

# **Civil Liberties Defense Center**

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Eugene City Council  
*Via Email*

Re: *Public Comments: Vote NO to Extending the DPSZ Exclusion Zone*

Dear Elected Representatives:

On behalf of the Civil Liberties Defense Center and our more than 1200 local members, we provide the following comments and information regarding the unconstitutional Downtown Public Safety Zone, and its process of excluding unhoused, poor, marginalized and/or disabled citizens without the protections of law. We believe this ordinance has been continuously enforced in a grossly discriminatory manner, is inefficient and ineffective at solving the problems of homelessness and potential crime, and is a waste of public resources that could be better utilized substantively addressing the underlying issues pertaining to individuals who have a human right to exist, to sit on a bench, or to congregate in the public areas of downtown despite their economic class.

## **CLASS WAR IN DOWNTOWN EUGENE**

### **Exclusion Zone or Downtown Public Safety Zone**

Eugene's Exclusion Zone has led to discrimination against individuals based on socio-economic status, age, disability, and appearance, and has a disproportionate negative impact on these groups. It is unconstitutional, and threatens the right of citizens to freely assemble in public, and violates their Due Process and Equal Protection rights guaranteed by the U.S. and Oregon constitutions.

The U.S. Constitution provides that everyone has the right to speak their mind and assemble with others in public places such as public parks and sidewalks. According to the US Supreme Court, sidewalks and downtown common areas are considered quintessential public forums deserving of the maximum constitutional protections. The Constitution does not discern between rich or poor, young or old, homeowners or houseless citizens. The City of Eugene and the Eugene Police Department have been utilizing their powers to unconstitutionally harass the poor, the young, disabled and houseless people attempting to live in a City that does not even have a single non-religious shelter, in order to protect 'the right to shop and consume' without being forced to set eyes on how the other half lives.

### **A Solution Without A Problem:**

Before the Downtown Public Safety Zone" (DPSZ), was passed, many of its supporters claimed that crime rates were on the rise. But, according to recent statistics, both property and person crimes have been consistently on the decline for the last several years—so what precipitated this community need to force people from our downtown commons?

Prior to implementation of this exclusion zone, a “Downtown Public Safety Task Team” was created to attempt to justify this unwarranted program. The Team, made up primarily of downtown retailers, admitted it wanted to create programs and incentives to encourage the homeless to go to other parts of town by giving them coupons for places outside of the downtown exclusion zone. The Civil Liberties Defense Center believes that the language used by the “Team” made it clear that many people are not welcome downtown at all, that they are profiling people in order to decide who should be excluded from public spaces downtown, and are attempting to push the issues of homelessness, mental illness and other community concerns onto other neighborhoods with less visibility and public presence. The Team gave some lip speak about providing “services” to these communities, but other than witnessing cops and private security guards harassing and using our tax dollars to thrust expensive tickets on penniless people, we haven’t seen much in the way of “service.”

In 2008 the Eugene City Council adopted Ordinance #20419 which defined a “Downtown Public Safety Zone” (DPSZ), and enacted conditions under which the Eugene Municipal Court could exclude a person from the zone. Five out of 8 city council members approved of it, including Andrea Ortiz, Mike Clark, Chris Pryor, and Jennifer Solomon. Councilors Betty Taylor, Alan Zelenka, and Bonny Bettman were the only three who opposed the ordinance. The ordinance states that any person who is simply *accused* of one of many minor (and often ambiguous) offenses listed below can be excluded from the DPSZ for 90 days. If a person is later *convicted* of committing one of a larger list of offenses in the downtown area, they can be excluded for a year. Since most of the folks appearing before the Municipal Judge don’t have lawyers and don’t understand what is happening to them, it’s simply a matter of the Prosecutor or officer asking for the exclusion and the judge granting it because no one is there to fight it. After it was clear that this process violates Due Process rights, the City attempted to ‘fix’ this issue by hiring an ‘advocate;’ a non-lawyer who was supposed to provide information and assistance to the vast majority of poor people facing exclusion orders. However, this advocate has been completely ineffective in assisting these individuals, and it is our understanding that since the creation of this position, the advocate has not been utilized by anyone accused of violating the DPSZ. Thus, the process and mechanism created by the City has been an utter failure in reconciling this due process concern. As with the City’s attempt to address the issues of homelessness and disability, the City once again attempted to provide pretty window dressing without actually addressing or remediating the serious underlying problem of failing to provide legal representation to people who stand to lose their freedom to travel, assemble and utilize public services in the downtown area.

If the City of Eugene were to make it’s statistics regarding the DPSZ public, we’d find that the vast majority of people targeted for prosecution are indigent, young, or mentally ill—all of whom have very little access to lawyers or legal information, and many of whom have little education or capacity to understand the complex process required for them to attempt to defend themselves against an exclusion order. For instance, an un-housed mentally ill person must appear for two separate court hearings just to defend themselves against the exclusion order—without an attorney, and a minimum of two separate and additional court dates to deal with their actual underlying criminal offense. So, this un-housed, often disabled person must attend a minimum of four mandatory court dates to deal with a crime like standing over a heating grate to keep warm (i.e. trespassing). In the case of the DPSZ, you are not entitled to a court appointed attorney to assist you in fighting an exclusion that forbids you from utilizing the public bus station, the Dining Room, and many other public services and areas to congregate and sit to pass the time (because they have no place to live or work). And of course, once you are in this flytrap, each time you are spotted walking the public sidewalk within the ‘zone’ you are prosecuted again and your exclusion is continued for another year. What next? After the City shut down the Occupy site, they provided free bus tickets to unhoused people simply to get them out of town.

The City and some of the business owners would prefer that these unhoused people go hang out where we can't see them—like under the bridges or anywhere else. But the issues of homelessness are only going to get worse in the coming years and it is our absolute responsibility to deal with these issues and not simply attempt to avoid them by forcing these individuals to hide themselves from the more prosperous classes. The DPSZ serves no legitimate purpose except to force homeless people away from the public's eyes and into less desirable locations that make all of us less safe.

The Council voted to approve an exclusion ordinance on August 11, 2008, effective date September 13, 2008. One of the reasons this reactionary law was approved was because it was contingent upon a sunset clause—a date where the law would no longer be effective— August 11, 2010. Instead of letting this unnecessary and unconstitutional law expire as intended, and without providing any substantive data to support the zone, the City Council has extended it two more times, the final extension is currently set to expire on April 30, 2012 unless the Council extends it once again. The Council should vote NO to extending this ordinance and should allow it to sunset as intended. If not, it will be up to the citizens of Eugene to redress this outrage through other means.

Although the City and police have promised to provide transparent information and statistics about the efficaciousness of the Exclusion zone ordinance and it's discriminatory enforcement, this has not occurred. The city has failed to provide any compelling justification why our dwindling City monies should be spent on harassing and jailing homeless people instead of providing them with necessary human services. These actions are akin to the City's recent decision to close the Occupy site that was providing a legal shelter and services to the unhoused with the promise of providing monies to shelter these individuals. Instead, once again, the vast majority of the money was unnecessarily funneled into law enforcement instead of actually addressing the underlying real issues.

EPD keeps a database of who is not allowed within the downtown zone (a "watch list" of transients). There is a complex procedure for an excluded person to obtain what is called a "variance" which allows that person to enter the downtown area for crucial and basic needs only, and they must carry the variance documents on them while in the exclusion zone—sort of like a militarized zone. Portland tried an exclusion ordinance as well, but eliminated it based upon serious concerns of police profiling. Whether Portland or Eugene, these exclusions are repugnant violations of peoples' civil rights and liberties, and are an ineffective waste of taxpayer resources.

#### **History of Classism, Ageism and Racism:**

Based upon crime statistics, there is no need for this illegal profiling program. Instead of harassing homeless people, we could use the money to offer programs, counseling, and non-religious shelter. The exclusion ordinance only displaces the problem of homelessness and crime and attempts to legitimize police profiling based upon class, appearance and lifestyle.

#### **Strict Scrutiny**

The Courts have ruled that when a government seeks to exclude, prosecute and harass a segment of the community through 'exclusion zones,' the ordinance must be narrowly tailored, taking into account two factors: efficiency (less restrictive methods) and effectiveness. Neither prong of this test can or has been satisfied by the City of Eugene regarding its exclusion zone.

Rather than criminalizing the poor, Eugene City Councilor Betty Taylor offered that the City could respond to

the problems with a homeless shelter, youth center, restrooms, mental health care and other social services (Pittman 2008)

### **The Mechanics of Exclusion**

Police, at their discretion, issues a citation or arrests a person for one of the many offenses listed in Eugene Code 4.874(1). Cop must provide person with a “Notice to Show Cause.” This requires person to show up in Eugene Municipal Court within 3-5 days from the date they were arrested or ticketed for a hearing ONLY on whether a 90-day exclusion will go into effect right away or not. This has nothing to do with the criminal charge they are facing—this is only about whether the person will be automatically excluded from the downtown zone.

The Notice must include:

- when and where to appear for the hearing.
- Which cop gave you the citation
- If you don’t show up for this hearing, the court automatically issues an exclusion order barring you from the downtown zone.
- Information on how to access free help regarding the exclusion order from the City Advocacy Program (though this has not actually occurred).
- If the court ultimately convicts you of one of the crimes listed in 4.874(1), then you are excluded from downtown for 1 year from the date the court actually convicts you (not from the date you were arrested or cited).

### **Court Hearing Number 1: Eugene Municipal Court Show Cause Hearing**

If you appear for Hearing Number 1, you will be told that the Court will now set another hearing 5-14 days from the date of Hearing Number 1. So guess what, you successfully made this court hearing only to be told you now have to come back within the next 2 weeks for another hearing where you can actually make an argument about why you should not be excluded from downtown Eugene.

If you did not show up for this hearing, the Court automatically rules against you, and you will be excluded for 90 days from the day after this hearing was scheduled.

### **Court Hearing Number 2: Eugene Municipal Court Show Cause Hearing**

Before this Court date, you should contact the City Advocacy office for information and assistance about how to represent yourself at this hearing. Unfortunately, you may not know this office exists, you most likely will not be able to speak to this person by phone, and you will not be able to meet with this person in the Court to discuss the matter prior to your hearing. And if you are like most unhoused people, you will not have a phone number for the advocate to call you back, if you were able to leave a message for him. You will not be provided an attorney if you cannot afford to retain one.

If you appear for Hearing Number 2, the Court will allow you to provide any information, evidence, or witness testimony about why you should not be excluded from the ‘downtown public safety zone,’ aka “exclusion zone.’ If the Court rules that it is ‘more likely than not’ that you committed the offense you were cited for in 4.874, the Court will enter an exclusion order barring you from the downtown zone for 90 days from the day after your hearing. The normal standard for a criminal conviction requires the City to prove you committed the offense ‘beyond a reasonable doubt.’ This law allows the City to use a lesser standard, ‘more likely than not,’ in order to punish you.

If you showed up for Hearing 1, but did not show up for Hearing 2, the Court can exclude you based upon the police report or an affidavit from a witness

**Court Hearing Number 3: Eugene Municipal Court Arraignment**

This is where you show up and plead not guilty to the actual crime you have been charged with. You will be provided a court appointed attorney if you have been charged with a misdemeanor, but this attorney does not represent you on the Exclusion Order. If you are charged with a Violation, you do not receive a court appointed attorney and must continue to represent yourself against the State. You will be provided another court date to resolve your case through trial or plea bargain.

**Court Hearing Number 4: Eugene Municipal Court Status Hearing/Plea Hearing**

This mandatory hearing is normally where you will either plead guilty the criminal charge and resolve your case, or you will request a trial date. If you are unable to resolve the case, you will be required to appear in about a month for a trial. If you are plead guilty and are convicted of an excludable offense, you will be ordered to remain out of the downtown zone for an additional year from this date.

**Court Hearing Number 5: Eugene Municipal Court Trial**

This fifth Court date is where you finally have your day in court to have a jury determine whether you are guilty of the offense(s) charged by the Eugene Police. If you are found guilty and convicted, you will be ordered to remain out of the downtown zone for an additional year from this date.

**If you were convicted in Lane County Circuit Court**

If you were convicted of an offense listed in 4.874(2) in Lane County Circuit Court, you may still be excluded if the Court or cop provides Eugene Municipal Court with a copy of the conviction for one of those offenses, and if the police report or witness affidavit proves that your criminal conduct occurred within the downtown exclusion zone. The Eugene Municipal Court may issue an exclusion order for a period of ONE YEAR from the date of the conviction. The person will be informed of this exclusion by MAIL to the last known address—so good luck if you are unhoused. If you actually receive a copy of this Order in the mail, you can request a hearing in Eugene Municipal Court only to contest (a) whether you were convicted of an offense listed in 4.874(2) and (b) whether the offense occurred within the “downtown public safety zone.” If you never receive the notice, the exclusion is automatically imposed upon you, and you won’t know that you have been excluded until a cop arrests you for being downtown while subject to an exclusion order you didn’t even know about. Sweet justice for the unhoused.

We request that the City of Eugene vote NO to the Motion to extend the DPSZ again. The Civil Liberties Defense Center fully intends to file a Constitutional challenge to this Exclusion concoction if the City does not allow this unconstitutional travesty to sunset as intended.

Sincerely,

Lauren Regan  
Attorney & Director  
Civil Liberties Defense Center

## **Offenses punishable by 90-day exclusion orders:**

### City Code Violations:

- 4.110- Regarding selling or giving alcohol to minors or intoxicated persons
- 4.230- Inhaling Toxic Vapors Prohibited
- 4.240- Use or Possession of Less than One Ounce of Marijuana
- 4.726- Harassment
- 4.729- Assault
- 4.730- Menacing
- 4.731- Intimidation in the Second Degree
- 4.770- Urinating or Defecating in, or in view of, a public place
- 4.780- Criminal Mischief in the Third Degree
- 4.782- Criminal Mischief in the Second Degree

### Oregon Revised Statutes Violations:

- ORS 163.185- Assault in the first degree
- ORS 164.365- Criminal mischief in the first degree
- ORS 166.165- Intimidation in the first degree
- ORS 167.262- Adult using minor in commission of controlled substance offense
- ORS 167.808- Unlawful possession of inhalants
- ORS 475.840- Unlawful for any person to manufacture or deliver a controlled substance
- ORS 475.846- Unlawful manufacture of heroin
- ORS 475.894- Unlawful possession of methamphetamine
- ORS 475.904- Unlawful manufacture or delivery of controlled substance within 1,000 feet of school
- ORS 475.906- Distribution of a controlled substance to minors
- ORS 163.160- Assault in the fourth degree
- ORS 163.190- Menacing
- ORS 163.275- Coercion
- ORS 163.355- Rape in the third degree
- ORS 163.365- Rape in the second degree
- ORS 163.375- Rape in the first degree
- ORS 163.385- Sodomy in the third degree
- ORS 163.395- Sodomy in the second degree
- ORS 163.405- Sodomy in the first degree
- ORS 163.408- Unlawful Sexual Penetration in the second degree
- ORS 163.411- Unlawful Sexual Penetration in the first degree
- ORS 163.415- Sexual Abuse in the third degree
- ORS 163.425- Sexual Abuse in the second degree
- ORS 163.427- Sexual Abuse in the first degree
- ORS 163.435- Contributing to the sexual delinquency of a minor
- ORS 163.575- Endangering the welfare of a minor
- ORS 164.345- Criminal Mischief in the third degree
- ORS 164.354- Criminal Mischief in the second degree
- ORS 166.065- Harassment
- ORS 166.155- Intimidation in the second degree
- ORS 167.012- Promoting prostitution
- ORS 167.017- Compelling prostitution
- ORS 471.475- Mixing, storing, or serving liquor without a license

## **Offenses punishable by one-year exclusion orders:**

### City Code Violations:

- 4.080- Noise disturbance
- 4.115- Minors- purchase or possession of liquor prohibited
- 4.190- Prohibited Consumption or Possession of alcohol in Unlicensed Public Places
- 4.230- Inhaling Toxic Vapors Prohibited
- 4.240- Use or Possession of Less than One Ounce of Marijuana
- 4.685- Prohibition of Unaccompanied or Un-emancipated Minors From Being in Public Places between the hours of 12 and 4 a.m

4.705- Offensive Physical Contact  
4.707- Interfering with Pedestrians  
4.725- Disorderly Conduct  
4.726- Harassment  
4.728- Recklessly Endangering Another Person  
4.729- Assault  
4.730- Menacing  
4.731- Intimidation in the Second Degree  
4.755- Public Indecency  
4.760- Prohibited Nudity  
4.770- Urinating or Defecating in, or in view of, a public place  
4.780- Criminal Mischief in the Third Degree  
4.782- Criminal Mischief in the Second Degree  
4.806- Criminal Trespass in the Second Degree by a Guest  
4.807- Criminal Trespass in the Second Degree  
4.808- Criminal Trespass in the First Degree  
4.809- Criminal Trespass while in the possession of Firearm  
4.820- Petty Larceny  
4.822- Theft  
4.825- Shoplifting  
4.882- Unlawful Entry Into a Motor Vehicle  
4.930- Theft of Services  
4.887- Carrying a concealed weapon  
4.888- Unlawful possession of firearms  
4.977- Interfering w/ public transportation

Oregon Revised Statutes Violations:

ORS 163.165- Assault in the third degree  
ORS 163.175- Assault in the second degree  
ORS 163.185- Assault in the first degree  
ORS 164.365- Criminal mischief in the first degree  
ORS 164.395- Robbery in the third degree  
ORS 164.405- Robbery in the second degree  
ORS 164.415- Robbery in the first degree  
ORS 166.165- Intimidation in the first degree  
ORS 166.170- State preemption of the Authority to Regulate Firearms  
ORS 166.220- Unlawful use of weapon  
ORS 166.240- Carrying of concealed weapons  
ORS 166.250- Unlawful possession of firearms  
ORS 167.262- Adult using minor in commission of controlled substance offense  
ORS 167.808- Unlawful possession of inhalants  
ORS 475.840- Unlawful for any person to manufacture or deliver a controlled substance  
ORS 475.846 – ORS 475.894- Unlawful delivery, manufacture, and possession of various controlled substances  
ORS 475.904- Unlawful manufacture or delivery of controlled substance within 1,000 feet of school  
ORS 475.906- Distribution of a controlled substance to minors  
ORS 163.160- Assault in the fourth degree  
ORS 163.190- Menacing  
ORS 163.195- Recklessly endangering another person  
ORS 163.275- Coercion  
ORS 163.355- Rape in the third degree  
ORS 163.365- Rape in the second degree  
ORS 163.375- Rape in the first degree  
ORS 163.385- Sodomy in the third degree  
ORS 163.395- Sodomy in the second degree  
ORS 163.405- Sodomy in the first degree  
ORS 163.408- Unlawful sexual penetration in the second degree  
ORS 163.411- Unlawful sexual penetration in the first degree

ORS 163.415- Sexual abuse in the third degree  
ORS 163.425- Sexual abuse in the second degree  
ORS 163.427- Sexual abuse in the first degree  
ORS 163.435- Contributing to the sexual delinquency of a minor  
ORS 163.465- Public indecency  
ORS 163.575- Endangering the welfare of a minor  
ORS 164.043- Theft in the third degree  
ORS 164.045- Theft in the second degree  
ORS 164.055- Theft in the first degree  
ORS 164.125- Theft of services  
ORS 164.245- Criminal trespass in the second degree  
ORS 164.255- Criminal trespass in the first degree  
ORS 164.265- Criminal trespass while in possession of a firearm  
ORS 164.272- Unlawful entry into a motor vehicle  
ORS 164.345- Criminal mischief in the third degree  
ORS 164.354- Criminal mischief in the second degree  
ORS 166.025- Disorderly conduct in the second degree  
ORS 166.065- Harassment  
ORS 166.115- N/A  
ORS 166.155- Intimidation in the second degree  
ORS 167.012- Promoting prostitution  
ORS 167.017- Compelling prostitution  
ORS 471.430- Purpose of Liquor Control Act  
ORS 475.840- N/A  
ORS 475.846-894 Drug Stuff  
ORS 475.904- Unlawful manufacture or delivery of a controlled substance within 1000 feet of a school  
ORS 475.906- Penalties for unlawful delivery to minors

**“In addition, persons who attempt, as defined in section 4.015 of this code or ORS 161.405, to commit offenses listed in this section are subject to exclusion pursuant to section 4.876 of this code.”**