

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF STAR, ADA AND CANYON COUNTIES, IDAHO, AMENDING STAR CITY CODE TITLE 3, CHAPTER 1, ADDING A NEW SECTION 8 TO REGULATE CHRONIC NUISANCE PROPERTY; REPEALING AND REPLACING TITLE 2, CHAPTER 2B, SECTION 8, PROVIDING STANDARDS FOR THE DENIAL AND REVOCATION OF ALCOHOLIC BEVERAGE LICENSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Star desires to regulate certain real property that creates chronic nuisances to better protect, the health, safety, and welfare of the residents of the City; and

WHEREAS, in instances where an alcoholic beverage licensee is in violation of state or municipal laws or has become a chronic nuisance, the City desires to add additional resources to further protect City residents from health, safety and welfare concerns;

NOW THEREFORE, be it ordained by the Mayor and City Council of the City of Star:

Section 1: Title 3, Chapter 1 of the Star City Code is hereby amended to add a new Section 8 Chronic Nuisance Property, as follows:

3-1-8 CHRONIC NUISANCE PROPERTY:

A. Purpose: Chronic nuisance properties present grave health, safety and welfare concerns, and occur when the property owners or persons in charge of such properties have failed to take corrective action to abate the nuisance conditions. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. Additionally, chronic nuisance properties are a financial burden to the city due to the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such properties.

This section of the Star city code is a means to ameliorate those conditions by providing a process for abatement and hold responsible the owners or persons in charge of such properties. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

B. Chronic Nuisance Property Violation:

1. Any property within the city of Star which becomes chronic nuisance property is in violation of this section and subject to its remedies.

2. Any person who permits property under his or her ownership or control to be a chronic nuisance property shall be in violation of this section and subject to its remedies.

C. Definitions: For purposes of this section, the following words or phrases shall have the meanings prescribed below:

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- ABATE: To repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this section by such means and in such a manner and to such an extent as the applicable city department director or designee determines is necessary in the interest of the general health, safety and welfare of the community.
- CHRONIC NUISANCE PROPERTY: Any property upon which three (3) or more of the below listed behaviors occur during any sixty (60) day period as a result of three (3) separate factual incidents that have been independently investigated by the Star police department.
- CONTROL: The ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property.
- NUISANCE ACTIVITY: Means and includes:
1. Any nuisance as defined by Idaho Code or this code occurring around or near the property, or;
 2. Any of the following activities, behaviors or criminal conduct:
 - a. Any felony;
 - b. Domestic battery, Idaho Code section [18-918](#);
 - c. Stalking, Idaho Code section [18-7905](#);
 - d. Battery, Idaho Code section [18-903](#);
 - e. Assault, Idaho Code section [18-901](#);
 - f. Violation of a protection order, Idaho Code section [39-6312](#);
 - g. Violation of a no contact order, Idaho Code section [18-920](#);
 - h. Disturbing the peace, Idaho Code section [18-6409](#);
 - i. Refusal to disperse, Idaho Code section [18-6410](#);
 - j. Indecent exposure, Idaho Code section [18-4116](#);
 - k. Any firearms violation listed in Idaho Code sections [18-3301](#) through 3324;
 - l. Any drug related activity listed in Idaho Code sections [37-2701](#) through 2751;
 - m. False alarms, Idaho Code section [18-6711A](#);
 - n. Fighting, section [4-12-5](#) of this title;
 - o. Resisting and obstructing officers, Idaho Code section [18-705](#), and;

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p. Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors or conduct.

- OWNER: Any person having any interest in the real estate in question, as indicated in the records of the office of the Ada or Canyon County assessor. "Owner" further means any tenant, renter or lessee, or any person, agent, firm, or corporation having a legal or equitable interest in a property.
- PERSON: Natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them.
- PERSON ASSOCIATED WITH A PROPERTY: Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or a person present on property, including, without limitation, any officer, director, customer, agent, employee, or any independent contractor of a property, or a person in charge of or owner of a property.
- PERSON IN CHARGE OF A PROPERTY: Any person, in actual or constructive possession of a property, including, but not limited to, an owner, occupant, agent, or property manager of a property under his or her control.
- PREMISES AND PROPERTY: May be used by this section interchangeably and means any building, lot, parcel, dwelling, rental unit or units, real estate or land, or portion thereof, including property used as residential or commercial property.
- RENTAL UNIT: Any structure or that part of a structure, including, but not limited to, single-family home, trailer, mobile home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons, or for commercial purposes.

D. Procedure:

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1. When the chief of police, or his designee, receives police documentation confirming the occurrence of three (3) or more nuisance activities within a sixty (60) day period on the property, the chief of police, or his designee, may review such reports to determine whether they describe the nuisance activities enumerated above. For the purposes of this section, an arrest or conviction of an individual for the above described nuisance activities shall not be necessary to qualify said activity as a nuisance. Upon a finding of the occurrence of three or more nuisance activities within a sixty (60) day period on the property, the chief of police, or his designee, shall notify a property owner at the address

shown on the Ada or Canyon County assessor records and shall notify the person in charge of the property in writing that the property is in danger of being declared a chronic nuisance property.

2. The notice shall contain:

- a. The street address or a legal description sufficient for identification of the property;
- b. A concise description of the nuisance activities that exist, or that have occurred on the property;
- c. A demand that the owner or person in charge respond to the chief of police, or his designee, within fifteen (15) days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;
- d. Offer the person in charge an opportunity to abate the nuisance activities giving rise to the violation; and
- e. A statement describing that if legal action is sought, the property could be subject to closure, civil penalties and costs assessed up to one hundred dollars (\$100.00) per day after the notice of the chronic nuisance property is received.

3. Such notice shall be either: a) personally served; or b) delivered by first class mail to the person in charge of the property, with a copy mailed to the owner at the address indicated by the Ada or Canyon County assessor, if different than the person in charge of the property.

4. If the person in charge fails to respond to the notice within the time prescribed, the chief of police, or his designee, shall post such notice at the property. If the person in charge fails to respond to the notice of chronic nuisance, the matter shall be referred to legal counsel for further action.

5. If the person in charge responds as required by the notice and agrees to abate the nuisance activity, the chief of police, or his designee, and the person in charge and/or property owner, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to legal counsel for enforcement action.

6. It is a defense to an action for chronic nuisance property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.

E. Commencement Of Action; Enforcement:

1. Once the matter is referred to legal counsel, legal counsel shall immediately review and make a determination whether to initiate legal action authorized under this section or state statute, or may seek alternative forms of abatement of the nuisance activity. Legal counsel may initiate legal action on the chronic nuisance property and seek civil penalties and costs in district court for the abatement of the nuisance.

2. In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the city shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The city may submit official police reports and other affidavits outlining the information that led to the investigation of nuisance activities occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.

3. Once a district court determines the property to be a chronic nuisance under this section the court may impose a civil penalty against any or all of the persons in charge of the property and/or the owner of the property, and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars (\$100.00) per day for each day the nuisance activity continues to occur following the date of the original notice by the chief of police, or his designee, as described above. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:

- a. The actions taken by the person in charge and/or owner to mitigate or correct the nuisance activity;
- b. The financial condition of the persons in charge;
- c. The repeated or continuous nature of the nuisance activity;
- d. The cost to the city of investigating and correcting or attempting to correct the condition;
- e. The statements of the neighbors or those affected by the nuisance activity; and
- f. Any other factor deemed relevant by the court.

4. The district court which determines the property to be a chronic nuisance property shall also assess costs against the person in charge and/or owner in the amount it costs the city to abate, or attempt to abate, the nuisance activity.

5. If the district court determines the property to be a chronic nuisance property, the district court may order the property closed and secured against all unauthorized access, use and occupancy for a period up to six (6) months, and may impose a civil penalty and costs.

6. Once a determination has been made by the district court that the chronic nuisance property shall be subject to closure, the court may authorize the city to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the court for review. Any civil penalty and/or costs awarded to the city may be filed with the city treasurer, who shall cause the same to be filed as a lien on the property with the Ada or Canyon County assessor.

7. The district court shall retain jurisdiction during any period of closure or abatement of the property.

Section 2: Title 2, Chapter 2B, Section 8 of the Star City Code “Revocation of License” is hereby repealed and replaced as follows:

2-2B-8. Denials of license applications and revocations of licenses.

- A. Denial of a license application. The mayor and council may deny a license application for fraud and misrepresentation in its procurement; for a violation of the laws of the United States, State of Idaho, or City of Star regulating the sale of alcoholic beverages; for a violation of any of the provisions of this chapter; and for any conduct or act of the licensee or any employees, or any conduct or acts permitted by him or them on the premises where such business is conducted, tending to render such business or premises as a public nuisance or a menace to the health, peace, safety or general welfare of the city.

Further, the mayor and council may deny a license application for a licensee having accumulated at least three points against their license in the prior year. Renewal of such licenses may only be granted by the city council after a public hearing at which the licensee or license applicant appears in person to provide testimony to demonstrate that procedures have been put in place to avoid and reduce future violations. Licenses without the assignment of at least three points may be renewed by consent agenda through the city council.

When the mayor and council deny a license, they shall specify, in writing, the statutes, ordinances and standards used in evaluating the application, the reasons for denial, and the actions, if any, that the applicant could take to obtain the license, transfer, or renewal. The foregoing shall be provided the applicant, in writing, within 30 days of a decision to deny an application.

- B. Revocation of an existing license. Notwithstanding any other provision of this Code to the contrary, any license issued under this Title 2, Chapter 2B, of the Star City Code, may be revoked or suspended by the City of Star pursuant to the following Alcoholic License Point System (ALPS):
1. General provisions.
 - a. Under the Alcoholic License Point System, licensee misconduct and the failure to exercise proper controls over an establishment licensed to sell liquor, beer, and/or wine, by the drink may result in a revocation or suspension of said license based

- upon accumulated "points" assigned to a licensee for said misconduct and failures to exercise proper control. The provisions of ALPS provide licensees in the City of Star with a clear description of what circumstances will result in a point being assigned to their license, the numbers of accumulated points that will result in certain consequences for the licensee, and the procedures and process for point allocations, hearings, and appeals.
- b. Licensee responsible for conduct of employees. License violations which occur due to the conduct of an employee or agent of a licensee shall be imputed to the licensee. Any points assessed for a license violation by an employee or agent of a licensee shall be assessed against the licensee's liquor license.
 - c. Licensee responsible for failure to exercise proper control. License violations which occur due to the failure of the licensee or its employees or agents to exercise proper control over the licensed premises shall be imputed to the licensee. Failure to exercise proper control shall mean acts or omissions which a reasonable person would believe would result in a license violation, and which result in a license violation, as defined herein.
 - d. Burden of proof, liability. Points may only be assessed against a license when the city determines, by a preponderance of the evidence, that a licensee or an employee or agent of a licensee, committed a license violation. Points may be assessed against a license even if the individual who performed the action or conduct that constituted the license violation was not convicted of committing a crime.
2. License point violations. A license violation can occur on the licensed premises, in the parking lot for the premises, or in an adjacent area under the control of the licensee. License violations may result in the assessment of points against a liquor, beer, or wine license. If a single incident or occurrence would constitute multiple license violations as listed below, each license violation shall be assessed points according to the schedule below and combined into a total score for that incident. The committee has discretion to assess points within the range corresponding to the particular violation set forth below. For the purposes of this section, license violations and applicable points shall include the following:
- a. Training. Failure of a licensee, its officers, managers, employees and agents to undergo training as may be required by this section. .5 to 1 Point.
 - b. Probation violation. A license violation arising during a probationary period, as applied to a licensee in this code. .5 to 2.0 Points.
 - c. Alcohol regulations. Any action or conduct which violates any provision of federal, state, or local law with respect to the manufacture, sale, distribution, solicitation, or use of alcoholic beverages. .5 to 2.0 Points.
 - d. Homicides. Any homicide offense under Idaho Code Title 18, Chapter 40. 6.5 Points.
 - e. Weapons. Any action or conduct which violates any provision of Idaho Code Title 18, Chapter 33. 1.0 to 4.0 Points.
 - f. Controlled substances. Any action or conduct which violates any provision of Idaho Code Title 37, Chapter 27. 1.0 to 3.5 Points.
 - g. Prostitution. Any action or conduct which violates any provision of Idaho Code Title 18, Chapter 56. 4.0 to 6.5 Points.

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- h. Human trafficking. Any action or conduct which violates any provision of Idaho Code Title 18, Chapter 86. 4.0 to 6.5 Points.
 - i. Gambling. Any action or conduct which violates any provision of Idaho Code Title 18, Chapter 38. .5 to 2.0 Points.
 - j. Assault and battery. Any action or conduct which constitutes assault or battery actions and violates any provision of Idaho Code Title 18, Chapter 9. 1.0 to 3.5 Points.
 - k. Sex crimes. Any action or conduct which violates any provision of Idaho Code Title 18, Chapters 15 and 66. 6.5 Points.
 - l. Occupancy. Exceeding occupancy load for the premises as stated on the occupant load limit sign posted in the premises or failing to post the occupant load limit sign for the premises in a conspicuous place near the main exit or exit access doorway of the premises. .5 to 2.0 Points.
 - m. Open containers. Allowing a person to exit the licensed premises while possessing an open container of alcoholic beverage. .5 to 1.5 Points.
 - n. Right-of-way encroachment. The licensee violates any provision of a right-of-way encroachment license. .5 to 1.5 Point.
 - o. Hours of operation. The licensee violates hours of operation as defined in Star City Code. .5 to 1.5 Points.
 - p. Chronic Nuisance Property. The licensee is determined to be a chronic nuisance property, as defined in 3-1-8, Star Code Code. 5. to 2.0 points.
 - g. Property maintenance. The licensee violates the International Property Maintenance Code, as adopted by Star City Code. .5 to 1.5 Point.
 - r. General violations. All other violations of law or the City Code. .5 to 3.5 Points.
 - s. Site specific DUI. A patron of a licensee that receives a DUI in Star City limits immediately following his/her leaving the licensed premises, and under facts and circumstances that give law enforcement credible evidence that the cause of the DUI was alcohol consumed from the licensed premises. 1.0—4.0 Points.
3. Accumulated point classifications.
- a. Minor: .5 to 3 Points.
 - b. Significant: 3.5 to 7.5 Points.
 - c. Major: 8.0 Points and above.
4. Duration of accumulated points. Each assessment of points pursuant to this chapter shall remain on the licensee's record with the city for a period of 12 months following the date of assessment.
5. License violation review procedures. Notification of the point system as stated herein, and a copy of this section, will be provided to each licensee by the city clerk upon the issuance of a license.
- a. Alcohol review committee (ARC). A committee consisting of the chief of police or his/her designee, city clerk or his/her designee, chief of staff or his/her designee, building official or his/her designee, and planning and zoning director or his/her designee. This committee shall constitute the alcohol review committee (Committee), which Committee shall be responsible for administering the provisions of the ALPS. The chief of police shall be the chair of the committee and shall

- schedule and conduct meetings of the committee upon notification that a license violation has occurred requiring committee action. The committee shall abide by the applicable provisions of the Idaho Open Meeting laws.
- b. The ARC shall meet monthly for the purpose of reviewing any new incident report of an alleged violation of this chapter by a licensee. At each meeting the committee shall review the written incident report provided to the committee by the chief of police and the committee shall determine from the content of that report whether there is a factual basis to conclude that a prohibited act as set forth in section 5-12-17(II)(B) has occurred.
 - i. If the ARC determines that there is not a factual basis to believe that a licensee or an employee or agent of a licensee committed a license violation, the city clerk will notify the licensee that the committee will take no further action with respect to that incident. The city clerk within five business days send by certified mail a copy of the Incident report to the licensee, along with written notice of the committee's determination. The incident report shall be considered closed with no further action.
 - ii. If the ARC determines that there is a factual basis to believe that a licensee or an employee or agent of a licensee committed a license violation, the committee shall assess points against the license of the licensee in accordance with this section. The city clerk within five business days of that determination and assessment shall have a Star Police Department designee hand deliver a copy of the incident report to the licensee. If that cannot be accomplished within the five-day period the city clerk shall instead send a copy to the licensee by certified mail along with a notification of the points assessed against the applicable liquor license for each violation, and any previous points assessed which have not yet expired. The committee may also provide written notice of the assessment to the Idaho State Police, Alcohol Beverage Control.
 - c. Point assessment outcome. When the cumulative points assigned to a liquor license reach the minor, significant, or major levels, the committee shall determine what penalties and remedies will be assessed against a licensee.
 - i. When points assigned to a liquor license, combined with any points previously assessed which have not yet expired, reach the minor category, the ARC may place the licensee on probationary status for a period not to exceed six months. However, for any point assessment that would otherwise bring a licensee into the minor category, the committee may in its discretion and in lieu of the assessment of points for the current violation, allow the licensee and its employees to complete specialized liquor law enforcement training offered by the City of Star Police Department and/or the Idaho State Police.
 - ii. When points assigned to a liquor license combined with any points previously assessed which have not yet expired, reach the significant category, the committee may require licensees and employees to complete the specialized training, may suspend the license for a period not to exceed 30 days, and/or place a licensee on probationary status for a period not to exceed one year.

- iii. When points assigned to a liquor license combined with any points previously assessed which have not yet expired, reach the major category, the committee may put forth a recommendation to city council to suspend or revoke the license. The city council shall only elect to suspend or revoke a liquor license after conducting a hearing pursuant to subsection 5-12-17(II)(F).
- iv. In making a determination as to the appropriate penalty or remedy to be imposed on a licensee, the committee or council may consider all circumstances related to the underlying license violation.
- v. Any action or decision of the committee shall be effective 14 calendar days after the city clerk has sent by certified mail the incident report and assessment of points to the licensee, unless a timely appeal is filed in which case any consequence is tolled during the pendency of the appeal.
- d. Appeals. A licensee may appeal a license violation determination by submitting a written appeal to the city clerk within 14 calendar days of the personal service of the notice upon the licensee, or from the date the city clerk mailed the notification of the incident report and assessment of points, whichever occurs first.
- e. The appeal will be heard by the city council, which hearing shall be conducted pursuant to the hearing procedure under section 2-2B-8(B)(6), below. A written appeal must contain detailed facts, and be based upon, either of the following two reasons:
 - i. Specific new factual evidence that was not included within the incident report.
 - ii. A procedural error regarding the committee assessment process.
- 6. Hearing procedures.
 - a. The council, upon receiving a written appeal for a license violation determination, or a suspension/revocation recommendation, shall conduct a hearing within 30 days of receipt of the appeal. The notice of the hearing date and time shall be served upon the licensee by leaving a copy at the licensed premises or by the city clerk mailing the notice by certified mail to the licensee at the licensed premises.
 - b. The appellant/licensee may appear in person, and may appear with legal counsel, to present their position. Although the hearing will be conducted in an informal manner, the hearing will be recorded as part of the city council's normal public hearing process. The mayor shall preside over the hearing. The rules of evidence shall not apply, except the mayor may exclude evidence which is irrelevant or repetitious.
 - c. As a supplement to appeal documents provided pursuant to Star City Code, above, each party is entitled to ten minutes to present their position, starting with the representative from the alcohol review committee, followed by the appellant. Any new documentation provided by either party at the hearing will become a part of the record. The council may ask questions of either party, but the parties will not ask questions of each other or of the council.
 - d. At the end of each side's ten-minute presentation the council shall deliberate and vote to either (i) affirm the decision of the ARC, (ii) overturn it, or (iii) make any alteration to either the assessment of points, or to the consequences imposed for

such assessment, as the council deems appropriate in light of all evidence and circumstances presented.

- e. The council shall make written findings of fact and conclusions of law within 60 calendar days of the hearing. Such findings shall be based upon competent and substantial evidence contained in the hearing record as a whole.
- f. A copy of the council decision, findings of fact, and conclusions of law shall be delivered by the city clerk to the licensee by certified mail. Any revocation/suspension imposed by said written finding of facts and conclusion of law shall be effective on the date set forth within the decision.

Section 3: This ordinance, or a summary thereof as allowed pursuant to Idaho Code, shall be published within 30 days. The ordinance shall become effective upon its passage, approval and publication.

The ordinance is hereby adopted on this ____ day of _____, 2022.

Trevor Chadwick, Mayor

ATTEST

Jacob Qualls, City Clerk