



ORDINANCE 2022-01

AN ORDINANCE FOR EXCLUSIONS AND CRIMINAL TRESPASS IN PUBLIC PLACES AND DECLARING AN EMERGENCY

WHEREAS, the Monroe City Council read the proposed ordinance for Exclusions and Criminal Trespass in Public Places during open City Council session on March 28, 2022; and

WHEREAS, the City of Monroe is charged with addressing all safety issues and the welfare of its citizens and properties; and

WHEREAS, there are situations where is necessary to exclude persons violating applicable laws from specific public places where such conduct is violent or disruptive; now

THEREFORE, BE IT THAT THE CITY OF MONROE ORDAINS AS FOLLOWS:

Section 1. Purpose.

The purpose of this chapter is to protect law-abiding citizens in their use of public buildings, public parks and City parking lots, and to authorize the City to exclude persons violating applicable laws from specific public places where such conduct is violent or disruptive of other City customers, City employees, or the conduct of City operations.

Section 2. Authority.

A. In addition to other remedies provided for violation of this code or any laws of the state of Oregon, a code enforcement officer or law enforcement officer may exclude any person who violates any applicable provision of law in any place subject to this chapter in accordance with the provisions of this section. In addition, a law enforcement officer or authorized employee may exclude any person who violates any applicable provision of the rules of conduct in any place subject to this chapter. 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 Oregon or U.S. Constitution. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable provisions of law or rules of conduct, shall be subject to exclusion as provided by this chapter.

B. The City Administrator may delegate their authority and assign a person or persons to be in charge of the various City properties for the purpose of enforcing rules of conduct. In addition, designated law enforcement and authorized employees shall have the authority to enforce the rules of conduct on City property, as deemed necessary by the person in charge, or when actually observed by the law enforcement officer or authorized employee.

Section 3. Definitions.

For purposes of this section, the following definitions apply:

- A. "Applicable provision of law" includes any applicable provision of this code, of any City ordinance applying to use of public places, any applicable criminal or traffic law of the state of Oregon, any law regarding controlled substances or alcoholic beverages, and any applicable Benton County ordinance or regulation. For purposes of this section, "applicable" means relating to the person's conduct in the public place.
- B. "City property" means any City owned or leased building, structure, or land, including but not limited to City Hall, Monroe Community Library, Monroe Community Center, City parks, trails, and open space, and designated City parking lots within the City of Monroe.
- C. "Public place" means any public property, including City property.
- D. "Rules of conduct" means rules and regulations implementing this chapter, including but not limited to Section 6 of this ordinance and adopted by the City Administrator under the authority of Section 5 of this ordinance.

Section 4. Prohibited acts generally.

- A. Any act or thing prohibited or the failing to do any act or thing commanded to be done in this chapter, in a public place, within the corporate limits of the City of Monroe and such other areas as may be specified in this chapter, is hereby declared to be an offense against the public peace, safety, health, morals and general welfare of the people of the City of Monroe.
- B. Any act or omission made unlawful under this chapter shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing any such act or omission.

Section 5. City Administrator authorized to adopt rules.

- A. The City Administrator is authorized to make such rules and regulations implementing Section 6 of this ordinance and not otherwise inconsistent or in conflict with other law as the City Administrator finds necessary for the better control and management of City property, including buildings, parking facilities, parks, trails, and open space. The rules of conduct may be posted at various City properties in abbreviated form and are not meant to be all-inclusive of the conduct prohibited or required by this chapter. Any person aggrieved by a rule or regulation may appeal to the City Council to amend or repeal a rule by filing with the City Recorder a petition which shall be presented to the City Council at its next regular meeting. Until and unless amended or repealed by the council, any rule or regulation made by the City Administrator shall be in full force and effect as if it were an ordinance, as of the date of notice from the City Administrator adopting the rule or regulation.
- B. Before adopting any rule, the City Administrator shall provide at least 30 days' notice to the City Council with a copy of the proposed rule.

Section 6. Rules of conduct.

While on or about City property:

- A. No person shall violate any federal, state, or city of Monroe law.
- B. No person shall enter or remain on any City property for purposes other than to conduct legitimate business with the City or to use that property lawfully under the laws and rules that apply.
- C. No person shall enter or attempt to enter any secure portion of any City property that is not open to members of the general public without authorization from the City Administrator or a designee.
- D. No person shall deface, damage, or destroy City property.
- E. No person shall engage in conduct that degrades the appearance of City property, including but not limited to depositing trash, defacing property, or spitting.
- F. No person shall engage in conduct that disrupts or interferes with operations of the City government, or disturbs City customers or employees, including but not limited to conduct that creates unreasonable noise or consists of loud or boisterous physical behavior.
- G. No person shall engage in conduct that subjects customers or employees of the City government to annoyance or alarm, including but not limited to conduct that involves the use of abusive or threatening language or gestures.
- H. Unless specifically authorized, no person shall use a public place for the purpose of housing or camping, including but not limited to placing objects such as vehicles, bicycles, backpacks, carts, or other items in a manner that interferes with free passage.
- I. No person shall refuse to obey the direction of an authorized City employee in the enforcement of this ordinance.
- J. No person shall violate any provisions posted on any City parking facility.

Section 7. Enforcement and exclusion.

- A. An exclusion issued under the provisions of this chapter shall be for the following timeframes:
 - 1. Thirty days for an exclusion based on an offense not covered by subsection (A)(2) or (A)(3) of this section.
 - 2. Ninety days if the basis for the exclusion is a misdemeanor offense created by state law or City ordinance. In addition, if the person to be excluded has been excluded from any public place at any time within two years before the date of the present exclusion, the exclusion shall also be for 90 days.

3. One hundred eighty days if the basis for the exclusion is a felony or a sex offense as defined by state law. In addition, if the person to be excluded has been excluded from one or more public places on two or more occasions within two years before the date of the present exclusion, the exclusion shall also be for 180 days.

4. Nothing herein precludes a no-contact condition of pretrial release or probation condition which operates to exclude the individual from specified public properties.

B. 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. If the previous exclusion is set aside, the term of the subsequent exclusion shall be reduced, as if the previous exclusion had not been issued. If multiple exclusions issued to a single person for one public place are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.

Section 8. Warning – Conduct subject to exclusion.

Before issuing an exclusion under this chapter, the law enforcement officer (or person authorized to enforce rules implementing this chapter) shall first give the person a warning and opportunity to desist from the violation of law or rule. An exclusion shall not be issued if the person promptly complies with the direction and desists from violating the law or rule. Notwithstanding the provisions of this section, no warning shall be required if the person is to be excluded for engaging in conduct that:

A. 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 the ORS:

1. ORS Chapter 162, Offenses Against the State and Public Justice;
2. ORS Chapter 163, Offenses Against Persons;
3. ORS Chapter 164, Offenses Against Property, except for ORS 164.805, Offensive Littering;
4. ORS Chapter 165, Offenses Involving Fraud or Deception;
5. ORS Chapter 166, Offenses Against Public Order; Firearms and Other Weapons; Racketeering;
6. ORS Chapter 167, Offenses Against Public Health, Decency and Animals;
7. ORS Chapter 475, Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors;
or

- B. Otherwise involves a controlled substance or alcoholic beverage; or
- C. Has resulted in injury to any person or damage to any property; or
- D. Constitutes a violation of any of the following provisions of this code:
 - 1. MCO 50.02(A), Unlawful deposit of human or animal excrement in public places;
 - 2. MCO 91.04, Vicious Dogs;
 - 3. MCO 93.16, Damaging flowers, trees, trails, buildings, and the like;
 - 4. MCO 93.18, Overnight camping on public property;
 - 5. MCO 93.19, Animals;
 - 6. MCO 93.20, Discharge of weapons; or
- E. Is conduct for which the person previously has been warned or excluded for committing in a public place.

Section 9. Notice.

Written notice shall be given to any person excluded from any public place. The notice shall identify the provision of law the person has violated and contain a brief description of the offending conduct, the places of exclusion, and the start date and end date of the exclusion period. The notice shall be signed by the officer or authorized employee and shall prominently display a warning of the consequences for failure to comply. The notice shall inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal.

Section 10. Right to appeal – Hearing procedure.

- A. A person receiving a notice under Section 9 of this ordinance may appeal to the municipal court to have the exclusion rescinded or the exclusion period shortened. An appeal shall be filed by providing a written request for hearing within 10 business days of the date of the exclusion notice. Failure to file written notice of appeal within 10 business days will be deemed a waiver of any appeal rights.
- B. The request for an appeal hearing must be in writing, contain a copy or description of the notice of exclusion, and a statement of the basis on which the decision to exclude is invalid, unauthorized, or otherwise improper.
- C. The municipal court shall schedule a hearing on the appeal within 15 business days of receiving the request, unless the appellant requests a later date. Notice of the hearing time and date shall be given to the appellant and to the person issuing the exclusion notice.

D. At the hearing, the appellant may contest the validity of the exclusion and may present evidence. The City shall have the burden of proving the validity of the exclusion by a preponderance of the evidence. The City may present evidence either by testimony or by written report of the officer or employee. If the City's evidence is presented only by written report and the municipal court judge cannot resolve a question by information contained in the report, the hearing may be held open for a reasonable time to complete the record.

E. If the municipal court judge finds the City has proved each element necessary to issue the exclusion notice, and if the exclusion is otherwise in accordance with law, the municipal court judge shall uphold the exclusion.

F. If the municipal court judge finds that the City has not met its burden of proof or that the exclusion is otherwise unlawful, then the municipal court judge shall enter an order rescinding the exclusion.

G. If an appeal of the exclusion is timely filed under this section, 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 decision, unless the municipal court judge specifies a later effective date.

H. The determination of the municipal court judge is a final decision and is not appealable to the City council. Appeals from any determination by the municipal court judge under this chapter shall be by writ of review to the circuit court of Benton County, Oregon, as provided in ORS 34.010 through 34.100.

Section 11. Application for waiver.

At any time within the period of exclusion, a person receiving such notice of exclusion may apply in writing to the City Administrator for a limited waiver of some or all of the effects of the exclusion for good reason. If the City Administrator grants a waiver under this section, the City Administrator shall promptly notify designated Monroe law enforcement, as applicable, of such action. In exercising discretion under this section, the City Administrator shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in the public place 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 Administrator determines to be relevant to the determination of whether or not to grant a waiver. Notwithstanding the granting of a waiver under this section, the period of waiver will be included for purposes of calculating the appropriate length of exclusion under Section 7 of this ordinance. The decision of the City Administrator to grant or deny a waiver, in whole or in part, under this section is committed to the sole discretion of the City Administrator and is not subject to appeal or review.

Section 12. Violation – Criminal trespass.

No person shall enter or remain in any public place at any time during which there is in effect a notice of exclusion issued under this chapter excluding that person from that place. A person who knowingly violates a notice of exclusion from public places under this chapter commits the crime of criminal trespass.

Section 13. Emergency Clause.

Whereas it is necessary for the general welfare and safety of the citizens of the City of Monroe that the City is able to coordinate with ongoing law enforcement activities, an emergency is hereby declared to exist, and this ordinance shall take effect immediately upon its passage by the City Council and approval by the Mayor.

PASSED BY THE COUNCIL this 25th day of April, 2022.



Dan Sheets, Mayor



Date



ATTEST:

Steve Martinenko, City Recorder