

Chapter 14B.120

TIME, PLACE AND MANNER REGULATION OF ESTABLISHMENTS THAT SELL AND SERVE ALCOHOLIC BEVERAGES

(New Chapter added by Ordinance No.
178201, effective March 19, 2004.)

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14B.120.010 Purpose.

The Oregon Legislature has authorized Oregon cities and counties to adopt reasonable time, place and manner regulations of the nuisance aspects of establishments serving alcoholic beverages, ORS 471.164. In adopting the provisions of this Chapter, the City Council's intent is to provide for reasonable time, place and manner regulations of the nuisance aspects of those establishments that serve alcoholic beverages where adverse effects occur with regard to the surrounding community. By requiring that the nuisance violations be brought before the Code Hearings Officer, the City Council's intent is that there will be specific findings made regarding the occurrence of adverse effects. The City Council also intends that the remedies imposed by the Code Hearings Officer under the authority of this Chapter will solely address the time, place and manner aspects of the nuisance activities. In addition, to create the most effective program, this Chapter establishes the Responsible Neighbor Program. The purpose of the Responsible Neighbor Program is to encourage the owners of establishments serving alcoholic beverages to act to ensure that the operation of their establishment does not create nuisances and thereby negatively impact neighborhood livability.

14B.120.020 Definitions.

As used in this Chapter, unless the context requires otherwise:

- A. "Alcoholic Beverage" means any liquid or solid containing more than one-half of one-percent alcohol and capable of being consumed by a human being.

- B. "Director" means the Director of the Office of Neighborhood Involvement, or the Director's designee.
- C. "Chief of Police" means the Chief of Police of the Portland Police Bureau.
- D. "Licensee" means any person holding a license issued by the Oregon Liquor Control Commission.
- E. "Establishment" means any location licensed under ORS Chapter 471 and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. "Establishment" also includes areas outside of a building that the Oregon Liquor Control Commission has specifically approved for serving alcoholic beverages.
- F. "Nuisance activity" means any of the following:
 1. Operation of sound producing equipment, as prohibited by City Code Section 14A.30.020.
 2. Disorderly conduct as defined in ORS 166.025 (2003).
 3. Offensive littering as defined in ORS 164.805 (2003).
 4. Drinking on public rights of way, unless officially authorized, as prohibited by City Code Section 14A.50.010.
 5. Interference with vehicle ingress and egress as prohibited by City Code Section 14A.50.035.
 6. Alcoholic beverage violations in parks, as prohibited by City Code Section 20.12.040, where the violation relates to a specific licensee.
 7. Discharge of a firearm at the establishment, as prohibited by City Code Section 14.A.60.020.
 8. **Illegal Drug activity as defined by ORS Chapter 475.840 sections (1) – (4).**
 9. **Unlawful Prostitution Procurement Activities or loitering for the purpose of prostitution as defined in City Code s 14A.40.040 or 14A.40.050 or Illegal prostitution as defined in ORS 167.007.**
 10. **Criminal homicide as defined in ORS 163.005(2) and 163.095-163.149**
 11. **Assault by means of a weapon or motor vehicle as defined in ORS 163.160(1)(b), 163.165(1)(a), 163.165(1)(c), 163.175(b)-(c), 163.185(a) and 163.185(d).**

12. Assault that causes serious physical injury as defined in ORS 163.165(b) and 163.175(a).
13. Recklessly endangering another person as defined in ORS 163.195.
14. Any felony sexual offense in the first degree as defined in ORS 163.375-163.427.
15. Unlawful Use of a Weapon as defined in ORS 166.220

G. "Serve" or "serving" means to furnish, provide or supply alcoholic beverages to patrons or customers.

14B.120.025 Authority to Adopt Rules, Procedures and Forms.

The Director and Chief of Police are authorized to adopt rules, procedures and forms to implement the provisions of this Chapter.

14B.120.030 Nuisance Activity Violations.

It shall be a violation of this Chapter if

- a. during any continuous ~~thirty (30)~~ **sixty (60)** day period, any combination of three or more nuisance activities as defined in 14B.120.030 (F) (1)-(9) occurs that is related to or arising out of an establishment that serves alcoholic beverages.
- b. One or more nuisance activities as defined in 14B.120.030 (F) (10)-(16) occur that are related to or arising out of an establishment that serves alcoholic beverages.

14B.120.040 Notice.

- A. The Director and the Chief of Police shall appoint a Liquor License Team to review and substantiate the occurrences of nuisance activities.
- B. If the Director or the Chief of Police determines that a nuisance activity has occurred at an establishment, the Director or the Chief of Police will send a written notice to the licensee. The notice shall contain a description of the nuisance activity, the date and the time of its occurrence.
- C. Upon determining that there is reasonable belief that a violation of this Chapter has occurred as provided under ~~three nuisance activities have occurred in violation of~~ Section 14B.120.030, the Director or the Chief of Police shall send written notice to the licensee. The written notice shall contain at least the following information:
 1. The street address or legal description of the establishment, as reflected in the records of the Oregon Liquor Control Commission.

2. A concise statement setting forth the date and time of nuisance activities, and the possible remedies that may be imposed under this Chapter by the Code Hearings Officer; and,
 3. A request that the licensee provide a written response within ten (10) business days either disputing the occurrence of the nuisance activities or providing specific proposals to abate the nuisance activities and preventing such nuisance activities from reoccurring.
- D.** If the licensee's response does not satisfy the Director or the Chief of Police's concerns, they may attempt to develop a nuisance abatement plan with the licensee. The Director or the Chief of Police may file a complaint with the Code Hearings Officer as provided under Section 14B.120.060 if:
1. The licensee refuses to actively and meaningfully participate in the process of developing a nuisance abatement plan; or,
 2. The effort by the Director or the Chief of Police to develop a nuisance abatement plan with the licensee fails.

14B.120.050 Nuisance Abatement Plan.

- A.** If the licensee responds to the Director or the Chief of Police within ten (10) business days of the date of the notice, with a proposed course of action for abating the nuisance activities, the Director or the Chief of Police shall review the proposal. If the Director or the Chief of Police determines that the proposal will reasonably abate the nuisance activities, the Director or the Chief of Police and the licensee shall enter into an enforceable agreement, specifying the terms and conditions of the abatement plan.
- B.** At a minimum, the agreement shall identify the nature of the nuisance activities, the specific steps the licensee will undertake to abate the nuisance activity and the related resources the licensee will commit to the abatement, if applicable, and a mechanism for the Director or the Chief of Police to monitor compliance with the plan.
- C.** Any such agreement shall be executed by the licensee and the Director or the Chief of Police within thirty (30) days of the date of the licensee's written response to the Director or the Chief of Police's notice. The Director or the Chief of Police may, upon request, extend this thirty-day period if it appears that the parties are working diligently to come to agreement.

14B.120.055 Responsible Neighbor Program.

(Amended by Ordinance No. 178898, effective November 24, 2004.) Qualified licensees may request to participate in a Responsible Neighbor Program as administered by the Director.

- A.** The Director shall approve a licensee for participation in the Responsible Neighbor Program, if the licensee meets all of the following qualifications:

1. The licensee is licensed solely for off premises sales; and
 2. The licensee is currently certified for participation in the Responsible Vendor Program provided in ORS 471.344 (2003).
- B.** If any licensee participating in the Responsible Neighbor Program has three (3) nuisance activities in violation of Section 14B.120.030, or fails to comply with any of the qualifications under Subsection 14B.120.030 A., the Director shall issue a written notice to the licensee and initiate a proceeding before the Code Hearings Officer as set out in Chapter 22.03 of the City Code for suspension of the licensee from participation in the Responsible Neighbor Program for a period of one year.
- C.** If a licensee is removed from the Responsible Neighbor Program, any subsequent nuisance activity violations under Section 14B.120.030, the Director or the Chief of Police will follow the processes and remedies as provided in Sections 14B.120.040 through 14B.120.080

14B.120.060 Enforcement.

Upon making a determination that a violation of this Chapter has ~~three or more nuisance activities have~~ occurred as provided under Section 14B.120.030, the Director or the Chief of Police may file a complaint before the Code Hearings Officer to initiate a code enforcement proceeding only if any of the following have first occurred:

- A.** The licensee has failed to submit a timely written response to the Director or the Chief of Police's notice; or
- B.** The licensee fails to propose or enter into an abatement plan that is acceptable to the Director or the Chief of Police; or
- C.** The licensee does not operate the establishment in compliance with the written abatement plan.
- D.** The licensee has been found to be in violation of this Chapter within the proceeding 12 months.

14B.120.070 Hearings.

The initiation and procedures of any code enforcement proceeding to determine whether nuisance activities have occurred as provided in Section 14B.120.030 and to impose remedies under Section 14B.120.080 shall follow the provisions of Chapter 22.03 of the City Code.

14B.120.080 Remedies.

If the Code Hearings Officer determines that a violation has occurred ~~three or more nuisance activities have occurred at an establishment~~, as provided in Section 14B.120.030, the Code Hearings Officer shall make findings regarding the occurrence of the nuisance activities and any related adverse effects. Time, place and manner

abatement remedies imposed by the Code Hearings Officer to address the occurrence of the nuisance activities may include any of the following:

- A.** Limiting the hours or days during which the establishment may operate.
- B.** Requiring the establishment to provide resources to monitor, control and respond to patron behavior at and around the establishment, including but not limited to, hiring adequate security personnel to patrol the establishment.
- C.** Restricting the activities at the establishment to prevent the reoccurrence of nuisance activities, including but not limited to restrictions upon the time and manner in which entertainment is offered.
- E.** Ordering the licensee to undertake other actions reasonably necessary to abate the nuisance activities or mitigate the effects thereof, including but not limited to, modifying the establishment to include noise insulation to prevent and abate nuisance activities related to noise.