

**ORDINANCE NO. 1294**

**AN ORDINANCE AMENDING THE CODE OF THE CITY OF TILLAMOOK TITLE IX, GENERAL REGULATIONS, ADOPTING A PROCESS FOR EXCLUDING INDIVIDUALS FROM CITY PROPERTY AND FORBIDDING INDIVIDUALS FROM CALLING CITY TELEPHONE NUMBERS AND AUTHORIZING THE MUNICIPAL COURT TO HEAR EXCLUSION APPEALS, AND DECLARING AN EMERGENCY**

**WHEREAS**, on occasion, individuals who enter city buildings act in a manner that disrupts City business and, in some instances, may subject city personnel to a risk of harm; and

**WHEREAS**, on occasion, individuals who enter onto city property may act in a manner that violates city policies or ordinances, disrupts other users, or creates a risk of harm;

**WHEREAS**, the City of Tillamook has a compelling interest in protecting the health, safety, and welfare of citizens, city staff, and city officials present and working in city buildings or other city property; and

**WHEREAS**, the City Council finds that the health, safety, and welfare of citizens, city staff, and city officials are best served by temporary exclusion of certain individuals from city properties; and

**WHEREAS**, the City Council recognizes that individuals excluded from city properties are entitled to due process; and

**WHEREAS**, the City Council has determined that appeals of exclusion orders should be reviewed by the Municipal Court Judge;

**NOW, THEREFORE**, the City of Tillamook ordains as follows:

**Section 1. Purpose.**

In furtherance of maintaining a safe environment for public employees and citizens, and pursuant to the powers and authority of the Tillamook City Council, this ordinance addresses 1) exclusion from city property, and 2) prohibition on telephoning the City.

**Section 2. Definitions.**

1. "City Manager" means the City Manager of the City of Tillamook or the City Manager's designee.
2. "City Building" means a building owned or leased by the City of Tillamook.
3. "City Property" means real property owned or leased by the City of Tillamook, including city buildings and parks. "City Property" does not include city rights-of-way.
4. "Municipal Court" means the Tillamook County Justice Court, or any other court designated by the Tillamook City Council to act as the municipal court for the City of Tillamook.

5. “Necessary Official Business” means a prearranged and verifiable meeting with a city employee or official on City Property.
6. “Prohibited Conduct” means any of the following types of conduct:
  - a. Behavior that constitutes a crime;
  - b. Behavior that constitutes a violation of the Code of the City of Tillamook or any city ordinances;
  - c. Disorderly conduct;
  - d. Riotous or violent or threatening behavior;
  - e. Unreasonably loud or disruptive behavior;
  - f. Disorderly or riotous assemblies;
  - g. Disruption of lawful meetings, events or work;
  - h. Obstruction of access to government services;
  - i. Abusive language or conduct;
  - j. Visible intoxication;
  - k. Violation of City policies intended to maintain a safe, orderly and efficient work environment in public buildings, including the Violence in the Workplace Policy and the Anti-Harassment Policy; or
  - l. Conduct that is otherwise disruptive to the efficient functioning of government affairs.

### **Section 3. Exclusion from City Property.**

1. An individual is subject to immediate exclusion from City Property if that individual is observed to be engaged in Prohibited Conduct.
2. An individual who engages in Prohibited Conduct on City Property in violation of this policy may be excluded from the particular City Property on which the individual engaged in Prohibited Conduct for a period of up to 6 months (Exclusion Period).
3. During the Exclusion Period, the individual who has been excluded may, with prior notice to and approval from the City Manager, enter onto the City Property from which the individual has been excluded, to conduct Necessary Official Business.
4. All exclusion notices shall be in writing, shall state the Prohibited Conduct that is the basis for the exclusion notice, shall state the Exclusion Period, and shall include appeal information. The exclusion notice shall be personally served on the individual or mailed to the individual by certified mail if a mailing address is available. Service of an exclusion notice is deemed to have occurred on the date of personal service or the date of acceptance of a certified mailing.
5. The exclusion notice will be kept on file by the City Manager.
6. The exclusion will remain in effect for the period of time specified in the notice unless modified or rescinded due to an appeal.
7. Except as provided in paragraph (3) of this section, if an individual who receives a notice of exclusion remains in or returns to the City Property from which he or she has been excluded, the individual is subject to immediate arrest for criminal trespass.

#### **Section 4. Telephone Contact.**

1. The City Manager has the authority to forbid individuals from calling city telephone numbers for up to 6 months, if the individual has previously engaged in conduct that would violate ORS 166.090, Telephonic Harassment when calling city telephone numbers.
2. All notices forbidding an individual from calling city telephone numbers must be in writing, and either personally served or mailed to the individual by certified mail if a mailing address is available. Service of a notice forbidding an individual from calling city telephone numbers is deemed to have occurred on the date of personal service or the date of acceptance of a certified mailing.
3. Notices forbidding an individual from calling a city telephone number must state the conduct that is the basis for the notice, must state the period during which the individual may not call the city telephone number, and must include appeal information.

#### **Section 5. Appeal.**

1. Any exclusion from City Property and any prohibition against calling city telephones may be appealed by filing a written appeal with Municipal Court within five (5) business days after service of notice of exclusion or notice forbidding telephone contact.
2. The exclusion or prohibition against calling city telephones shall remain in effect during the appeal period.
3. If an appeal is not timely filed with the Municipal Court, no appeal hearing will be held and the exclusion notice or notice forbidding telephone contact shall become the final decision of the City.
4. The Municipal Court Judge shall hold a hearing on the appeal within seven (7) business days of the date of filing of the appeal, unless the appellant and the City agree to a different date.
5. The appeal hearing shall be conducted by the Municipal Court Judge. No jury shall be empaneled for a hearing pursuant to this section.
6. The Municipal Court Judge will review the written appeal and may consider any testimony, evidence, and other argument presented by the City and by the person who is the subject of the notice, as well as any other testimony, evidence, and other argument that the Municipal Court Judge considers relevant to whether the exclusion of prohibition is lawful and consistent with this ordinance, ORS 166.090, or any other applicable law.
7. The Municipal Court Judge shall issue a written decision on the appeal within five (5) business days of the date of the appeal hearing.
8. The Municipal Court Judge may uphold, amend, or rescind the exclusion or telephone prohibition. The decision of the Municipal Court Judge is the final decision of the City.

#### **Section 6. Authority of Municipal Court to Hear Exclusion Appeals.**

The Municipal Court of the City of Tillamook is hereby authorized to hear, consider, and render a decision upon appeals of exclusions from City Property and prohibitions on calling city telephone numbers, following the appeal process described in this ordinance.

**Section 7. Severability.**

The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs, and clauses.

**Section 8. Codification.** Provisions of this Ordinance shall be incorporated in the Code of the City of Tillamook, Title IX, General Regulations, and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word and the sections of the Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 7-9) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

**Section 9. Emergency**

This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

**PASSED FIRST READING** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

**PASSED SECOND READING** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

**ADOPTED** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

**APPROVED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

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Suzanne Weber, Mayor

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Abigail Donowho, City Recorder