

1 **ENGROSSED ORDINANCE BILL NO. 21-18**

2 AN ORDINANCE RELATING TO PUBLIC NUISANCE; AMENDING SRC 98.140,
3 98.150, 98.160, 98.170, 98.190, 98.200, AND 98.210; CREATING NEW PROVISIONS;
4 AND DECLARING AN EMERGENCY

5 *The City of Salem ordains as follows:*

6 **Section 1.** SRC Chapter 98 – Public Nuisance – is hereby amended as set forth in
7 Exhibit A, attached hereto and by reference incorporated herein.

8 **Section 2. Codification.** In preparing this ordinance for publication and distribution, the
9 City Recorder shall not alter the sense, meaning, effect or substance of this ordinance, but
10 within such limitations, may:

- 11 **(a)** Renumber sections and parts of sections of the ordinance;
- 12 **(b)** Rearrange sections;
- 13 **(c)** Change reference numbers to agree with renumbered chapters, sections or other
14 parts;
- 15 **(d)** Delete references to repealed sections;
- 16 **(e)** Substitute the proper subsection, section or chapter, or other division numbers;
- 17 **(f)** Change capitalization and spelling for the purpose of uniformity;
- 18 **(g)** Add headings for purposes of grouping like sections together for ease of
19 reference; and
- 20 **(h)** Correct manifest clerical, grammatical or typographical errors.

21 **Section 3. Severability.** Each section of this ordinance, and any part thereof, is
22 severable, and if any part of this ordinance is held invalid by a court of competent
jurisdiction, the remainder of this ordinance shall remain in full force and effect.

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PASSED by the City Council this _____ day of _____, 2018.

ATTEST:

City Recorder
Approved by City Attorney: _____

Checked by: G. Moore

EXHIBIT A

Sec. 98.140. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of Police means the duly appointed and acting Chief of Police of the City or the Chief of Police's designee.

Control means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on property.

Good cause means circumstances beyond the ability of a person acting with reasonable care and diligence to control.

Owner means any person, agent, firm or corporation having a legal or equitable or management interest in a property. The term "owner" includes, but is not limited to:

- (a) A mortgagee in possession in whom is vested:
 - (1) All or part of the legal title to the property; or
 - (2) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or
- (b) A person who can control what occurs on that property.

Permit means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

Property means any real property including land and that which is affixed, incidental or appurtenant to land, including, but not limited to, any premises, room, house, building or structure or any separate part or portion thereof, whether permanent or not.

Public nuisance property means property upon which three or more instances of any combination of the below listed behaviors occur, or whose patrons, employees, residents, owners or occupants engage in three or more instances of any combination of the below listed behaviors within 400 feet of the property, during any 30-day period as a result of three or more separate factual incidents; or property upon which four or more instances of any combination of the below listed behaviors occur, or whose patrons, employees, residents, owners or occupants engage in four or more instances of any combination of the below listed behaviors within 400 feet of the property, during any 90-day period as a result of four or more separate factual incidents.

- (a) Harassment as defined in ORS 166.065 (2017).
- (b) Intimidation as defined in ORS 166.155 to 166.165 (2017) or SRC 97.080.
- (c) Disorderly conduct as defined in SRC 95.120 or ORS 166.023 to 166.025 (2017).
- (d) Discharge of a firearm as defined in SRC 95.160.
- (e) Noise disturbance as defined in SRC 93.010.

- (f) Drinking in public as defined in SRC 90.020.
- (g) Minor in possession of alcohol as defined in ORS 471.430 (2017).
- (h) Assault as defined in SRC 95.040, ORS 163.160 (2017), or ORS 163.165 to 163.185 (2017).
- (i) Sexual abuse as defined in ORS 163.415 to 163.427 (2017).
- (j) Public indecency as defined in ORS 163.465 (2017) or SRC 96.220.
- (k) Trespass as defined in SRC 95.550, or ORS 164.245 to 164.265 (2017).
- (l) Criminal mischief as defined in ORS 164.345 to 164.365 (2017).
- (m) Prostitution or related offenses as defined in ORS 167.007 to 167.017 (2017).
- (n) Illegal gambling as defined in ORS 167.117 (2017), or ORS 167.122 to 167.127 (2017).
- (o) Alcoholic liquor violations as defined in ORS 471.105 to 471.482 (2017).
- (p) Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203 (2017), ORS 475.005 to 475.285 (2017), or ~~475.940 to 475.995~~, ORS 475.752 to 475.980 (2017).
- (q) Littering as defined in ORS 164.805 (2017).
- (r) Curfew offenses as defined in SRC 95.330 to 95.360.
- (s) Menacing as defined in ORS 163.190 (2017).
- (t) Arson or reckless burning as defined in ORS 164.315 to 164.335 (2017).
- (u) Contributing to the sexual delinquency of a minor as defined in ORS 163.435 (2017).
- (v) Sexual misconduct as defined in ORS 163.445 (2017).
- (w) Any attempt to commit (as defined in ORS 161.405 (2017)) and conspiracy to commit (as defined in ORS 161.450 (2017)) any of the above behaviors.

Structure means that which is built or constructed, an edifice or building of any kind including units thereof or mobile homes; any of which is an addition to or a fixture on real property.

(Prior Code, § 98.140; Ord. No. 24-93; Ord. No. 46-94; Ord. No. 64-97; Ord. No. 84-98)

State Law reference— Places declared nuisances for abatement, ORS 105.555; places declared nuisances per se, ORS 105.597.

Sec. 98.150. Notice procedure.

- (a) Notwithstanding SRC 20J.090 – 20J.190, wWhen the Chief of Police believes in good faith that property within the City has become public nuisance property, the Chief of Police shall notify the owner and the owner's registered agent under SRC 98.180, if known, in writing that the property has been determined to be public nuisance property. The notice shall contain the following information:

- (1) The street address or description sufficient for identification of the property.
 - (2) That the Chief of Police has found the property to be public nuisance property with a concise description of the conditions leading to his or her findings.
 - (3) A direction to notify the Chief of Police in writing within 15 days from the date of mailing the notice of the actions the owner intends to take to abate the nuisance.
 - (4) A direction to abate the nuisance, enter into a compliance plan agreement mutually agreed upon by the owner and the Chief of Police designed to abate the nuisance, or show good cause to the Chief of Police why the owner cannot abate the nuisance, within 60 days from the date of mailing the notice.
 - (5) That if the nuisance is not abated, good cause for failure to abate is not shown, a compliance plan is not entered into, or if a compliance plan agreement does not result in abatement of the nuisance, the Hearings Officer~~Council~~ may order abatement, with appropriate conditions. The Hearings Officer~~Council~~ may also employ any other remedy deemed by it to be appropriate to abate the nuisance, ~~including, but not limited to, authorizing a civil complaint in a court of competent jurisdiction which may include seeking closure of the property or enforcement of any compliance plan agreement entered into under this chapter.~~ The City may also file a civil complaint in a court of competent jurisdiction which may include seeking closure of the property or enforcement of any compliance plan agreement entered into under this chapter.
 - (6) That the owner may be required to pay to the City a civil penalty of \$~~4~~500.00 a day for each day the nuisance continues after the Hearings Officer~~Council~~ orders abatement.
 - (7) That the multifamily dwelling license, if any, of the property is subject to suspension or revocation.
 - (8) That permitting public nuisance property is a misdemeanor.
 - (9) That the above remedies are in addition to those otherwise provided by law and the Salem Revised Code.
- (b) Service of the notice is completed upon:
- (1) Personal service on the owner or owner's registered agent under SRC 98.180, if any; or
 - (2) Mailing the notice first class, by any one of the following: certified or registered mail, return receipt requested, or express mail, postage prepaid, addressed to:
 - (A) The owner's registered agent under SRC 98.180, if any; or
 - (B) The owner at the address of the property believed to be a public nuisance property, and to such other address as shown on the tax rolls of the county in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Chief of Police.
- (c) A copy of the notice shall be served on occupants of the property, if different from the owner. Service shall be completed upon personal service of the notice or upon mailing the notice first class, by any one of the following: certified or registered mail, return receipt requested, or express mail, postage prepaid, addressed to "occupant" of each unit of the property believed to be a public nuisance property.

- (d) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this chapter. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid.

(Prior Code, § 98.150; Ord. No. 24-93; Ord. No. 51-96; Ord. No. 84-98)

State Law reference— Action regarding such nuisances in circuit court, ORS 105.660.

Sec. 98.160. Abatement procedures.

- (a) Within 15 days of the mailing of the notice, the owner shall notify the Chief of Police in writing of the actions that owner intends to take to abate the nuisance.
- (b) Within 60 days of the mailing of the notice, the owner shall abate the nuisance, enter into a compliance plan agreement mutually agreed to by the owner and the Chief of Police and designed to abate the nuisance, or show good cause to the Chief of Police why the owner cannot abate the nuisance within that time.
- (c) If the owner does not comply with subsection (a) or (b) of this section or fails to comply with the terms of a compliance plan agreement entered into under this chapter, the Chief of Police may file a petition to the Hearings Officer, with the City Recorder, seeking a determination that the property is a public nuisance property, and that the owner has failed to comply with SRC 98.160(a) or (b) or the terms of any compliance plan agreement entered into under the chapter. ~~refer the matter to the Council for hearing as a part of its regular agenda at the next succeeding meeting. The City Recorder shall give notice of the hearing to the owner and occupants, if different from the owner. At the time set for hearing the owner and occupants may appear and be heard by the Council. The Council shall determine whether the property is public nuisance property and whether the owner has complied with subsection (a) and (b) of this section and whether the owner has complied with the terms of any compliance plan agreement entered into under this chapter. The City has the burden of showing by a preponderance of the evidence that the property is public nuisance property and that the owner has failed to comply with the terms of any compliance plan agreement entered into under this chapter. The owner has the burden of showing by a preponderance of the evidence that there is good cause for failure to abate the nuisance or enter into a compliance plan agreement within 60 days of the mailing of the notice.~~
- (d) Upon filing of the petition, the City Recorder shall forward the petition to the Hearings Officer, who shall promptly set a public hearing on the petition not less than ten business days nor more than thirty business days after the date the petition is filed with the City Recorder. The Hearings Officer may authorize a shorter period when it appears that the alleged violation poses an imminent hazard to public health, safety, or welfare. The notice of hearing shall specify the time, date, and place of the hearing. The Hearings Officer may postpone, continue, or reschedule any hearing with the consent of all parties or on the motion of any party for good cause shown.
- (e) The Hearings Officer shall give notice of the hearing, together with a true copy of the petition, to the owner or owner's registered agent under SRC 98.180, if any, and the occupants, if different from the owner, not less than five business days prior to the date set

for hearing. If the Hearings Officer has authorized a shorter period of time to conduct the hearing pursuant to subsection (d), notice of the hearing shall be provided as soon as practicable under the circumstances. Service shall be completed upon personal service of the notice or upon mailing the hearing notice and petition first class, by any one of the following: certified or registered mail, return receipt requested, or express mail. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid. The failure of any person to receive actual notice of the hearing shall not invalidate any decision or order of the Hearings Officer.

- (f) At the time set for hearing the owner and occupants may appear and be heard by the Hearings Officer. The Hearings Officer shall determine whether the property is public nuisance property and whether the owner has complied with subsections (a) and (b) of this section and whether the owner has complied with the terms of any compliance plan agreement entered into under this chapter. The City has the burden of showing by a preponderance of the evidence that the property is public nuisance property and that the owner has failed to comply with the terms of any compliance plan agreement entered into under this chapter. The owner has the burden of showing by a preponderance of the evidence that there is good cause for failure to abate the nuisance or enter into a compliance plan agreement within 60 days of the mailing of the notice.

(Prior Code, § 98.160; Ord. No. 24-93; Ord. No. 51-96; Ord. No. 84-98)

Sec. 98.170. Remedies by ~~Council~~Hearings Officer.

- (a) The Hearings Officer shall issue a final order that substantially complies with the requirements of SRC 20J.380. In the event the Hearings Officer~~Council~~ determines that property is public nuisance property, and that the owner has failed to comply with SRC 98.160(a) or (b) or the terms of any compliance plan agreement entered into under this chapter, the Hearings Officer~~Council~~ may order that the nuisance be abated. The order may include conditions under which abatement is to occur. The Hearings Officer~~Council~~ may also employ any other remedy deemed by it to be appropriate to abate the nuisance.~~including, but not limited to, authorizing a civil complaint in a court of competent jurisdiction which may include seeking closure of the property or enforcement of any compliance plan agreement entered into under this chapter.~~
- (b) The remedies in this section are in addition to those otherwise provided by law and the Salem Revised Code.

(Prior Code, § 98.170; Ord. No. 24-93; Ord. No. 51-96; Ord. No. 84-98)

Sec. 98.190. Civil penalty.

- (a) Notwithstanding SRC 20J.140 – 20J.190, tThe Chief of Police is authorized to assess a civil penalty of \$~~1500.00~~ a day, payable to the City, for each day the nuisance continues to exist after the Hearings Officer~~Council~~ orders that the nuisance be abated. A nuisance continues to exist if there is any single occurrence of a behavior listed in the definition of public nuisance property in SRC 98.140~~(g)~~ upon the property or by any patron, employee, resident, owner or occupant within 400 feet of the property.

- (b) A civil penalty is assessed by ~~serving~~issuing written notice of penalty to the owner of public nuisance property and the owner's registered agent under SRC 98.180, if known, in the manner set forth in SRC 98.150(b). The notice shall contain the following information:
- (1) The street address or description sufficient for identification of the property.
 - (2) That the Chief of Police has found the nuisance continues to exist after the Hearings Officer~~Council~~ ordered the nuisance be abated, with a concise description of the conditions leading to his or her findings.
 - (3) That the owner may request a hearing before the Hearings Officer on the validity of the assessment of the penalty. A hearing request must be in writing and filed with the City Recorder -Salem Municipal Court, 555 Liberty St. SE, Salem, Oregon 97301 within fifteen business ~~ten~~days after~~of the~~ mailing of the notice. The request must state the grounds upon which the owner believes that the penalty is not valid. That if the request is not filed within the time allowed, the person will have waived the right to have the Hearings Officer review the validity of the assessment of the penalty.

~~The Court may assess the costs of the hearing against the owner if the Court determines the penalty is valid. The penalty and hearing costs will become a lien against the property unless paid.~~

- (c) The notice of penalty shall be deemed served upon mailing. The failure of any person or owner to receive actual notice of the assessment of a civil penalty shall not invalidate or otherwise affect the assessment of a civil penalty under this chapter. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid. The penalty is final when 10 days have elapsed from the date of mailing the notice if a request for hearing is not filed, or upon entry of an order by the municipal court declaring the penalty valid if a request for hearing is filed.
- (d) A hearing request must be in writing stating the grounds upon which the owner believes the penalty is not valid, be filed with the City Recorder within fifteen business days after mailing of the notice, and be accompanied by a hearing fee as established by resolution of the Council. The hearing fee is not refundable unless the Hearings Officer finds that the assessment of the civil penalty was not well founded in law or fact, in which case the appeal fee shall be refunded in full.
- (e) A hearing request filed more that fifteen business day after mailing of the notice of penalty shall not be accepted.
- (f) The penalty is final when fifteen business days have elapsed from the date of mailing of the notice if a request for hearing is not filed, or upon entry of a final order by the Hearings Officer declaring the penalty valid.
- (g) If a civil penalty remains unpaid thirty calendar days after such penalty becomes final, the Finance Officer shall enter the civil penalty into the City lien docket. The lien shall bear interest at the legal rate, which shall commence from the date of entry in the lien docket, and may be collected or foreclosed as provided by law.
- (h) A property shall no longer be considered a public nuisance property after the later of: 1) The passage of one year from the date of the last reported occurrence of a behavior listed in the definition of public nuisance property in SRC 98.140 upon the property or by any patron,

employee, resident, owner or occupant within 400 feet of the property; or, 2) The passage of one year from the date a compliance plan agreement is entered into between the owner and the Chief of Police.

(Prior Code, § 98.190; Ord. No. 24-93)

Sec. 98.200. Hearing on Civil Penalty.

- (a) Upon receipt of a timely request and hearing fee, the Hearings Officer shall promptly set a public hearing not less than ten business days nor more than thirty business days after the date the request is filed with the City Recorder. The notice of hearing shall specify the time, date, and place of the hearing. Service of the hearing notice shall be completed upon personal service of the notice or upon mailing the hearing notice by any one of the following: certified or registered mail, return receipt requested, or express mail. The failure of any person to receive actual notice of the hearing shall not invalidate any decision or order of the Hearings Officer. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid. The Hearings Officer may postpone, continue, or reschedule any hearing with the consent of all parties or on the motion of any party for good cause shown. The Municipal Court shall hold a hearing upon a request filed as provided in SRC 98.190. At the hearing the owner may contest the validity of the penalty. The city shall have the burden of showing the validity of the penalty by a preponderance of the evidence. The court shall enter an order determining whether the penalty is valid or not valid. The action of the court pursuant to this section is final. If the court determines that the penalty is valid, the court may assess costs of the hearing against the owner.
- (b) At the hearing the owner may contest the validity of the penalty. The City shall have the burden of showing the validity of the penalty by a preponderance of the evidence.
- (c) The Hearings Officer shall enter a final order that substantially complies with the requirement of SRC 20J.380 determining whether the penalty is valid or not valid.

(Prior Code, § 98.200; Ord. No. 24-93)

Sec. 98.210. Remedies not exclusive~~Penalty and costs of hearing as lien.~~

The remedies provided by this chapter are not exclusive and are in addition to any other rights, remedies and penalties available to the City under any other provision of law or the Salem Revised Code, including, but not limited to, filing in a court of competent jurisdiction any action necessary to prevent, restrain, enjoin, correct or abate any violation of the law or the Salem Revised Code. The court shall have the authority to impose any legal or equitable relief, including, but not limited to, injunctive relief.~~The Chief of Police and Municipal Court shall forward statements of the assessments for penalties and hearing costs to the Finance Officer. The Finance Officer shall notify the owner by mail of the sum of money due to the City. If that sum is not paid within 30 days of the billing date, the Finance Officer shall file with the Council a statement of the sum due, plus an additional charge of five percent to cover assessment procedure expense. After a reasonable opportunity to be heard in objection thereto, the Council shall then, by ordinance, declare the correctness of such statement and declare the same to be a~~

~~lien upon the property involved, to be entered in the minor lien docket and enforced against the property, in the same manner provided for enforcement of liens for street improvement.~~

~~(Prior Code, § 98.210; Ord. No. 24-93; Ord. No. 51-96)~~