

## GENERAL ORDINANCE NO. 98-1224

AN ORDINANCE DECLARING THE COMMISSION OF CERTAIN  
CRIMINAL OFFENSES ON PLACES OR BUSINESSES WITHIN THE  
CITY OF THE DALLES AS PUBLIC NUISANCES, AND  
PROVIDING FOR ABATEMENT OF SUCH NUISANCES

THE COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:

Section I: Definitions. As used in this ordinance, except where the context indicates otherwise, the following terms shall mean:

- A. City. The City of The Dalles.
- B. Person. A natural person, firm, partnership, association or corporation.
- C. Person in charge of property. An agent, occupant, lessee, contract purchaser or other person having possession or control of property.
- D. Police Chief. The duly appointed police chief of the City or authorized designee.

Section 2: Offenses Constituting Nuisances. It is a public nuisance for any person in charge of property to permit, or any person to cause to exist, any place or business where patrons, employees, residents, guests, visitors, or occupants engage in a pattern of behavior in the neighborhood involving three or more instances of the commission of any of the following listed offenses:

- A. Drinking in Public places, General Ordinance No. 93-1175, Section 2.
- B. Unreasonable Noise, General Ordinance No. 93-1175, Section 3.
- C. Assault, ORS 163.160, 163.165, 163.175, or 163.185.
- D. Sexual Abuse, ORS 163.415, 163.425, or 163.427.
- E. Public Indecency, ORS 163.465.
- F. Criminal Trespass, ORS 164.245 or 164.255.
- G. Criminal Mischief, ORS 164.345, 164.354, or 164.365.
- H. Disorderly Conduct, ORS 166.025.

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- I. Harassment, ORS 166.065.
- J. Minor in Possession of Alcohol, ORS 471.430.
- K. Unlawful Manufacture, Delivery or Possession of a Controlled Substance, ORS 475.992.
- L. Theft by Receiving, ORS 164.095.

Section 3. Establishment of Pattern of Behavior. For purposes of this ordinance, “pattern of behavior in the neighborhood” means one or more patrons, employees, residents, guests, visitors, or occupants of the place or the business has been arrested or issued a citation for violation of three or more of any of the offenses specified in Section 2, and which have occurred over any six month period at the place or the business or within 300 feet thereof. It is the intent of this ordinance that a “pattern of behavior in the neighborhood” can include situations where there has been three or more violations of the same offense, or three or more separate violations of different offenses.

Section 4. Violations. Property within the City which is determined to create a public nuisance is in violation of this ordinance and shall be subject to the remedies set forth herein. Any person in charge of such property who permits the property to create a public nuisance is in violation of this ordinance and shall be subject to the remedies set forth herein.

Section 5. Abatement Procedure. When the Police Chief receives documentation establishing a pattern of behavior, as defined in Section 3, has occurred upon property such that the property is creating a public nuisance, the Police Chief shall take the following action:

- A. Notify the person in charge of the property that the property is creating a public nuisance. The notice shall contain the following information:
  - 1. The street address or legal description sufficient for identification of the property.
  - 2. A statement that the Police Chief has determined the property is creating a public nuisance, with a concise description of the activities supporting the determination.
  - 3. A demand that the person in charge respond within 14 days to the Police Chief and propose a course of action that the Police Chief agrees will abate the prohibited activities giving rise to the violation.
- B. Service of the notice shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge of the property at the address of the property alleged to be creating a public nuisance, or at any other place which is likely to give

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the person in charge of the property notice of the determination by the Police Chief.

C. A copy of the notice shall be served on the owner at the address shown on the tax rolls of the county in which the property is located, and the occupant, at the address of the property, if these persons are different from the person in charge of the property, and shall be made either personally or by first class mail, postage prepaid. A copy of the notice shall also be posted at the property.

D. The failure of any person to receive notice that the property may be creating a public nuisance shall not invalidate or otherwise affect the proceedings under this ordinance.

B. If, after the notification, but prior to the commencement of legal proceedings by the City pursuant to Sections of this ordinance, a person in charge of the property stipulates to the Police Chief the person will pursue a course of action the parties agree will abate the prohibited activities giving rise to the violation, the Police Chief may agree to postpone legal proceedings for a period of not less than 10 nor more than 30 days. If the agreed course of action does not result in the abatement of the prohibited activity or if no agreement concerning abatement is reached within 30 days, the Police Chief may refer the matter to the City Attorney to commence a legal proceeding to abate the nuisance.

F. Concurrent with the notification procedures set forth above, the Police Chief shall send copies of the notice, as well as any other documentation which supports legal proceedings against the property, to the City Attorney.

Section 6. Burden of Proof Defenses: Mitigation of Civil Penalty. In an action for property creating a public nuisance, the City shall have the initial burden of proof to show by a preponderance of the evidence the property is creating a public nuisance.

A. It is a defense to an action under this ordinance that the person in charge of the property at all material times, could not, in the exercise of reasonable care or diligence, determine the property was creating a public nuisance, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination the property created a public nuisance.

B. In establishing the amount of any civil penalty imposed, the court may consider any of the following factors and shall cite those found applicable:

1. The actions taken by the person in charge of the property to mitigate or correct the prohibited activities on the property;
2. The length of time that any prohibited activity has been going on and whether the problem at the property was repeated or continuous;
3. The cost to the City of investigating and correcting or attempting to

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correct the prohibited activities; and

4. Any other factor deemed by the court to be relevant.

Section 7. Emergency Closures. Any emergency closure proceeding initiated under this section shall be based upon evidence showing that prohibited activities have occurred on the property, and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of emergency closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders. In such an event the notice procedures set forth in Section 5 need not be complied with.

Section 8. Commencement of Actions: Remedies. The City Attorney may commence legal proceedings to enjoin or abate property which is creating a public nuisance, and to seek closure of the property, the imposition of civil penalties against any or all of the persons in charge of the property, and any other relief deemed appropriate.

A. If after commencement but prior to the trial of an action or suit brought by the City pursuant to this ordinance, a person in charge of the property stipulates with the City that he or she will pursue a course of action the parties agree will abate the prohibited activities giving rise to the violation, the City may agree to stay proceedings for a period of not less than 10 nor more than 60 days. The person in charge of the property or the City may thereafter petition the court for additional like periods of time as may be necessary to complete the action to abate the prohibited activities. However, if the City reasonably believes the person in charge of the property is not diligently pursuing the action necessary to abate the prohibited activities, the City may apply to the court for relief from the stay and may seek relief deemed appropriate.

B. If the court determines property to be creating a public nuisance, the court shall order the property be closed and secured against all access, use and occupancy for a period of not less than three months, nor more than one year. The court shall retain jurisdiction during any period of closure. The person in charge of the property may petition the court for an order reducing the period of closure if the person in charge of the property and the City stipulate the nuisance has been and will continue to be abated.

C. If a property is found to be in violation of this ordinance, the person in charge of the property is subject to a civil penalty of up to \$100.00 per day for each day prohibited activities occur on the property, following the giving of notice under Section 5.

Section 9. Enforcement. The court may authorize the City to physically secure the property against all access, use or occupancy if the person in charge of the property fails to do so within the time specified by the court. If the City is authorized to secure the property, all costs reasonably incurred by the City to physically secure the property shall be paid to the City by the person in charge of the property, and may be included in the City's money judgement. As used in this section, "costs" mean those costs actually incurred by the City for physically securing the property, as well as tenant relocation costs pursuant to subsection (D) of this section.

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A. The City shall prepare a statement of the costs expended for physically securing the property and submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by ORCP 68, the statement of costs shall be included in the City's money judgement.

B. Judgements imposed under this section shall bear interest at the rate of nine percent per annum from the date the judgement is entered.

C. Any person who is assessed the cost of physically securing the property by the court shall be personally liable for the payment of costs to the City.

D. The person in charge of the property shall pay reasonable relocation costs of a tenant, as defined in chapter 90 of the Oregon Revised Statutes, if, without actual notice, the tenant moved onto the property after either:

1. A person in charge of the property received notice from the Police Chief of the determination pursuant to Section 5; or

2. A person in charge of the property received notice of an action brought pursuant to Section 8.

Section 10. Attorney Fees. In any action brought pursuant to Section 8, the court may award attorney fees to the prevailing party.

Adopted by the City Council and approved by the Mayor July 13, 1998.