

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 16

Home Wood Heating Curtailment Program Enforcement

Section 16-001 Purpose

Lane County, Eugene and Springfield have enacted ordinances prohibiting the use of solid-fuel space heating devices under certain circumstances. Lane County enacted Ordinance Number 9-90 [Lane Code ("LC") 9.120 - 9.160], Eugene enacted Ordinance Number 19731 [Eugene Code ("EC") 6.250 - 6.270], and Springfield enacted Ordinance Number 5546 [Springfield Code ("SC") 4-8-4]. Each municipality also either delegated enforcement of the ordinances to LRAPA [L.C. § 9.145; Springfield Code § 4-8-4(4)], or authorized the City Manager to delegate enforcement to LRAPA (Eugene Code § 6.265). By Administrative Order No. 44-92-10, the Eugene City Manager has delegated authority to LRAPA to administer the ordinance. Thus, each jurisdiction has authorized LRAPA to enforce the solid-fuel space heating device ordinances. In addition, each jurisdiction has authorized LRAPA to use its own regulations and procedures to enforce the ordinances, and to impose penalties of \$50--\$500 for violations of the ordinances.

These regulations establish the procedures and penalties LRAPA will use to enforce those municipal codes. Except as expressly noted in this Title, these provisions shall provide the sole regulations for LRAPA's enforcement of the solid-fuel space heating provisions of the municipal codes.

Section 16-010 Definitions

Words and phrases used in this Title are defined as follows, unless the context requires otherwise:

1. "Director." The Director of the LRAPA and authorized deputies or officers.
2. "LRAPA." The Lane Regional Air Protection Agency, a regional air quality control authority.
3. "Person." Any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.
4. "Person in Charge of Property." An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property.

Section 16-100 Civil Penalty Schedule

In addition to any other penalty provided by law, LRAPA may assess, for violation of LC Section 9.135, EC Section 6.255, or SC Section 4-8-4(2), the following amounts:

- | | | | |
|----|-------------------|---|-------|
| 1. | Class 1 violation | - | \$ 50 |
| 2. | Class 2 violation | - | \$100 |
| 3. | Class 3 violation | - | \$200 |
| 4. | Class 4 violation | - | \$400 |

Section 16-110 Classification of Violations

1. Class 1 Violation. A violation by a person at a time when the person had no civil penalties

under this Title 16 on his/her record during the previous 36 months.

2. Class 2 Violation. A violation by a person at a time when the person had only one civil penalty under this Title 16 on his/her record during the previous 36 months.
3. Class 3 Violation. A violation by a person at a time when the person had two civil penalties under this Title 16 on his/her record within the previous 36 months.
4. Class 4 Violation. A violation by a person at a time when the person had three or more civil penalties under this Title 16 on his/her record within the previous 36 months.
5. Penalties on Record. For purposes of this section, a person has a civil penalty on his or her record if the person has paid a civil penalty under this Title 16; LRAPA has entered a default order against the person for a violation of this Title 16; or a hearings official has entered an order against the person for violation of this Title 16 after a hearing.
6. Each day of violation is a separate offense, subject to penalty.

Section 16-120 Notice of Violation

1. A notice of violation may be issued, without any prior notice, whenever the Director has cause to believe that a violation of LC Section 9.135, EC Section 6.255, or SC Section 4-8-4(2) has occurred. The notice shall be served by certified mail or personal delivery at the address where the violation is alleged to have occurred.
2. If the notice contains an assessment of a civil penalty imposed pursuant to Section 16-100 of this Title, the notice shall also advise the person to whom the notice is directed that he or she may:
 - A. Waive any hearing on the matter and pay the civil penalty; or
 - B. Waive any hearing on the matter, pay the civil penalty, and submit a written statement to be considered in mitigation of the violation; or
 - C. Request a hearing on the matter, pursuant to Section 16-130 of this Title, to be conducted in the manner set forth in Section 16-140 of this Title.

The notice shall contain a statement that failure to comply with one of the options set forth above within 21 days of the date the notice of violation was mailed or served will result in the entry of an order of default and judgment based on the notice of violation.

3. No hearing or appeal rights shall be afforded if the notice of violation does not include the imposition of a penalty.

Section 16-130 Appeal of Civil Penalty

1. A person who has been served with a written notice of violation which includes the imposition of a civil penalty shall have 21 days from the date of mailing or personal delivery of the notice in which to file a written answer or an application for hearing.
2. In the answer, the person shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the person may have and the reasoning in support thereof. Except for good cause shown:

- A. Factual matters not controverted shall be presumed admitted;
 - B. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense;
 - C. New matters alleged in the answer shall be presumed to be denied unless admitted in a subsequent pleading or stipulation by LRAPA; and
 - D. Evidence shall not be taken on any issue not raised in the notice and the answer unless such issue is specifically determined by the hearings official to be within the scope of the proceeding.
- 3. In the absence of a timely answer, the Director, on behalf of LRAPA, may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.
 - 4. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Informal settlement may be made by written agreement of the parties consenting to a fine or other form of intermediate sanction.
 - 5. Upon a showing of good cause and general relevance, any party to a contested case shall be issued subpoenas to compel the attendance of witnesses and the production of books, records and documents.
 - A. Subpoenas may be issued by:
 - (1) A Hearings Officer; or
 - (2) LRAPA; or
 - (3) An attorney of record for the party requesting the subpoena.
 - B. Each subpoena authorized by this section shall be served personally upon the witness by the party or any person over 18 years of age.
 - C. Witnesses who are subpoenaed, other than parties or officers or employees of LRAPA, shall receive the same fees and mileage as in civil actions in the circuit court.
 - D. The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.
 - E. A person present in a hearing room before a Hearings Officer during the conduct of a contested case hearing may be required, by order of the Hearings Officer, to testify in the same manner as if he or she were in attendance before the Hearings Officer upon a subpoena.
 - F. Upon a showing of good cause a Hearings Officer may modify or withdraw a subpoena.
 - G. Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

Section 16-140 Conducting Contested Case Evidentiary Hearings

- 1. The contested case evidentiary hearing shall be conducted by and under the control of a

Hearings Officer.

2. If the Hearings Officer has a potential conflict of interest as defined in ORS 244.020(4), that officer shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).
3. The hearing shall be conducted, subject to the discretion of the Hearings Officer, so as to include the following:
 - A. The staff report and evidence of the proponent in support of its action;
 - B. The statement and evidence of opponents;
 - C. Comments and questions;
 - D. Any rebuttal evidence by proponents and opponents;
 - E. Any closing arguments by parties.
4. The Hearings Officer shall have the right to question witnesses.
5. The hearing may be continued with recesses as determined by the Hearings Officer.
6. The Hearings Officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.
7. Exhibits shall be marked and maintained by LRAPA as part of the record of the proceeding.

Section 16-150 Evidentiary Rules

1. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
2. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
3. All offered evidence not objected to will be received by the Hearings Officer subject to the officer's power to exclude irrelevant, immaterial or unduly repetitious matter.
4. Evidence objected to may be received by the Hearings Officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made on the record at or before the time a final order is issued.

Section 16-160 Final Orders

1. A final order shall be issued by the Hearings Officer, who may direct any party to prepare the final order.
2. Final orders on contested cases shall be in writing and shall include the following:
 - A. Rulings on admissibility of offered evidence when the rulings are not set forth in the record.
 - B. Findings of fact--those matters that are either agreed as fact or that, when

disputed, are determined by the Hearings Officer on substantial evidence to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based.

- C. Conclusion(s) of law--applications of the controlling law to the facts found and the legal results arising therefrom.
- D. Order--the action taken by LRAPA as a result of the facts found and the legal conclusions arising therefrom.

Section 16-170 Default Orders

1. When LRAPA has given a party an opportunity to request a hearing and the party fails to make a request within the specified time, or when LRAPA has set a specified time and place for a hearing and the party fails to appear at the specified time and place, the Director may enter a final order by default.
2. LRAPA may issue an order of default only after a prima facie case on the record has been made. The record may be made by either the two ways:
 - A. By the hearings officer at the time specified for the hearing; or
 - B. By the Director at a separate meeting convened by the Director.
3. The record shall be complete at the time of the notice at the time the default order is issued.
4. The record may consist of oral (transcribed, recorded or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the LRAPA file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.
5. When the Hearings Officer has set a specified time and place for a hearing in a matter in which only one party is before the Hearings Officer, and that party subsequently notifies LRAPA that the party will not appear at such specified time and place, the Hearings Officer may enter a default order, cancel the hearing and follow the procedure described in subsections 2 and 4 of this section.
6. Any default order shall be the final order of LRAPA.