

ORDINANCE NO. 751

AN ORDINANCE OF THE CITY OF WILSONVILLE ADDING SECTION “10.550 CIVIL EXCLUSION” TO CHAPTER 10 OF THE WILSONVILLE CITY CODE

WHEREAS, Wilsonville citizens have recently raised concerns about individuals’ unlawful disruption of the peace or engaging in illegal activities in public spaces, which actions do not involve the lawful rights of free speech, assembly, or petitioning the government; and

WHEREAS, police officials in Wilsonville recently raised concerns that the City has not adopted the plenary authority to reasonably exclude a disruptive, criminal, or dangerous individual from public spaces; and

WHEREAS, many private property owners have granted police the power to exclude such individuals from private property; and

WHEREAS, to protect the safety of those using Wilsonville’s parks and other public property from individuals who act *in violation of applicable law or regulations in or on City property*; and

WHEREAS, to protect Wilsonville’s quality of life and citizen’s enjoyment of public space; and

WHEREAS, to encourage appropriate use of City parks and other property; and

WHEREAS, to protect City facilities from destruction, vandalism, and degradation and to deter individuals from engaging in such actions; and

WHEREAS, to provide police in Wilsonville with a tool to prevent dangerous or troublesome individuals from engaging in recurring unlawful behavior; and

WHEREAS, in anticipation of challenges accompanying the expected growth and development of Wilsonville;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The following is added to Chapter 10 of the Wilsonville City Code as Section 10.550 Civil Exclusion:

“10.550 Civil Exclusion

- (1) Definitions. For purposes of this provision:

(a) “Applicable provision of law” includes any applicable provision of this Code, or any City ordinance, or of any rule or regulation promulgated by the Council under this Title, any applicable criminal or traffic law of the State of Oregon, any law regarding controlled substances or alcoholic beverages, or any applicable County ordinance or regulation.

(b) “Excluding officer” means any police officer or City employee authorized by the City Manager to issue exclusions.

(c) “City property” means any property including, but not limited to, parks, greenways, buildings, parking lots, or other land or physical structures owned or managed by the City.

(2) Exclusion. In addition to other remedies provided for violation of this Code, or of any laws of the State of Oregon, any excluding officer may exclude any person who violates any applicable provision of law *or regulation* in or on any City Property from that City Property in accordance with the provisions of this Section. Provided, further, the removal of a person for disturbing a City Council or other public meeting shall not be the basis for exclusion from future City Council or other public meetings under this ordinance; but may be used as evidence in any other civil or criminal proceeding that may result in a future exclusion.

(3) Period of Exclusion. 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 any City property at any time within two years before the date of the present exclusion, the exclusion shall be for (90) days. If the person to be excluded has been excluded from City property on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days.

(4) Warning Prior to Exclusion. Before issuing an exclusion under this Section, the excluding 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:

(a) Is classified as a felony or 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.

1. Chapter 162 – Offenses Against the State and Public Justice;
2. Chapter 163 – Offenses Against Persons;
3. Chapter 164 – Offenses Against Property, except for ORS 164.805, Offensive Littering;
4. Chapter 165 – Offenses Involving Fraud or Deception;
5. Chapter 166 – Offenses Against Public Order; Firearms and Other Weapons; Racketeering;

- 6. Chapter 177 – Offenses Against Public Health, Decency and Animals;
- 7. 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. 10.130 Minor – Purchase or Possession of Liquor
 - 2. 10.230 Killing of Birds or Animals Prohibited
 - 3. 10.300 Public Intoxication and Drinking
 - 4. 10.310 Panhandling
 - 5. 10.320 Public Kept In Decency
 - 6. 10.350 City Property, Destruction
 - 7. 10.390 Posted Notices, Defacement
 - 8. 10.410 Diving from Public Pilings
 - 9. 10.410 Unlawful Operating or Riding a Skateboard in a Prohibited Area
 - 10. 10.420 Intentionally Causing Damage to Town Center Park Properties by or for Skateboarding
 - 11. 10.425 Camping on Public Property and Rights of Way
 - 12. 10.510 Attempt to Commit Offenses
- (e) Is conduct for which the person previously has been warned or excluded for committing on any City Property.

(5) Written Notice. Written notice signed by the excluding officer shall be given to any person excluded from any City property under this Section. The notice shall specify:

- (a) the date of the exclusion’s issuance,
- (b) length of exclusion,
- (c) City property from which the person is excluded;
- (d) identify the provision of law the person has violated and shall contain a brief description of the offending conduct;
- (e) inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal;
- (f) inform the excluded person of the right to petition for a waiver of all or any portion of the exclusion; and
- (g) the consequences for failure to comply shall be prominently displayed on the notice.

(6) Appeal of Exclusion. A person receiving such notice of exclusion may appeal, in writing, to the Wilsonville Municipal Court Clerk.

- (a) A hearing shall be held at the next regularly scheduled session of the Wilsonville Municipal Court.

1. The excluded individual may request, in writing, setting forth the reason therefor, that the hearing be postponed, and the Clerk shall grant such a postponement upon a showing of necessity.
- (b) The municipal judge shall dissolve the exclusion upon a showing that:
 1. The excluding officer lacked probable cause; or
 2. The excluded individual was engaged in the lawful exercise of any right or privilege guaranteed under the United States Constitution, Constitution of the State of Oregon, or any other law.

(7) Waiver of Exclusion. At any time within the period of exclusion, a person receiving such notice of exclusion may apply, in writing, to the Municipal Judge for waiver of some or all of the effects of the exclusion for good reason. If the Municipal Judge grants a waiver under this Subsection, the Municipal Judge shall promptly notify the excluding officer. In exercising discretion under this Subsection, the Municipal Judge shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be within the area from which they are excluded 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 Municipal Judge determines to be relevant to the determination of whether or not to grant a waiver. The decision of the Municipal Judge to grant or deny, in whole or in part, a waiver under this Subsection is committed to the sole discretion of the Municipal Judge and is not subject to appeal or review.

1. The Municipal Judge shall grant the waiver if the excluded individual wishes to participate in any free speech activity protected by the Constitution of the United States or the Oregon Constitution.

(8) Stay During Appeal. If an appeal of the exclusion is timely filed under Section 6, the effectiveness of the exclusion shall be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion from the time of the stay shall be effective immediately upon the issuance of the Municipal Judge's decision, unless the Municipal Judge specifies a later effective date.

(9) Appropriate Length of Exclusion. 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 Subsection (3). 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 or a single facility are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.

DATED and signed by the Mayor this _____ day of November, 2014.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Goddard	Yes
Councilor Fitzgerald	Yes
Councilor Stevens	Yes