

**CHAPTER 98
PUBLIC NUISANCE**

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98.100. Violations. Violation of any of the provisions of this chapter is a misdemeanor. (Ord No. 103-87)

98.110. Severability. If any provision of this chapter, or its application to any person, or circumstances is held to be invalid for any reason, the remainder of the chapter, or the application of its provisions to other persons or circumstances shall not in any way be affected. (Ord No. 103-87)

98.120. Declaration of Purpose. It is hereby found and declared that:

- (a) Because of repeated disruptive behavior on them, properties within the City of Salem can create unreasonable disruptions to the neighborhoods where the properties are located.
- (b) The properties become chronic nuisances to surrounding property owners and degrade neighborhoods.
- (c) Existing state criminal statutes and city ordinances are inadequate to address, control or remedy the denigration that results from the chronic unlawful activity occurring at the properties.
- (d) Civil regulation of these properties will provide a remedy to the problems caused by these chronic behaviors and will promote and protect the public health, safety and welfare. (Ord No. 24-93)

98.130. Public Nuisance Property.

- (a) Any property within the City of Salem which becomes public nuisance property is in violation of this chapter and subject to its remedies.
- (b) Any person who permits property under his or her ownership or control to be a public nuisance property shall be in violation of this chapter and subject to its remedies. (Ord No. 24-93)

98.140. Definitions.

- (a) **Chief of Police.** The duly appointed and acting Chief of Police of the City of Salem, Oregon, or the Chief of Police's designee.

(b) Control. The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on property.

(c) Good Cause. Circumstances beyond the ability of a person acting with reasonable care and diligence to control.

(d) Owner. Any person, agent, firm or corporation having a legal or equitable or management interest in a property. Owner includes, but is not limited to:

(1) A mortgagee in possession in whom is vested:

(A) All or part of the legal title to the property; or

(B) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or

(2) A person who can control what occurs on that property.

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

(f) Property. 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.

(g) Public Nuisance Property. Property upon which three or more instances of any of the below listed behaviors occur, or whose patrons, employees, residents, owners or occupants engage in three or more instances of any 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.

(1) Harassment as defined in ORS 166.065 (1987).

(2) Intimidation as defined in ORS 166.155 to 166.165 (1993) or SRC 97.080.

(3) Disorderly conduct as defined in SRC 95.120 or ORS 166.025 (1983).

(4) Discharge of a firearm as defined in SRC 95.160.

(5) Noise disturbance as defined in SRC 93.010.

(6) Drinking in public as defined in SRC 90.020.

(7) Minor in possession of alcohol as defined in SRC 90.130 or ORS 471.430 (1991).

(8) Assault as defined in SRC 95.040, ORS 163.160, or ORS 163.165 to 163.185 (1991).

(9) Sexual abuse as defined in ORS 163.415 to 163.427 (1991).

(10) Public indecency as defined in ORS 163.465 (1977) or SRC 96.220.

(11) Trespass as defined in SRC 95.550 or ORS 164.245 to 164.265 (1979).

(12) Criminal mischief as defined in ORS 164.345 to ORS 164.365 (1993).

(13) Prostitution or related offenses as defined in ORS 167.007 to ORS 167.017.

(14) Illegal gambling as defined in ORS 167.117 or ORS 167.122 to ORS 167.127.

(15) Alcoholic liquor violations as defined in ORS Chapter 471.105 to 471.482.

(16) Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 to 475.285, or ORS 475.940 to 475.995.

(17) Littering as defined in ORS 164.805.

(18) Curfew offenses as defined in SRC 95.330 to 95.360.

(19) Menacing as defined in ORS 163.190.

(20) Arson as defined in ORS 164.315 to 164.335.

(21) Contributing to the sexual delinquency of a minor as defined in ORS 163.435

(22) Sexual misconduct as defined in ORS 163.445.

(23) Prohibited touching as defined in SRC 96.300.

(24) Any attempt to commit (as defined in ORS 161.405) and conspiracy to commit (as defined in ORS 161.450) any of the above behaviors.

(h) Structure. 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. (Ord No. 24-93; Ord 46-94; Ord No. 64-97; Ord No. 84-98)

98.150. Notice Procedure.

(a) When 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/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 council may order abatement, with appropriate conditions. The 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.
- (6) That the owner may be required to pay to the city a civil penalty of \$100 a day for each day the nuisance continues after the council orders abatement.
- (7) That the rental 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.

(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, 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, 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. (Ord No. 24-93; Ord No. 51-96; Ord No. 84-98)

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 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. (Ord No. 24-93; Ord No. 51-96; Ord No. 84-98)

98.170. Remedies by Council.

(a) In the event the 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 council may order that the nuisance be abated. The order may include conditions under which abatement is to occur. The 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. (Ord No. 24-93; Ord No. 51-96; Ord No. 84-98)

98.180. Registered Agent for Service. The owner of a rental dwelling who does not possess a license for that dwelling under SRC 31.005 and 31.993 may register the name and address of an agent for service of notice under this chapter with the Building Official of the Department of Community Development. "Rental dwelling" is any hotel, motel, apartment house or dwelling wherein rooms or structures are offered or maintained for rent or lease as permanent or temporary dwelling places. "Rental dwelling" does not include those dwellings described in SRC 31.993(b) and (c). (Ord No. 24-93)

98.190. Civil Penalty.

(a) The Chief of Police is authorized to assess a civil penalty of \$100 a day, payable to the City, for each day the nuisance continues to exist after the council orders that the nuisance be abated. A nuisance continues to exist if there is any single occurrence of a behavior listed 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 issuing written notice of penalty to the owner of public nuisance property and the owner's registered agent under SRC 98.180, if known. 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 council ordered the nuisance be abated, with a concise description of the conditions leading to his/her findings.
- (3) That the owner may request a hearing on the validity of the assessment of the penalty. A hearing request must be in writing and filed with the Salem Municipal Court, 555 Liberty St. SE, Salem, Oregon 97301 within 10 days of the mailing of the notice. The request must state the grounds upon which the owner believes that the penalty is not valid.

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 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. (Ord No. 24-93)

98.200. Hearing. 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. (Ord No. 24-93)

98.210. Penalty and Costs of Hearing as Lien. The chief of police and municipal court shall forward statements of the assessments for penalties and hearing costs to the director of finance. The director of finance shall notify the owner by mail of the sum of money due to the City of Salem. If that sum is not paid within thirty days of the billing date, the director 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. (Ord No. 24-93; Ord No. 51-96)

98.300. Purpose; Nuisance Declared. The presence of abandoned carts within the City is hereby declared to be a public nuisance, and the purpose of SRC 98.300-98.380 is to provide a means to allow for the voluntary abatement of the nuisance by the owners of shopping carts through a notification and retrieval process. Notwithstanding any other provision of this Chapter, the abatement of abandoned carts shall be made pursuant to SRC 98.300-98.380. (Ord No. 41-09)

98.310. Definitions. Unless the context otherwise specifically requires, as used in SRC 98.300-98.380, the following mean:

- (a) “Abandoned cart” means any shopping cart that has been removed from the owner’s premises without written consent of the owner and which is located on either public or private property.
- (c) “Code Compliance Officer” means the department head charged with the enforcement of SRC 98.300-98.380 by the City Manager, or that department head’s designee.
- (d) “Owner” means a person that, in connection with the operation of a business, makes a shopping cart available to a customer.
- (e) “Person” means a natural person, corporation, partnership, limited liability company, limited liability partnership, co-operative, trust, or other entity in law or fact.
- (f) “Premises” means the entire area of the real property owned, occupied or utilized by an owner, including any parking lot or other property provided by or on behalf of an owner for customer parking or use.
- (g) “Shopping cart” means a basket that is mounted on wheels and used for the transportation of goods, or any other similar device, that is provided by an owner for use by a customer. (Ord No. 41-09)

98.320. Cart Identification Required. Every shopping cart must have a permanently affixed sign that contains all of the following information:

- (a) The identity of the owner of the shopping cart;
- (b) A toll-free telephone number of the owner for shopping cart return; and

(c) A statement that the unauthorized removal of the shopping cart from the premises is a crime under ORS 164.015. (Ord No. 41-09)

98.330. Posted Notice. An owner shall conspicuously post a sufficient number of signs on the owner's business premises that unauthorized appropriation of a shopping cart is a crime under ORS 164.015 and to provide the toll free telephone number that members of the public may use to report abandoned shopping carts. (Ord No. 41-09)

98.340. Toll-free Telephone Line Required.

(a) A toll-free telephone line shall be established, maintained and made available to the public, at the owner's expense, for the purpose of reporting abandoned carts.

(b) The agreement between the owner and the toll-free telephone provider shall provide that operator of the toll-free telephone line forward a report of each call concerning an abandoned cart to the owner and to the code compliance office, within one business day of receipt of the call, and that such report be provided through electronic mail or by fax.

(c) More than one owner may use the same toll-free telephone number to share expenses. Any agreement by two or more owners to share a toll-free telephone number shall comply with the requirements of this section. (Ord No. 41-09)

98.350. Notification and Retrieval of Abandoned Carts.

(a) The Code Compliance Officer or any member of the public may report the location of an abandoned cart by calling the toll-free telephone number provided by the owner.

(b) If the City has notice of the location of an abandoned cart, the Code Compliance Officer shall use the toll-free telephone number provided by the owner to report the location of the abandoned cart.

(c) If an abandoned cart does not have a sign with the information required by SRC 98.330, the City may take custody of the abandoned cart. If the owner can be identified, and after reasonable effort, the Code Compliance Officer is unable to contact the owner of the abandoned cart and seventy-two hours has passed, or if the owner cannot be identified, the Code Compliance Officer may dispose of the abandoned cart as provided in SRC 98.370(b). (Ord No. 41-09)

98.360. Duty to Retrieve Cart. An owner, or an owner's contractor, shall retrieve an abandoned cart within seventy-two hours from the date the report is made to the owner under SRC 98.350. (Ord No. 41-09)

98.370. Custody and Disposition.

(a) The Code Compliance Officer may take custody of an abandoned cart and impose a civil penalty of fifty dollars on the owner of the abandoned cart if the owner does not retrieve the abandoned cart within seventy-two hours after the owner receives a report of an abandoned cart under SRC 98.350. The Code Compliance Officer shall release the shopping cart to the owner after the civil penalty is paid.

(b) **Disposition after Thirty Days.** Title to any abandoned cart not reclaimed by the owner within thirty days after notification from the Code Compliance Officer, or to any abandoned cart where the City has been unable to identify the owner after reasonable efforts and which has been in the City's custody for thirty days, shall be forfeited to the City and the shopping cart may be sold or otherwise disposed of by the City. (Ord No. 41-09)

98.380. Violation. Failure by an owner to comply with SRC 98.320, SRC 98.330 or SRC 98.340, or to retrieve an abandoned cart under SRC 98.360 is an infraction, punishable by a fine not to exceed five hundred dollars. (Ord No. 41-09)