

## **ENB-8.01 - Time, Place, & Manner Administrative Procedures for Regulation of Nuisance Aspects of Establishments that Serve Alcoholic Beverages**

### **TIME, PLACE, AND MANNER ADMINISTRATIVE PROCEDURES FOR REGULATION OF NUISANCE ASPECTS OF ESTABLISHMENTS THAT SERVE ALCOHOLIC BEVERAGES**

*Administrative Rule Adopted by City Council*

ARC-ENB-8.01

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#### **I. Purpose**

The purpose of the Time, Place, and Manner (TPM) Ordinance is to provide for reasonable time, place and manner regulation of the nuisance aspects of establishments that serve alcoholic beverages where adverse effects occur with regard to the surrounding community. The Time, Place, and Manner Ordinance is specifically authorized by ORS 471.164(1).

Portland City Code Section 14B.120.025 authorizes the Office of Neighborhood Involvement (ONI) Director and Chief of Police to adopt rules and procedures to implement the provisions of City Code Chapter 14B.120.

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#### **II. Definitions**

For the purposes of these administrative procedures, the following terms shall be defined as set forth below:

- A. "Alcoholic Beverage" as defined in Portland City Code Section 14B.120.020;
- B. "Captain of the Drugs and Vice Division (Captain)" means the Captain of the Drugs and Vice Division for the Portland Police;
- C. "Chief of Police" as defined in Portland City Code Section 14B.120.020;
- D. "Crime Prevention Program Coordinator (CPC)" means the Crime Prevention Program Coordinators for the Office of Neighborhood Involvement;
- E. "Crime Prevention Program Manager" means the Manager of the Crime Prevention Program for the Office of Neighborhood Involvement;
- F. "Director" as defined in Portland City Code Section 14B.120.020;
- G. "Drugs and Vice Division (DVD) Investigators" means the two Drugs and Vice Division investigators for the Portland Police Bureau;
- H. "Establishment" as defined in Portland City Code Section 14B.120.020;
- I. "Full On-Premises Sales License" means the sale and service of distilled spirits, malt beverages, cider, and wine for consumption on the licensed premises. Also allows licensees who are pre-approved to cater events off the licensed premises;
- J. "Licensee" as defined in Portland City Code Section 14B.120.020;
- K. "Liquor License Program Specialist (LLS)" means the Liquor License Specialist for the Office of Neighborhood Involvement;
- L. "Liquor License Team (LLT)" means the multidisciplinary team that consists of the LLS, DVD, Crime Prevention Program, and Noise Control Officer;
- M. "Livability Control Program" means a program that proactively addresses nuisance activities;
- N. "Neighbor" means a resident residing within the City of Portland;
- O. "Neighborhood Association" means a neighborhood association recognized by the Office of Neighborhood Involvement;
- P. "Neighborhood Services Manager" means the Neighborhood Services Manager for the Office of Neighborhood Involvement;
- Q. "Noise Control Officer" means the Noise Control Officer for the Office of Neighborhood Involvement;
- R. "Nuisance Abatement Plan (AP)" means an enforceable agreement between the ONI Director or the Chief of Police and the Licensee that specifies terms, conditions, resources and steps that the licensee to abate nuisance activities;

- S. "Nuisance Activity" as defined in Portland City Code Section 14B.120.020;
- T. "Off-Premises Sales License" means the sale of malt beverages, wine and cider in factory-sealed containers for consumption off the licensed premises, and allows approved licensees to offer sample tasting of malt beverages, wine and cider on premises;
- U. "Oregon Liquor Control Commission (OLCC)" means the Oregon Liquor Control Commission of the State of Oregon;
- V. "Responsible Neighbor Program (RNP)" means the voluntary program that off premises licensees participate in to address livability concerns;
- W. "Responsible Neighbor Plan" means the plan that addresses criteria of the Responsible Neighbor Program and approved by the ONI Director;
- X. "Senior Neighborhood Officer (SNO)" means the Senior Neighborhood Officer for the Portland Police Bureau;
- Y. "Serve" as defined in Portland City Code Section 14B.120.020; and
- Z. "Signatory Authority" means what agency will have the lead responsibility to develop the abatement plan and petition the Code Hearing Office.

III. Roles and Responsibilities

The Office of Neighborhood Involvement ("ONI") and Portland Police Bureau ("Police") will use a multi-disciplinary team approach to implement the TPM ordinance. The roles and the responsibilities of the stakeholder agencies and program staff are as follows:

A. Director and Chief of Police. The ONI Director and the Chief of Police have authority to enforce the Time, Place and Manner Ordinance. Criteria and a mechanism has been developed by the Office of Neighborhood Involvement and the Portland Police Bureau to determine which agency will take the lead in sending notices, approving abatement plans, and filing complaints to the Code Hearings Office.

Source of Complaints	Authority
Three or more complaints in a 30-day period that originate from the noise officer, neighbors or impacted businesses or neighborhood associations that do not result in a police report.	ONI Director
Three or more complaints in a 30-day period that result in a filed police report.	Chief of Police
A combination of complaints filed by neighbors to ONI and complaints resulting in a police report.	ONI Director and/or Chief of Police <sup>1</sup>
<sup>1</sup> <a href="#">See B.3 below</a>	

B. Liquor License Team (LLT). The ONI Director and Chief of Police will form a liquor License Team. As authorized in 14B.120.040, the LLT will:

1. Use a team case management and problem solving approach;
2. Facilitate the TPM process and ensure timely communication between stakeholders to:

- a. Review and substantiate complaints to determine if the nature of the complaint requires further investigation. The review will consist of interviewing the complainant, potential witnesses, and the licensee before any formal notice letter may be sent to the licensee (see '[Substantiating Complaints](#)' section for further detail);
- b. Decide which agencies will be included in the investigative process.
  - i. At a minimum, these agencies shall include: The Portland Police Bureau - DVD and SNO and the Office of Neighborhood Involvement - LLS, CPC and Noise Control Officer.
  - ii. Additional agencies or organizations may include the OLCC inspection unit, Portland Patrol, and Neighborhood or Business Associations.

3. Make recommendations to the Director and Chief of Police when there is a combination of complaints filed by neighbors to ONI and complaints resulting in a police report.

C. Liquor License Specialist (LLS). The LLS will:

1. Convene and facilitate the Liquor License Team meetings;
2. Coordinate meeting dates/times and distribute meeting notices and complaint lists;
3. Serve as the central repository for TPM files;
4. Coordinate and participate in review process with DVD Investigators and Crime Prevention Coordinators prior to presentation of case file to the Neighborhood Services Manager and/or Crime Prevention Manager; and
5. Serve as the lead person in the preparation of case file for submission to the Neighborhood Services Manager and/or Crime Prevention Manager for the Code Hearings Office.

D. Drugs and Vice Division (DVD) Investigators. The DVD Investigators will:

1. Serve as the repository for police reports;
2. Provide LLT any documentation relevant to TPM cases;
3. Present cases to Code Hearings;
4. Review each TPM case file with appropriate case manager (CPC), to assure validity of complaints and quality of each file; and
5. Participate in review process of cases to be presented to the Neighborhood Services Manager and/or Crime Prevention Manager for submission to Code Hearings Officer.

E. Crime Prevention Program Coordinator (CPC). The CPC will:

1. Manage each TPM case file with coordinated review from the DVD Investigator;
2. Review neighbor complaints for validity by:
  - a. Facilitating communication with the licensee and the LLS in the development of the Abatement Plan and
  - b. Implementing the Responsible Neighbor Program.
3. Assist the LLC in preparing cases to be filed with the Code Hearings Officer; and
4. Present case file for Code Hearings Officer to the Neighborhood Services Manager and/or Crime Prevention Manager.

F. Senior Neighborhood Officer (SNO). The SNO will:

1. Assist in the review of complaints;
2. Participate in the LLT; and
3. Provide input on Abatement Plans.

G. Noise Control Officer (NCO). The NCO will:

1. Provide information on noise complaints.

2. Participate in the LLT; and
3. Review all cases and provide input on Abatement Plans, especially those where noise is an issue.

H. Neighborhood Service Manager (NSM). The NSM will:

1. Provide quality assurance by reviewing the case files of TPM;
2. Assist in the case preparation for the Code Hearings Officer; and
3. Present cases to Code Hearings.

I. Crime Prevention Program Manager (CPM). The CPM will:

1. Provide quality assurance by reviewing the case files of TPM;
  2. Assist in the case preparation for the Code Hearings Officer; and
  3. Present cases to Code Hearings.
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#### **IV. Case Development Process**

Complaints will be reviewed by the LLT prior to a recommendation being given to the Director and the Chief of Police regarding notice being sent to the licensee. These procedures provide detail to the authority given to the LLT to substantiate complaints as stated in 14B.120.040.

A. Receiving Complaints. Complaints against liquor licenses are received by multiple sources, including:

1. Portland Police District Officers (PDO);
2. Senior Neighborhood Officers (SNO);
3. Neighborhood Liaison Officers (NLO);
4. Drugs and Vice Division License Investigators (DVD);
5. Oregon Liquor Control Commission (OLCC) License Inspectors and Investigators;
6. ONI Liquor License Specialist (LLS);
7. ONI Crime Prevention Specialist (CPC);
8. ONI Noise Control Office;
9. Neighborhood Coalition Offices;
10. Bureau of Emergency Communication (BOEC) or '911'; or
11. The Police Non-Emergency Number.

B. Documenting Complaints. The Office of Neighborhood Involvement and Portland Police Bureau will collaborate with agencies and programs that receive complaints to develop a coordinated and centralized tracking system to accurately document all complaints received relevant to the TPM. The following information will be collected in this process:

1. Name of business involved;
2. Address of business;
3. Date of the incident;
4. Name of complainant;
5. Address of complainant;
6. Type, time and duration of the nuisance activity;
7. Location where nuisance activity occurred;
8. Action taken by complainant or business;

9. Description of violator(s);
10. Number of people involved in nuisance activity;
11. Observations by complainant or other witnesses; and,
12. Willingness of complainant to testify.

C. Substantiating Complaints. In developing their recommendation to the Chief of Police and/or Director, the LLT will:

1. Evaluate each complaint to determine whether the complaint can be substantiated:
  - a. Demonstrate through factual documentation that the activities surrounding the licensed premises impact neighborhood livability;
  - b. Demonstrate that the nuisance activities are ongoing;
  - c. Demonstrate that there have been previous attempts to address the nuisance activities and they have been unsuccessful; and
  - d. The complainant is available to offer testimony and evidence to the Code Hearings Office to substantiate these facts.
2. Consider the following criteria to evaluate the nature of the complaints:
  - a. The length of time the licensee has maintained the license (new/old, multiple licenses);
  - b. Willingness and ability of the licensee to manage the identified nuisance activities;
  - c. The character of the neighborhood and population (crime around licensee);
  - d. The significance of a history or pattern of repeated citations for the same violation or a combination activities with violations meeting TPM criteria;
  - e. Whether the incidents (fights, noise, drug activity, etc.) occurred in the establishment or began in the establishment and continued outside the establishment;
  - f. Whether the incidents occurred when the establishment was open for business;
  - g. Whether the incidents involved the licensee, its employees, or patrons;
  - h. Whether the licensee or its employees have contacted the impacted neighbor, neighborhood association, Crime Prevention Coordinator, Police and cooperated with the investigation;
  - i. Whether the licensee knew or should have known of the illegal activity;
  - j. Whether documentation exists, which may include:
    - i. Neighbor Logs;
    - ii. Calls for services received by the City, where the caller clearly identifies the nuisance activity and its association to the establishment;
    - iii. Police Reports;
    - iv. Noise citation or violations of Portland City Code Title 18 at the establishment or related to or associated with the establishment;
    - v. Crime Prevention Staff observations;
    - vi. Pictures depicting the type of nuisance activity with a written or recorded time, date, and type of nuisance activity and identity of the complainant providing the picture;
    - vii. Video taken in a public place depicting the type of nuisance activity with a written or recorded time, date, and type of nuisance activity and identity of the complainant providing the video; and
    - viii. OLCC records of nuisance violations provided by the OLCC investigators or inspectors.
3. Review any existing Good Neighbor Agreement (GNA) between the specific establishment and the neighborhood.

If no GNA exists, the LLT shall recommend the development of a GNA to address the issue(s).

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## **V. Responsible Neighbor Program**

The City of Portland has created a Responsible Neighbor Program (RNP) solely for off-premises licensees to promote livability in neighborhoods. The purpose of the following administrative procedures is to provide detailed information about how to participate in this program.

A. Program Qualification. Any solely off-premises licensee can petition the Director for approval and participate in this program. The off-premises licensee shall develop a "Responsible Neighbor Plan," containing:

1. Verification from the Oregon Liquor Control Commission (OLCC) that the licensee is limited to solely off-premises sales, and is a participant in the OLCC Responsible Vendor Program, as specified in OAR 845-009-0135;
2. Development of a Responsible Neighbor Program: The CPC will meet with the licensee or their designee to develop a plan that includes the following elements:
  - a. Nuisance control: The CPC will provide contact information to the owner, operator, manager, or a local representative of the parent company of the appropriate authority regarding nuisance activity contained in the TPM ordinance;
  - b. Litter control: The CPC will assess the surrounding area and make recommendations to prevent litter complaints that are related to the location of the establishment. At least two trash receptacles must be provided on site for customer use next to the on-site pedestrian circulation system for off-premises licensees; and
  - c. Loitering control: The CPC will make recommendations to prevent loitering that are related to the location of the licensee's premises.

B. Program Approval Process. The off-premises licensee and Crime Prevention Coordinator shall sign the Responsible Neighbor Plan and forward the executed agreement to the TPM file.

C. Removal from the Program. If the off-premises licensee fails to meet the provisions outlined in 14B.120.055, the Director and/or Chief of Police shall remove the licensee from the RNP. Thereafter, the licensee will be subject to the full provisions of the TPM ordinance. Upon removal, the off-premises licensee will:

1. Be able to reapply for the program after one year; and,
2. If the licensee received a sanction set forth by the Code Hearings Officer, they may be able to reapply to the RNP after two years upon completion of their sanction.

D. Change of Ownership. If there is a Change of Ownership on an off-premises licensee, the new licensee must petition the Director and meet the criteria for acceptance into the Responsible Neighbor Program.

E. Change of License. If there is a change of license from off-premises to an on-premises license, the licensee will automatically be removed from the Responsible Neighbor Program.

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## **HISTORY**

Ordinance No. 178201 passed by Council February 18, 2004, effective March 19, 2004.