

ORDINANCE NO. 354

AN ORDINANCE ESTABLISHING A DRUG-FREE ZONE; DESIGNATING AREAS OF ITS BOUNDARIES; PROVIDING FOR EXCLUSION, NOTICES, AND VARIANCES.

WHEREAS, the City of Cascade Locks desires to eradicate illegal drug use within the City boundaries; and

WHEREAS, the City desires to designate areas within the City boundaries as Drug-Free Zones, for the purpose of excluding those associated with the illegal use, possession, sale, or transfer of illegal and controlled substances;

NOW, THEREFORE, THE CITY OF CASCADE LOCKS, HOOD RIVER COUNTY, OREGON, HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Drug-Free Zones. Drug-Free Zones are those areas of the City as designated by the City Council under this Ordinance, which are areas where the number of arrests where there was probable cause to believe a person has committed any of the offenses enumerated in Section 3 of this Ordinance is significantly higher than other similarly sized geographic areas of the City, or other geographic areas where there is probable cause to believe that said offenses are occurring.

SECTION 2. Designation of Drug-Free Zones. If the City Council designates an area meeting the criteria of Section 1 of this Ordinance to be a Drug-Free Zone, the City Council shall do so by Ordinance. The designation shall be valid for a period of three (3) years. The office of the City Law Enforcement Officer is directed to report to the City Council at least ninety (90) days before the end of the three (3) year period, as to whether there is a need to re-authorize or re-configure the Drug-Free Zones enumerated in Section 7.

SECTION 3. Civil Exclusion.

a. A person is subject to exclusion for a period of ninety (90) days from the public streets, sidewalks and other public ways in one or more Drug-Free Zones designated by this Ordinance if that person has been arrested based upon probable cause to believe that the person has committed any of the following offenses within a Drug-Free Zone, unless the offense was committed entirely within a private residence:

1. Attempt to unlawfully possess a controlled substance, in violation of ORS 161.405;
2. Criminal solicitation to unlawfully possess a controlled substance, in violation of ORS 161.435;
3. Criminal conspiracy to unlawfully possess a controlled substance, in violation of ORS 161.450;
4. Unlawful possession of a controlled substance, in violation of ORS 475.992, other than possession of less than one ounce of marijuana under ORS 475.992(4)(f);
5. Criminal conspiracy to unlawfully deliver a controlled substance, in violation of ORS 161.450;
6. Unlawful delivery of a controlled substance, in violation of ORS 475.992;

7. Attempt to unlawfully deliver an imitation controlled substance, in violation of ORS 161.405;
8. Criminal conspiracy to unlawfully deliver an imitation controlled substance, in violation of ORS 161.450; or
9. Unlawful delivery of an imitation controlled substance, in violation of ORS 475.991.

b. A one (1) year exclusion from one or more of the Drug-Free Zones shall take effect upon the date of conviction for any of the offenses enumerated in Subsection a. of this Section, if that offense was committed within any Drug-Free Zone.

c. Except as allowed under Section 6, a person excluded under authority of this Section may not enter any Drug-Free Zone except to:

1. Attend a meeting with an attorney;
2. Attend a scheduled initial interview with a social service provider;
3. Comply with Court or Corrections ordered obligations;
4. Contact criminal justice personnel at a criminal justice facility; or
5. Travel through a Drug-Free Zone on the I-84 freeway within the boundaries of any Drug-Free Zone.

While in a Drug-Free Zone, a person who is otherwise excluded may travel only directly to and from the obligations enumerated in (1) through (4) of this Subsection.

d. If an excluded person is in a Drug-Free Zone in violation of the exclusion during the exclusion period, that person is subject to immediate arrest for criminal trespass in the second degree, pursuant to ORS 164.245.

SECTION 4. Issuance of Exclusion Notices. The City Law Enforcement Officer and/or designees are the persons in charge of the public streets, sidewalks, and public ways in the Drug-Free Zones, for purposes of issuing exclusion notices in accordance with this Ordinance.

SECTION 5. Procedure. If a person is arrested based upon probable cause to believe that the person has committed any of the offenses enumerated in Subsection a. of Section 3 within a Drug-Free Zone, the City Law Enforcement Officer and/or designees may exclude that person from one or more Drug-Free Zones, which are so designated by the City Council. The notice shall specify the areas designated as Drug-Free Zones in Section 7 from which that person is excluded and shall contain information concerning the right to appeal the exclusion to the City Council.

SECTION 6. Appeal and Variances.

a. **Appeal.** Any person to whom an exclusion notice is issued shall have a right to appeal as follows:

1. Appeals shall be made to the City Council of the City of Cascade Locks. All hearings regarding such appeals shall be conducted in accordance with City Council hearing procedures for *de novo* hearings.
2. Copies of documents in the City's control, which are intended to be used at the hearing, shall be made available, upon request, to the appellant.

3. An appeal of a ninety (90) day exclusion must be filed, in writing, by 5:00 PM of the fifth (5th) business day following issuance of the notice of exclusion.
4. An appeal of a one (1) year conviction based exclusion must be filed, in writing, by 5:00 PM of the fifth (5th) business day following the date of conviction.
5. An appeal of a denial of an application for a variance or revocation of a variance must be filed, in writing, by 5:00 PM of the fifth (5th) business day following the denial or revocation of the variance.
6. A ninety (90) day exclusion shall not take effect during the time that an appeal of the ninety (90) day exclusion is pending. If no appeal is taken, the initial ninety (90) day exclusion shall take effect at 12:01 AM on the eighth (8th) calendar day following the issuance of the notice of exclusion.
7. A one (1) year conviction based exclusion shall take effect at 12:01 AM on the calendar day following the date of conviction and, notwithstanding an appeal of the exclusion, shall remain in effect unless the City council issues a contrary decision.
8. At the hearing on an appeal of a ninety (90) day exclusion, the City shall have the burden to show, by a preponderance of the evidence, that the exclusion is based upon probable cause to believe that the appellant committed any of the offenses enumerated in Subsection a. of Section 3, and that the conduct supporting the exclusion occurred within a Drug-Free Zone.
9. At the hearing on an appeal of a one (1) year conviction based exclusion, the City shall have the burden to show, by a preponderance of the evidence, that the appellant was convicted of any of the offenses enumerated in Subsection a. of Section 3, and that the conduct supporting the conviction occurred within a Drug-Free Zone.
10. At the hearing on an appeal of a denial of an application for a variance, the City shall have the burden to show, by a preponderance of the evidence, that the denial was in accordance with this Section.
11. At the hearing on an appeal of a revocation of a variance, the City shall have the burden to show, by a preponderance of the evidence, that any of the conditions enumerated in this Section supporting revocation existed at the time of revocation.
12. At the hearing on an appeal of a ninety (90) day exclusion, the following shall be *prima facie* evidence that the exclusion was based on probable cause to believe that the appellant committed any of the offenses enumerated in Subsection a. of Section 3:
 - (a) A determination by a Court having jurisdiction over the offense that forms the basis for the exclusion, that probable cause existed to arrest the person to whom the initial ninety (90) day exclusion notice was issued for violation of any of the offenses enumerated in Subsection a. of Section 3; or
 - (b) An accusatory instrument charging the person to whom a ninety (90) day exclusion notice was issued, for violation of any of the offenses enumerated in Subsection a. of Section 3.

13. At the hearing on an appeal of a one (1) year conviction based on exclusion, a judgement of conviction for any of the offenses that formed the basis for the exclusion, as enumerated in Subsection a. of Section 3, shall be conclusive evidence that the described conduct occurred.

b. **VariANCES.** Variances shall be granted, denied, or revoked in accordance with the following provisions: all variances shall be in writing, for a specific period and only to accommodate a specific purpose, all of which shall be stated on the variance. The purpose of the variance is to allow only travel to and from locations within a Drug-Free Zone according to the terms of the variance. The variance must be carried on the person while in a Drug-Free Zone in order to be effective and must be presented to a police officer upon request. In the event a person having a variance is found in a Drug-Free Zone in violation of the terms of the variance, that person is subject to immediate arrest for criminal trespass in the second degree, pursuant to ORS 164.245.

1. **General Variance.** The City Law Enforcement Officer and/or designees may, for any reason, grant a variance from an exclusion at any time during an exclusion period. A variance granted under this Subsection allows travel only within the Drug-Free Zone specified in the variance, and only according to the terms specified in the variance.

2. **Residential Variance.** The City Law Enforcement Officer and/or designees shall grant a residential variance from an exclusion to an excluded person to allow travel within a Drug-Free Zone in accordance with the terms of the variance if the excluded person:

- (a) Lived in a Drug-Free Zone when excluded; and
- (b) Continues to live at the same residence.

A variance granted under this Subsection allows travel only within the Drug-Free Zone within which the residence is situated and only in accordance with the terms of the variance.

3. **Essential Needs Variance.** The City Law Enforcement Officer and/or designees may grant an essential needs variance from an exclusion to an excluded person to allow travel within a Drug-Free Zone in accordance with the terms of the variance if the excluded person:

- (a) Possesses a residential variance;
- (b) Must access a public or private place within a Drug-Free Zone that provides an essential need; and
- (c) The essential need sought by the excluded person cannot reasonably be accessed by the excluded person without violating the Drug-Free Zone exclusion.

A variance granted under this Subsection allows travel only within the Drug-Free Zone in which the excluded person resides and only in accordance with the terms of the variance.

4. **Employment Variance.**

- (a) The City Law Enforcement Officer and/or designees may grant an employment variance from an exclusion to an excluded person to allow travel within a Drug-Free Zone in accordance with the terms of the variance if the excluded person:
 - i) Was an owner, principal, agent, or employee of a place of lawful employment located in a Drug-Free Zone when excluded; and
 - ii) Continues to be employed at the same place of employment.

A variance granted under this Subsection allows travel only within the Drug-Free Zone in which the excluded person works and only in accordance with the terms of the variance.

(b) The City Law Enforcement Officer and/or designees may grant an employment variance from an exclusion to an excluded person to allow travel within a Drug-Free Zone in accordance with the terms of the variance if the excluded person:

- i) Is an owner, principal, agent, or employee of a place of lawful employment; and
- ii) Will be required to perform employment related services in a Drug-Free Zone.

A variance granted under this Subsection allows travel only within the Drug-Free Zone in which the excluded person works and only in accordance with the terms of the variance.

5. **Social Services Variance.** The City Law Enforcement Officer and/or designees may grant a social services variance to an excluded person to allow travel within a Drug-Free Zone in accordance with the terms of the variance if the excluded person:

- (a) Is in need of social services in a Drug-Free Zone;
- (b) The social services are sought for reasons relating to the health or well-being of the excluded person; and
- (c) The social services agency has written rules and regulations prohibiting the unlawful use and sale of controlled substances by its clients.

A variance granted under this Subsection allows travel only within the Drug-Free Zone in which the social services agency is located and only in accordance with the terms of the variance.

c. **Revocation of Variances.** Variances may be revoked in accordance with the following provisions:

1. **Grounds for Revocation.**

- (a) The applicant provided false information in order to obtain the variance;
- (b) There is probable cause to believe the person has committed any of the offenses enumerated in Subsection a. of Section 3 in a Drug-Free Zone subsequent to the issuance of the variance; or
- (c) If the circumstances giving rise to the issuance of the variance no longer support a continuation of the variance.

2. **Residential Variance Exception.**

- (a) A residential variance may only be revoked if the applicant provided false residential information in order to obtain the variance; or
- (b) If the circumstances giving rise to the issuance of the variance no longer support a continuation of the issuance of the variance.

d. **Definitions.**

1. **Essential Needs.** As used in this Section, “essential needs” are defined as food, physical care, and medical attention.

2. **Travel.** As used in this Ordinance, “travel” is defined as the movement on foot or within or upon a vehicle within a Drug-Free Zone from one point to another without delay other than to obey traffic control devices.

SECTION 7. Listing of Drug-Free Zones. The following descriptions shall comprise the boundaries of the Drug-Free Zones listed, and the Drug-Free Zones shall include the entire area within the listed boundary.

a. The entire City of Cascade Locks: Commencing at the Section corner common to Sections 6 and 7, Township 2 North, Range 8 East of the Willamette Meridian, and Sections 1 and 12 in Township 2 North, Range 7 East of the Willamette Meridian, in the County of Hood River and the State of Oregon; thence North 548 feet, more or less, to a point on the Meander Line of the Columbia River; thence North 60 15' East 1650 feet to the point of the beginning of this description; thence North 71 East 759 feet; thence North 65 East 858 feet; thence North 50 43" 3038.4 feet; thence North 61 East 1176.2 feet; thence North 63 15' East 1805 feet; thence East 2640 feet to the Northeast corner of Section 5 common with Sections 4 and 5, Township 2 North, Range 3 East, and Section 32 and 33, Township 8 North, Range 3 East of the Willamette Meridian; thence South, along said section line to the Southeast corner of Section 5; thence West, along the South line of Section 5 to a point on the Southerly right-of-way line of the Columbia River Highway (Interstate 84); thence Westerly, along said right-of-way line to a point where said right-of-way line intersects the East line of Section 7; thence South 74 40' 12" West 685 feet; thence South 0 25' 43" West 857.33 feet; thence South 89 33' 46" West 657.33 feet; thence South 0 30' 46" West 1305.87 feet; thence South 89 23' 27" West 2621.3 feet; thence North 0 9' 00" East 3949 feet; thence South ¼ mile to the SE corner of the NW ¼ of the SW ¼ of Section 7, Township 2 North, Range 8 East of the Willamette Meridian; thence West ¾ mile to the SW corner of the North ½ of the SW ¼ of Section 12, Township 2 North, Range 7 East of the Willamette Meridian; thence South ½ mile, thence west along the South line of the North ½ of the NW ¼ of Section 13, Township 2 North, Range 7 East of the Willamette Meridian, to where this line intersects the boundary line between the States of Oregon and Washington, thence Northeasterly along the said boundary line to the middle point of the NW ¼ of Section 6, Township 2 North, Range 8 East of the Willamette Meridian, thence South to a point on the Meander line of the Columbia River, more or less to the point of the beginning.

ADOPTED by the City Council this **9th** day of **July**, 2001.