

## ORDINANCE NO. 16-1011

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### AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING THE OREGON CITY MUNICIPAL CODE CREATING SECTION 12.16.070 TO ALLOW FOR EXCLUSION OF INDIVIDUALS FROM OREGON CITY PARKS

**WHEREAS**, the City of Oregon City owns and operates many parks in the City and regulates the activities that occur in the parks; and to promote healthy lifestyles; and

**WHEREAS**, the City wishes to promote healthy lifestyles and to protect the public health, safety, welfare by reducing unwanted and unwelcome behaviors within parks.

#### **NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:**

**Section 1.** Section 12.16.070 of the Oregon City Municipal Code shall be created as follows.

#### **12.16.070 – Park Exclusions.**

A. In addition to other remedies provided for violation of this Code, or of any of the laws of the State of Oregon, any municipal police officer may exclude any person who violates any applicable provision of law in any park from the city's parks in accordance with the provisions of this Section. Nothing in this Section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the state or federal constitutions. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable provisions of law, shall be subject to exclusion as provided by this Section.

B. For purposes of this Section, "applicable provision of law" includes any applicable provision of Oregon City Municipal Code, of any City ordinance, or of any rule or regulation promulgated by the City Manager under OCMC 12.16.020(B), any applicable criminal or traffic law of the State of Oregon, any law regarding controlled substances or alcoholic beverages and any applicable County ordinance or regulation. For purposes of this Section, "applicable" means relating to the person's conduct in the Park.

C. An exclusion issued under the provisions of this Section shall be for thirty (30) days. If the person to be excluded has been excluded from City parks at any time within two years before the date of the present exclusion, the exclusion shall be for ninety (90) days. If the person to be excluded has been excluded from City parks on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days.

D. Before issuing an exclusion under this Section, a municipal police officer shall first give the person a warning and a reasonable opportunity to desist from the violation. An exclusion shall not be issued if the person promptly complies with the direction and desists from the violation. Notwithstanding the provisions of this Subsection, no warning shall be required if the person is to be excluded for engaging in conduct that:

1. Is classified as a felony or as a misdemeanor under the following Chapters of the Oregon Revised Statutes, or is an attempt, solicitation or conspiracy to commit any such felony or misdemeanor defined in ORS:

- a. Chapter 162 - Offenses Against the State and Public Justice;
- b. Chapter 163 - Offenses Against Persons;
- c. Chapter 164 - Offenses Against Property, except for ORS 164.805, Offensive Littering;
- d. Chapter 165 - Offenses Involving Fraud or Deception;
- e. Chapter 166 - Offenses Against Public Order; Firearms and Other Weapons; Racketeering;
- f. Chapter 167 - Offenses Against Public Health, Decency and Animals;
- g. Chapter 475 - Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors; or
- 2. Otherwise involves a controlled substance or alcoholic beverage; or
- 3. Has resulted in injury to any person or damage to any property; or
- 4. Constitutes a violation of any of the following provisions of this Code:
  - a. Section 9.12.010 – Drinking in Public Places;
  - b. Section 9.12.020 – Disturbing the Peace;
  - c. Section 9.12.030 – Obscene Conduct;
  - d. Section 9.24.020 – Carrying or Discharge of Weapons;
  - e. Section 12.16.020 – Park Regulations;
  - f. Section 12.16.040 – Camping; or
  - g. Section 12.160.050 – Possession of Alcoholic Beverages; or
- 5. Is conduct for which the person previously has been warned or excluded for committing in any Park.

E. Written notice shall be given to any person excluded from the City's parks under this Section. The notice shall specify the date and length of the exclusion, shall identify the provision of law the person has violated and shall contain a brief description of the offending conduct. The notice shall inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal. It shall be signed by the issuing party. Warnings of consequences for failure to comply shall be prominently displayed on the notice.

F. A person receiving such notice of exclusion may appeal to the Oregon City Municipal Court. Any appeal must be filed within 10 days of the exclusion being issued. The Municipal Court shall uphold the exclusion if, upon de novo review, the preponderance of evidence admissible convinces the court that, more likely than not, the person in fact committed the violation, and if the exclusion is otherwise in accordance with law.

G. At any time within the period of exclusion, a person receiving such notice of exclusion may apply in writing to the City Manager for a waiver of some or all of the effects of the exclusion for good reason. If the City Manager grants a waiver under this Subsection, the City Manager shall promptly notify the Police Department and the Director of Community Services of such action. In exercising discretion under this Subsection, the City Manager shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in a City park during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the City Manager determines to be relevant to the determination of whether or not to grant a waiver. Notwithstanding the granting of a waiver under this Subsection, the exclusion will be included for purposes of calculating the appropriate length of exclusions under 12.16.070(C). The decision of the City Manager to grant or deny, in whole or in part, a waiver under this Subsection is committed to the sole discretion of the City Manager, and is not subject to appeal or review.

H. If an appeal of the exclusion is timely filed under Section 12.16.070(F), the effectiveness of the exclusion shall be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion shall be effective immediately upon the issuance of the Municipal Court decision, unless the Municipal Court specifies a later effective date.

I. If a person is issued a subsequent exclusion while a previous exclusion is stayed pending appeal (or pending judicial review, should a court stay the exclusion), the stayed exclusion shall be counted in determining the appropriate length of the subsequent exclusion under 12.16.070(C). If the predicate exclusion is set aside, the term of the subsequent exclusion shall be reduced, as if the predicate exclusion had not been issued. If multiple exclusions issued to a single person are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.

J. No person shall enter or remain in any park at any time during which there is in effect a notice of exclusion issued under this section excluding that person from that park.

Read for the first time at a regular meeting of the City Commission held on the 19<sup>th</sup> day of October, 2016, and the City Commission finally enacted the foregoing ordinance this 2<sup>nd</sup> day of November, 2016.

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DAN HOLLADAY, Mayor

Attested to this 2<sup>nd</sup> day of November 2016,

Approved as to legal sufficiency:

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Kattie Riggs, City Recorder

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City Attorney