

1 **ORDINANCE BILL NO. 22-17**

2 AN ORDINANCE RELATING TO PROMOTION AND PRESERVATION OF SAFE
3 SIDEWALKS; AMENDING SRC 95.720, 95.730, 95.740; AMENDING AND
4 RENUMBERING 95.735, 95.736, 95.750, 95.760; RENUMBERING 95.770; CREATING
5 95.800, 95.830 AND 95.990.

6 *The City of Salem ordains as follows:*

7 **Section 1. Findings.**

- 8 (a) The City of Salem is a geographically diverse city, largely comprised of residential,
9 commercial, and industrial areas.
- 10 (b) Maintaining pedestrian and authorized commercial activity on public sidewalks is
11 essential to public safety and welfare, thriving neighborhoods, and economic vitality
12 within the city.
- 13 (c) Sitting or lying down on a public sidewalk, or leaving personal property unattended on a
14 public sidewalk, is not the ordinary, customary, or intended use of a public sidewalk.
- 15 (d) The need to maintain pedestrian and commercial traffic is greatest during the customary
16 hours of operation of businesses, shops, restaurants, and other public and private
17 enterprises, services, and activities within the city, when public sidewalks are in greatest
18 use, and when city residents are most likely to use their neighborhood sidewalks.
- 19 (e) Persons who sit or lie down on public sidewalks, or who leave personal property
20 unattended on public sidewalks, during customary business hours threaten the safety and
21 welfare of all pedestrians, with the greatest impact on those pedestrians who are elderly,
22 young children, or who have physical and mental disabilities.
- 23 (f) Persons who sit or lie down on public sidewalks, or who leave personal property
24 unattended on public sidewalks, deter city residents and visitors from patronizing local
25 shops, restaurants, and businesses, and enterprises, and from utilizing public and private
26 services, and activities within the city, and deter people from using the sidewalks in their
27 neighborhoods, with the greatest impact occurring during customary business hours.
- 28 (g) Business areas and neighborhoods become detrimental to pedestrian safety and welfare
29 and economic vitality when persons sit or lie down on public sidewalks, or leave
30 personal property unattended on public sidewalks, with the greatest impact occurring
during customary business hours. This behavior causes a cycle of decline as residents

1 and tourists go elsewhere to walk, meet, shop, dine, and access other services and
2 activities, and residents become intimidated from using the public sidewalks in their
3 own neighborhoods.

- 4 **(h)** Sitting or lying down, or leaving personal property unattended, is an incompatible and
5 detrimental use of the public sidewalks in all areas of the city.
- 6 **(i)** The people of the City of Salem promote policies that preserve the right to enjoy public
7 spaces and to traverse freely, while protecting free-speech rights, as well as other safe
8 activity consistent with city ordinances and permitting requirements.
- 9 **(j)** The prohibitions against sitting or lying down on public sidewalks, or leaving personal
10 property unattended on public sidewalks, contained in this ordinance leaves fully intact
11 the right to speak, protest, or engage in other lawful activity on any public sidewalk
12 consistent with city ordinances and permitting requirements.
- 13 **(k)** The prohibition against sitting or lying down on public sidewalks, contained in this
14 ordinance, applies only to public sidewalks. There are numerous places within the city
15 where the restrictions of this ordinance do not apply, including private property, public
16 benches, private seating areas of sidewalk cafés, non-sidewalk areas of public parks,
17 public plazas, and other non-sidewalk common areas open to the public.
- 18 **(l)** The prohibition against sitting or lying down on public sidewalks contained in this
19 ordinance contains exceptions for medical emergencies, persons in wheelchairs, and
20 permitted activities, among others.
- 21 **(m)** The City of Salem desires to help persons in need to obtain services. In order to provide
22 persons sitting or lying down on public sidewalks the opportunity to obtain referrals to
23 appropriate service entities, a peace officer may not issue a citation without first warning
24 the person that sitting or lying down on a public sidewalk during certain hours is
25 unlawful.
- 26 **(n)** The City of Salem desires to provide persons an opportunity to remove their personal
27 property from public sidewalks on their own. Prior to removing unattended personal
28 property from a public sidewalk in accordance with the provisions of this ordinance,
29 advance notice is to be given unless the property poses an immediate threat to public
30 health, safety and welfare.

1 (o) “Campsites” have become a frequent occurrence throughout the City, including on public
2 sidewalks, public property, and public rights-of-way. These campsites are unsafe and
3 unhealthy for the people living in them, and have a detrimental effect on the safety and
4 welfare of the residents and visitors of the City of Salem.

5 (p) The City of Salem is a compassionate city, and desires to help persons experiencing
6 residential instability or homelessness, to transition to safe and permanent housing.
7 However, allowing camping on our public sidewalks, in our neighborhoods, and in other
8 areas of our city does not help people transition to housing and has a detrimental effect on
9 public safety and welfare.

10 (q) Maintaining accessible sidewalks for pedestrian and commercial traffic is an important
11 public safety objective. Blocked and obstructed sidewalks present hazards to pedestrians,
12 and pedestrians should not have to travel in the street to avoid sidewalks blocked or
13 obstructed by a campsite.

14 (r) The placement of tents or other items on public sidewalks, public property, and public
15 rights-of-way, for habitation, is not the ordinary, customary, or intended use of these
16 areas, and is an incompatible and detrimental use of these spaces in all parts of the City.

17 (s) Campsites can also obstruct and delay emergency personnel responding to emergencies.
18 Campsites can obstruct ingress to and egress from businesses, residential buildings, and
19 other establishments and property. Campsites often exhibit the presence of human waste
20 and uncontained food, which poses public health risks.

21 **Section 2.** SRC 95.720 is amended to read:

22 **95.720. Sitting or Lying Down on Public Sidewalks During Certain Hours**

23 **(a) Definitions.** Unless the context specifically requires otherwise, as used in this section, the
24 following words and phrases mean:

25 **(1) “Public Sidewalk”** means the area lying between the street and the abutting property,

26 **(2) “Street”** means any public right-of-way, that is open to the public, used, or intended to be
27 used, by vehicular traffic.

28 **(b) It shall be unlawful for any person to sit or lie down upon a public sidewalk, or upon a**
29 **blanket, chair, stool, or any other object placed upon a public sidewalk, during the hours of**
30 **between 7:00 a.m. and 9:00 p.m.**

(c) The prohibitions in subsection (b) shall not apply to any person:

1 (2) “Campsite” means any place where there is a tent, or any structure consisting of any
2 material with a top or roof or any other upper covering or that is otherwise enclosed by
3 sides, that is of sufficient size for a person to fit underneath or inside while sitting or
4 lying down.

5 (b) It is unlawful for any person to camp in or upon any public sidewalk, public property, or
6 public right of way, unless otherwise specifically authorized by law or by declaration of the
7 Emergency Program Manager in emergency circumstances.

8 (c) Upon finding it to be in the public interest, the City Council may exempt a special event from
9 compliance with this section. The resolution shall specify the period of time and location
10 covered by the exemption.

11 (d) Nothing in this section shall be construed to permit conduct that is prohibited by SRC 95.700
12 “Pedestrian Interference.”

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

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

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

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

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

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

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

28 ~~(g) Pedestrian ways means any sidewalk, plaza, alley, parking structure or parking area, or other~~
29 ~~way designed and regularly used for pedestrian travel, any planter strip or landscaped area~~
30 ~~located adjacent to or contained within such streets, plazas, alleys, or other ways, and includes~~

1 ~~that portion of public rights of way used for the parking of vehicles, but does not include that~~
2 ~~portion of public rights of way regularly and traditionally used for vehicular travel.~~

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

6 ~~(i) Travel means movement by foot on a pedestrian public way, from one point to another,~~
7 ~~without delay other than to obey traffic control devices, or by vehicle on a public way, from one~~
8 ~~point to another without delay other than to obey traffic control devices.~~

9 **Section 4.** SRC 95.735 is amended and renumbered to SRC 95.810.

10 **95.73595.810. Downtown Crime Prevention District Created.**

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

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

18 (1) **Felonies:** ORS 161.405(1)(2)(b)-(c), “Attempt,” if the crime is an enumerated
19 offense; ORS 161.450(1)(2)(b)-(c), “Conspiracy,” if the crime is an enumerated offense;
20 ORS 163.165, “Assault in the third degree”; ORS 163.175, “Assault in the second
21 degree”; ORS 163.185, “Assault in the first degree”; 163.160(1), (3) & (4), “Assault in
22 the fourth degree”; ORS 163.425, “Sexual abuse in the second degree”; ORS 163.427,
23 “Sexual abuse in the first degree”; ORS 163.465(1)(2)(b), “Public indecency”; ORS
24 164.055, “Theft in the first degree”; ORS 164.057, “Aggravated theft in the first degree”;
25 ORS 164.315, “Arson in the second degree”; ORS 164.325, “Arson in the first degree”;
26 ORS 166.165, “Intimidation in the first degree”; ORS 167.012, “Promoting prostitution”;
27 or ORS 167.017, “Compelling prostitution”; ORS 475.752(1)(a)-(c), (2)(a)-(c), (3)(a)-(b),
28 & (6), 475.840(1)(a)-(c), (2)(a)-(c) & (3)(a), “Prohibited acts generally; penalties”; ORS
29 475.850, “Unlawful delivery of heroin”; ORS 475.852, “Unlawful delivery of heroin
30 within 1,000 feet of school”; ORS 475.854, “Unlawful possession of heroin”; ORS
475.860(1) & (4), 475.860(1)(2) & (4)(a) “Unlawful delivery of marijuana”; ORS

1 475.862, “Unlawful delivery of marijuana within 1,000 feet of school”; ORS 475.864(5),
2 (6)(f), & (8)(a), 475.864(1)(2) “Unlawful possession of marijuana”; ORS 475.870,
3 “Unlawful delivery of 3,4 methylenedioxymethamphetamine”; ORS 475.872, “Unlawful
4 delivery of 3,4 methylenedioxymethamphetamine within 1,000 feet of school”; ORS
5 475.874, ”Unlawful possession of 3,4 methylenedioxymethamphetamine”; ORS 475.880
6 “Unlawful delivery of cocaine”; ORS 475.882, “Unlawful delivery of cocaine within
7 1,000 feet of school”; ORS 475.884, “Unlawful possession of cocaine”; ORS 475.890,
8 “Unlawful delivery of methamphetamine”; ORS 475.892, “Unlawful delivery of
9 methamphetamine within 1,000 feet of school”; ORS 475.894, “Unlawful possession of
10 methamphetamine”; ORS 475.904, “Unlawful manufacture or delivery of controlled
11 substance within 1,000 feet of school”; ORS 475.906(1) & (2), “Penalties for distribution
12 to minors.”

13 **(2) “Class A” Misdemeanors:** ORS 161.405(1)(2)(d), “Attempt,” if the crime is an
14 enumerated offense; ORS 161.450(1)(2)(d), “Conspiracy,” if the crime is an enumerated
15 offense; ORS 163.160(1) & (2), “Assault in the fourth ~~forth~~ degree”; ORS 163.190,
16 “Menacing”; ORS 163.435, “Contributing to the sexual delinquency of a minor”; ORS
17 163.465(1) & (2)(a), “Public indecency”; ORS 164.045, “Theft in the second degree”;
18 ORS 164.255, “Criminal trespass in the first degree”; ORS 164.265, “Criminal trespass
19 while in possession of firearm”; ORS 164.335, “Reckless burning”; ORS 163.415,
20 “Sexual abuse in the third degree”; ORS 166.025(1), (2)(b), & (3), “Disorderly conduct
21 in the second degree”; ORS 166.155, 165.155, “Intimidation in the second degree”; ORS
22 166.065(1), (2), (4), (5) & (6), 166.065(1) & (4), “Harassment”; ORS 167.007,
23 “Prostitution”; ORS 475.752(3)(c), 475.840(3)(e), “Prohibited acts generally; penalties”;
24 ORS 475.860(1) & (2), 475.860(1)(3)(a) “Unlawful delivery of marijuana”; ORS
25 475.864(1), (2), (3)(a), (4)(a), (5), (6)(a)-(e), & (7)(a), “Unlawful possession of
26 marijuana”; ORS 475.906(3), “Penalties for distribution to minors.”

27 **(3) “Class B” Misdemeanors, “Class C” Misdemeanors, Violations and Infractions:**
28 ORS 161.405(1)(2)(e)-(g), “Attempt,” if the crime is an enumerated offense; ORS
29 163.445, “Sexual misconduct”; ORS 164.043, “Theft in the third degree”; ORS 164.245,
30 “Criminal Trespass in the second degree”; ORS 164.383, “Unlawfully applying graffiti”;
ORS 164.386, “Unlawfully possessing graffiti implement”; ORS 164.805, Offensive

1 littering”; ORS 166.025(1) & (2)(a), ~~166.025~~, “Disorderly conduct in the second degree”;
2 ORS 166.065(1), (2), (3), ~~166.065(1) & (3)~~, “Harassment”; ORS 167.400, “Tobacco
3 possession by minors”; ORS 167.401(1) & (2), “Tobacco purchase by minors”; ORS
4 471.430(1), “Purchase or possession of liquor by person under 21”; ORS 471.410(2),
5 “Providing liquor to person under 21”; ORS 475.752(1)(d)-(e), (2)(d)-(e), & (3)(d)-(e),
6 475.840(1)(d)-(e), (2)(d)-(e) & (3)(d)-(e), “Prohibited acts generally; penalties”; ORS
7 475.860(1) & (3), ~~475.860(1), & (3), (b) & (4)(b)~~ “Unlawful delivery of marijuana”; ORS
8 475.864(1), (2), (3)(b)-(c), (4)(b), (5), (6), (7)(b)-(c), & (8)(b), ~~475.864(1)(3) & (4)~~
9 “Unlawful possession of marijuana”; ORS 475.904, “Unlawful manufacture or delivery
10 of controlled substance within 1,000 feet of school”; ORS 475.906(4), “Penalties for
11 distribution to minors”; SRC 90.020, “Consumption and Sale of Alcohol Prohibited in
12 Certain Places”; SRC 93.010, “Noise Disturbance Prohibited”; SRC 95.040, “Assault and
13 Battery”; SRC 95.120, “Disorderly Conduct”; SRC 95.125, “Urinating or Defecating in
14 Public”; SRC 95.160, “Firearms; Discharge”; SRC 95.330, “Minors Nighttime Curfew”;
15 SRC 95.335, “Minors Daytime Curfew”; SRC 95.550, “Trespass”; ~~SRC 95.580,~~
16 ~~“Littering Public Places”~~; SRC 95.610, “Prohibited Graffiti”; SRC 95.670, “Sitting or
17 Lying down on Public Sidewalks at Certain Hours”; SRC 95.675, “Camping Prohibited
18 on Public Property and Public Rights of Way”; SRC 95.700, “Pedestrian Interference”;
19 SRC 95.710, “Sports Activity Prohibited in Certain Areas”; SRC 96.220, “Public
20 Indecency”; SRC 96.300, “Prohibited Touching”; SRC 96.400, “Prohibited Prostitution
21 Conduct”; or SRC 97.080, “Intimidation.”

22 **Section 5.** SRC 95.736 is amended and renumbered to SRC 95.820.

23 **95.73695.820. North Salem Crime Prevention District Created.**

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

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

4 (1) **Felonies:** ORS 161.405(1)(2)(b)-(c), “Attempt,” if the crime is an enumerated
5 offense; ORS 161.450(1)(2)(b)-(c), “Conspiracy,” if the crime is an enumerated offense;
6 ORS 163.425, “Sexual abuse in the second degree”; ORS 163.427, “Sexual abuse in the
7 first degree”; ORS 163.465(1) & (2)(b), “Public indecency”; ORS 167.012, “Promoting
8 prostitution”; ORS 167.017, “Compelling prostitution”; ORS 475.752(1)(a)-(c), (2)(a)-
9 (c), (3)(a)-(b), & (6), 475.840(1)(a)-(e), (2)(a)-(e) & (3)(a), “Prohibited acts generally;
10 penalties”; ORS 475.850, “Unlawful delivery of heroin”; ORS 475.852, “Unlawful
11 delivery of heroin within 1,000 feet of school”; ORS 475.854, “Unlawful possession of
12 heroin”; ORS 475.860(1) & (4), 475.860(1),(2) & (4)(a) “Unlawful delivery of
13 marijuana”; ORS 475.862, “Unlawful delivery of marijuana within 1,000 feet of school”;
14 ORS 475.864(5), (6)(f), & (8)(a), 475.864(1)(2) “Unlawful possession of marijuana”;
15 ORS 475.870, “Unlawful delivery of 3,4-methylenedioxymethamphetamine”; ORS
16 475.872, “Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet
17 of school”; ORS 475.874, ”Unlawful possession of
18 3,4-methylenedioxymethamphetamine”; ORS 475.880 “Unlawful delivery of cocaine”;
19 ORS 475.882, “Unlawful delivery of cocaine within 1,000 feet of school”; ORS 475.884,
20 “Unlawful possession of cocaine”; ORS 475.890, “Unlawful delivery of
21 methamphetamine”; ORS 475.892, “Unlawful delivery of methamphetamine within
22 1,000 feet of school”; ORS 475.894, “Unlawful possession of methamphetamine”; ORS
23 475.904, “Unlawful manufacture or delivery of controlled substance within 1,000 feet of
24 school”; ORS 475.906(1) & (2), “Penalties for distribution to minors.”

25 (2) **“Class A” Misdemeanors:** ORS 161.405(1)(2)(d), “Attempt,” if the crime is an
26 enumerated offense; ORS 161.450(1)(2)(d), “Conspiracy,” if the crime is an enumerated
27 offense; ORS 163.435, “Contributing to the sexual delinquency of a minor”; ORS
28 163.465(1) & (2)(a), “Public indecency”; ORS 164.255, “Criminal trespass in the first
29 degree”; ORS 164.265, “Criminal trespass while in possession of firearm”; ORS 163.415,
30 “Sexual abuse in the third degree”; or ORS 167.007, “Prostitution”; ORS 475.752(3)(c),
475.840(3)(e), “Prohibited acts generally; penalties”; ORS 475.860(1) & (2),

1 475.860(1)(3)(a) “Unlawful delivery of marijuana”; ORS 475.864(1), (2), (3)(a), (4)(a),
2 (5), (6)(a)-(e), & (7)(a), “Unlawful possession of marijuana”; ORS 475.906(3), “Penalties
3 for distribution to minors.”

4 **(3) “Class B” Misdemeanors, “Class C” Misdemeanors, Violations and Infractions:**
5 ORS 161.405(1)(2)(e)-(g), “Attempt,” if the crime is an enumerated offense; ORS
6 163.445, “Sexual misconduct”; ORS 164.245, “Criminal Trespass in the second degree”;
7 ORS ~~475.752(1)(d)-(e), (2)(d)-(e), & (3)(d)-(e), 475.840(1)(d)-(e), (2)(d)-(e) & (3)(d)-(e),~~
8 “Prohibited acts generally; penalties”; ORS ~~475.860(1) & (3), 475.860(1)(3)(b) & (4)(b)~~
9 “Unlawful delivery of marijuana”; ORS ~~475.864(1), (2), (3)(b)-(c), (4)(b), (5), (6), (7)(b)-(c), &~~
10 ~~(8)(b), 475.864(1)(3) & (4)~~ “Unlawful possession of marijuana”; ORS 475.904, “Unlawful
11 manufacture or delivery of controlled substance within 1,000 feet of school”; ORS 475.906(4),
12 “Penalties for distribution to minors”; SRC 95.550, “Trespass”; SRC 96.220, “Public
13 Indecency”; SRC 96.300, “Prohibited Touching”; or SRC 96.400, “Prohibited Prostitution
14 Conduct.”; SRC 95.670, “Sitting or Lying down on Public Sidewalks at Certain Hours”; SRC
15 95.675. “Camping Prohibited on Public Property and Public Rights of Way”

16 **Section 6.** SRC 95.740 is amended to read:

17 **SRC 95.740 Unattended Personal Property on Public Sidewalks Prohibited**

18 **(a) Definitions.** Unless the context specifically requires otherwise, as used in this section, the
19 following words and phrases mean:

- 20 (1) “Public Sidewalk” means the area lying between the street and the abutting property.
21 (2) “Personal property” means tangible items, other than signs, which are reasonably
22 recognizable as belonging to individual persons and which have apparent utility or value.
23 (3) “Street” means any public right-of-way, that is open to the public, used, or intended to be
24 used, by vehicular traffic.

25 **(b) It is unlawful for any person to knowingly leave personal property unattended on a public**
26 **sidewalk during the hours of between 7:00 a.m. and 9:00 p.m.**

27 **(c) The prohibitions of subsection (b) do not apply to:**

- 28 (1) Personal property left unattended on a public sidewalk for less than two hours, that is
29 actively being loaded or unloaded; or,
30 (2) Any person performing a City approved or permitted activity.

1 (d) Personal property left unattended on a public sidewalk in violation of this section may be
2 removed by the City if:

3 (1) The property poses an immediate threat to public health, safety or welfare, or;

4 (2) The property has been posted with a notice written in English and Spanish at least
5 twenty-four hours in advance. The notice shall contain the following information:

6 (A) That it is unlawful to leave personal property unattended on a public sidewalk within
7 the City of Salem during the hours of between 7:00 a.m. and 9:00 p.m.;

8 (B) The date and time the notice was posted and the date and time at which the property
9 is subject to being removed by the City;

10 (C) That the property subject to the notice is subject to immediate removal if, within the
11 following 30 days, the property is again left unattended on a public sidewalk in
12 violation of this section,

13 (D) The contact information for how to reclaim any personal property which has been
14 removed by the City pursuant to this section; and,

15 (E) That any property removed by the City pursuant to this section will be disposed of
16 pursuant to applicable law if not claimed within 30 days after removal.

17 (e) Personal property removed by the City pursuant to this section shall be stored for a minimum
18 of thirty days during which time it must be made reasonably available to the owner. The
19 thirty-day retention period of this subsection does not apply to personal property that is in an
20 unsafe or unsanitary condition, or perishable.

21 (f) The Director, may develop administrative policies for the removal of unattended personal
22 property from public sidewalks, the storage of the property, and procedures by which the
23 property may be reclaimed

24 (g) Nothing in this section shall be construed as limiting the City’s ability to seize, remove,
25 abate, or dispose of property in accordance with any other provision of the Salem Revised
26 Code or in accordance with any other provision of law.”

27 (i) Nothing in this section shall be construed to permit conduct that is prohibited by SRC 95.700
28 “Pedestrian Interference.”

29 **Civil Exclusion.**

30 ~~(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~~

1 person has committed an enumerated offense within a crime prevention district shall be
2 prohibited from being present on pedestrian ways or public ways within the district for any
3 purpose, except as allowed by a variance granted pursuant to SRC 97.750. If the enumerated
4 offense is a “Class B” misdemeanor, “Class C” misdemeanor, violation or infraction, the
5 period of exclusion shall be thirty days; if one or more of the enumerated offenses are
6 felonies or “Class A” misdemeanors, the period of exclusion shall be ninety days. If the
7 enumerated offense was a felony or a “Class A” misdemeanor, the period of exclusion shall
8 be extended by a period of one year, effective upon date of conviction.

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

18 (e) ~~Any person who is issued an additional exclusion notice within six months of the expiration~~
19 ~~of any prior notice shall have an additional ninety day period of exclusion added onto the~~
20 ~~period of the additional notice.~~

21 **Section 7.** SRC 95.750 is amended and renumbered to SRC 95.840.

22 **95.750**~~95.840~~. **Variances from Exclusion.**

23 (a) Notwithstanding SRC ~~95.740~~95.830, the Chief of Police, or the Chief’s designee, may grant
24 a variance to an excluded person at any time during the period of exclusion, upon a showing by
25 the excluded person of a plausible need to engage in one of the following:

- 26 (1) To travel to and from a scheduled meeting with an attorney or scheduled meetings with
27 criminal justice personnel; to and from obligations performed in compliance with an order of
28 the court or a justice agency; and to and from an administrative or judicial hearing to which
29 the person is a party;
- 30 (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

1 satisfy the essential needs of the person. As used in this paragraph, “essential needs” means
2 food, physical care, and medical attention;

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

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

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

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

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

16 (b) A request for a variance shall be in writing, shall state the purpose for which the variance is
17 sought, and the period of time during which the variance is requested to be effective. If granted,
18 the variance shall allow relief from exclusion only for travel to and from specified locations,
19 activities and events, or for presence at specified locations, activities and events, within the crime
20 prevention district. The variance shall be in writing, shall clearly state the terms of the variance,
21 including that travel within, or presence in, the crime prevention district is allowed only in
22 accordance with the terms specified in the variance. The variance must be carried by the
23 excluded person while within the crime prevention district in order to be effective, and shall be
24 presented to any enforcement officer upon request.

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

30 (d) A variance may be revoked if:

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

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

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

4 (e) Refusal to issue a variance or revocation of a variance may be appealed to the hearings
5 officer, as provided in SRC ~~97.770~~95.860. A variance shall become effective upon issuance; a
6 revocation of a variance shall become effective upon the fifth business day after the date of the
7 mailing of notice of revocation to the excluded person.

8 **Section 8.** SRC 95.760 is amended and renumbered to SRC 95.850.

9 **95.760~~95.850~~. Violation of Exclusion Notice.** Any person to whom an exclusion notice has
10 been issued and who is present in a crime prevention district in violation of the notice or the
11 terms of a variance issued pursuant to SRC 95.840 is subject to immediate arrest for criminal
12 trespass under SRC 95.550(a) or ORS 164.245, and shall have the exclusion extended for an
13 additional period of thirty days.

14 **Section 9.** SRC 95.770 is renumbered to SRC 95.860.

15 **95.770~~95.860~~. Appeals.**

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

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

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

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

8 (e) The hearings officer shall hear and determine the appeal on the basis of the appellant's
9 written statement and any additional evidence the hearings officer deems appropriate. At the
10 hearing the appellant may present testimony and oral argument personally or by counsel. The
11 city has the burden of proof to demonstrate, by a preponderance of the evidence, that the
12 issuance of the exclusion notice is based upon the requisite enumerated offenses by the appellant,
13 that extension of the exclusion notice is based upon the appellant's presence in a crime
14 prevention district in violation of SRC 95.850, or that the grounds for revocation of a variance
15 exist. The appellant has the burden of proof to demonstrate, by a preponderance of the evidence
16 that the ground for issuance of a variance exist.

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

23 (g) The decision of the hearings officer is final, and may include a determination that the appeal
24 fee be refunded to the appellant upon a finding that the issuance of the exclusion notice, an
25 extension thereof, the refusal to issue a variance, or the revocation thereof, was not grounded in
26 law or fact. Appeals from a decision of the hearings officer shall be to circuit court by writ of
27 review, and not otherwise.

28 **Section 10.** SRC 95.800 is created to read:

29 **95.800 Civil Exclusion Definitions.** Unless the context otherwise requires, as used in SRC
30 95.800 - 95.860, the following mean:

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

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

6 (c) Crime prevention district means a geographic area of exclusion to which the provisions of
7 SRC 95.800 – 95.860 apply.

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

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

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

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

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

22 (i) Travel means movement by foot on a pedestrian public way, from one point to another,
23 without delay other than to obey traffic control devices, or by vehicle on a public way, from one
24 point to another without delay other than to obey traffic control devices.

25 **Section 11.** SRC 95.830 is created to read:

26 **95.830. Civil Exclusion.**

27 (a) Any person arrested or cited to appear in court for charging or lodged in jail for
28 presentation to a judicial officer for charging, based upon probable cause to believe that the
29 person has committed an enumerated offense within a crime prevention district shall be
30 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 97.840. If the enumerated

1 offense is a “Class B” misdemeanor, “Class C” misdemeanor, violation or infraction, the
2 period of exclusion shall be thirty days; if one or more of the enumerated offenses are
3 felonies or “Class A” misdemeanors, the period of exclusion shall be ninety days. If the
4 enumerated offense was a felony or a “Class A” misdemeanor, the period of exclusion shall
5 be extended by a period of one year, effective upon date of conviction.

6 (b) The exclusion notice shall be issued by the enforcement officer at the time the person is
7 arrested or cited for the commission of the enumerated offense. The exclusion notice shall be
8 in writing, and shall specify the enumerated offenses, the geographical extent of exclusion,
9 the date exclusion takes effect, the procedure for filing an appeal, the availability of a
10 variance, and the extension of the period of exclusion by an additional one year period upon
11 conviction, if the enumerated offense was a felony or “Class A” misdemeanor. The period of
12 exclusion shall commence upon the issuance of the notice of exclusion, but shall be stayed
13 upon the filing of a notice of appeal under SRC 95.860(a) which stay shall remain in place
14 until the hearings officer issues a decision upon the appeal under SRC 95.860(f).

15 (c) Any person who is issued an additional exclusion notice within six months of the
16 expiration of any prior notice shall have an additional ninety day period of exclusion added
17 onto the period of the additional notice.

18 **Section 12.** SRC 95.990 is created to read:

19 **95.990. Violations.**

20 (a) Violation of SRC 95.010, 95.025, 95.190, 95.200, 95.210, 95.220, 95.300, 95.340,
21 95.440, 95.510, 95.520, 95.530, 95.610, 95.710, 95.720, 95.730, or 95.740 is an
22 infraction.

23 (b) Except as provided in subsections (a) of this section, violation of any other provision of
24 SRC 95.010-95.740 is a misdemeanor.

25 **Section 13. Codification.** In preparing this ordinance for publication and distribution, the City
26 Recorder shall not alter the sense, meaning, effect or substance of this ordinance, but within such
27 limitations, may:

28 (a) Renumber sections and parts of sections of the ordinance;

29 (b) Rearrange sections;

30 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;

(d) Delete references to repealed sections;

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- (e) Substitute the proper subsection, section or chapter, or other division numbers;
- (f) Change capitalization and spelling for the purpose of uniformity;
- (g) Add headings for purposes of grouping like sections together for ease of reference; and
- (h) Correct manifest clerical, grammatical or typographical errors.

Section 14. Severability. Each section of this ordinance, and any part thereof, is severable, and if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

PASSED by the City Council this _____ day of _____, 2017.

ATTEST:

City Recorder

Approved by City Attorney: _____

Checked by: S.Miller