

**CHAPTER 95
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95.010. Aircraft; Dropping Articles From. It shall be unlawful for any person to throw or drop any printed matter, goods, wares, merchandise, missile, or other article or thing from any aircraft in flight over the corporate limits of the city, over the municipal airport, or over any other area or grounds over which the city exercises police control. This section shall not be construed as prohibiting the use of airplane for crop dusting or for dusting or spraying in furtherance of insect and pest control; provided that a permit therefore is first obtained from the city administrator. (Ord No. 3817)

95.020. Airguns; Discharge Prohibited.

- (a) It shall be unlawful for any person to discharge any airgun within the corporate limits of the City.
- (b) Notwithstanding subsection (a) of this section, it shall not be unlawful to discharge an airgun within the corporate limits of the City if:
 - (1) The person is discharging an airgun on a commercially operated shooting range, field, or other area designed and built exclusively for the use of airguns.
 - (2) The person is discharging an airgun while acting as a registered participant in an organized competition or tournament held within a park for which a community event permit has been issued pursuant to SRC Chapter 104. As used in this paragraph, park means any public grounds owned, supervised, or controlled by the City, whether within or outside of the corporate limits of the City. (Ord No. 4824; Ord No. 19-12)

95.025. Animals; Prohibiting Sale of Live. It shall be unlawful for any person to display, sell, deliver, give away, or dispose in any other method a live animal on city property or the public right of way within the City of Salem. Adoption events conducted or sponsored by a registered animal control agency, humane society, or animal shelter, if authorized by a duly issued right of way permit, are exempt. (Ord No. 10-14)

95.030. Archery. It shall be unlawful for any person to shoot an arrow with a metal point or head or to shoot an arrow or dart of any description with a long bow, gun, blowgun or any propelling device which

has a pull exceeding ten pounds; provided, however, the provisions of this section shall not apply to the use of archery devices on ranges either in or out of doors, having a permit from the Chief of Police; provided, further, that this section shall not be construed as prohibiting the use of archery devices by an instructor or by pupils or students under supervision of an authorized officer or instructor of a public or parochial high school or institution of higher learning. Supervised archery competitions or tournaments may be held within the city under the auspices of such public or parochial schools, or other nonprofit sponsor provided, that a permit therefor is first obtained from the Chief of Police. If such competition is to be held within a public park, a permit therefor shall also be obtained from the Director. Such a permit shall not be granted unless such officials are satisfied that the competition or tournament will be so supervised and conducted that the safety of the public and participants will be guarded; and, if sponsored by other than a public or parochial school, only upon presentation of proof of public liability insurance in the amount and coverage approved by the City's Risk Manager. (Ord No. 4824; Ord No. 5726; Ord No. 47-80; Ord No. 101-94; Ord No. 42-09)

95.040. Assault and Battery. It shall be unlawful for any person, not being armed with a dangerous weapon, to assault or to commit any assault and battery upon another in the city. (Ord No. 3655)

95.050. Bean Shooters and Slingshots. It shall be unlawful for any person to use any bean shooter, slingshot or any other contrivance used in shooting beans, stones, pebbles, or other substance or thing, in or upon any street, alley, or public place within the city. (Ord No. 4824)

95.060. Begging. It shall be unlawful for any person in the city to beg or solicit alms as a business or as a means of support. (Ord No. 3389)

95.065. Cemeteries; Vandalization of. It shall be unlawful for any person to intentionally, knowingly, or recklessly vandalize any public or private cemetery within the city. For purposes of this section "vandalize" includes, but is not limited to, burning, damaging, defacing, defiling, destroying, digging, marring, painting or writing upon, the grounds or property located within a cemetery. (Ord No. 46-89)

95.080. City-Owned Areas Outside City Limits.

(a) **Offenses.** It shall be unlawful for any person within any of the areas owned by the city and outside its municipal boundaries to commit any disorderly conduct or assault; to be in an intoxicated condition; to injure or deface any property within such areas; to molest, kill, or injure any wildlife; to place or scatter any trash, junk, or refuse upon any of such areas; to trespass upon or to deface, injure, or remove any part of any tree, fence, gate, or building, or to place any sign, card, bill, or mark upon any part thereof; or to enter or remain upon any such area, or part of such area, posted against trespassing, while in possession of a firearm.

(b) **Special police officers.** The chief of police is hereby authorized and directed to deputize suitable persons to act as police officers in any areas owned by the city and outside of its municipal boundaries, and such officers are hereby given all of the authority and powers of police officers of the city, with authority to arrest and to bring before the municipal judge persons violating any of the provisions of this section. Such officers shall be sworn before taking office. (Ord No. 3313; Ord No. 54-05)

95.085. City Property; Defacing or Injuring. It shall be unlawful for any person to deface or injure any public property or to remove any part of any tree, fence, gate, or building, or to place any sign, card, bill, mark or paint upon public property. (Ord No. 108-84)

95.090. City Property; Unauthorized Use. It shall be unlawful for any officer or employee of the city, or any department thereof, to allow or permit any machinery, tools, equipment, or other personal property owned by the city, or any department thereof, to be used for any other than municipal purposes unless the

consent of the council is first had and obtained. It shall likewise be unlawful for any person to use any such property for any other than municipal purposes except with the consent of the council. The provisions of this section shall not apply to loaning the city fire department apparatus to other cities or communities. If any such machinery, tools, equipment, or other personal property owned by the city, or any department thereof, is damaged or destroyed while used in violation of this section, the officer or employee of the city, or any department thereof, responsible for such use and the person using such machinery, tools, equipment, or other personal property in violation of this section shall be liable in damages to the city for such damages to or destruction of such city property in an action at law brought in any court of competent jurisdiction. The violation of this section shall conclusively be deemed the proximate cause of any such damage to or destruction of any such city property. (Ord No. 2558)

95.095. Loaded Firearms.

- (a) It shall be unlawful for any person to possess a loaded firearm, whether the shell or cartridge is a blank or is live ammunition, while in a public place as defined in ORS 161.015.
- (b) Nothing in subsection (a) shall apply to:
 - (1) A law enforcement officer in the performance of official duty.
 - (2) A member of the military in the performance of official duty.
 - (3) A person licensed to carry a concealed handgun.
 - (4) A person authorized to possess a loaded firearm while in or on a public building under ORS 166.370.
 - (5) A government employee or contractor of the City of Salem engaged in flight safety hazard abatement to comply with Chapter 14 of the Code of Federal Regulations, Part 139.337 at McNary Field. (Ord No. 29-96; Ord No. 54-05)

95.100. Concealed Weapons.

- (a) It shall be unlawful for any person to carry concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force and commonly known as a switchblade knife, any dirk, dagger, ice pick, sling shot, metal knuckles or any other similar instrument by the use of which injury could be inflicted upon the person or property of another person.
- (b) Nothing in subsection (a) of this section shall apply to any peace officer as defined in ORS 133.005, whose duty it is to serve process or make arrests. (Ord No. 3389; Ord No. 27-70; Ord No. 48-76; Ord No. 181-79; Ord No. 24-89; Ord No. 33-90; Ord No. 96-91; Ord No. 29-96)

95.120. Disorderly Conduct. It shall be unlawful for any person, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, to:

- (a) Engage in fighting or in violent, tumultuous, or threatening behavior; or
- (b) Disturb any lawful assembly of persons without lawful authority; or
- (c) Disobey, except while passively resisting an arrest, an order of a peace officer present at an assembly of three or more persons, to disperse or abandon any weapon. For the purposes of this subsection an order of an officer is lawful if two or more persons present:
 - (1) Are threatening bodily harm to another or damage to property, with immediate power to carry out that threat, or
 - (2) Have committed an unlawful act of violence during the course of the assembly.
- (d) Initiate or circulate a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe, or other emergency, which report reasonably would be expected to cause alarm; or
- (e) Obstruct with his person vehicular or pedestrian traffic on a public street or way. (Ord No. 3389; Ord No. 192-71; Ord No. 72-82; Ord No. 56-84; Ord No. 88-95; Ord No. 69-99)

95.125. Urinating or Defecating in Public. It shall be unlawful for any person to intentionally or recklessly urinate or defecate in any public place except a restroom or toilet facility maintained for such purposes. (Ord No. 69-99)

95.130. Disorderly Houses. It shall be unlawful to keep or maintain a bawdyhouse, house of prostitution, or disorderly house, or to suffer or allow any disorderly, boisterous or riotous conduct in any house of building, or upon any premises in the city. (Ord No. 3389)

95.160. Firearms; Discharge.

- (a) It shall be unlawful for any person to discharge any firearm within the city.
- (b) The provisions in subsection (a) do not apply to:
 - (1) A person discharging a firearm in the lawful defense of person or property.
 - (2) A person discharging a firearm on a public or private shooting range, shooting gallery or other area designed and built for the purpose of target shooting.
 - (3) A person authorized or required by his or her employment or office to discharge blank ammunition for signal purposes at athletic or sports events, or as part of a military or police ceremony.
 - (4) A government employee or contractor of the City of Salem engaged in flight safety hazard abatement to comply with Chapter 14 of the Code of Federal Regulations, Part 139.337 at McNary Field.
 - (5) An employee of the United States Department of Agriculture, acting within the scope of employment, discharging a firearm in the course of the lawful taking of wildlife. (Ord No. 4824; Ord No. 29-96; Ord No. 54-05; Ord No. 24-12)

95.163. Intentional False Fire Alarms.

- (a) It shall be unlawful for any person to intentionally activate a fire alarm except to signal an actual emergency involving fire or other condition threatening human life or major property loss.
- (b) A violation of this section is a misdemeanor. (Ord No. 27-12)

95.165. Garage Sales Limitation.

- (a) For the purposes of this section, the term "garage sale" shall mean the public sale of new or used goods within the corporate limits of the City of Salem by any individual or group of individuals from any private property, including but not limited to garages, porches, carports, yards, when said individual or group of individuals is not in the business of selling such goods or not licensed as a secondhand dealer, junk dealer or when the property from which such sale is to be conducted is not within a zone permitting commercial business or otherwise permitted under the provisions of this code. The offering for sale of one item by public display with a sign indicating the item is for sale and the price thereof attached to or upon such item, and sale of more than one individual item not offered by public display and where no signs are posted concerning a sale or place of sale are transactions exempt from the provisions of this section. Provided, further, that sales by organizations, societies, associations, leagues, or corporations that are organized and operated exclusively for religious, educational, philanthropic, benevolent, fraternal, or charitable purposes and are not operated for the pecuniary profit of its members or shareholders shall be exempt from this definition.
- (b) It shall be unlawful to conduct within the City of Salem more than three garage sales in any calendar year, each of said sales to extend no longer than three days. (Ord No. 159-84)

95.190. Handbills Deposited in Motor Vehicles. It shall be unlawful for any person, except an authorized officer, marshal, constable, or policeman, without the consent of the owner or person lawfully in charge of a motor vehicle, to place, deposit, throw, distribute, or dump any handbill sheet of paper,

envelope, sample, catalogue, package, or any paper or printed matter of any kind, character, or description in any automobile whether such motor vehicle is at rest or in motion or unattended, on any street, public park, parking lot, public place, alley, highway, or county road within the boundaries of the city. (Ord No. 4374)

95.200. Fastening Handbills to Public Property. Except as provided by SRC 255.055, it shall be unlawful for any person, except a public officer or employee in the performance of a public duty, to stick, stamp, paint, print, paste, nail, tack, or otherwise fasten any card, banner, handbill, sign, poster, advertisement, or notice of any kind, or to cause the same to be done, on any sidewalk, crosswalk, curb, pavement, curbstone, lamppost, pole, hydrant, bridge, or tree upon public property in the City. (Ord No. 3335; Ord No. 53-84; Ord No. 12-12)

95.210. Fastening Handbills to City Property. It shall be unlawful for any person, except a public officer or employee in the performance of a public duty, to paste, post, print, nail, tack, or otherwise fasten any card, banner, handbill, sign, poster, advertisement, or notice of any kind, or to cause the same to be done, on any property of the city without the consent of the mayor.

Any advertisement prohibited by this section may be taken down, moved, or destroyed by anyone. (Ord No. 3335)

95.220. Fastening Handbills to Private Property. It shall be unlawful for any person, except a public officer or employee in the performance of a public duty, or a private person in giving a legal notice, to paste, post, paint, nail or tack, or otherwise fasten any card, banner, handbill, sign, poster, advertisement, or notice of any kind upon any property without the written consent of the owner, holder, lessee, agent, or trustee thereof.

Any advertisement prohibited by this section may be taken down, moved, or destroyed by anyone. (Ord No. 3335)

95.235. Killing or Molesting Ducks Prohibited.

(a) It shall be unlawful for any person to kill, injure, take, or molest any duck or any duck nest in, upon, or adjacent to any waters within the corporate limits of the city, except as provided in subsection (b) of this section. This section shall not apply to any person otherwise lawfully killing or taking ducks by the ducks' legal owner, by the lawful agent of the ducks' legal owner, or by a government employee or contractor of the City of Salem engaged in flight safety hazard abatement to comply with Chapter 14 of the Code of Federal Regulations, Part 139.337 at McNary Field.

(b) Whenever the number or actions of ducks upon any premises, public or private, constitute a nuisance in the judgment of the Director, the Director shall have the authority to remove any of such ducks as may reasonably appear to be wild or not owned by any person. In addition or in lieu thereof, the Director may, in the Director's discretion, authorize any person in possession of any premises affected by such nuisance to remove or cause the removal of any such ducks. (Ord No. 5365; Ord No. 15-81; Ord No. 96-88; Ord 54-05; Ord No. 42-09)

95.240. Unlawful Keeping of Miniature Swine.

(a) It shall be unlawful to keep more than one miniature swine (species *Sus scrofa bittatus*) as a household pet in any dwelling unit.

(b) It shall be unlawful to keep any miniature swine as a household pet unless:

- (1) The miniature swine is less than 100 pounds in weight;
- (2) The miniature swine is less than 18 inches in height at the shoulder; and
- (3) The miniature swine is spayed or neutered.

(c) A violation of this section is an infraction.

(d) As used in this section, "miniature swine" means a swine of the species *Sus scrofa bittatus*, commonly known as a "pot-bellied pig."

(e) As used in this section, “household pet” means the keeping of an animal in the home for pleasure rather than for commercial purposes. (Ord No. 31-13)

95.290. Iceboxes and Other Containers; Abandonment. It shall be unlawful for any person to place, leave, or maintain, in a place accessible to children, any abandoned, unattended, or discarded icebox, refrigerator, or other container of any kind which has an air-tight door with a snap lock or other lock or mechanism which may not be released for opening from the inside of the icebox, refrigerator, or container, without first removing therefrom the snaplock or other lock mechanism or removing the air-tight door. (Ord No. 4577)

95.300. Kite Flying.

(a) It shall be unlawful for any person to fly any kite containing any metal, wire, or tinsel string either in the kite, the tail of the kite, or the kite string.

(b) It shall be unlawful for any person to fly any kite in such a manner that the kite, kite tail, or kite string will come within fifty feet of any power line, measured on a horizontal plane.

(1) In case any kite, kite tail, or kite string shall become entangled in any electric power line, it shall be unlawful for any unauthorized person to undertake to remove the same from such power line. In such event, the person who was flying the kite shall notify the police, and the electric power company concerned, upon notification by the police department, shall remove such kite, kite tail, or kite string as soon as possible. (Ord No. 3389)

95.330. Minors Nighttime Curfew.

(a) No minor under the age of 18 years shall be in or upon any street, highway, park, alley, or other public place between the hours specified in subsection (b) of this section unless:

(1) The minor is accompanied by a parent, guardian, or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor;

(2) The minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during the hours specified in this section; or

(3) The minor is lawfully emancipated pursuant to ORS 419B.550 to 419B.558.

(b) For minors under the age of 16 years, the curfew is between 10:00 p.m. and 6:00 a.m. of the following morning. For minors 16 years of age or older, the curfew is between 12:00 a.m. and 6:00 a.m. (Ord No. 3677; Ord No. 5287; Ord No. 5369; Ord No. 85-74; Ord No. 53-95; Ord No. 23-97; Ord No. 63-98)

95.334. Findings and Purpose.

(a) The council determines that prior to enactment of Ordinance No. 23-97 (daytime curfew) May 27, 1997 (sunset June 30, 1998), there had been an increase in truancy and juvenile crime, victimization, and gang activity involving persons under the age of 18 during regular school hours in the City of Salem, and that there was a decrease in these incidents during the 1997-98 school year when the daytime curfew was in effect.

(b) The council determines that the State of Oregon compulsory school attendance law has no immediate sanction for juvenile violators, and truancy is not effectively controlled by existing laws and ordinances.

(c) The Council determines that the City of Salem has a compelling interest in providing for the enforcement of school attendance, for the protection of juveniles from gang activity and the perpetrators of crime, for the reduction of juvenile criminal activities and for the protection of the general public during regular school hours, and that a daytime curfew is the least intrusive method for the City to further these interests. (Ord No. 23-97; Ord No. 63-98)

95.335. Minors Daytime Curfew.

(a) No minor between the ages of 7 and 18 years who has not completed the twelfth grade shall be

in or upon any street, highway, park, alley or other public place during regular school hours except while attending school as required by ORS 339.010 to 339.065, unless:

(1) The minor is accompanied by a parent, guardian, or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor;

(2) The minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during regular school hours and is authorized by the minor's parent, guardian, or other person having the legal care and custody of such minor;

(3) The minor is lawfully emancipated pursuant to ORS 419B.550 to 419B.558, or

(4) The minor is authorized and approved to be away from the school as provided in ORS 339.030 and 339.065, but is not suspended or expelled.

(b) For purposes of this section, regular school hours are: those hours for the full-time school which the child would attend in the school district in which the child resides, on any day for which school is in session, unless such day is a scheduled vacation or holiday observed by the school. (Ord No. 23-97; Ord No. 63-98)

95.340. Parent or Guardian Not to Allow Curfew Violation.

(a) No parent, guardian, or person having the care and custody of a minor under the age of 18 years shall allow such minor to be in or upon any street, highway, park, alley, or other public place between the hours specified in SRC 95.330, except as otherwise provided in that section.

(b) No parent, guardian, or person having care and custody of a minor between the ages of 7 and 18 years who has not completed the twelfth grade shall allow such minor to be in or upon any street, highway, park, alley, or other public place during regular school hours except as otherwise provided in SRC 95.335. (Ord No. 3677; Ord No. 5287; Ord No. 85-74; Ord No. 23-97; Ord No. 63-98)

95.350. Enforcement. Any police officer or any other law enforcement officer is hereby authorized and empowered to take charge of any person under the age of 18 years violating the provisions of SRC 95.330 or 95.335 and it shall be the duty of any such officer taking charge of any such person to thereafter notify the parent or guardian of such person immediately of such violation and to notify such parent or legal guardian that such person will be held in the custody of the police officer until he or she can come get such minor person. For violations of SRC 95.335, a police officer in lieu of holding the minor person in custody for delivery to a parent or legal guardian may release that person to the principal or other designated official at the school at which the minor is enrolled. (Ord No. 3677; Ord No. 5287; Ord No. 23-97; Ord No. 63-98)

95.360. Duty of Parent or Guardian, to Pick Up Violators. It shall be unlawful and shall be considered a separate offense for any parent, guardian, or any other adult person having the legal care and custody of any person under the age of 18 years to refuse to come to the police officer and take the minor person under his or her custody immediately to the minor's home upon being notified by the police department as provided in SRC 95.350. (Ord No. 3677; Ord No. 5287; Ord No. 23-97; Ord No. 63-98)

95.380. Furnishing Tobacco to Minors. It shall be unlawful to sell, give, or furnish tobacco in any form to any minor under 18 years of age; provided, in the event the laws of the state make it unlawful to sell, give, or furnish tobacco to any minor under the age of 21 years, then it shall also be unlawful to sell, give, or furnish tobacco to any minor under 21 years of age in the city. (Ord No. 3389; Ord No. 5641)

95.390. Minors; Loitering in Certain Places. It shall be unlawful for any minor under the age of 21 years to go into, visit, or loiter in or about any gambling house or house of prostitution. (Ord No. 3389)

95.395. False Swearing.

(a) A person commits the offense of false swearing if the person makes a false sworn statement,

knowing it to be false.

(b) False swearing is a misdemeanor. (Ord No. 6-08)

95.400. Failure to Appear.

(a) It shall be unlawful for any person who has been served with a summons or a citation to willfully fail to appear as required in such summons or citation, unless the person has obtained prior permission by the court upon good cause shown, or for any person to fail to appear at any other time ordered by the court.

(b) Violation of this section is a misdemeanor. (Ord No. 6-08)

95.430. Resisting Officers. It shall be unlawful for any person acting intentionally:

(a) To resist any peace officer known by the person to be a peace officer acting in the discharge or apparent discharge of duty.

(1) "Resist," as used in this subsection, means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes behavior clearly intended to prevent being taken into custody by overcoming the actions of the arresting officer. The behavior does not have to result in actual physical injury to the arresting officer. Passive resistance does not constitute behavior intended to prevent being taken into custody.

(2) It is no defense to a prosecution under this subsection that the peace officer lacked legal authority to make the arrest, provided the peace officer was acting under color of official authority.

(b) To hinder or interfere materially with any peace officer known by the person to be a peace officer acting in the discharge or apparent discharge of duty by intimidation, force or physical contact. This subsection shall not apply to the hindrance of an unlawful action by a peace officer or interference with the making of an arrest. (Ord No. 59-65; Ord No. 182-79; Ord No. 88-95)

95.431. Giving False Information to Police Officers. It shall be unlawful for any person to knowingly and willfully give any false, untrue, or misleading information to a police officer while he is acting in his official capacity with intent to hinder, delay, impede, or mislead said officer in the prosecution of his official work, or with the intent to obstruct justice. (Ord No. 55-69; Ord No. 175-69)

95.435. Refusing to Assist Officers; Aiding Escape and Escape. It shall be unlawful for any person acting intentionally, knowingly or recklessly:

(a) To refuse, except while passively resisting an arrest, to assist any peace officer in the lawful discharge of duty when requested to do so by the peace officer.

(b) To aid or assist any person in custody upon charge of a violation of any section of this Code, in the person's endeavors to escape from such custody, whether such escape is expected or not.

(c) To escape or attempt to escape while a prisoner or otherwise in custody of a city peace officer.

It is a defense to a prosecution under this subsection that the person escaping or attempting to escape was in custody pursuant to an illegal arrest. (Ord No. 88-95)

95.440. Smoke and Soot. It shall be unlawful for the owner, agent, lessee, or manager of any building, locomotive, or other structure, or for the person employed as engineer or otherwise in the operation of the furnace or engine in such building, locomotive, or other structure within the city, to cause smoke containing soot, cinders, or other substance to issue or be emitted from the chimney or smokestack of such building or structure, which soot, cinders, or other substance shall damage the property or injure the health of any person or shall especially annoy the public.

Any chimney or smokestack within the city from which there shall issue or be emitted smoke containing soot, cinders, or other substance in sufficient quantity to cause such soot, cinders, or other substance to be deposited on any surface within the corporate limits of the city shall be deemed and is

hereby declared a public nuisance.

The provisions of this section shall not apply to buildings used exclusively for private residences. (Ord No. 1834)

95.510. Trains Standing on Streets. It shall be unlawful for any person owning, operating, or in charge of any railway train, car, or locomotive to leave, stop, or stand the same upon or over any crosswalk, street crossing, or street intersection in such a manner as to obstruct the free use thereof by pedestrians or vehicles. It shall also be unlawful for any such person in charge of any railway train, car, or locomotive to leave, stop, or stand the same upon any other part or portion of any street in the city for a longer period of time than thirty minutes; provided, however, that this section shall not apply to Water Street between Chemeketa Street and Court Street, Front Street between Trade Street and South Street, or to Trade Street between 12th Street and Front Street, or to industrial spur tracks upon such portions of Water Street. Front Street or Trade Street or tributaries thereto. (Ord No. 3399; Ord No. 5616)

95.520. Lights on Train Required at Night. Whenever any railway train, car, or locomotive is left standing upon any street pursuant to the provisions of SRC 95.510 for more than 30 minutes between sunset and sunrise, the same shall be lighted with a red warning light at each corner of each end of each cut of cars or car so standing, such warning lights to be sufficient candle power to be plainly visible at a distance of not less than three hundred feet; provided, however, this section shall not apply to any railway train, car, or locomotive left standing upon any industrial spur track upon that portion of any street between the curb, or, in the absence of a curb, the edge of the traveled roadway and the adjacent property line; and provided further, that locomotives shall be lighted at either end with a headlight or white light. (Ord No. 3399; Ord No. 5616)

95.530. Unauthorized Boarding. It shall be unlawful for any person, other than a railroad employee, or his assistant, to climb or enter upon or to get on board of any portion of any railroad car or railroad train at any place within the corporate limits of this city, except that passengers shall be allowed to board passenger cars and cabooses if at a regular depot platform of such railroad company. (Ord No. 3389)

95.540. Trees and Shrubs; Unauthorized Removal or Destruction. It shall be unlawful for any person to in any manner cut, break, remove, or otherwise mutilate or destroy any tree, shrub, flower, or other plant, or any part thereof, growing in any parking space, public park, square, opening, street, or alley without first having obtained the permission therefor from the Director, or, growing upon private grounds or premises, the permission of the owner thereof. (Ord No. 3389; Ord No. 42-09)

95.548. Definitions. As used in SRC 95.548 and 95.550, except as the context requires otherwise:

(a) Open to the public means premises which by their physical nature, function, custom, usage, notice or lack thereof, or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.

(b) Person in charge means a person, a representative or employee of the person who has lawful control of premises by ownership, tenancy, official position, or other legal relationship. "Person in charge" includes, but is not limited to the person, or holder of a position, designated as the person or position-holder in charge by the governor, board, commission, or governing body of any political subdivision of this state.

(c) Premises includes any building and any real property, whether privately or publicly owned. (Ord No. 60-76; Ord No. 30-2003)

95.550. Trespass.

(a) It shall be unlawful for any person to enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public, or when the entrant is not otherwise licensed or privileged to do so.

- (b) It shall be unlawful for any person to fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.
- (c) It shall be unlawful for any person, with the intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that he has such right, to tamper or interfere with or damage property of another.
- (d) It shall be unlawful for any person to enter premises that are open to the public after being lawfully prohibited from entry to the premises. (Ord No. 3389; Ord No. 60-76; Ord No. 30-2003)

95.560. Vagrancy. It shall be unlawful for any person to lodge or sleep in or upon any public highway, street, alley, public park, parking lot, or other public place; or to lodge or sleep in any barn, shed, shop, warehouse, railroad car, automobile, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to possession thereof. (Ord No. 3389; Ord No. 5282; Ord No. 28-70; Ord No. 203-70; Ord No. 139-76)

95.600. Definitions. As used in SRC 95.600 to 95.660:

- (a) Graffiti means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted, or otherwise applied to property without the prior authorization of the owner of the property regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property.
- (b) Graffiti Nuisance Property means property to which graffiti has been applied, if the graffiti is visible from any public right of way, from any other public or private property or from any premises open to the public, and if the graffiti has not been abated within the time provided in SRC 95.650.
- (c) Owner has the meaning set forth in SRC 98.140(d) and, in addition, includes the state and political subdivisions of the state, school districts and special districts.
- (d) Permit has the meaning set forth in SRC 98.140(e).
- (e) Property means any real or personal property and that which is affixed, incident or appurtenant to real property, including but not limited to any premise, house, building, fence, structure or any separate part thereof, whether permanent or not.
- (f) Structure has the meaning set forth in SRC 98.140(h). (Ord No. 37-94; Ord No. 96-95)

95.610. Prohibited Graffiti.

- (a) It shall be unlawful for any person to apply graffiti.
- (b) It shall be unlawful for any person to solicit or command another person to apply graffiti.
- (c) It shall be unlawful for any person to aid or abet or agree to aid or abet another person to plan to apply or apply graffiti. (Ord No. 37-94; Ord No. 96-95)

95.620. Penalty. Violation of SRC 95.610 is an infraction. In addition to any other penalty provided by law, a person adjudged responsible for violation of SRC 95.610 or any other offense within the jurisdiction of the court may be ordered by the court to perform community service including graffiti removal at any locations within the jurisdiction of the court and to pay restitution. (Ord No. 37-94; Ord No. 96-95)

95.630. Graffiti Removal.

- (a) Graffiti removal means:
 - (1) Removal or attempted removal of graffiti from or painting or repair of public or private property with the written consent, on a form approved by the Salem City Attorney, of the owner of such property or of a person authorized by the owner of such property to give written consent, or
 - (2) Abatement under SRC 95.660.
- (b) Graffiti removal shall be supervised by the Chief of Police or his or her designee. (Ord No.

37-94; Ord No. 96-95)

95.635. Reward. The Chief of Police may offer a reward of One Hundred Dollars (\$100.00) or such other sum as the council may direct for information leading to the arrest and conviction of an adult or a finding that a juvenile is within the jurisdiction of the court for violating SRC 95.610. (Ord No. 37-94)

95.640. Graffiti Nuisance Property.

(a) It is hereby found and declared that graffiti creates a visual blight and property damage. When graffiti is allowed to remain on property and not is promptly removed, it invites additional graffiti and criminal activity and constitutes a nuisance.

(b) Any property within the city which becomes graffiti nuisance property is in violation of this chapter and subject to its remedies.

(c) Any owner of property who permits said property to be a graffiti nuisance property shall be in violation of this chapter and subject to its remedies. (Ord No. 96-95)

95.645. Notice Procedure.

(a) When the Chief of Police believes in good faith that property within the city is a potential 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 is potential graffiti 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 potential graffiti nuisance property with a concise description of the conditions leading to his/her findings.

(3) A direction to abate the graffiti, or show good cause to the Chief of Police why the owner cannot abate the graffiti, within five city business days from the date of mailing the notice.

(4) That if the graffiti is not abated and good cause for failure to abate is not shown, 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.

(5) That the rental dwelling license, if any, of the property is subject to suspension or revocation.

(6) That permitting graffiti nuisance property is an infraction.

(7) That the above remedies are in addition to those otherwise provided by law.

(b) Service of the notice is completed upon mailing the notice first class, postage prepaid, addressed to:

(1) The owner's registered agent under SRC 98.180, if any, or

(2) The owner at the address of the property believed to be a potential graffiti 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 mailing the notice first class, postage prepaid, addressed to "occupant" of each unit of the property believed to be a potential graffiti 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. 96-95; Ord No. 51-96)

95.650. Abatement Procedures.

(a) Within five city business days of the mailing of the notice the owner shall abate the graffiti or show good cause why the owner cannot abate the graffiti within that time.

(b) Upon good cause shown, the Chief of Police may grant an extension of up to ten additional city business days.

(c) If the owner does not comply with subsection (a) or (b) of this section, 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 graffiti nuisance property and whether the owner has complied with subsection (a) and (b) of this section. The city has the burden of showing by a preponderance of the evidence that the property is graffiti nuisance property. The owner has the burden of showing by a preponderance of the evidence that there is good cause for failure to abate the nuisance within five city business days of the mailing of the notice. (Ord No. 96-95; Ord No. 51-96)

95.655. Remedies by Council.

(a) In the event the council determines that property is graffiti nuisance property, 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.

(b) The remedies in this section are in addition to those otherwise provided by law. (Ord No. 96-95; Ord No. 51-96)

95.660. Abatement by City. If the owner fails to abate the nuisance as ordered by the council, the city may cause the nuisance to be abated as provided in SRC 50.840 to 50.845, except that the Chief of Police shall be responsible for causing abatement instead of the health officer. (Ord No. 96-95; Ord No. 8-2000)

95.700. Pedestrian Interference.

(a) No person shall block or interfere with, or attempt to block or interfere with, any other person along a public sidewalk by any means, including but not limited to standing on that part of the sidewalk used for pedestrian travel or placing any object or vehicle in such area, with the intent to interfere with free passage.

(b) No person shall block or interfere with, or attempt to block or interfere with, pedestrian or vehicular entrances to public or private property abutting a public sidewalk with the intent to interfere with the free ingress to or egress from such property.

(c) This section shall not apply to any activity otherwise made lawful including, but not limited to, lawful protesting activity and lawful picketing activity. (Ord No. 19-2000)

95.710. Sports Activity Prohibited in Certain Areas.

(a) It shall be unlawful for any person to engage in sports activity upon any of the streets, alleys or sidewalks within the district bounded on the north by the north curb line of Union Street, on the south by the south curb line of Trade Street, on the east by the east curb line of Cottage Street and on the west by the west curb line of Front Street, except that this prohibition shall not apply to that area designated Marion Square Park, its walkways and contiguous sidewalks.

(b) As used in this section, "sports activity" means an activity engaged in for recreational purposes, or for the amusement of the person performing the activity, including, but not limited to, dropping, kicking, throwing, rolling, flying or batting of any object; throwing, squirting, dumping, or dropping of any liquid, solid or gaseous substance, other than into a designated trash receptacle; grabbing, holding, tackling, hitting, shoving, pulling, or pushing another person; football, boxing, sparring, martial arts, wrestling, soccer, Frisbee tossing, volleyball, basketball, baseball, softball, hacky sack, knife throwing, tree climbing or scaling of exterior walls.

(c) This prohibition does not apply to any business performing landscaping, maintenance,

pruning, construction or related activities under contract, or activities engaged in pursuant to a lawfully issued city permit or as part of a city-approved community event. (Ord No. 16-2003)

95.720. Violations.

(a) Violation of SRC 95.010, 95.025, 95.190, 95.200, 95.210, 95.220, 95.300, 95.340, 95.440, 95.510, 95.520, 95.530, 95.610, 95.640 or 95.710 is an infraction.

(b) Violation of SRC 95.580 is a misdemeanor punishable by a fine of not more than \$250, imprisonment for a period not to exceed thirty days, or by both such fine and imprisonment.

(c) Except as provided in subsections (a) and (b) of this section, violation of any other provision of SRC 95.010-95.720 is a misdemeanor. (Formerly 95.990, Ord No. 16-2003, Ord No. 10-14)

CIVIL EXCLUSION

95.730. Definitions. Unless the context otherwise requires, as used in SRC 95.730-95.770, the following mean:

(a) Arrest means to place a person under actual or constructive restraint, or to take a person into custody, for the purpose of charging that person with the commission of any enumerated offense which is a misdemeanor or felony.

(b) Cite means to issue a citation to appear to a person for commission of an enumerated offense.

(c) Crime prevention district means a geographic area of exclusion to which the provisions of SRC 95.730-95.770 apply.

(d) Enumerated offense means any of the offenses establishing the basis for exclusion in a crime free zone.

(e) Hearings officer means a person appointed pursuant to SRC 2.315 to serve in a quasi-judicial capacity in the review of civil penalties or disabilities imposed under the Salem Revised Code.

(f) Enforcement officer means a peace officer as defined by ORS 133.005, or any other person with authority to enforce the Salem Revised Code.

(g) Pedestrian ways means any sidewalk, plaza, alley, parking structure or parking area, or other way designed and regularly used for pedestrian travel, any planter strip or landscaped area located adjacent to or contained within such streets, plazas, alleys, or other ways, and includes that portion of public rights-of-way used for the parking of vehicles, but does not include that portion of public rights-of-way regularly and traditionally used for vehicular travel.

(h) Public ways means any highway, roadway, street, alley or other way designed and regularly used for vehicular travel, but excluding that portion of public rights-of-way used for the parking of vehicles.

(i) Travel means movement by foot on a pedestrian public way, from one point to another, without delay other than to obey traffic control devices, or by vehicle on a public way, from one point to another without delay other than to obey traffic control devices. (Ord No. 16-2003; Ord No. 74-07)

95.735. Downtown Crime Prevention District Created.

(a) The geographic area bounded on the north by the north curb line of Union Street, on the south by the south curb line of Trade Street, on the east by the east curb line of Cottage Street and on the west by the west curb line of Front Street is hereby designated as the Downtown Crime Prevention District.

(b) An enumerated offense in the Downtown Crime Prevention District means any of the following felonies, misdemeanors, violations, or infractions, unless the offense was committed entirely within a private residence:

(1) **Felonies:** ORS 161.405(1)(2)(b)-(c), "Attempt," if the crime is an enumerated offense; ORS 161.450(1)(2)(b)-(c), "Conspiracy," if the crime is an enumerated offense; ORS 163.165, "Assault in the third degree"; ORS 163.175, "Assault in the second degree"; ORS 163.185,

“Assault in the first degree”; ORS 163.425, “Sexual abuse in the second degree”; ORS 163.427, “Sexual abuse in the first degree”; ORS 163.465(1)(2)(b), “Public indecency”; ORS 164.315, “Arson in the second degree”; ORS 164.325, “Arson in the first degree”; ORS 166.165, “Intimidation in the first degree”; ORS 167.012, “Promoting prostitution”; or ORS 167.017, “Compelling prostitution”; ORS 475.840(1)(a)-(c), (2)(a)-(c) & (3)(a), “Prohibited acts generally; penalties”; ORS 475.850, “Unlawful delivery of heroin”; ORS 475.852, “Unlawful delivery of heroin within 1,000 feet of school”; ORS 475.854, “Unlawful possession of heroin”; ORS 475.860(1)(2) & (4)(a) “Unlawful delivery of marijuana”; ORS 475.862, “Unlawful delivery of marijuana within 1,000 feet of school”; ORS 475.864(1)(2) “Unlawful possession of marijuana”; ORS 475.870, “Unlawful delivery of 3,4-methylenedioxymethamphetamine”; ORS 475.872, “Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school”; ORS 475.874, “Unlawful possession of 3,4-methylenedioxymethamphetamine”; ORS 475.880 “Unlawful delivery of cocaine”; ORS 475.882, “Unlawful delivery of cocaine within 1,000 feet of school”; ORS 475.884, “Unlawful possession of cocaine”; ORS 475.890, “Unlawful delivery of methamphetamine”; ORS 475.892, “Unlawful delivery of methamphetamine within 1,000 feet of school”; ORS 475.894, “Unlawful possession of methamphetamine”; ORS 475.904, “Unlawful manufacture or delivery of controlled substance within 1,000 feet of school”; ORS 475.906(1) & (2), “Penalties for distribution to minors.”

(2) “Class A” Misdemeanors: ORS 161.405(1)(2)(d), “Attempt,” if the crime is an enumerated offense; ORS 450(1)(2)(d), “Conspiracy,” if the crime is an enumerated offense; ORS 163.160, “Assault in the fourth degree”; ORS 163.190, “Menacing”; ORS 163.435, “Contributing to the sexual delinquency of a minor”; ORS 163.465(1) & (2)(a), “Public

indecency”; ORS 164.255, “Criminal trespass in the first degree”; ORS 164.265, “Criminal trespass while in possession of firearm”; ORS 164.335, “Reckless burning”; ORS 163.415, “Sexual abuse in the third degree”; ORS 165.155, “Intimidation in the second degree”; ORS 166.065(1) & (4), “Harassment”; ORS 167.007, “Prostitution”; ORS 475.840(3)(c), “Prohibited acts generally; penalties”; ORS 475.860(1)(3)(a) “Unlawful delivery of marijuana”; ORS 475.906(3), “Penalties for distribution to minors.”

(3) “Class B” Misdemeanors, “Class C” Misdemeanors, Violations and Infractions: ORS 161.405(1)(2)(e)-(g), “Attempt,” if the crime is an enumerated offense; ORS 163.445, “Sexual misconduct”; ORS 164.245, “Criminal Trespass in the second degree”; ORS 164.383, “Unlawfully applying graffiti”; ORS 164.386, “Unlawfully possessing graffiti implement”; ORS 164.805, “Offensive littering”; ORS 166.025, “Disorderly conduct in the second degree”; ORS 166.065(1) & (3), “Harassment”; ORS 167.400, “Tobacco possession by minors”; ORS 167.401(1) & (2), “Tobacco purchase by minors”; ORS 471.430(1), “Purchase or possession of liquor by person under 21”; ORS 471.410(2), “Providing liquor to person under 21”; ORS 475.840(1)(d)-(e), (2)(d)-(e) & (3)(d)-(e), “Prohibited acts generally; penalties”; ORS 475.860(1)(3)(b) & (4)(b) “Unlawful delivery of marijuana”; ORS 475.864(1)(3) & (4) “Unlawful possession of marijuana”; ORS 475.904, “Unlawful manufacture or delivery of controlled substance within 1,000 feet of school”; ORS 475.906(4), “Penalties for distribution to minors”; SRC 90.020, “Consumption and Sale of Alcohol Prohibited in Certain Places”; SRC 93.010, “Noise Disturbance Prohibited”; SRC 95.040, “Assault and Battery”; SRC 95.120, “Disorderly Conduct”; SRC 95.125, “Urinating or Defecating in Public”; SRC 95.160, “Firearms; Discharge”; SRC 95.330, “Minors Nighttime Curfew”; SRC 95.335, “Minors Daytime Curfew”; SRC 95.550, “Trespass”; SRC 95.580, “Littering Public Places”; SRC 95.610, “Prohibited Graffiti”; SRC 95.700, “Pedestrian Interference”; SRC 95.710, “Sports Activity Prohibited in Certain Areas”; SRC 96.220, “Public Indecency”; SRC 96.300, “Prohibited Touching”; SRC 96.400, “Prohibited Prostitution Conduct”; or SRC 97.080, “Intimidation.” (Ord No. 74-07)

95.736. North Salem Crime Prevention District Created.

(a) The geographic area bounded on the west by the west curb line of Front Street NE, on the south by the south curb line of Market Street NE, on the east, the west side of the Union Pacific right of way between Market Street NE to the intersection with Silverton Road NE, continuing with the west curb line of Silverton Road NE to the east curb line of Hawthorne Avenue NE, continuing north to Hyacinth Street NE, on the north, the north curb line of Hyacinth Street NE to the Salem Parkway, bounded by the north/west curb line of the Salem Parkway, to the north curb line of Tryon Street NE is hereby designated as the North Salem Crime Prevention District.

(b) An enumerated offense in the North Salem Crime Prevention District means any of the following felonies, misdemeanors, violations or infractions, unless the offense was committed entirely within a private residence:

(1) **Felonies:** ORS 161.405(1)(2)(b)-(c), "Attempt," if the crime is an enumerated offense; ORS 161.450(1)(2)(b)-(c), "Conspiracy," if the crime is an enumerated offense; ORS 163.425, "Sexual abuse in the second degree"; ORS 163.427, "Sexual abuse in the first degree"; ORS 163.465(1) & (2)(b), "Public indecency"; ORS 167.012, "Promoting prostitution"; ORS 167.017, "Compelling prostitution"; ORS 475.840(1)(a)-(c), (2)(a)-(c) & (3)(a), "Prohibited acts generally; penalties"; ORS 475.850, "Unlawful delivery of heroin"; ORS 475.852, "Unlawful delivery of heroin within 1,000 feet of school"; ORS 475.854, "Unlawful possession of heroin"; ORS 475.860(1),(2) & (4)(a) "Unlawful delivery of marijuana"; ORS 475.862, "Unlawful delivery of marijuana within 1,000 feet of school"; ORS 475.864(1)(2) "Unlawful possession of marijuana"; ORS 475.870, "Unlawful delivery of 3,4-methylenedioxymethamphetamine"; ORS 475.872, "Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school"; ORS 475.874, "Unlawful

possession of 3,4-methylenedioxymethamphetamine"; ORS 475.880 "Unlawful delivery of cocaine"; ORS 475.882, "Unlawful delivery of cocaine within 1,000 feet of school"; ORS 475.884, "Unlawful possession of cocaine"; ORS 475.890, "Unlawful delivery of methamphetamine"; ORS 475.892, "Unlawful delivery of methamphetamine within 1,000 feet of school"; ORS 475.894, "Unlawful possession of methamphetamine"; ORS 475.904, "Unlawful manufacture or delivery of controlled substance within 1,000 feet of school"; ORS 475.906(1) & (2), "Penalties for distribution to minors."

(2) **"Class A" Misdemeanors:** ORS 161.405(1)(2)(d), "Attempt," if the crime is an enumerated offense; ORS 450(1)(2)(d), "Conspiracy," if the crime is an enumerated offense; ORS 163.435, "Contributing to the sexual delinquency of a minor"; ORS 163.465(1)(2)(a), "Public indecency"; ORS 164.255, "Criminal trespass in the first degree"; ORS 164.265, "Criminal trespass while in possession of firearm"; ORS 163.415, "Sexual abuse in the third degree"; or ORS 167.007, "Prostitution"; ORS 475.840(3)(c), "Prohibited acts generally; penalties"; ORS 475.860(1)(3)(a) "Unlawful delivery of marijuana"; ORS 475.906(3), "Penalties for distribution to minors."

(3) **"Class B" Misdemeanors, "Class C" Misdemeanors, Violations and Infractions:** ORS 161.405(1)(2)(e)-(g), "Attempt," if the crime is an enumerated offense; ORS 163.445, "Sexual misconduct"; ORS 164.245, "Criminal Trespass in the second degree"; ORS 475.840(1)(d)-(e), (2)(d)-(e) & (3)(d)-(e), "Prohibited acts generally; penalties"; ORS 475.860(1)(3)(b) & (4)(b) "Unlawful delivery of marijuana"; ORS 475.864(1)(3) & (4) "Unlawful possession of marijuana"; ORS 475.904, "Unlawful manufacture or delivery of controlled substance within 1,000 feet of school"; ORS 475.906(4), "Penalties for distribution to minors"; SRC 95.550, "Trespass"; SRC 96.220, "Public Indecency"; SRC 96.300, "Prohibited Touching"; or SRC 96.400, "Prohibited Prostitution Conduct." (Ord No. 74-07)

95.740. Civil Exclusion.

(a) Any person arrested and either cited to appear in court for charging or lodged in jail for presentation to a judicial officer for charging, based upon probable cause to believe that the person has committed an enumerated offense within a crime prevention district shall be prohibited from being present on pedestrian ways or public ways within the district for any purpose, except as allowed by a variance granted pursuant to SRC 97.750. If the enumerated offense is a “Class B” misdemeanor, “Class C” misdemeanor, violation or infraction, the period of exclusion shall be thirty days; if one or more of the enumerated offenses are felonies or “Class A” misdemeanors, the period of exclusion shall be ninety days. If the enumerated offense was a felony or a “Class A” misdemeanor, the period of exclusion shall be extended by a period of one year, effective upon date of conviction.

(b) The exclusion notice shall be issued by the enforcement officer at the time the person is arrested or cited for the commission of the enumerated offense. The exclusion notice shall be in writing, and shall specify the enumerated offenses, the geographical extent of exclusion, the date exclusion takes effect, the procedure for filing an appeal, the availability of a variance, and the extension of the period of exclusion by an additional one year period upon conviction, if the enumerated offense was a felony or “Class A” misdemeanor. The period of exclusion shall commence upon the issuance of the notice of exclusion, but shall be stayed upon the filing of a notice of appeal under SRC 95.770(a) which stay shall remain in place until the hearings officer issues a decision upon the appeal under SRC 95.770(f).

(c) Any person who is issued an additional exclusion notice within six months of the expiration of any prior notice shall have an additional ninety day period of exclusion added onto the period of the additional notice. (Ord No. 16-2003; Ord No. 74-07; Ord No. 111-07)

95.750. Variances from Exclusion.

(a) Notwithstanding SRC 95.740, the Chief of Police, or the Chief’s designee, may grant a

variance to an excluded person at any time during the period of exclusion, upon a showing by the excluded person of a plausible need to engage in one of the following:

(1) To travel to and from a scheduled meeting with an attorney or scheduled meetings with criminal justice personnel; to and from obligations performed in compliance with an order of the court or a justice agency; and to and from an administrative or judicial hearing to which the person is a party;

(2) To travel to and from a public or private establishment located in the crime prevention district to obtain goods or services not otherwise reasonably available outside the district to satisfy the essential needs of the person. As used in this paragraph, “essential needs” means food, physical care, and medical attention;

(3) To travel to and from the person’s place of employment;

(4) To travel to and from a government agency, private non-profit corporation, or charity to obtain social services needed for the health or well-being of the person, and which are provided pursuant to written rules and regulations prohibiting unlawful use or possession of controlled substances;

(5) To travel to and from an educational facility to enroll as a student or to attend classes;

(6) To travel to and from a religious institution for the purposes of exercising the person’s right to worship;

(7) To travel to and from the person’s permanent place of residence for any purpose specified in paragraphs (1)-(6) of this section, or to travel to and from the residence of the person or any member of the person’s immediate family. For the purposes of this paragraph, “immediate family” means the person’s parents, in-laws, stepparents, siblings, grandparents, children, or grandchildren.

(b) A request for a variance shall be in writing, shall state the purpose for which the variance is sought, and the period of time during which the variance is requested to be effective. If granted,

the variance shall allow relief from exclusion only for travel to and from specified locations, activities and events, or for presence at specified locations, activities and events, within the crime prevention district. The variance shall be in writing, shall clearly state the terms of the variance, including that travel within, or presence in, the crime prevention district is allowed only in accordance with the terms specified in the variance. The variance must be carried by the excluded person while within the crime prevention district in order to be effective, and shall be presented to any enforcement officer upon request.

(c) A person who is present on a pedestrian way or public way pursuant to a variance shall travel by the shortest direct route to and from the locations specified in subsection (a) of this section, and, if stopped by an enforcement officer, has the burden to demonstrate, by clear and convincing evidence, that the person is traveling to and from one of the locations for the purposes specified in the variance.

(d) A variance may be revoked if:

(1) The request for the variance contained false information;

(2) There is probable cause to believe the excluded person has committed another enumerated offense within the crime prevention district; or

(3) Circumstances upon which the variance was granted no longer exist.

(e) Refusal to issue a variance or revocation of a variance may be appealed to the hearings officer, as provided in SRC 97.770. A variance shall become effective upon issuance; a revocation of a variance shall become effective upon the fifth business day after the date of the mailing of notice of revocation to the excluded person. (Ord No. 16-2003; Ord No. 74-07)

95.760. Violation of Exclusion Notice. Any person to whom an exclusion notice has been issued and who is present in a crime prevention district in violation of the notice or the terms of a variance issued pursuant to SRC 95.750 is subject to immediate arrest for criminal trespass under SRC 95.550(a) or ORS 164.245, and shall have the exclusion extended for an additional period of thirty days. (Ord No.16-2003; Ord No. 30-2003; Ord No. 74-07)

95.770. Appeals.

(a) A person who has been issued an exclusion notice, who has had the period of exclusion extended, who has been refused a request for a variance, or who has had a variance revoked, may appeal the action or decision by filing a written request with the city recorder, within fifteen business days after receipt of notice of the action or decision, setting forth the name and address of the applicant and the reasons why the notice or extension should be rescinded, the variance granted, or the revocation reversed. Failure to file an appeal within such fifteen day period shall be a waiver of all rights to review the action or decision, and any such appeal shall be dismissed by the hearings officer. The name and address set forth in the request shall be deemed conclusively correct, and mailing to the person at such address, by first class mail, shall be deemed delivery three days after the date of mailing. Failure of the person to actually receive a notice of hearing or the hearings officer's decision if mailed to the address set forth in the request shall not in any way invalidate or otherwise affect the validity of any action or decision.

(b) If a request for an appeal is filed, an exclusion notice, extension of exclusion period or revocation of a variance shall be subject to a stay until such time as the hearings officer has issued a final decision upholding or rescinding the action or decision.

(c) The request shall be accompanied by an appeal fee, in an amount established by resolution of the City Council. Except as provided in subsection (g) of this section, the appeal fee is non refundable.

(d) Unless the appellant and the city agree to a longer period, an appeal shall be heard by a hearings officer within ten business days of the filing of the request. At least five business days prior to the hearing, the city shall mail notice of the time and location of the hearing to the

appellant at the address set forth on the request.

(e) The hearings officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the hearings officer deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel. The city has the burden of proof to demonstrate, by a preponderance of the evidence, that the issuance of the exclusion notice is based upon the requisite enumerated offenses by the appellant, that extension of the exclusion notice is based upon the appellant's presence in a crime prevention district in violation of SRC 95.760, or that the grounds for revocation of a variance exist. The appellant has the burden of proof to demonstrate, by a preponderance of the evidence that the ground for issuance of a variance exist.

(f) The hearings officer shall issue a written decision within ten business days of the hearing date. A copy of the decision shall be mailed to the person's address as set forth on the request, and shall be deemed effective upon actual receipt, or three days after mailing, whichever is sooner. If issuance of an exclusion notice, extension of period of exclusion, or revocation of variance is upheld, a period of exclusion shall commence immediately upon the effective date of the decision.

(g) The decision of the hearings officer is final, and may include a determination that the appeal fee be refunded to the appellant upon a finding that the issuance of the exclusion notice, an extension thereof, the refusal to issue a variance, or the revocation thereof, was not grounded in law or fact. Appeals from a decision of the hearings officer shall be to circuit court by writ of review, and not otherwise. (Ord No. 16-2003; Ord No. 74-07)