2) "Contact Person" means:

(a) The owner(s) of the dwelling unit; or

(b) The agent of the owner(s), authorized to act for the owner(s) as designated on the license application.

(c) The contact person, whether the owner or an agent, must be located within Lincoln County, and cannot use the dwelling unit(s) licensed under this Chapter as the basis for compliance with this provision unless the owner or agent resides at that location.

(3) "Dwelling Unit" means:

(a) A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, sanitation and only one cooking area.

(b) A "single family dwelling" means a structure of which all habitable portions thereof are connected structurally and comprise one dwelling unit, including but not limited to factory built dwellings, mobile homes and site built dwellings.

(c) A "two family dwelling" means a structure of which all habitable portions thereof are connected structurally and comprise two dwelling units including but not limited to factory built dwellings, mobile homes and site built dwellings.

(d) A "multi-family dwelling" means a structure of which all habitable portions thereof are connected structurally and comprise three or more dwelling units, including, but not limited to, factory built dwellings, mobile homes and site built dwellings.

(4) "License" means a short term rental license issued by Lincoln County and maintained in good standing by the Owner(s) or agent of the Owner(s) in accordance with the provisions of the Lincoln County Code.

(5) "Owner(s)" means the person or people, partnership, corporation, association, or other legally recognized person(s) or entity holding title to the dwelling unit in accordance with law.

(6) "Person" includes any natural person(s), firm, partnership, association, social or fraternal organization, corporation, business or any other group or combination acting as a unit.

(7) "Rental Agreement" means any agreement, whether or not in writing, granting the use of a dwelling unit to a person. Use of a dwelling unit by a recorded owner or other person or persons without monetary consideration shall not be considered to be a rental under this chapter.

(8) "Rent" means the authorization of use of a dwelling unit granted to a person(s) in exchange for monetary consideration.

(9) "Renter" is a person who rents a short term rental.

(10) "Short Term Rental" means the renting of a dwelling unit (including any accessory guest house on the same property) to any person(s) on a day to day basis or for a period of time of up to thirty (30) consecutive nights.

(11) "Sleeping Area" is a room or other space within a dwelling unit designed, intended or used for sleeping. Roll out beds, fold out couches, or other temporary sleeping accommodations including tents and recreational vehicles shall not be considered a sleeping area, and may not be used to increase the allowed occupancy of a short term rental as provided in LCC 4.404 through 4.460. Determinations as to the number of sleeping areas within a dwelling unit are reserved to the Lincoln County Licensing Authority and all determinations are final. [2016 o.487 § 4; 2016 o.490 § 2]

4.420 Licenses

(1) It shall be unlawful to rent any dwelling unit as a short term rental without obtaining and maintaining a current license as provided in LCC 4.405 through 4.460. All dwelling unit owners shall obtain a license prior to using the dwelling unit as a short term rental.

(2) No license granted under the provisions of LCC 4.405 through 4.460 shall be assignable. If the dwelling unit is sold or transferred by any means, a new license is required of the subsequent owner(s) who desire to continue short term rental operation; provided, however, that the Board of Commissioners may set a pro rata lower fee for the first year. The subsequent owner(s) will be required to fill out a new application and agree in writing to comply with the requirements of this Chapter. [2016 o.487 § 5]

4.425 Application for License; Fee

(1) Applications for a license, renewal of a license, or license caused by a change in ownership shall be made upon forms provided by the County.

(2) Every license application, renewal license or license caused by a change in ownership shall be accompanied by annual fee(s) in amounts as set, and periodically reviewed and amended, by order of the Board of Commissioners.

(3) Every application shall be processed by the Department or Office designated by the Lincoln County Board of Commissioners (hereafter County Licensing Authority). Upon receipt of the completed application the County will review the application and certify that:

(a) Based on a viewing of the property, the short term rental complies with standards found in LCC 4.440(1) in posting contact person information and providing that information to the local fire department and Lincoln County Sheriff's Office.

(b) Determine the maximum occupancy for the short term rental as defined by LCC 4.440(6).

(c) Receive and review the certified statement of the owner that the owner of the short term rental has met and will continue to comply with the requirements of this Chapter.

(d) Transient Room Tax Compliance Required. Notwithstanding any other provision of this Chapter or the Lincoln County Code, and as a separate stand-alone requirement and criteria for holding a valid license, the owner shall provide a certified statement that the owner will comply with LCC Chapter 5.005 through 5.070 Transient Room Taxes. If the owner cannot demonstrate compliance with Chapter 5 Transient Room Taxes, or the County determines that the owner is not in compliance with the provisions of that Chapter, the license shall not be issued, or may be suspended or revoked, or may be denied upon renewal, until such time as the noncompliance is resolved to County's satisfaction. Compliance includes, but is not limited to, failure to report, improper reporting, failure to collect or failure to remit required transient room taxes. Any of these actions not timely made is also grounds for noncompliance. [2016 o.487 § 6]

4.430 Issuance of License

(1) Authority to issue licenses rests with the Lincoln County Licensing Authority as designated by the Board of Commissioners. In addition, an issued license is subject to revocation or refusal to renew the license for failure to meet, maintain or operate the short term dwelling in conformance with the requirements of this Chapter and the procedures as provided in LCC 4.425.

(2) Within sixty (60) days of receipt of a completed application, the payment of required fees, and the determination or certification of compliance with the requirements of LCC 4.440 (Operational Standards) and LCC 4.425 (Application for License; Fee), a license shall be issued by the Lincoln County Licensing Authority to the owner which shall be good for one (1) year from the date of issuance.

(3) If an application for a permit or the renewal of a permit is denied, or a permit is revoked, cancelled or not renewed the owner may appeal denial or revocation or nonrenewal under LCC 4.450. Unless and until a permit is finally revoked or not renewed as provided in this Chapter, a short term rental may continue to operate. [2016 o.487 § 7]

4.440 Operating Standards

As used in LCC 4.405 through 4.460, all short term rentals shall comply with the following operating standards and conditions:

(1) Contact Person(s). The name and phone number of the contact person(s) shall be posted, provided and updated in the following manner:

(a) If the short term rental has a sign identifying it as a short term rental, then the current name and phone number of the contact person shall either appear on the sign or otherwise be

conspicuously posted near the sign so that it is visible from the street and from outside the front entrance of the short term rental.

(b) In addition, the owner shall provide the contact person's name and phone number in writing to the local fire chief and the Lincoln County Sheriff's Office. The Sheriff's Office shall supply this information to each property owner as shown on the Lincoln County Assessor's records located within two hundred fifty feet (250') of the short term rental property.

(c) The owner shall update the posted notice and provide a new written notice to the local fire chief and Lincoln County Sheriff's Office each time there is a change to the name or phone number of the contact person. An additional fee, as set by the Board, shall accompany the new written notice provided to the Sheriff to offset costs of the Sheriff's Office in supplying this new information to property owners in accordance with LCC 4.440(1)(c) above.

(d) The owner or contact person shall contact a renter by phone or in person or otherwise respond within a reasonable period of time which shall normally be within one hour, unless circumstances would require a lesser or greater time, upon receiving any complaint from a neighbor, the local fire department or the Sheriff's Office concerning the conduct of a renter.

(2) Quiet Time. In accordance with the requirements of LCC 2.2000 through 2.2045, the hours of 10:00 p.m. until 7:00 a.m. the next day are required quiet time. Renters who violate this standard may be issued enforcement mechanisms available to the County under LCC 2.2045 and LCC Chapter 10. In addition multiple violations of the quiet time requirements by short term dwelling renters may subject the licensee to revocation or nonrenewal of the license as provided in LCC 4.450. The owner or contact person shall notify every renter, in writing, of the quiet times and that a renter may be subject to sanction and penalties under the County Code.

(3) Garbage Service. The owner shall be required to maintain adequate garbage service, with required secure containers, from the franchised waste disposal service company serving its property. The service must be at a level commensurate with the garbage generated at the dwelling, but no less than weekly service when the short term rental is being rented. Owners shall notify all guests of the garbage services and requirements for the dwelling.

(4) Parking. The owner must provide one (1) parking space for each approved sleeping area in a short term rental, plus one (1) additional parking space per unit. For dwellings constructed on or after July 1, 2016, all required parking shall be provided off street. For dwellings constructed prior to July 1, 2016, off-street parking must be used if physically available. If a sufficient number of off-street parking spaces are not available for the authorized number of vehicles, then on-street parking may be used unless otherwise prohibited. Parking shall not, under any circumstances, hinder the path of any emergency vehicle. Renters may be cited and fined under existing State or County law in the event they park illegally. Repeated violations of prohibited parking by renters of the short term rental may be grounds for enforcement against the Owners under LCC 4.460. The owner or contact person shall notify every renter in writing of the required off-street parking and other parking spaces available to serve the short term rental.

(5) House Number. A house number, visible from the street, shall be installed and maintained by the Owners.

(6) Limits on Occupancy. The maximum occupancy for a short term rental unit shall be calculated on the basis of an average of three (3) persons per sleeping area plus an additional two (2) persons. For the purpose of maximum occupancy, those under two (2) years of age shall not be counted. Accessory structures, tents and recreational vehicles and similar sleeping arrangements shall not be used to increase the number of people approved to occupy a short term rental.

Notwithstanding the forgoing, no more than 16 persons shall occupy the short term rental unit at any one time.

Notwithstanding the foregoing limits, a dwelling built and operated as a short term rental unit on July 1, 2016, may be grandfathered in at a higher maximum occupancy level, not to exceed 3 persons per sleeping area plus 2 additional persons, under the following conditions:

(a) The owner applies for a higher occupancy limit in the initial application for a short term rental license, which application must be received no later than December 31, 2016. No dwelling will be allowed a higher occupancy limit unless the owner applies and qualifies during this application period.

(b) The owner provides proof (rental agreements, ads, or other reasonable evidence) that the unit has historically been rented and occupied by more than 16 persons.

(c) The property on which the dwelling unit is located can provide, within all applicable laws, off-street parking as required under LCC 4.440(4) above. That requirement is one parking space per sleeping area, plus one more.

(d) For illustrative purposes, a dwelling with six sleeping areas may be allowed a maximum of 20 persons (three per sleeping area, plus two more) if a total of seven (7) lawful off-street parking spaces are provided.

(e) Review of the request for a higher occupancy limit shall be made by the County Licensing Authority which at its sole discretion shall make all determinations as to whether or not to grant, partially grant, or deny a request for higher occupancy.

(7) Notices to Renters. The owner must provide to each renter and post in a prominent location in the dwelling, a list of rules including, but not limited to, rules on required quiet times, available garbage service, parking locations and limitations on occupancy. [2016 o.487 § 8]

4.445 Complaint Procedure

All complaints will initially proceed through the informal resolution process provided herein. If the complaint is unresolved, then the more formal process shall be utilized as set forth below:

(1) Step One. The complaining party shall attempt to communicate with the contact person designated on the license, communicated in writing to the neighbor, and posted at the short term dwelling. The complainant shall describe the problem and the requested resolution.

(2) Step Two. The contact person shall promptly respond to the complainant and make reasonable efforts to remedy any situation that is out of compliance with the provisions of this Chapter. If that resolves the matter, the complaint process terminates.

(3) Step Three. If the response from the contact person is not satisfactory to the complaining party or the contact person does not believe that the problem violates this Chapter, either party or both parties may next provide a written complaint to the Lincoln County Licensing Authority, with a copy of the written complaint provided to the other party by the complainant or the contact person. The written complaint shall describe all efforts to resolve the problem. The Licensing Authority shall then attempt to resolve the complaint with parties. The Licensing Authority may use community mediation resources if it determines such resources are available and would help resolve the complaint. If not mutually resolved by the parties, the Licensing Authority shall issue a written determination to both parties to resolve the problem. If the Licensing Authority finds that a violation of this Chapter occurred, the Licensing Authority may undertake enforcement action as authorized in this Chapter and LCC Chapter 10.

(4) Step Four. Either party may appeal the determination of the Licensing Authority by filing a written appeal to the Board of Commissioners within thirty (30) days of the Authority's determination. The Board of Commissioners, or its designee, shall hold an informal hearing on the appeal and issue a final decision.

(5) This procedure is separate from but complimentary with the procedures used to revoke, cancel or deny renewal of a license, LCC, 4.450. [2016 o.487 § 9]

4.450 Denial, Revocation or Nonrenewal of a License; Hearing

Owners of short term rental units who hold a valid license under this Chapter are required to comply with all applicable provisions of this Chapter and the Lincoln County Code. In addition to the penalties for violation of any provision of LCC 4.405 through 4.460 punishable pursuant to LCC Chapter 10, failure to comply may subject the owner to revocation or nonrenewal of a License as provided for in this section. Appeal of denial of a license is also governed under these provisions.

(1) The following shall be grounds for considering revocation or nonrenewal of the license:

(a) Three or more violations of this chapter or other provisions of the Lincoln County Code related to the same short term rental within one (1) year. Violations include, but are not limited to, complaints identified in LCC 4.445 which reached step 4 and a final determination was made that the problem as unresolved violated provisions of this Chapter. Violations may also be determined by the Licensing Authority for noncompliance with the provisions of this Chapter or other provisions of the Lincoln County Code.

(2) Denial of a license may be appealed under the procedures set forth below.

(3) The County shall conduct a hearing if it wishes to consider the revocation or nonrenewal of a short term rental license. The County will also hold a hearing if an owner appeals denial of a license. All hearings will be conducted by the Board of Commissioners or its designee. The County shall give thirty (30) days written notice to all relevant parties of the time, date and place of the hearing, that the short term rental permit may be revoked as a result of the hearing and of the allegations and violations upon which revocation will be considered. At the hearing, each party shall have an opportunity to be heard and present such witnesses, testimony and other evidence as that party deems relevant to the issues. The procedure will be informal and no cross examination will be allowed. The hearing may be continued at the discretion of the County. At the conclusion of the hearing process, the Board of Commissioners or its designee shall consider the evidence and issue a written order revoking the license, or not renewing it, or denying the application as the situation warrants. [2016 o.487 § 10]

4.455 Nonliability of County

Neither the County nor any official or employee of the County, including the Lincoln County Licensing Authority shall be liable for any damages, claims from any owner or third party relating to enforcement of any provision of LCC 4.405 through 4.460. [2016 o.487 § 11]

4.456 Delegation of Authority

The Lincoln County Licensing Authority is delegated the authority and responsibility to adopt rules, procedures, forms and practices consistent with the overall intent of this Chapter, to implement, administer, and operate the licensing program for the County. [2016 o.490 §3]

4.460 Severability

Each section, sentence, clause, and phrase hereto is declared severable. If any section, sentence, clause, or phrase of this chapter is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this Chapter. [2016 o.487 §12]

MASS GATHERINGS (SMALL, OUTDOOR AND EXTENDED)

4.505 Definitions

As used in LCC 4.505 to 4.605, unless the context requires otherwise:

(1) “Assembly of Persons” means any gathering of any person, including but not limited to spectators, attendees, organizers, performers and participants on any given day.

(2) “Board” means the Lincoln County Board of Commissioners, or its designee.

(3) “Department” means the Lincoln County Planning Department.

(4) “Director” means the Director of Lincoln County Planning, or his or her designee.

(5) “Extended Outdoor Mass Gathering” (hereinafter “EMG”) means and includes an Assembly of Persons, including but not limited to spectators, for which the actual cumulative number is or is reasonably expected to be more than 3,000 persons for a period that continues to be for more than 120 hours, including set-up, placement, storage and removal or similar action of any equipment, materials, structures, vehicles, supplies and so forth, within any continuous three-month period, and that is primarily held in open spaces and not in any permanent structure within the unincorporated area of Lincoln County. The duration begins on the earlier of when the first attendee can or is anticipated to arrive at the assembly and when the last attendee has left the assembly.

(6) “Hearings Body” means the following:

(a) For Outdoor Mass Gatherings, the Board;

(b) For EMGs, the County Planning Commission;

(c) For appeals of a decision of the County Planning Commission, the Board;

(d) For appeals of a decision of the Director or Board, the Lincoln County Circuit Court.

(7) “Organizer” includes any person who conducts, stages or sponsors a Small Gathering, Outdoor Mass Gathering or EMG, and the owner, lessee, or possessor of the real property upon which the Small Gathering, Outdoor Mass Gathering or EMG is to take place.

(8) “Outdoor Mass Gathering” (hereinafter, “MG”) means and includes an assembly of persons, including but not limited to spectators, and whose number is or is reasonably anticipated to be more than 3,000 persons for a period that continues or can reasonably be expected to continue for more than 24 hours, but less than 120 hours, excluding set up, placement, storage and removal or similar action of any equipment, materials, structures, vehicles, supplies and so forth, within any continuous three-month period and which is primarily held in open spaces, but not in any permanent structure within the unincorporated area of Lincoln County. The duration begins on the earlier of when the first attendee can or is anticipated to arrive at the assembly, and when the last attendee has left the assembly.

(9) “Permanent Structure” includes a stadium, an arena, an auditorium, a coliseum, a fairground, a commons, or other similar established places for assemblies and public gatherings.

(10) “Person” or “Persons” means any individual, firm, partnership, corporation, joint venture, association, social club, fraternal organization, fraternity, sorority, non-profit organization, estate, trust, receiver, trustee, syndicate or other group, organization or combination acting as a unit.

(11) “Sheriff” means the Lincoln County Sheriff or his/her designee.

(12) “Small Gathering” (hereinafter, “SG”) means and includes an assembly of persons, including but not limited to spectators, whose actual cumulative number is or is reasonably anticipated to be less than 3,001 persons but more than 300 persons for a period that continues or can reasonably be expected to continue for more than 6 hours but not more than 120 hours,

including set-up, placement, storage and removal or similar action of any equipment, materials, structures, vehicles, supplies and so forth within any continuous three month period, and that is held primarily in open spaces and not in any permanent structure within the unincorporated area of Lincoln County. The duration begins on the earlier of when the first attendee can or is anticipated to arrive at the assembly and when the last attendee has left the assembly.

(13) "Spectator" means any person located within, alongside or near the SG, MG or EMG, whether or not that person pays a fee to participate in the SG, MG or EMG.

(14) "Sponsor" means any person that allows, promotes or causes an SG, MG or EMG.

(15) "Temporary Structure" includes stages, tents, trailers, chemical toilet facilities and other non-permanent structures customarily erected or sited for temporary use.

(16) "Traffic Control" means signs, warning markers and other regulatory devices meeting the standards of the Manual of Uniform Traffic Control Devices.

4.510 SG, MG and EMG Exclusions

(1) The requirements in this Code for SGs, MGs and EMGs shall not apply to any regularly scheduled religious service or religious organized activity that takes place on institutional property, regularly organized and supervised school district activity or program that takes place on school property, any activities at the Lincoln County Fairgrounds or Commons, any activity at a County park, or any activity of a municipal corporation or governmental agency.

(2) The Director or Hearings Body, as applicable, may waive all or part of the permit requirements for certain limited SGs, upon a showing by the Organizer of good cause, when no significant public health, safety or welfare issues are involved or when the Director or Hearings Body determines that no County law enforcement or other County resources are necessary. Notwithstanding the above, there shall be no waiver of fire protection standards (Section 4.550).

4.515 SG, MG and EMG Permit Required

(1) No Organizer shall hold, conduct advertise or otherwise promote an SG, MG or EMG or allow an SG, MG or EMG to be held on real property in the unincorporated areas of Lincoln County unless the Organizer obtains a permit to hold such an SG, MG or EMG.

(2) No permit for an SG, MG or EMG shall be issued unless the landowner of the property that is the site of the SG, MG or EMG also signs the application.

(3) All SGs and MGs are exempt from the requirements of Chapter 1 of the Lincoln County Code, except where noted.

(4) One permit shall be required for each SG, MG or EMG.

(5) A permit issued under these provisions does not entitle the SG, MG or EMG Organizer to construct any permanent physical alterations to or on the real property which is the site of the SG, MG or EMG.

(6) The Organizer of a proposed SG, MG or EMG shall file an application with the Department at least 90 days prior to the SG, MG or EMG.

(7) The application shall include the following:

(a) Name and mailing address, email address and phone number of the Organizer (and of the Property Owner, Lessee, or Possessor, if different).

(b) Legal description and address, if any, of the location of the proposed SG, MG or EMG.

- (c) A map of the SG, MG or EMG showing access roads and assembling and disbanding points.
- (d) The date or dates of the proposed SG, MG or EMG.
- (e) The proposed starting and ending time(s) of the SG, MG or EMG.
- (f) The estimated number of persons, vehicles and animals that will be attending, participating in or viewing the SG, MG or EMG.
- (g) The nature of the proposed SG, MG or EMG.
- (h) A sketch, and other detailed information showing the type, number and location of all toilets, washing facilities, water supply, food preparation, food service facilities and solid waste collection locations.
- (i) The name and phone number of the contact person who shall be easily identified and who shall remain at the SG, MG or EMG site at all times.
- (j) Approval by the authorized representative of the rural fire protection district under ORS Chapter 478, or State Fire Marshal, or State Forester, as applicable.
- (k) A water supply plan showing compliance with OAR 333-039-0010; a drainage plan showing compliance with OAR 333-039-0020; a sewerage plan showing compliance with OAR 333-039-0025; a refuse storage and disposal plan showing compliance with OAR 333-039-0030; a food and sanitary food service plan showing compliance with OAR 333-039-0035, an emergency medical facilities plan showing compliance with OAR 333-039-0040; a fire protection plan showing compliance with OAR 333-039-0045; a security personnel plan showing compliance with OAR 333-039-0050; and a traffic plan showing compliance with OAR 333-039-0055.
- (l) A copy of the proposed participant entry form for the SG, MG or EMG, including a release agreement releasing Lincoln County, its officers, agents, employees or volunteers from liability for any or all injuries.
- (m) A signed indemnity agreement on a form provided by the County.
- (n) Information on whether alcohol will be part of the SG, MG or EMG, and if so, in what way, and what arrangements have been made for appropriate licensing.
- (o) Such other appropriate information as the Director or Board may require in order to ensure compliance with the provisions of this chapter, as well as the rules of the Oregon Department of Human Services.
- (8) The application for an SG, MG or EMG shall be accompanied by the appropriate fee pursuant to the County fee schedule. Except as provided in subsection (9) below, no rebate or refund of money paid for a permit shall be made.
- (9) Incomplete applications shall be denied and the application fee, less County costs, shall be returned to the permit applicant.
- (10) If the application is submitted fewer than 90 days prior to the event and the Director or Board accepts the application, the processing fee shall be double.
- (11) The Director shall furnish a copy of the SG, MG or EMG permit to the Sheriff and to any other jurisdiction with regulatory authority in which the SG, MG or EMG takes place.
- (12) If a permit for a proposed event under this Ordinance cannot be issued because the proposed event does not meet the definition of an SG, MG or EMG, the proposed event shall not be authorized unless it otherwise complies with Chapter 1 of the Lincoln County Code.
- (13) No more than one SG, MG, or EMG may be held at the same location within a three month period.

4.520 SG, MG and EMG Permit Processing/When Hearings Are Required

- (1) SG permits shall be processed administratively by the Director without a hearing.
- (2) No application for an MG permit shall be approved without review by the Board following a public hearing.
- (3) No application for an EMG permit shall be approved without review by the Planning Commission following a public hearing in accordance with ORS 433.763.
- (4) Public hearings shall be set at the discretion of the Director, but, in no case, earlier than 10 days from the date of the application.

4.525 SG, MG and EMG Departmental and Agency Notice

- (1) The Director shall send notice of the application to the following officers at least 10 calendar days prior to the administrative decision (for the SG) or hearing (for the MG or EMG): Lincoln County Counsel (serving as Risk Manager), County Sheriff, the Director of Lincoln County Health and Human Services, the County Roadmaster, and the Chief of the Fire District, if there is one, in which the SG, MG or EMG is proposed, the State Fire Marshal and the State Forester.
- (2) The Director shall publish notice of his or her administrative decision for an SG in a newspaper of general circulation in the County within 10 calendar days of the date of his or her decision.
- (3) The Director shall publish notice of the hearing for an MG or EMG permit at least 10 calendar days before the hearing in a newspaper of general circulation in the County.

4.530 SG, MG and EMG Approval Criteria

- (1) An SG, MG or EMG permit shall be approved upon demonstration by the Organizer of compliance with or the ability to comply with the provisions of this chapter, as well as all health and safety rules adopted by the Oregon Department of Human Services, as applicable.
- (2) Each public official receiving notice of the application for an SG who wishes to comment on the application shall submit such comment in writing to the Director within 10 days of receiving notice of the application. Each public official receiving notice of the application for an MG or EMG permit who wishes to comment on the application shall submit such comment in writing to the Hearings Body no later than the date and time for the hearing.
- (3) The comment from any public official regarding an SG, MG or EMG permit may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed.
- (4) The Director or Hearings Body shall consider the imposition of any suggested changes submitted by the public officials who received notice of the proposed gathering.
- (5) The Director or Hearings Body may consider and impose any reasonable condition on a permit under this chapter.

4.535 SG, MG and EMG Appeals

- (1) When the County Planning Commission is the Hearings Body, any person who participated in the hearing before the Planning Commission shall be deemed a party and may appeal the decision to the Board.

(2) All SG decisions of the Director and MG decisions of the Board shall be reviewable only by the Lincoln County Circuit Court for the State of Oregon only by writ of review under the provisions of ORS 34.010 to 34.100.

(3) All EMG rulings of the Board are appealable to the Land Use Board of Appeals.

4.540 SG, MG and EMG Insurance

(1) If the Director, Board or Planning Commission, as applicable, determines that the SG, MG or EMG creates a potential for injury for persons or property, they may require Organizers to obtain a commercial general liability insurance policy in an amount commensurate with the risk, with single limit policy limits of not less than \$2,000,000.

(2) The insurance policy may not be cancelable and shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the SG, MG or EMG.

(3) The insurance policy must be an “occurrence” policy, or its equivalent, that provides for payment of claims made during the 180 day period after the scheduled termination of the SG, MG or EMG.

(4) The Organizer shall furnish the Director with an insurance certificate and a copy of the insurance policy naming the County as an additional insured under the policy, at least 14 days before the first day of the SG, MG or EMG.

(5) The permit for an SG, MG or EMG shall be voided by the Director if the Organizer does not file proof of the non-cancelable insurance required by this section with the Director at least 14 days before the first day of the SG, MG or EMG.

(6) The Organizer must agree in writing to indemnify, defend and save and hold harmless the County, its commissioners, boards, officers, employees and agents, from all suits, actions, damages or claims to which the County may be subjected to of any kind or nature whatsoever, resulting from, caused by, arising out of or as a consequence of such SG, MG, or EMG and the activities permitted in connection therewith.

4.545 SG, MG and EMG Sanitary Facilities and Food Preparation

(1) The County Environmental Health Division shall have the responsibility for approving all sanitation and related facilities required by the Director or Hearings Body for an SG, MG or EMG permit to ensure that reasonable minimum standards have been or will be met by the Organizer, in accordance with the procedures outlined in this chapter and OAR 333-039.

(a) Water. An adequate supply of water meeting state drinking water standards for chemicals and bacteria shall be provided.

(b) Food Service Facilities. Food service facilities shall comply with the Oregon Department of Human Services regulations that pertain to the operation of temporary restaurants. All food service providers must be validly licensed.

(2) Such approval of an SG, MG or EMG permit by the County Environmental Health Department shall indicate the number, type, and location, when appropriate, of the various sanitary facilities and shall include a description of the specific type of food preparation and food service facilities to be provided.

4.550 SG, MG and EMG Fire Protection Standards

(1) No SG, MG or EMG permit shall be granted under this chapter unless the Organizer has shown that the authorized representative of the rural fire protection district under ORS Chapter 478 has approved the type, size, number and location of fire protection devices and equipment available at, in or near any location, including outdoor sites, buildings, tents, stadium or enclosure, during the course of an SG, MG or EMG for which a permit is required under this chapter.

(2) If the site for which the permit is applied for is located outside a fire protection district, the Organizer must show approval from the Office of the State Fire Marshal, or State Forester, as applicable.

4.555 SG, MG and EMG Medical Service

(1) Sheriff shall have responsibility for approving plans as to medical service required for the SG, MG or EMG.

4.560 SG, MG and EMG Public Safety

(1) The Organizer must submit plans for public safety at the SG, MG or EMG demonstrating the following:

(a) Adequate traffic control and crowd protection policing shall be contracted for or otherwise provided by Organizer.

(A) There shall be provided one traffic control person for each 250 persons expected or reasonably expected to be in attendance at any time during the SG, MG or EMG.

(B) Further, there shall be provided one crowd control person for each 100 persons expected or reasonably expected to be in attendance at any time during the SG, MG or EMG.

(b) The Organizer shall submit the names and necessary background information as required by the Director or Hearings Officer for all traffic-control and crowd-control personnel to be utilized during the MG or EMG.

(c) All such personnel must meet the following minimum standards in order to be approved as suitable:

(A) Be at least 18 years of age;

(B) Must have the physical capability to perform the traffic control and traffic control responsibilities;

(C) Have training or experience acceptable to the County to conduct traffic and or crowd control duties.

(2) All of the traffic control and crowd control personnel must wear appropriate safety vests or jackets.

(3) The required number of crowd control personnel must be on duty during the entire SG, MG or EMG unless a relief schedule has been planned and approved.

(4) A relief schedule will be approved only when sufficient crowd control strength on duty has been maintained to meet the minimum strength standards set forth in this chapter.

(5) It is the duty of the crowd control personnel to report any violations of the law to the Sheriff.

4.565 SG, MG and EMG Parking Facilities

(1) Prior to or on the date of application for an SG, MG or EMG, the Organizer shall provide a scale drawing showing that adequate parking facilities have been made available within or adjacent to the location for which the permit is requested.

(2) Such parking facilities shall provide parking space for one vehicle for every four persons expected or reasonably expected to attend.

(3) Adequate ingress and egress shall be provided from such parking area to facilitate the movement of any vehicle at any time to or from the parking area of the SG, MG or EMG.

(4) Should buses be used to transport the public to the SG, MG or EMG, it shall be shown that adequate parking is available at any site from which buses are scheduled to pick up persons to transport them to the SG, MG or EMG.

4.570 SG, MG and EMG Permit Display and Set Up and Clean Up Requirements

(1) The Organizer of an SG, MG or EMG shall have a copy of the permit available for inspection upon request.

(2) Any permit for an SG, MG or EMG shall not be transferrable or assignable without the consent of the Director or Board.

(3) Any permit for an SG, MG or EMG shall be kept posted in a conspicuous place upon the premises of such assembly.

(4) All onsite activities required to prepare the assembly site must occur within 72 hours prior to the advertised time the assembly is scheduled to begin. The Director or Hearings Body may, upon a showing of necessity, allow preparation to begin more than 72 hours before the advertised time of the assembly but those activities are limited to set up only and not commercial vending, rehearsals or sound checks. All of the facilities shall be in place at least 2 hours before the SG, MG or EMG begins.

(5) The organizer must remove and repair all remaining residue, debris, or damage to property resulting from the assembly 72 hours after termination of the assembly.

4.575 SG, MG and EMG Inspection of Premises

(1) No SG, MG or EMG permit shall be granted unless the Organizer shall, in writing, upon the application for such permit, consent to allow the Director, law enforcement, public health and fire control officers to come upon the premises for which the permit has been granted for the purpose of inspection and enforcement of the terms and conditions of the permit and this chapter and any other applicable laws or ordinances.

(2) If any inspections reveal deficiencies in compliance with State or local law, the inspectors may return as often as needed until the deficiencies are cured. If the deficiencies are not cured or cannot be cured, the Sheriff may suspend or terminate the SG, MG or EMG.

4.580 SG, MG and EMG Restricted Hours of Operation

(1) No SG, MG or EMG shall be conducted, including set-up, placement, storage, staging, removal or similar action of any equipment, materials, structures, vehicles, supplies and so forth, between the hours 1:00 A.M. and 9:00 A.M.

(2) The gathering must comply with the Lincoln County Noise Ordinance (Lincoln County Code Sections 2.2000 to 2.2045).

4.585 SG, MG and EMG Enforcement

(1) The Organizer shall provide a contact person who shall be easily identifiable with readily visible ID and who shall remain at the SG, MG or EMG site at all times.

(2) If any Organizer of an SG, MG or EMG violates any provisions of this chapter, the Sheriff may immediately suspend, revoke or terminate any permit for an SG, MG or EMG and may seek any legal remedy available.

(3) The SG, MG or EMG Organizer shall keep a reasonable count of persons and vehicles entering and leaving the SG, MG or EMG.

(4) If, at any time during the SG, MG or EMG held under a valid permit, the number of persons or vehicles attending the SG, MG or EMG exceeds by 10% or more the number of persons or vehicles estimated in the permit application, the Sheriff has the authority to require the Organizer to limit further admissions until a sufficient number of individuals or vehicles have left the site to bring the actual attendance down to the number estimated by the Organizer.

(5) For any SG, MG or EMG held under a valid permit, the Sheriff has the authority to order the crowd to disburse and leave the SG, MG or EMG site if the Organizer cannot maintain order and compliance with all applicable State and local laws or refuses or is unable to adhere to the terms and conditions of the permit.

(6) In addition to the State law provisions in ORS Chapter 433, including ORS 433.990(7), the County Counsel or District Attorney for Lincoln County may maintain an action in any court of general jurisdiction to restrain or enjoin any violation of this Ordinance.

(7) If persons remain on site after the scheduled end of the permitted SG, MG or EMG, or if the Organizer fails to remove all debris or residue within 72 hours after termination of the SG, MG or EMG, or if the Organizer fails to remove all temporary structures within three weeks after the termination of the SG, MG or EMG, the County may issue citations to the Organizer, all persons remaining at the site, and/or all persons who have left debris behind.

(8) In addition to any other remedies provided, if the SG, MG or EMG site is not restored to its previous condition, or better, the County may arrange for cleanup of the site, and then file an action for damages against the Organizer or successor landowner.

4.590 SG, MG and EMG Intoxicating Liquor Prohibition

(1) No Organizer, nor any person having charge or control thereof at any time when an SG, MG or EMG is being conducted shall permit any person to bring into such SG, MG or EMG or upon the premises thereof, any intoxicating liquor, nor permit intoxicating liquor to be consumed on the premises, and no person during such time shall take or carry onto such premises or drink thereon intoxicating liquor.

(2) Subsection (1) of this section shall not apply to the sale and consumption of intoxicating liquor from a facility located on the premises of an SG, MG or EMG when validly licensed by the State.

4.595 SG, MG and EMG Unlawful Controlled Substances Prohibition

No firm, person, society, association or corporation conducting an SG, MG or EMG, nor any person having charge or control thereof at any time when an SG, MG or EMG is being conducted shall permit any person to possess any controlled substances that are unlawful under Oregon law.

4.600 SG, MG and EMG Compliance Required

Compliance with the terms and conditions of this chapter shall constitute minimum health, sanitation and safety provisions; and failure to comply with the terms and conditions of this chapter or state laws shall constitute a public nuisance and shall be subject to all criminal, civil and equitable remedies as such.

4.605 SG, MG or EMG Violation Enforcement

For an SG, MG or EMG, violation of this chapter is subject to enforcement pursuant to Chapter 10 of the Lincoln County Code, and other legal remedies available under the law.

4.610 Review of Ordinance # 495

Prior to December 31, 2018, the Lincoln County Board of Commissioners shall review this Ordinance for possible amendments. [2017 o.495 §1]