ORDINANCE NO. 1225

AN ORDINANCE RELATED TO EXCLUDING CERTAIN PERSONS FROM PUBLIC PROPERTY

The people of the City of Prineville ordain as follows:

1. Purpose. The purpose of this Ordinance is to protect law-abiding citizens in their use of Public Places within the City of Prineville and to authorize exclusion of certain persons from Public Places when those persons violate applicable Federal or State laws, City Ordinances and rules promulgated by Public Bodies where the conduct of such person is violent or disrupts others or the conduct of the operations of the Public Bodies.

2. Definitions. For the purpose of this Ordinance, the following definitions apply:

"Applicable provision of law" includes any applicable provision of this Ordinance, of any City ordinance applying to the use of Public Places, any applicable criminal or traffic law of the State of Oregon, any Federal Law, any law regarding controlled substances or alcoholic beverages, any applicable City of Prineville (COP) ordinance or regulation, and any ordinances, orders, rules or regulations of any Public Body. For purposes of this Ordinance, "applicable" means relating to the person's conduct in the Public Place.

"Authorized Employee" means:

a) an employee of a Public Body authorized by such Public Body to exclude persons from Public Places managed by the Public Body;
b) a City Code Enforcement Officer; and
c) a Peace Officer.

"Chief of Police" means the City's Chief of Police.

"City" means the City of Prineville.

"City Manager" means the Prineville City Manager or his or her designee.

"City Property" means any building, structure, or land owned or leased by the City, including, but not limited to City Hall, City parks, trails, bike paths, bridges, streets, alleys, City parking lots, and any open public space within the City.

"Hearings Officer" means a person appointed by the City Manager, which person may be an employee of the City.

"Public Body" means the City of Prineville, Crook County Parks and Recreation District, Crook County, Crook County Fire & Rescue, and any other special district, municipal corporation, or division or agency of the State of Oregon or the United States.

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"Public Place" means any property owned or managed by any Public Body, including, but not limited to City Property and public park areas managed by Crook County Parks and Recreation District.

"Rules of Conduct" means the rules and regulations set out in Section 5 of this Ordinance.

3. Authority.

A. In addition to other remedies provided for City Ordinance violations, to include this Ordinance, or any laws of the State of Oregon or the Federal Government, a person may be excluded by an Authorized Employee from a specific Public Place if such person violates any Applicable provision of law in a Public Place.

B. Nothing in this Ordinance 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 shall be subject to exclusion as provided by this Ordinance.

4. Prohibited Acts Generally.

A. Any act or thing prohibited or the failing to do any required act or thing by this Ordinance, in a Public Place, within the corporate limits of the City is hereby declared to be a violation of this Ordinance.

B. Any act or omission made unlawful under this Ordinance shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing any such act or omission.

5. Rules of Conduct. While on or about any Public Place:

A. No person shall violate any federal or state laws, City Ordinance, or Crook County Park and Recreation District rule.

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 Manager.

D. No person shall engage in conduct that degrades the appearance of City Property, including but not limited to depositing trash or defacing property.

E. No person shall spit on any surface on any Public Place other than the ground.

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 the free passage of persons.

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6. Enforcement and Exclusion.

A. An exclusion issued under the provisions of this Ordinance shall be for the following timeframes:

i. Thirty (30) days for an exclusion based on an offense or rule not covered by subsection A. ii. or A. iii. of this section.

ii. Ninety (90) days if the basis for the exclusion is a Felony or Misdemeanor offense under federal law or state law. In addition, if the person to be excluded has been excluded from any Public Place at any time within two (2) years before the date of the present exclusion, the exclusion shall also be for ninety (90) days.

iii. One hundred and eighty (180) days if the person to be excluded has been excluded from one or more Public Places under this Ordinance on two or more occasions within two (2) years before the date of the present exclusion.

iv. Twenty-four (24) hours when a person's behavior does not violate one or more of the provisions set forth in Section 7, but causes either of the following:

a) A significant and immediate threat to public health or safety; or

b) A serious disturbance that prevents other persons from enjoying a Public Place.

If a person receives two 24-hour exclusions within any ninety (90) day period, then any subsequent exclusions may be for a period of thirty (30) days.

v. Nothing herein precludes a no-contact condition of pretrial release or probation condition, which operates to exclude the individual from specified Public Places.

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 determined, 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.

7. Warning – Conduct Subject to Exclusion. Before issuing an exclusion under this Ordinance, the Authorized Employee shall first give the person a verbal warning and opportunity to desist from the violation of an Applicable provision of law. An exclusion shall not be issued if the person promptly complies with the direction and desists from violating the Applicable provision of law. Notwithstanding the provisions of this Ordinance, 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 (ORS), or is an attempt, solicitation or conspiracy to commit any such felony or misdemeanor defined in the ORS:

i. ORS Chapter 162, Offenses Against the State and Public Justice;

ii. ORS Chapter 163, Offenses Against Persons;

iii. ORS Chapter 164, Offenses Against Property, except for ORS 164.805, Offensive Littering;

iv. ORS Chapter 165, Offenses Involving Fraud or Deception;

v. ORS Chapter 166, Offenses Against Public Order; Firearms and Other Weapons; Racketeering;

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vi. ORS Chapter 167, Offenses Against Public Health, Decency and Animals;

vii. 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 the Code of Prineville:

i. Chapter 90.00, Animals;

ii. Section 93.14, Dangerous animals;

iii. Section 130.25, Weapons;

iv. Section 131.02, Overnight camping on public property;

v. Section 130.45 (D), Urination or defecation in Public Places, except if the conduct involves only urination on a permeable surface (such as grass, dirt, mulch or other plant materials) in a park; or

E. Is conduct for which the person previously has been warned or excluded for committing in a Public Place.

8. Notice. A report shall be taken documenting facts, and a written notice shall be given to any person excluded from any Public Place, whether it be an exclusion warning or an exclusion for a specific time. The notice shall identify the Applicable 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, or that it is an exclusion warning. The notice shall be signed by the Authorized Employee and shall prominently display a warning of the consequences for failure to comply. The notice shall include information on the right to appeal, including the time limit and the place of delivering the appeal.

9. Right to Appeal – Hearing Procedure.

A. A person receiving an exclusion notice under Section 8 may appeal to the City to have the exclusion rescinded or the exclusion period shortened. An appeal shall be filed by providing a written request for hearing within five (5) business days of the date of the exclusion notice. Failure to file written notice of appeal within five (5) 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. A hearing on the appeal shall be scheduled within ten (10) business days of receiving the request, unless the appellant requests a later date. Notice of the hearing time and date shall be mailed to the appellant at the address he or she furnished to the Authorized Employee 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 Public Body shall have the burden of proving the validity of the exclusion by a preponderance of the evidence. The Public Body may present evidence either by testimony or by written report of the Authorized Employee. If the Public Body's evidence is presented only by written report and the Hearings Officer cannot resolve a question by information contained in the report, the hearing may be held open for a reasonable time to complete the record.

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E. If the Hearings Officer finds the Public Body has proved each element necessary to issue the exclusion notice, and if the exclusion is otherwise in accordance with law, the Hearings Officer shall uphold the exclusion.

F. If the Hearings Officer finds that the Public Body has not met its burden of proof or that the exclusion is otherwise unlawful, then the Hearings Officer shall enter an order rescinding the exclusion.

G. If an appeal of the exclusion is timely filed under this section, 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 Hearings Officer specifies a later effective date.

H. The determination of the Hearings Officer is a final decision and is not appealable to the city council. Appeals from any determination by the Hearings Officer under this Ordinance shall be by writ of review to the Circuit Court of Crook County, Oregon, as provided in ORS 34.010 through 34.100.

10. Application for Waiver. At any time within the period of exclusion, a person receiving such notice of exclusion may apply in writing to the Chief of Police for a limited waiver of some or all of the effects of the exclusion for good cause. If a waiver is granted under this section, the Chief of Police shall promptly notify the Public Body which manages the Public Place from which the person was excluded of such action and enter the waiver information into the exclusion database kept by the Prineville Police Department. In exercising discretion under this section, the Chief of Police 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 Chief of Police 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 6 above. The decision of the Chief of Police to grant or deny a waiver, in whole or in part, under this section is committed to the sole discretion of the Chief of Police and is not subject to appeal or review. Exclusions and waivers of exclusions will also be forwarded to the Public Body managing the Public Place from which the person was excluded.

11. Criminal Trespass. No person shall enter or remain in any Public Place at any time during which there is in effect a valid exclusion issued under this Ordinance excluding that person from that place. A person who knowingly violates a valid notice of exclusion from a Public Place under this Ordinance commits the crime of Criminal Trespass II.

12. Severability. If any section, sentence, paragraph, term, or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority or found unconstitutional, illegal, or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on

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the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect.

Passed by the City Council on September _____, 2016.

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Betty J. Roppe, Mayor

ATTEST:

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Lisa Morgan, City Recorder

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