

## EXHIBIT C

### Chapter 9.35

#### **PUBLIC NUISANCES**

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#### **9.35.010 Purpose and construction.**

The purpose of this chapter is to define, regulate and provide for the abatement of public nuisances; reduce fire, safety and health hazards; preserve and enhance the attractiveness of the City's neighborhoods; and protect property values within the City. This chapter is an exercise of the City's police power and is necessary for the health, safety and welfare of the City and to preserve and protect the public peace. Therefore, the provisions of this chapter shall be liberally construed for the accomplishment of such purposes.

#### **9.35.015 Definitions.**

All terms used in this chapter shall have their common definition meaning. In addition to the common definition meaning, the terms used shall mean as follows:

"Abate" means to repair, replace, remove, destroy or otherwise remedy a condition that violates this chapter.

"Abandoned vehicle" means any vehicle left on a public right-of-way or on private property without the consent of the property owner for a period of 72 hours or longer.

"Apparently inoperable" means a vehicle that meets any of the following criteria:

The vehicle is:

1. Covered or partially covered by moss, leaves, needles or other vegetation; or has grass or other vegetation growing up around the vehicle; or other circumstances exist that support a reasonable belief that the vehicle has not been moved for 30 days or more;

2. Has any visibly damaged, missing, or broken major components, including but not limited to any of the following: windows, windshields, headlights, taillights, mirrors, body panels, hoods, doors, bumpers, trunk lids, driver's seats, steering wheels, grill covers, radiators, or any major mechanical or electrical equipment; or

3. For any other reason appears in such a condition as to not be legally operable on a public road.

"Building materials" means lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing materials, cans of paint and similar materials.

A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property,

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dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months.

“Garbage” means waste food products, other organic waste products and packaging materials from food products.

“Housing Unit” means:

(1) a house;

(2) an apartment;

(3) a mobile home;

(4) a group of rooms; or

(5) a single room that is (a) occupied as separate living quarters, (b) in which the occupants live and eat separately from any other persons in the building, and (c) which have direct access from the outside of the building through a common hall.

“Junk” means discarded, broken or disabled items, including, but not limited to, furniture, appliances, toys, vehicle parts, building materials, tools, machinery parts or other items that are not in functioning condition.

“Junk Vehicle” has the same definition as set forth in RCW 46.55.010(5).

“Marijuana Nuisance” means the production or processing of marijuana or marijuana-infused products, or the storage or growing of marijuana plants where any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another “housing unit” as defined in this Section.

“Landowner” means an owner of private property, or a person in possession or control of private property.

“Person” means human beings of either sex as well as firms, partnerships, corporations, and all associations of human beings, whether acting by themselves or by a servant, agent or employee.

“Premises” means any building, lot, parcel, real estate, land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

“Public nuisance” means a thing, act, failure to act, occupation or use of property which (1) annoys, injures or endangers the comfort, repose, health or safety of the public; (2) unlawfully interferes with, obstructs, or renders dangerous for passage any stream, river, channel, public park, square, street, alley, highway or sidewalk; ~~or~~ (3) renders the public insecure in life or use of property; or (4) is recognized as a nuisance as defined by state law, federal law, or elsewhere within this Code. All of the conditions enumerated in UPMC 9.35.030 are “public nuisances.”

“Responsible party” means any person owning property, as shown on the real property records of Pierce County or on the last assessment roll for taxes, and shall also mean any lessee, tenant or person having possession of the property. There may be more than one responsible party for a particular property.

“Trash” includes, but is not limited to, used, discarded, torn or broken paper; plastic; glass; cardboard; packaging materials; small pieces of scrap metal; wire; pipe; stone; plaster; cement; office supplies; cosmetics; bottles; cans; jars; or boxes.

“Yard waste” means any accumulation of leaves; trimmings from trees, brush and shrubs; cut grass and weeds; or garden waste.

### **9.35.020 Duty to maintain real property.**

Any person owning, leasing, renting, occupying or in charge of any real property in the City, including vacant lots, has a duty to maintain the property free from junk, trash, yard waste and any other nuisance as defined in this chapter, in order that such property shall not endanger the safety, health or welfare of the general public.

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### 9.35.025 Prohibited conduct.

It is a violation of this chapter for any person to permit, create, maintain or allow upon any premises, any of the acts or things declared to be public nuisances herein.

### 9.35.030 Public nuisances.

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance:

- A. Any unfenced, uncovered, unguarded or abandoned pit, hole, excavation, well, septic tank, cesspool, pond, or swimming pool into which a child or other person could fall.
- B. Attractive nuisances dangerous to children, including, but not limited to, abandoned, broken or neglected vehicles, boats, equipment and machinery; refrigerators, freezers or other insulated containers within which a child could suffocate; and abandoned, dilapidated or structurally unsound buildings.
- C. The existence or accumulation of any garbage or organic waste on the premises, including, but not limited to, bones; hides; skins; dead animals, fish or fowl; waste food products; or manure; provided that nothing herein shall prevent the temporary retention of such waste in approved covered receptacles or the temporary retention of waste food products and manure in enclosed compost piles.
- D. The existence or accumulation of any trash, litter or inorganic waste, including, but not limited to, used, broken, torn or discarded paper, cardboard, plastic, rags, empty bottles, cans, glass, plaster, barrels, boxes, crates, packing cases, construction debris, Styrofoam, excelsior, hay, straw, packing materials, scrap metal, wire, pipe, crockery, and plaster not enclosed in covered bins or metal receptacles approved by the City.
- E. The existence or accumulation of any junk, including, but not limited to, broken, discarded, torn, or non-functional furniture, mattresses, bedding, appliances, toys, vehicle parts, building materials or other articles of personal property.
- F. The accumulation of yard waste, including, but not limited to, grass cuttings, weeds, brush, tree limbs, vegetation, garden waste, debris or organic matter which may be a fire hazard, or in which flies or rodents may breed and multiply, or which is a hazard to the public health, safety or welfare; provided that nothing herein shall prevent the temporary retention of yard waste in an enclosed compost pile.
- G. The existence of noxious or toxic weeds which could be hazardous to health, including, but not limited to, poison oak, poison ivy, and deadly nightshade; or the existence of overgrown grass, weeds or shrubs in which flies and rodents may breed and multiply or which may be a fire hazard pursuant to the Uniform Fire Code as adopted by reference in the University Place Municipal Code.
- H. The outdoor burning or disposal of refuse, sawdust, wood or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon private or public property, including City streets, rights-of-way and alleys, or to cause or permit the smoke, ashes, soot or gases arising from such burning to pollute the air or endanger the health, safety and welfare of the public; provided, that this section shall not apply where the party responsible for the action has obtained a burning permit from the applicable fire department or local air quality authority.
- I. Any toxic, radioactive, caustic, explosive, flammable, combustible, malodorous, or septic substances, unless kept in proper receptacles as provided by the health and refuse laws or by the Uniform Fire Code.

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J. The existence or accumulation of building material, lumber, salvage materials, scrap iron, tin and other metal, wire, stone, cement or brick which is unsightly and may be an attractive nuisance; provided, that this subsection shall not apply if the materials are associated with an active building permit, or are neatly piled and screened from view from the public right-of-way or any neighboring property.

K. Any fence or structure which is sagging, leaning, fallen, decayed, dangerous, or a fire hazard. Any building which is determined to be a dangerous building pursuant to ~~the Uniform Code for the Abatement of Dangerous Buildings as adopted by reference~~ other provisions of the University Place Municipal Code.

L. The existence of any dead, diseased, infested or dying tree that may constitute a danger to property or persons.

M. All trees, plants, shrubs, vegetation or fences overhanging or on any sidewalk, street, or public right-of-way, which:

1. Obstruct or impair the free and full use of the sidewalk or street by the public, or
2. Damage, obstruct or endanger power lines, cables, conduits, sewers or drains located within a public right-of-way, or
3. Obstruct the public's vision of intersections from the streets, sidewalks and public right-of-way.

All tree limbs overhanging a public sidewalk which are less than 10 feet above the surface of the sidewalk and all tree limbs overhanging a public street which are less than 12 feet above the surface of the street are deemed to obstruct or impair the full use of the sidewalk or street.

N. Maintaining a Marijuana Nuisance.

O. Retain or store, except if permitted by any other City ordinance, any of the following:

1. One or more junk, wrecked, dismantled, partially dismantled, or apparently inoperable vehicles; or
2. Body parts, engines or drive-train parts, wheels, tires, or any other parts, assemblies or components of automobiles and other vehicles;
3. One or more abandoned vehicles.

Unless such vehicles are (a) completely enclosed within a building sited, constructed and maintained in full compliance with the terms of any permit, license, statute, regulation, ordinance or order regulating such activity; (b) screened from neighboring properties and the right-of-way; or (c) stored or parked in a lawful manner on private property in connection with the legal business of a licensed dismantler, motor vehicle wrecker, licensed vehicle dealer, junk, salvage or wrecking yard, which is operating in full compliance with the terms of any permit, license, statute, regulation, ordinance or order regulating such activity, including the property fencing and screening provisions in RCW 46.80.130.

P. Any building or structure where construction was commenced and then ceased and the building or structure was left unfinished, or any building or structure that has been constructed or modified without required permits.

Q. Any structure, vehicle or other personal property that has been found contaminated and declared unfit or use by a local health officer pursuant to RCW 64.44.030.

R. Any structure or personal property maintained in violation of the terms of a written order issued by the City of University Place, the Tacoma-Pierce County Health Department, or the local fire prevention district.

S. The failure to maintain yard space thereof reasonably neat and clean and free of uncut grass, weeds, blackberry vines, bushes and debris, so as to prevent rodent, insect or other pest infestation, and so as to prevent a fire hazard.

T. Constitutes a blight on the surrounding neighborhood.

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### **9.35.035 Abatement of public nuisance.**

- A. The responsible person or persons for any premises on which a nuisance as defined in UPMC 9.35.030 is found, shall abate such nuisance by removal, trimming, demolition, rehabilitation or repair.
- B. Whenever any declared nuisance, source of filth or cause or probable cause of injury to health shall be found to exist on any private or public property, the City Manager or designee shall have the power and authority to order verbally and/or in writing the owner or occupant or user thereof, by appropriate action, at the expense of such owner, occupant, or user to correct and remove such nuisance, source of filth or cause or probable cause of injury to health within such time as the City Manager or designee may order.
- C. In the event of the refusal or failure to remove such nuisance within said time, the City Manager or designee may cause such nuisance to be abated at the expense of such person or persons, which cost may be recovered by the City from such person or persons in an action brought in the name of the City to recover the same in any court of competent jurisdiction.
- D. As provided by RCW 35A.21.405, the City Manager or designee is also authorized to file a special assessment against the property on which the nuisance was abated for the City's costs in abating the nuisance. Before levying a special assessment, the City shall notify the property owner and any identifiable mortgage holder that a special assessment will be levied on the property and provide the estimated amount of the special assessment. The notice must be sent by regular mail.
- E. In any such abatement by the City, the City shall also be entitled to interest accruing at the rate of twelve percent (12%) per annum from the time of the expenditure of funds by the City for such abatement, or such other maximum rate established by law.

### **9.35.036 Serving of Orders.**

- A. Any order described in Section 9.35.035(B) of this Code required to be served on a person, owner, agent or occupant of a premises, shall be deemed to have been served under any of the following conditions:
  - 1. Such order is delivered to such person by any authorized representative of the City Manager or designee;
  - 2. Such order is mailed (by first class mail, postage prepaid and by a form of mail that requires the signed receipt showing when and to whom it was delivered) to the owner, representative of the owner, or the last known occupant of the premises;
  - 3. Such order, properly signed, is posted by an authorized representative of the City Manager or designee upon any portion of such premises visible from a public place; or
  - 4. In such manner as a summons and complaint may be served.
  - 5. If the whereabouts of such persons are unknown and the same cannot be ascertained by the City Manager or designee in the exercise of reasonable diligence and the City Manager or designee shall make an affidavit to that effect, then the order may also be served by publishing the same twice, once each week for two consecutive weeks, in the official newspaper of the City.

### **9.35.037 Contents of Order.**

The order shall contain, among other things, the following information:

- A. Name of owner or other persons interested;
- B. The location of the premises, identified by street address or legal description of the premises or other brief description;
- C. General description of the premises considered a nuisance;
- D. A statement or list of items in violation of this Chapter;
- E. A reasonable time for correction of the violation. In the instance of a junk vehicle or abandoned vehicle, the period of time shall be no less than fifteen (15) days.

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F. A copy of the order may be filed with County Auditor, which filing shall have the same force and effect as other lis pendens orders provided by law.

### **9.35.038 Alternative abatement procedure.**

In addition to the procedures outlined in this Chapter, nuisances may be abated in accordance with the following additional procedures pursuant to RCW 35.21.310:

- A. When requested by the City Manager, the matter of a pending violation may be submitted to the City Council for consideration whenever the violation consists of trees, plants, shrubs or vegetation, or parts thereof, which overhang any sidewalk or street or which are growing thereon in such manner as to obstruct or impair the free and full use of the sidewalk or street by the public; and may further so require the owner of any property therein to remove or destroy all grass, weeds, shrubs, bushes, trees or vegetation growing or which has grown and died, and to remove or destroy all debris, upon property owned or occupied by them and which are a fire hazard or a menace to public health, safety or welfare. After consideration, the Council may, by resolution, either accept, reject or modify the recommendation and require the property owner to abate the violation by removal or destruction, at his or her cost and expense, within a time specified in the resolution.
- B. The resolution shall not be passed until the property owner is given at least five days' notice of the pendency of the proposed resolution. The notice shall describe the property involved, the nature of the hazardous condition, the corrective action required, and the date of the Council meeting during which the matter will be considered.
- C. If the nuisance is not abated by the property owner within the time fixed in the resolution, the City may abate the same and mail a bill to the property owner covering the cost to the City of such abatement. If the property owner fails or refuses to pay the bill immediately, the City may file a lien therefor against the property, which lien shall be in the same form, filed with the same officer and within the same time and manner and enforced and foreclosed as is provided by law for liens for labor and material.

### **9.35.040 Penalties and enforcement.**

In order to discourage public nuisances and otherwise promote compliance with applicable Code provisions, the City may undertake any of the following enforcement actions:

- A. Civil Penalties. Any person who fails to comply with the provisions of this chapter shall be subject to a civil ~~penalty~~ infraction in accordance with Chapter ~~4.15-UPMC~~ 7.80 RCW. The existence of an order as set forth under this chapter shall not be a prerequisite for the issuance of civil infractions.
- B. Enforcement Actions Authorized. Initiate enforcement actions as authorized by this chapter or elsewhere within the Municipal Code or as permitted by law.
- C. Require abatement by means of a judicial abatement order, and if such abatement is not timely completed by the person or persons responsible for a Code violation, undertake the abatement and charge the reasonable costs of such work as authorized by this chapter;
- D. Order work stopped at a site by means of a stop work order, and if such order is not complied with, assesses civil penalties as authorized by this chapter.
- E. Suspend, revoke, or modify any permit or business license previously issued by the City or deny an application for a permit or business license when other efforts to achieve compliance have failed. An action under this subsection shall be governed by the processes particular to such permit or license;

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~~B.F. Other Legal Remedies. Nothing in this chapter limits the right of the City to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of this chapter.~~

~~G. Enforcement action by the City shall be in accordance with Chapter 1.20 and/or 1.30 UPMC at the City's discretion.~~

G. In addition to or as an alternative to any other penalty provided herein or by any other nuisance ordinance, the City shall be entitled to its costs, reasonable attorneys' fees and reimbursement of staff time and expenses in any action to enforce the provisions of this Chapter or any other nuisance regulation ordinance.

H. Summary Abatement. Nothing in this Chapter prohibits the City from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety. The City may take summary action to close the property without complying with the notification provisions of this chapter, but shall provide such notice as is reasonable under the circumstances.

**9.35.050 Authorizing enforcement assistance from ~~the Tacoma-Pierce County Health Department~~Other Agencies.**

The City may obtain enforcement assistance from other governmental agencies ~~Tacoma-Pierce County Health Department~~ is hereby authorized to assist City officials in the enforcement of this chapter.

**9.35.060 Appeals.**

A. The City Hearing Examiner is designated to hear appeals by property owners or those having an interest in the property subject to an abatement order as set forth in Section 9.35.035(B) UPMC, PROVIDED, HOWEVER, the Hearing Examiner shall not have the authority to adjudicate civil infractions issued under chapter 7.80 RCW.

B. Any applicant or licensee may, within fourteen (14) days after receipt of an abatement order, file with the City Clerk a written notice of appeal. No fee shall be required for the filing of an appeal.

C. As soon as practicable after receiving the written appeal, the City Clerk shall fix a date, time, and place for the hearing of the appeal by the Hearing Examiner. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing by the City Clerk, by mailing a copy addressed to each appellant at his or her address shown on the notice of appeal.

D. At the hearing, the appellant or appellants shall be entitled to appear in person, and to be represented by counsel and to offer such evidence as may be pertinent and material to the denial or to the notice and order. The technical rules of evidence need not apply.

E. Only those matters or issues specifically raised by the appellant or appellants in the written notice of appeal shall be considered in the hearing of the appeal.

F. Unless the parties agree otherwise or circumstances do not otherwise permit, within ten (10) business days following conclusion of the hearing, the Hearing Examiner shall make written findings of fact and conclusions of law, supported by the record, and a decision which may affirm, modify, or overrule the denial or order of the City, and may further impose terms and conditions relative to the abatement of the nuisance, and may further impose upon an unsuccessful appellant the costs associated with the appeal.

G. Failure of any person to file an appeal in accordance with the provisions of this Chapter shall constitute a waiver of the right to an administrative hearing and adjudication of the abatement order.

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**9.35.070 State Provisions Adopted by Reference.**

A. The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

7.48.010 Actionable nuisance defined.

7.48.050 Moral nuisances—Definitions.

7.48.120 Nuisance defined.

7.48.130 Public nuisance defined.

7.48.140 Public nuisances enumerated.

7.48.150 Private nuisance defined.

7.48.155 Unlawful use of firearm or deadly weapon—Arrest required.

7.48.160 Authorized act not a nuisance.

7.48.170 Successive owners liable.

7.48.180 Abatement does not preclude action for damages.

7.48.190 Nuisance does not become legal by prescription.

7.48.200 Remedies.

7.48.240 Certain places of resort declared nuisances.

7.48.250 Penalty—Abatement.

7.48.280 Costs of abatement.

B. The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full. To the extent that such provisions impose or modify requirements elsewhere within this chapter, the RCW sections shall be reconciled with the provisions set forth in this chapter to provide effect to both, provided however, in the event of a conflict, the RCW section shall prevail:

RCW 46.55.240(3) Local Ordinances -- Requirements