

**Eugene's Exclusion Ordinance:
A Dilemma for Civil Liberties, Public Space,
and the Homeless**

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Executive Summary

This paper uses interviews with community members, case law, police data, local newspapers and broadcasts, and other literature to examine some of the conundrums that arise for the City of Eugene in enacting the Exclusion Ordinance. It includes an extensive analysis of the constitutional issues surrounding the ordinance, as well as legal precedent. This paper looks at how exclusion represents the community's conceptualization and use of law enforcement and public spaces, and how this ordinance is part of the systemic privatization of the commons. Finally, it explores how exclusion and other laws impact vulnerable members of the community. The purpose of this paper is to explore some of the issues the Exclusion Ordinance poses to civil liberties and human rights, through the lens of an activist. The analysis primarily focuses on the perspective of the homeless and youth populations, as these are often underrepresented in policy decisions.

Downtown Eugene in the 1950's is likened to a Norman Rockwell painting. It was the epicenter of regional activity, and a destination for business, leisure, and civic and cultural events. With increased ownership of automobiles, people and businesses moved away from the city center, pursuing newer, cheaper, and more accessible and spacious suburban development. With this decline in traffic and activity, the downtown became less vibrant. Without informal social control that comes with diverse and frequent use, the area entered into a state of urban deterioration. Many community members perceive the area to be dangerous. As a result, the City has adopted multiple strategies to increase public safety and revitalize the city core. These measures included the creation of a Downtown Public Safety Zone and Exclusion Ordinance, which allows the City to exclude people from the downtown area for certain crimes, sometimes without a conviction.

The public gives the government authority in exchange for protection and order. In times of uncertainty and fear, the government and the public negotiate this social contract, striving for a balance between civil liberties and public safety. Benjamin Franklin disagreed with the wisdom of this exchange, stating "any society that would give up a little liberty to gain a little security will deserve neither and lose both." The government sometimes argues that civil liberties impede on its ability to serve the public interests. Yet, these same protections are in place to prevent tyranny and abuse by those in power. When people relinquish their rights as individuals, they also let go of safeguards against injustices of the state. Additionally, without due process, equal protection, and other legal safeguards, government actions will be more likely to result in unfair outcomes. Arguably, the surrender of civil liberties ultimately threatens the public interest in justice and security.

In order to address safety concerns in the downtown, the community allowed the City of Eugene to adopt the Exclusion Ordinance. This is a noteworthy approach in that it functions through a civil legal process, not criminal, a distinction that allows the City to strip away constitutional rights afforded in the criminal justice system. It changes the standard of proof, eliminates the right to representation, challenges one's freedom of movement, and erodes the protections against self-incrimination, double jeopardy, and cruel and unusual punishment. Since exclusion zones potentially infringe on civil liberties, courts have decided they must pass the "strict scrutiny" test to determine whether the ordinance is narrowly tailored to meet a compelling state interest. This brings to question whether the ordinance effectively does what it aims to do, and whether the ordinance restricts constitutional rights more broadly than necessary.

When the City excludes a person from the Downtown, it also restricts that individual's right to access public space. Enforcement measures such as the Exclusion Ordinance aim to ensure that socially unacceptable behavior does not endanger the general public or prevent people from enjoying public resources. This paper describes how this ordinance is also a part of a local movement for police and private security to sanitize the public space for private business interests, ridding "undesirables." Police may inadvertently or purposefully infringe on the rights of the individual, if that individual somehow falls outside of the social norm, and is perceived to be threatening. Historically, exclusion and public order laws have been a mechanism for the systemic marginalization of racial minorities and the homeless. The exclusion zones in Portland, Oregon demonstrate this point, as the City found them to have a disparate impact on the African American community. Community members in Eugene expressed deep concern for how this ordinance, and other codes, affects the homeless and youth.

In the words of one homeless caseworker, "the world is an exclusion zone for some of those who are not welcome." Eugene has a history of displacing homeless people, uprooting them from their neighborhoods where they feel safest and can have the best quality of life in their circumstance. It also has a list of criminal codes that have a disproportionate impact on people who must live or otherwise spend their time on the street. Homeless people account for 55% of those arrested in the downtown between September 2008 and December 2009. In 2009, they accounted for 92% of prohibited camping arrests, 73% of trespass arrests, 80% of arrests for obstructing the sidewalk and pedestrian traffic, 75% of park rules violations, and half of the arrests for public urination and defecation. People must engage in certain behaviors for survival. However, some of these are illegal in public spaces, and that is the only place homeless have to go.

Overwhelmingly, interviewees shared that the homeless and youth in the downtown commit crime or otherwise act in a disruptive manner because they have no alternatives. A lack of bathrooms; shelter and affordable housing; day-use facilities and places to socialize; education, civic, and vocational opportunities; and treatment for mental health and dependency on substances all contribute to the problem. Excluding those in need is only a band-aid for larger social issues. As one man expressed, "Eugene gave up and made an exclusion ordinance—shame on them." The City has chosen to deal with challenging times by dividing the community, punishing and banishing those who are most vulnerable.

In enacting the Exclusion Ordinance, one man who had been homeless felt the message from the City was clear. "You don't belong here, and we don't care what you do so long as you don't do it around us." He said that "the City says, 'we don't care where you go or if you die.' They kick you out of where there are people and food." This paper includes a discussion of some of the ways in which this policy has compromised the safety and well-being of those who are cited, and how it increased the sense of alienation and hopelessness that many experience.

Eugene's Exclusion Ordinance raises several questions. How do we balance public safety with individual rights? How do we decide who belongs and who does not in an equitable, non-discriminatory manner? How do we create a community that is inclusive to diverse groups of people, even when they seem incompatible? How can we be compassionate during challenging times? Let us reflect on how Eugene can maintain its charm and progressive, humanitarian ideals, even in times of uncertainty and fear.

I. Introduction

Over the last sixty years, the story of Eugene's downtown has been one of disappointment and frustration for the community. Forsaken in the late 1960s, the area has since been in a continual state of urban decay, despite multiple efforts to revitalize. Everyone envisions a vibrant, safe, and inclusive city center. However, opinions vary as to the barriers to achieving this vision, or how the vision will materialize.

Public safety has increasingly become a part of the rhetoric regarding the downtown revitalization efforts. Businesses in the area, as well as some community members, have demanded the City address what they believe to be chronic criminal behavior. As a result, the City enacted the Exclusion Ordinance, which aims to create a safe and vibrant Downtown by removing repeat criminal offenders from the area.

This approach presents several issues for Eugene. It highlights the tension that exists between public safety and individual rights. It raises the question of who belongs and who does not, and how we make this determination in an equitable, non-discriminatory manner. It challenges Eugene's supposed identity of being a compassionate and inclusive community that embraces diversity.

The purpose of this paper is to explore some of the issues the Exclusion Ordinance poses to civil liberties and human rights, through my lens and research as an activist. The analysis primarily focuses on the perspective of vulnerable populations, as these are often underrepresented in policy decisions. Further research is necessary to discuss how the ordinance impacts other stakeholders such as businesses. Additionally, this analysis is limited to the Exclusion Ordinance and a few other laws that disproportionately affect people who dwell in public spaces. Further research is necessary to comprehensively assess the City's codes, policies

and resources for dealing with people who are homeless, mentally ill, addicted to substances, youth, or otherwise vulnerable.

Using interviews with community members, case law, and police data, this paper examines some of the conundrums that arise for the City of Eugene in enacting the Exclusion Ordinance. It discusses the constitutional issues surrounding the ordinance, as well as the practical implications. This paper explores how exclusion represents the community's conceptualization and use of public resources and spaces, and the ways in which exclusion from public spaces impacts those who lack alternatives and have no place to go (e.g. the homeless and youth). Finally, it looks into some of the ways that Eugene can maintain its charm and progressive, humanitarian ideals, even in times of extreme challenges and fear.

II. Methods

This paper contains several sources for data, and all will appear throughout the paper. It includes: academic journals and case law; news articles; Eugene City Council meeting minutes; Eugene City Code; crime and arrest data from the Eugene Police Department; and interviews. This section will elaborate on the latter two methods.

a. Eugene Police Department Data

In early October, 2009, I called the records office for the Eugene Police Department (EPD) and asked how to request either data pertaining to the Exclusion Ordinance, or police reports for incidence that resulted in exclusion citations. The staff person stated that no such information was available.

On October 16th, I emailed the Police Planner to make the same inquiry. I chose to contact her because of her active role in researching the Downtown public safety issues. She forwarded the request to the Data and Records Manager. On October 22nd, I received an email that acknowledged receipt of the information request.

On November 23rd, the Records Supervisor responded with a cost estimate. I could view 25 police reports for \$10 per report (first 10 pages and \$1 per page thereafter). I asked whether I could view the reports without receiving a copy, to conserve paper, labor, and money. She responded that this would be possible, but would require the department to print each report and redact any information exempt from disclosure. She said this would take weeks to accomplish. On December 8th, she emailed a new cost estimate of \$137.

As of early October, when I began these requests, the City of Eugene had issued 43 exclusion citations. In November, the EPD records department informed me that I could view a little over

half of the police reports with redactions. Finally, in December, the records department was prepared to begin processing such a request, but it would take weeks, and would cost either \$250 (to purchase paper copies), or \$137 (to view without purchasing). If the request required three weeks for preparation, the earliest possible day for completion would have been early January. In the mean time, the City may have issued additional exclusion citations not considered in the request. In conclusion, my request proved to be limited in content, outdated, and expensive. A Eugene public-interest advocate had suggestions for more successful public information requests in the future: 1) discuss how you plan to use the information for the public's interest; 2) find organizations who also could benefit from the information and affiliate yourself with them; 3) in conjunction with 1 and 2, ask for a fee waiver; 4) let them know if time sensitivity is an issue.

During an interview, a police officer introduced me to an EPD crime analyst. He generously agreed to meet and share whatever information he could and, in due course, shared data on police arrests in the Downtown and city wide. Unfortunately, he found that “getting the [data on] Violations of the Exclusion Order is proving to be more difficult.” In April, I followed up with him to see if he had yet found this data, and as early May, he informed me that this data “is harder to come by, but I’ll keep trying.”

I felt perplexed and concerned by the inaccessibility of data on the exclusion citations. If the Police Department is not collecting data on this approach, they may be unable to properly evaluate its implications. On the other hand, if such data exists but is unavailable to the community, the approach lacks the transparency necessary to foster legitimacy and trust in it and other police endeavors.

b. Interviews

27 people from the Eugene community participated in interviews for this study. They consisted of the following: 2 human rights attorneys; a civil liberties advocate; 10 social workers who work with transitional youth or homeless people (including one youth); 2 homeless youth, one young man who was homeless 5 years; 3 excluded individuals; 9 employees for the City of Eugene from the Eugene Police Department, Municipal Court, Probation and Parole, the Human Rights Commission, Planning and Development, Parks and Open Space, and the Eugene Public Library; 2 people who live in the Downtown Neighborhood. At least 10 interviewees work Downtown. I may have included some participants in more than one category. Other participants have multiple identities, as well, such as years of experience living in Eugene, or serving on City and community boards and committees involving neighborhood issues, budget, social services, and homelessness. Some participants agreed to share their identities in this paper, those who did not or were under the age of 18 are kept anonymous to maintain their confidentiality.

The selection of interviewees began with contact via email to the Eugene Police Department Public Information Officer, the Eugene Chamber of Commerce, and the Community Services Manager for the City of Eugene. In these emails, I identified myself, my discipline, and the topic of research (the Exclusion Ordinance). I requested a voluntary interview, as well as the contact information for anyone else who may have experience with the Downtown Safety Zone, or individuals excluded from the area. I then contacted any individuals to whom I was referred in the same manner, and continued to gather a snowball sample.

The Eugene Chamber of Commerce never responded to email, and did not participate. While I was aware that Downtown businesses may have relevant experience and insights, I chose not to pursue this group because many have shared their perspective at City Council meetings.

Additionally, business owners comprised one third of the individuals invited to be on the Downtown Safety Task Force, the committee that made recommendations to the City Council regarding policy for the future downtown safety plan. The task force had one youth advocate, and one homeless advocate. Business owners already have a lot of voice and representation in community decision making.

This method for sampling was subject to researcher and participant bias, as it was limited to only those individuals whom I thought to contact or contacted through referral. However, this approach allowed me to connect with individuals who the community identified as important, and this facilitated interviews with participants whom I may not have otherwise known. Furthermore, it allowed me to interview individuals cited with the Exclusion Ordinance through the supervision of social service agencies. This gave me greater access, as well as protecting potentially vulnerable individuals from any negative consequences that may result from the interviews.

The interviews were unstructured, with a checklist of topics to cover with each individual in no particular order. This approach created space for participants to discuss the topics they felt were important, as well as for me to gather perspectives on specific issues pertaining to the Exclusion Ordinance. The checklist covered these topics: the impacts of the Exclusion Ordinance on people; indentifying Downtown issues, and ways to address them; and the effectiveness of the Exclusion Ordinance.

The locations of the interviews were determined by the individual. All occurred in the office space of a government agency, community organization, or business, except for an interview with a police officer walking through the Downtown. Most interviews lasted 60-90 minutes, and there were two with a duration of approximately three hours.

The research followed several guidelines to ensure the interviews were in compliance with federal regulations and ethical standards governing the protection of human subjects. These guidelines involved: oversight of the Institutional Review Board; informed consent to participate (verbal or written); and confidentiality (except with consent of the participant to use their name).

III. Background

This section includes a brief historical overview of Downtown Eugene and issues in the area. It provides context for the City of Eugene's current measures to revitalize the downtown, such as the Exclusion Ordinance. It elaborates in greater detail on the Downtown Public Safety Zone and the Exclusion Ordinance, and specifically summarizes how it operates.

a. History of Downtown Eugene

In the book *Eugene 1945-2000*, Jonathan Stafford describes downtown Eugene of the 1950s in an idyllic way, as a "picture that could have been Norman Rockwell." He says that, "in those days downtown was the regional center of activity, not only for retail businesses but also for civic and cultural events." However, with the increased ownership of automobiles in the 1960s, people began to live farther away from their place of employment and city center. Additionally, people needed roads and parking to accommodate their vehicles. These factors enabled suburban development. At the same time, characteristics of the downtown encouraged developers to build elsewhere, including infrastructure issues (water, sewer, electrical and telephone wires, fire safety). Fragmented land ownership created barriers to purchasing large plots of area. Buying green land and constructing new buildings was a faster and more profitable alternative (Stafford 2001).

Richie Weinman, Community Services Manager for the City of Eugene Planning and Development Department, notes some of the difficulties in developing the downtown today. The buying and construction of land is expensive, and the City Council often lacks political support to incentivize or fund private development in the area. The infrastructure downtown is old, and the codes can be limiting. Additionally, shopping malls on private land are easy to manage compared to the downtown, where the land has many owners or is public and open to all.

Over the years, businesses and people moved away from the city center, and a new dynamic emerged. Eugene Police Officer Tom Schulke describes what he calls a “vicious cycle”:
businesses leave the downtown, which leads to empty storefronts. Without stores and bustling business, fewer people come into the downtown. The absence of traffic makes the neighborhood seem abandoned, and increases the likelihood of crime and people’s feeling of being unsafe. As the neighborhood gains a reputation for being unsafe, fewer and fewer people come. In turn, this causes businesses to relocate.

Tod Schneider, Eugene Police Department crime prevention specialist, said the best thing for a crime-ridden area is to create something to attract people. Jane Jacobs discusses the importance of public spaces serving diverse needs, so many different people use them. She points out that districts must serve more than one primary function to ensure presence of people using the same common facilities at different times. The city needs diverse people watching and buildings facing the street to provide “eyes upon the street...to ensure the safety of both residents and strangers” (Jacobs 1961). Similarly, interviewees suggested that by using the downtown for mixed purposes, including social services, residences, cultural activities and events, and business, the area will draw more people, addressing the issues of remoteness, insecurity, and crime. One woman said that, in order to make the downtown feel safer, the City must make it more inviting. “More people equals a greater sense of safety,” she said. A man who works in the City parks reiterated this point. Public spaces feel safer if they are visible and have people around, like park staff. This large presence will deter crime and increase safety for everyone.

Wilson and Kelling call this process “urban decay.” They note that this phenomenon has occurred for centuries in every city. However, in recent years, it has taken a new form. With populations becoming increasingly mobile, people with privilege relocate, leaving behind the poor

and the elderly. This aggravates and magnifies the deterioration of the urban areas, and, according to the authors, accelerates the escalation of public fear, social disorder, and crime (Wilson and Kelling 1982). Through ecological analysis, sociologists found concentric zones in cities, with crime rates the highest in the city centers (Burgess, Park, and McKenzie 1925). Shaw and McKay noted that these patterns of crime remained consistent over decades, regardless of the demographic composition in the space at a given time. This finding led them to conclude that social disorder occurs because of the environment, not the social group (Shaw and McKay 1969).

In the 1960's, the City of Eugene joined with private property owners and businesses to "preserve and enhance the downtown core of the City." In the early 1970s, as part of a series of urban renewal efforts, the City created a Pedestrian Mall that barred automobiles and was "designed to provide an inviting pedestrian environment for commercial cultural social and political activities." The Mall's territory included Broadway from Charnelton Street to Oak Street, as well as portions of Olive Street and Willamette Street. In order "to minimize conflict between the diverse uses and interests associated with the Mall, and to prevent incompatible activities which detract from the value of the Mall," the City codified a list of prohibited behaviors. Prohibited acts included: riding bicycles, skateboards, or roller blades; lying down; impeding pedestrian lanes; bringing non-service dogs into the area; and engaging in an activity involving more than 4 people without a permit (Eugene City Code 20196). Violation of the rules could result in exclusion from the Pedestrian Mall (Eugene City Code 19605). The City abandoned the pedestrian mall idea in 1997. However, other efforts to create a vibrant city center continue today.

Some interviewees imagine a downtown with local businesses, social services, art, residences, and a variety of attractions that will draw diverse groups of people for different

reasons. Currently, the City of Eugene is engaged in a series of efforts to revitalize the Downtown. These plans include filling the empty pit across from the Public Library, and building a new Lane Community College facility in its place; creating a Veterans' Administration medical clinic on Willamette Street; improvements to the Park Blocks for the Farmers' Market; and additional police officers (www.vibranteugene.org). Additionally, the City has stated its intention to adopt several measures for public safety. These include increasing police presence, and the coordination of police, private security, and social workers. It also includes increasing jail space, as the City currently has 15 beds at the County Jail. The Downtown Safety Task Force, as well as multiple interviewees, cited inadequate jail spaces as a major contributor to problems in the Downtown. The jail cannot hold people for a long period of time, and so it frequently and rapidly releases inmates, therefore providing little value for deterrence or incapacitation. The City also has long-term plans to enhance social services for the mentally ill and provide shelter for those who use substances (Downtown Safety Task Force, 2010).

b. The Downtown Public Safety Zone and Exclusion Ordinance

2008 was an election year for the City of Eugene, including a competitive mayoral race between Kitty Piercy and Jim Torrey. The issue of public safety arose in political campaigns, and Eugene's Exclusion Zone specifically became a hot topic, as illustrated in multiple local newspapers and broadcasts (see KVAL on September 22nd, the Register Guard on August 13, and the Eugene Weekly on August 14th and August 21st). During this election season, the City enacted an ordinance that established a Downtown Public Safety Zone to address the incidence and reoccurrence of certain criminal behaviors that the City claimed "contribute to the degradation of the downtown area and adversely affect the quality of life for the downtown

area's residents, businesses, and visitors" (Eugene City Code 2008). Appendix A includes the full text of the ordinance. The mechanism for enforcement of the DPSZ is the Exclusion Citation, which bans people from the area.

The City of Eugene enacted the Exclusion Ordinance law in August, 2008, and it sunsets in August 2010. At that time, the City Council will decide whether to continue, change, or eliminate the Ordinance.

The Downtown Public Safety Zone is twenty square blocks. Its boundaries draw a line along the south side of 7th Avenue, then south along Lawrence Street, then east along 8th Avenue, then south along Lincoln Street, then east along 11th Avenue, then north along Pearl Street, then west along 8th Avenue, then north along Oak Street until 7th Avenue (Appendix B is the Eugene Police Department map that shows the boundaries of the DPSZ).

The Exclusion Ordinance allows the City to ban individuals from coming into the Downtown Public Safety Zone for certain criminal activities. A judge can ban the person for ninety days for receiving an exclusion citation. If the person is later convicted of the crime, the judge can ban them for an additional year. Crimes that can lead to exclusion include a variety of drug-related crimes, violent crimes, and property crimes (see Appendix C for a list of excludable crimes).

According to Officer Tom Schulke, the City of Eugene enacted the Exclusion Ordinance to address a core group of people who show a "theme of problematic behavior." He determines whether or not to issue an Exclusion Citation based on the severity and frequency of the criminal acts a person commits.

When Schulke decides to issue an Exclusion Citation, he gives the person a two-sided document. One side shows a map of the downtown, showing the boundaries of the Downtown

Public Safety Zone. The second side has a document titled “Notice to Show Cause.” It lists the alleged crime and explain the Exclusion Ordinance process.

In 3-5 business days, the cited person must appear in court. Upon doing so, he or she can schedule a show cause hearing, where the person comes before a judge. The show cause hearing will be an opportunity for the person to either to explain why he or she should not be excluded from the DPSZ, or why they should be granted variances (exceptions) that will allow them to come into the area for certain reasons during the period of their exclusion. If the person fails to appear at their initial hearing, the court can enter an order to exclude them without further notice.

The municipal court may grant a variance for any reason it deems suitable. The statute lists some possible reasons a person may need a variance: if access to a specific place downtown fulfills an essential need or social service that cannot reasonably be fulfilled elsewhere; or if the person goes downtown to for employment or educational purposes.

The person will go through a separate criminal process to address the pending criminal allegation that led to the exclusion citation. As noted above, upon conviction for the criminal offense, the person can be excluded for an additional year. Violation of exclusion from the Downtown Public Safety Zone is a separate criminal offence, for which the maximum sentence is a \$500 fine and 30 days in jail.

The show cause hearing that determines whether a person will be excluded and the terms of their exclusion is a civil proceeding, and as a result, the person has fewer rights than he or she enjoys during a criminal trial. The following section of this paper involves a discussion of this distinction in greater depth.

IV. A Legal Discussion on Pre-Conviction Exclusions

The City of Eugene enacted the Exclusion Ordinance in hopes that it would ensure the safety of community members who live, work, or otherwise visit the downtown. However, with its enactment came a trade-off of certain individual liberties. The Exclusion Ordinance functions through a civil legal process rather than criminal, and as a result, individuals enjoy a lesser level of due process protections. This section discusses how the Exclusion Ordinance impacts a person's constitutional rights, including: the Sixth Amendment Right to representation; the Fifth Amendment protections from self-incrimination and double jeopardy; the Eighth Amendment protection against cruel and unusual punishment; the Fourteenth Amendment guarantee to equal protection; and lastly, though not explicitly stated in the U.S. Constitution, the right to intrastate travel and freedom of movement. Finally, the section discusses how courts have instructed communities to scrutinize exclusion ordinances to ensure they do not excessively compromise or restrict individual civil liberties.

a. The Social Contract

As part of the social contract, we concede individual freedoms and follow rules. We do this for the wellbeing of the community as well as our own self-preservation. For example, traffic laws prevent me from driving my vehicle freely at the speed of my choosing. At the same time, they prevent many devastating accidents and fatalities. This agreement requires a sacrifice from individuals, but benefits everyone, as well.

In times of uncertainty and fear, the Government and the public negotiate the social contract, striving for a balance between civil liberties and public safety. For example, during war, the US Government's investigative powers grow in the name of national security. Some citizens support the broad display of authority, even when it contradicts various constitutional rights. Torture,

indefinite detention without Habeas Corpus, extraordinary renditions, illegal spying, racial profiling, assassinations of US citizens, even equipment that allows the Government to see underneath your clothing, are tactics that Americans tolerate. In times of trepidation, the public may lower its threshold for what is a reasonable exchange of individual liberties for protection, and as a result, the Government exercises awesome power.

Benjamin Franklin disagreed with the wisdom of this exchange, stating “any society that would give up a little liberty to gain a little security will deserve neither and lose both.” The government sometimes argues that civil liberties impede on its ability to serve the public interests. Yet, these same protections are in place to prevent tyranny and abuse by those in power. When people relinquish their rights as individuals, they also let go of safeguards against injustices of the state. Additionally, without due process, equal protection, and other safeguards, government actions will more likely result in unfair outcomes. Arguably, the surrender of civil liberties ultimately threatens the public interest in justice and security.

The City of Eugene adopted the Exclusion Ordinance to address “downtown safety issues,” (Eugene City Council, 2008) and at a high price. The Exclusion Ordinance is wrought with constitutional, procedural, and practical issues that should concern legal experts, City officials, and community members. It potentially infringes upon civil liberties provided in the United States Bill of Rights, and conflicts with core community values that embrace social justice and human rights.

b. Civil v. Criminal

The City of Eugene’s approach to dealing with safety concerns in the Downtown area is noteworthy because it functions through a civil legal process, not criminal. This is an important distinction because, in doing so, the City strips away many of the rights we are afforded through

the criminal justice system. Claire Syrett, of the American Civil Liberties Union described this as a situation where the City utilized an administrative or civil procedure actually aimed at criminal conduct (Eugene City Council July 21, 2008).

In criminal law, there is a presumption of innocence; the accused are “innocent until proven guilty” (Coffin v. US 1895). The burden lies upon the state to prove this guilt. The prosecution must show that the person both intended to commit the crime, and actually did commit the criminal act. The prosecution must persuade the judge or jury of the defendant’s guilty “beyond a reasonable doubt.” Conversely, in civil cases, the prosecutor must only establish the defendant’s guilt based on a “preponderance of evidence,” showing that it is more likely than not that the person committed the crime. The judge or jury must feel 51% certain that the person is guilty. This standard is much more permissive than that of criminal trials, and increases the likelihood of a determination of guilt. It also leaves a lot of room for doubt and the possibility that innocent people will unfairly receive sanctions they do not deserve. Claire Syrett pointed out that, “even a civil restraining order requires more evidence” than that required for exclusion.

c. **The Sixth Amendment Right to Counsel & the Fifth Amendment Protection Against Self-Incrimination**

The U.S. Constitution guarantees an attorney for criminal trials but not civil. In the landmark case Gideon v. Wainwright, the U.S. Supreme Court decided that the Sixth Amendment right to counsel is fundamental. Furthermore, they said that the Fourteenth Amendment binds the states to uphold this right, thereby requiring every state to provide counsel to indigents (Gideon v. Wainwright 1963). However, this ruling applied only to felony cases. Later court rulings extended this right to some misdemeanor cases, but never to civil trials. This limitation presents a serious problem for the justice system, as it allows the wealthy access to counsel and the court

system and disregards the poor. This unequal treatment violates the Fourteenth Amendment guarantee to “equal protection of laws” (Fourteenth Amendment of the United States Constitution 2010). As Supreme Court Justice Stephen Field said, the Fourteenth Amendment “undoubtedly intended that equal protection and security should be given to all [and] they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs...” (Barbier v. Connolly 1985).

Fairness aside, the U.S. Constitution only guarantees the right to counsel in criminal cases and not civil. Exclusion Ordinance citations fall within a civil process rather than criminal, and as a result, cited individuals have no entitlement to counsel. Unless they can financially afford to hire an attorney, the poor must navigate the law and process alone, possibly with little understanding.

Claire Syrett shared her criticisms of this process, stating that restrictions on a person’s movement should only be imposed by a judge in the context of a criminal case, where a person would then have access to an attorney. Citizens for Public Accountability, a Eugene Public Interest Group felt even that would not suffice, stating that, even if the Exclusions required a criminal conviction, “many low-income people, and the working poor, accept conviction on lesser crimes when accused of more serious crimes because they only have access to public defenders, whose services are increasingly limited for lack of funding” (<http://www.lanecpa.org/cpa/exclusion.htm>). These community members question the fairness of excluding people from the downtown without the provision of adequate counsel.

Judge Wayne Allen of Eugene Municipal Court told this City Council of the court’s practice to inform people at the time of a hearing (for any type of violation) that they had the right to be represented by an attorney. He felt that, while providing an attorney could be expensive, it may

prevent people from saying things that could be problematic in a later criminal proceeding (Eugene City Council August 21, 2008). Without an attorney, people may share information that can later become evidence should they stand criminal trial. The City will provide an attorney for criminal cases, but not for the civil show cause hearing. Even if the person will eventually enjoy counsel for their criminal charges, the cause hearing for the exclusion citation occurs within 3-5 business days, before such counsel can take place. Representation is important for ensuring the Fifth Amendment protection against self-incrimination, and indigent people do not have a meaningful opportunity to seek it.

A homeless caseworker for White Bird heard from her clients that there are no exceptions granted to individuals who receive an exclusion citation. They also believed that the County Courthouse fell within the boundaries, preventing cited individuals from attending their own hearing (one of the interviewees for this study who had a citation held this belief, as well). These facts are inaccurate, but this perception brings to question whether or not people understand the Ordinance's rules. Without an attorney, a person may have difficulty navigating the process, and may have no meaningful opportunity to exercise their rights.

Judge Marcus of Multnomah County points out a similar irony in Portland, "If the social services needed by an excluded person have to do with illiteracy or paranoia, for example, it is at least predictable that the mitigation of exclusion available in theory will not occur in practice" (City of Portland v. Burrage 2005). Especially for vulnerable individuals such as those with mental health issues, disability, and low levels of literacy, their ability to advocate on their own behalf without an attorney or other support is highly debatable.

According to Eugene Municipal Court, very few people have contested their exclusion. As of February 5th, 2010, out of the 68 citations pursued by the prosecutor's office, 12 people

requested a hearing. In over 82% of the cases, cited individuals did not argue their exclusion or request variances. Half of those who did request a hearing won a dismissal. Individuals received variances in only 3% of the total cases. A fraction of the cited individuals are exercising their rights. Perhaps they are truly criminals and honest about the fact, or perhaps they are experiencing disempowerment and significant barriers. In situations such as these, the community must evaluate the efficacy and fairness of the process.

d. Freedom of Movement

During an interview, a Eugene Police Officer posed what he felt was a constitutional question. “How can you tell people to be here and not there?” He questioned whether the state’s interference in a person’s freedom of movement violates the law. While the Supreme Court has not expressly recognized any fundamental right to travel within a state (*Memorial Hospital v. Maricopa County* 1974), some lower courts have ruled otherwise. The Ohio Supreme Court found that exclusion violated individuals of their right to “freedom of movement in the form of their right to intrastate travel” specifically, the right to "travel locally through public spaces and roadways" of the state (*State v. Burnett* 2001).

Oregon courts have only discussed the right to intrastate travel as fundamental in cases related to discrimination based on place of residence. However, in Multnomah County, Judge Marcus was acutely concerned about the ways in which exclusions impact the individual’s right to intrastate travel for multiple reasons. 1) Exclusions prevent people from participating in casual community activity, such as “chatting with a neighbor on the sidewalk, accompanying a friend or family member for a walk, a cup of coffee or a meal, a few moments in a park, even reading a newspaper or magazine in public.”2) The need for variances restricts the person, and deprives them of liberties guaranteed to other citizens, “requiring any citizen to apply for permission to

engage in the most obviously lawful and significant of social activities evinces supervision, control, and repression antithetical to any free society.” 3) Excluded people become subject to arrest, search incident to arrest, incarceration, and conviction for trespass, and they must carry papers to prove they can enter the forbidden zone. “The City and the State would have us relegate persons previously arrested on probable cause to the status of those unfortunate people whose homeland is occupied by a foreign army” (City of Portland v. Burrage 2005). Judge Marcus likens this level of policing to a military occupation. Claire Syrett, field organizer of the American Civil Liberties Union Lane County Chapter, expressed concern that, in the pursuit of public safety, the City creates a “police state.” Certainly, it qualifies as an intensifying of police intervention and government restriction on travel.

e. The Fifth Amendment Protection Against Double Jeopardy

State and local laws establish criminal codes that act as mechanisms for enforcement and empower authorities to investigate, prosecute, and penalize people for criminal activity. However, the government can only penalize a person once for a specific occurrence of a criminal activity. No person shall “be subject for the same offence to be twice put in jeopardy of life or limb” (Fifth Amendment of the United States Constitution 2010). The Fifth Amendment stipulates that no one can receive more than one punitive sentence for a given offence. The Supreme Court ruled that a person can be given “both a criminal and civil sanction in respect to the same act” (Hilvering v. Mitchell 1938). A person can be held accountable through both a criminal and civil process, but only one of those can lead to a punitive sanction.

Exclusion Zone citations bring suspects before a judge twice: once regarding the civil exclusion, and later for the criminal violation for which the suspect was excluded. The suspect may receive two sentences: an exclusion from the Downtown, and then whatever penalties the

law permits for the given criminal activity. We must consider whether exclusion from the Downtown is punitive in nature to determine whether it violates the double jeopardy clause of the constitution.

The U.S. Supreme Court instructs courts to consider seven factors to determine whether a sanction is a civil remedy or criminal penalty: 1) “whether the sanction involves an affirmative disability or restraint;” 2) “whether it has historically been regarded as punishment;” 3) “whether it comes into play only on a finding of wrongdoing;” 4) “whether its operation will promote deterrence;” 5) “whether the behavior to which it applies is already a crime;” 6) “whether an alternative purpose to which it may rationally be connected is assignable for it;” 7) “whether it appears excessive in relation to the alternative purpose assigned” (Hudsen v. US 1997).

In State V. Lhasawa, the Oregon Supreme Court examined these factors to determine whether the Portland Prostitution-Free Zone violated the ban against double jeopardy. The court found that, because the exclusion allows for variances and is limited in time and geography, it is not a restraint or punishment. Furthermore, the ordinance served “the remedial purpose of improving quality of life,” and this purpose, along with incapacitation and deterrence, can all be civil objectives (2002).

Based on the Oregon Supreme Court’s analysis of the Hudsen Test, exclusion does not infringe upon the protection against double jeopardy. Eugene’s Exclusion Ordinance is similar to Portland’s Prostitution-Free Zone in every regard mentioned. The legislative intent of the ordinance aims to improve quality of life and increase public safety and is not retributive. Additionally, the ordinance pertains to a small geographic area, it is limited to 90 days, and variances give people the opportunity to continue to access the area for legitimate purposes.

According to this precedent, Eugene’s Exclusion Ordinance does not violate the Double Jeopardy Clause. However, this ruling assumes that individuals will not experience significant barriers to requesting and receiving variances, which Judge Marcus of Multnomah County found highly questionable, “the practical ability to understand, process, and successfully assert a right to apply for a variance is so unlikely as to account for the low numbers of such applications” (City of Portland v. Burrage 2005). Furthermore, the ruling suggests that the extent to which exclusion is punitive should be measured by the legislative intent, rather than how the individual experiences it. Depending on the individual’s circumstances, exclusion from the Downtown could be greatly penalizing.

Some courts have found that arresting homeless people for sleeping outside when no shelter space exists violates their Eighth Amendment right to be free from cruel and unusual punishment (National Coalition for the Homeless, National Law Center on Homelessness and Poverty 2006). For example, the U.S. District Court for the Southern District of Florida ruled that the City of Miami’s “policy of arresting, harassing and otherwise interfering with homeless people for engaging in basic activities of daily life—including sleeping and eating—in the public places where they are forced to live” were cruel and unusual. The City cannot punish a person for “life-sustaining conduct” (Michael Pottinger, et al. v. City of Miami 1992).

f. Strict Scrutiny: the Effectiveness and Efficiency of the Ordinance

Generally, the government cannot infringe on fundamental liberties “unless that infringement is tailored to serve a compelling state interest.” Since exclusion zones potentially infringe on fundamental liberties, courts have decided they must pass the “strict scrutiny” test, in which they determine whether a compelling state interest exists, and whether a state action has

been narrowly tailored to meet that interest (Reardon 2009). Two court cases dealing with the issue of strict scrutiny and exclusion zones were in Cincinnati, Ohio and Portland Oregon.

The United States District Court in Cincinnati decided that Cincinnati's interest in enacting a drug-Exclusion Ordinance, "to enhance the quality of life in drug-plagued neighborhoods and to protect the health, safety, and welfare of citizens in those areas" indeed represents a compelling government interest (Johnson v. Cincinnati 2003). However, such an ordinance must be narrowly tailored, taking into account two factors.

The first factor is effectiveness, a consideration of whether the law meets its objectives and satisfies the government interest. The City should use empirical evidence to predict or measure the effectiveness of this approach, consulting social scientists and policy experts.

Interviews in this study suggest that the ordinance is ineffective, rendering two results. In the first scenario, people ignore the exclusion and continue to go into the downtown in defiance of their citation. In the second scenario, the ordinance merely displaces the people and crime. In both situations, the social problems persist. All three excluded interviewees said exclusion did not keep them from the downtown. It merely changed the time of day that they went. One Eugene Police Officer was aware of this fact, and said that he believes people modify their behavior to avoid him, but still come into the area despite their citation.

A leader in the adjacent West University neighborhood association expressed the concern that, "as people are banned from Downtown they will change their traffic pattern." He noted that exclusion from the downtown could lead people to come into his neighborhood. Indeed, from 2008 to 2009, his neighborhood saw an increase of 24% in crimes against persons and 30% in

behavior crimes (Eugene Police Department 2009). See Appendix 3 for a comparison of neighborhood crime statistics. A man who works for the City of Eugene on development admitted that, “problems don’t just go away... they move.” A man who works with homeless youth recalls how the City and University of Oregon cracked down on activities near the campus on E. 13th Avenue and closed down the West University Park nearby. This drove people to the downtown mall, and when they were unwelcome there, they went to Monroe Park (in the adjacent Jefferson-Westside neighborhood). “It keeps people out of areas of interest, but it doesn’t help them. It pushes them to another place. People just crop up in another area.”

Based on these testimonies, the Exclusion Zone seems to merely modify or displace criminal behavior. Since the City of Eugene does not address the social problems that lead to criminal activity in the downtown, the issues continue. As a result of necessity, alienation from the community, mental health issues, criminality and anti-social behavior carry on in the downtown and other neighborhoods.

It may be helpful to research similar ordinances in other places. However, the mere citation of successes in other cities is not enough to prove the effectiveness of an exclusion zone and justify its enactment. “...citation to the experiences of Portland, Oregon is also misplaced in considering narrow tailoring. Even if we were to extrapolate that what worked in Portland would likely work [here], this fact would not sustain the Ordinance.” Reference to other localities may broaden our perspective of innovative ways to address social issues, but it cannot provide sufficient and conclusive evidence for how an ordinance will work in Eugene. Each city is unique and requires an individualized approach. Portland’s prostitution-free zone came in response to rapid growth in sex commerce in that city (Sanchez 2004), an issue of much less

pertinence in Eugene. Strict scrutiny requires a city to develop the least restrictive approach that is narrow and specific to the community needs.

The second factor cited in the *Cincinnati* case is efficiency, taking into account whether the ordinance uses the least restrictive means to accomplish the City's compelling state interest. “[I]f there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means’” (*Dunn v. Blumstein* 1972). To pass strict scrutiny, the City of Eugene must demonstrate that they have tried less restrictive methods without success, and then also choose the approach that least interferes with fundamental liberties.

A prosecutor maintained that the Exclusion Ordinance is the most efficient option, because citations have proven ineffective in deterring crime, and jail space is too limited to accommodate and incapacitate the offenders for a meaningful period. The immediate, economic, and simplistic nature of exclusion makes it the most efficient option. On the other hand, 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). A human rights attorney stated, “It is never necessary to banish people because we have criminal codes and social service programs to address the problems.” The Journal of the American Medical Association found that the Downtown Emergency Service Center in Seattle, Washington, saved the City millions of dollars by providing housing and on-site services to homeless people with severe alcohol problems. The study found that it cost \$4,066 per person per month in publicly-funded services such as jail, detox center use, hospital-based medical services, alcohol and drug programs and emergency medical services. In contrast, the social service agency cost only \$1,492 and \$958 after six and 12 months in housing, respectively.

Additionally, although the program had no abstinence policy, alcohol consumption declined an average of 33% after 12 months in housing (Larimer, et al. 2009).

The Downtown Safety Task Force recommended that the City expand the Downtown Public Safety Zone (which costs \$30,000), create additional jail beds (which costs \$42,193 per bed), and increase the number of law enforcement officers. These strategies are extremely costly. These strategies are reactive, and may not effectively address the root causes of public safety issues. Furthermore, they are more restrictive and authoritarian than other options, such as providing social services. In terms of effectiveness, economics, and civil liberties, strategies that involve increased policing are inefficient.

Programs such as Seattle's shelter lead to long-term solutions, and savings, for cities, without infringing on civil liberties. Efficiency, in the context of strict scrutiny, refers to that option which poses the least restrictions on civil liberties. The community must reflect on the ways it can fulfill the interests and needs the Exclusion Ordinance aims to satisfy and decide which is most efficient.

While the stated purpose of the Exclusion Ordinance is to empower the police and courts to further public safety, surrendering of civil liberties carries serious implications for individuals. Exclusions can occur outside a criminal process, and as a result, individuals may lose protections against self-incrimination, double jeopardy, and cruel and unusual punishment, as well as the rights to representation and freedom of travel. The community and government must deliberate on whether this exchange of liberties for security effectively and efficiently promotes the interests of the community, and consider whether these interests can be met without the erosion of constitutional rights.

V. Privatization of Police, Public Space, and Civil Liberties

When the City excludes a person from the Downtown, it restricts that individual's right to access public spaces. At the same time, when a person is afraid to enter the Downtown because of crime, that individual's feels unable to exercise his or her right to public space, as well. This section expands on the previous discussion of liberties, but looks beyond constitutional issues. It explores the role of police officers and private security guards in protecting the rights of different stakeholders in the City when enforcing the Exclusion Ordinance and other laws. It includes a discussion about the tension that exists between the rights of individuals and the rights of the community, and issues surrounding access and entitlement to private property and public land.

a. Protecting the Rights of the Community

The role of police has evolved over time. Traditionally in the United States, the police's primarily function was to maintain order for the public. This involved controlling disruptive behaviors, often through physical force and with little regard for individual rights. "Young toughs were roughed up, people were arrested 'on suspicion' or for vagrancy, and prostitutes and petty thieves were routed. 'Rights' were something enjoyed by decent folk..." Police enforced the social norms of the community informally addressing people and behaviors determined undesirable. With the social movements of the 1960s, this role changed. Policing began to focus more on community relations, and negative publicity of police brutality led to an increase reverence for individual civil liberties (Wilson and Kelling 1982).

A tension between individual and community rights exists, and police play a central role in protecting and denying both. All people have a right to access public spaces. These are the commons, owned by all and open to all. Everyone has the right to utilize the public streets, walkways, parks, and other resources. Yet, if people violate certain rules of conduct, their ability

to access certain public facilities can be revoked. For example, certain behaviors will result in an expulsion from the Public Library.

Enforcement measures such as the Exclusion Ordinance aim to ensure that socially unacceptable behavior does not endanger the general public or prevent people from enjoying public resources. It protects the rights of the majority. At one City Council forum, a community member wondered how the rights of downtown business owners and community members might be enforced. At the same meeting, another community member said, “A community without law and order is a community without peace”(Eugene City Council August 11, 2008). The police aim to control problematic behaviors so that the rest of the community can enjoy their liberties safely and peacefully.

Determining the true threats to public safety and liberties can be challenging. In a study commissioned by the City of Eugene, one third of community members indicated that public safety was a top local issue of concern (these individuals ranked it either the first or second highest priority) (Strategy Research Institute, City of Eugene 2009). A man who works with the City of Eugene Planning and Development Department points out that the fear of public safety in the downtown is more an issue of public perception than actual crime. He adds that the media perpetuates misperceptions by covering the “hot” topic. A homeless caseworker suggested that the City should just educate the public and address fear-based ignorance (indeed, every person I interviewed stated that they feel safe in the downtown, although the sample cannot be generalized to the greater Eugene population, and further research is necessary to understand this issue). One woman that works downtown said she walks in the area at night. A resident of the downtown who is active in the neighborhood association shared, “We need to change the perception of the downtown. The risk is exaggerated, and it’s a self-fulfilling prophesy.” To be

responsive to the community and increase accessibility to the downtown, Eugene must address the public fear and false perception.

b. Infringement on the Rights of the Individual

To protect the public interests, police may inadvertently or purposefully infringe on the rights of the individual. A Eugene Police Officer discusses the predicament of punishing someone for violating their exclusion citation. “The excluded are trespassing, but yet they own the public space as taxpayers.” By its very definition, public land belongs to the public, but the mere act of exercising this ownership can become criminal if a person is banned. “In a fascinating twist on the private property law of trespass... [a person] could be charged and potentially convicted of criminal trespass for setting foot in the public space of the zone” (Sanchez 2004). This becomes particularly problematic if banishment from spaces affects some social groups more than others. In such situations, exclusion becomes a part of a broader, systemic marginalization of those populations.

When police adhere to the desires of the majority, they risk bias and discrimination. Suppose the Eugene community decides that some racial or religious group behaves outside the social norm, and that creates fear and prevents people from going to certain public spaces. Similarly, suppose the Eugene community decides that the homeless or street youth exhibit disruptive behaviors. If police maintain order through the enforcement of community standards, these groups could become the target of police action and discrimination.

Police adherence to community standards can be problematic in that it encourages differential treatment of people who fall outside the social norm. Portland, Oregon ended their Prostitution-Free Zone and Drug-Free Zone after the City determined the zones to disparately impact African American community members (Dworkin 2008). In Chicago, the Anti-Gang

Loitering Ordinance allowed for “racial zoning” (Sanchez 2004), in which police used the law to target racial minorities.

Eugene varies from Portland and Chicago in its demographic composition, but the City must still consider how certain laws may impact some groups of people more than others. The Fourteenth Amendment of the United States Constitution asserts that no state shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The state must treat all groups equally and cannot impose rules differentially.

A caseworker for the homeless expressed concern that police will discriminate against people “who have no resources.” Indeed, Mark Gissiner, Police Auditor for the City of Eugene, shared that their office receives complaints from people with exclusion or trespass violations, because they are homeless, mentally ill, or have substance use issues (although many interviewees said that the police have used the ordinance judiciously). Many chronically homeless behaviors, such as sleeping on the streets, panhandling, public excretion or urination, and public intoxication, are threatening or undesirable. In some urban settings, police rate transients and their behaviors as a bigger problem than drugs, car burglaries, public fighting, cruising, or noise. (Berkeley and Thayer 2000). These behaviors may be a high priority to police who want to do their job in making the public feel safe. “Regular citizens may not use public parks and other facilities because they fear the spaces are controlled by transients” (Chamard 2008).

One cited individual, “Peter” is a University of Oregon student. He believed that the Exclusion would not be enforced against him. His car allows him to travel through the Downtown in a relatively undetected manner, a privilege those without the opportunity or desire

to access a vehicle cannot enjoy. Secondly, he speculates that he does not look like an excluded person. When asked what an excluded person looks like, he described the men with whom he associated during the time of his citation. These men were homeless.

Perhaps inadvertently, police actions disproportionately impact the homeless. According to data provided by the Eugene Police Department, 55% of individuals arrested in the Downtown in the period of September, 2008 through December, 2009 were homeless. In the case of exclusion citations, officers must be able to identify who does and does not belong in the Downtown area. They must know what an excluded person looks like. Chris Mirabel wondered, “What happens if excluded people don’t belong to a certain identifiable group?” An officer who works downtown says he has no answers. He pointed out that no list of excluded individuals exists. He has no way of knowing day-to-day who has been cited, who has variances, and who is again allowed to enter the Downtown. He relies on his own memory and knowledge as a community police officer. The Exclusion Ordinance process lacks organization and accountability in its enforcement. This creates an awkward situation for officers, who may be required to defend their enforcement choices. Additionally, it leaves the door open for abuse if the department employs officers lacking integrity.

This officer takes comfort in the fact that exclusion requires judicial approval. This prevents police from excluding individuals without oversight. “The judge is a watchdog,” he said. The hearing with a judge provides some level of due process and may prevent injustice. Sometimes, this is not the case. For example, some law enforcement officers in the West University Neighborhood have adopted a more informal approach that entails less procedural hurdles.

c. Private Property, Public Servants

The West University Neighborhood presents an interesting contrast to the Downtown Neighborhood. Although they share a border, the West University Neighborhood employs a different brand of community policing. The West University Public Safety Station (WUPSS) is situated On East 13th Street, on the edge of the University of Oregon. The station is a “cooperative effort of the University Small Business Association, the University of Oregon, Downtown Eugene Inc., and the Eugene Police Department” (Eugene Police Department). Indeed, according to multiple interviewees, the City pays one-third of the WUPSS police officer’s salary, and the rest of the funding comes from the University of Oregon and business owners in the neighborhood. One Eugene Police Officer of the WUPSS discusses how this dynamic shapes his work.

Since the West University Neighborhood is the most densely student-populated neighborhood in Eugene, this officer must make it safe enough that parents will feel comfortable with their children living in it while attending the University of Oregon. Similarly, his job involves creating a neighborhood where people can do business. “The business community knows what they want and it’s my job to give it to them.”

He finds this task challenging because of the vagrancy in the neighborhood. He cites multiple attractions that contribute to this problem: the three locations of White Bird clinic, which provide social services to many homeless people; and the three convenience stores (Minit Mart, Circle K, and 7-Eleven), which sell alcoholic beverages. He paints a squalid picture: sidewalks with people using offensive language, panhandling, and purchasing alcohol for minors in exchange for money to buy alcohol; alleys near residences and businesses with feces on the ground, people digging through dumpsters and recycling bins, and people using drugs. “You

don't know what I know," he says. He wonders how a young student feels taking out the trash to an alley like this. He recalls instances where an employee at the Chinese Acupuncture Center would not leave her vehicle to go into work because she felt intimidated by people outside.

When this officer began his work at the WUPSS, he focused mostly on improving the environment on 13th Avenue from Kincaid St. to Mill St. One mechanism he has traditionally utilized is the Eugene Police Department's Trespass Letter Program. "A Trespass Letter of Consent (TLC) is a specifically-worded legal document which allows a police officer to take enforcement action on your behalf without contacting you first." It essentially authorizes police officer to enforce the criminal trespass laws on private property, and on behalf of private property owners, without a call to service for prompting. The officer can function like a security guard, ensuring that no one trespasses on the private property. From his perspective, it empowers him to "deal with loitering."

In the West University Neighborhood, every business on 13th Avenue from Kincaid Street to Pearl Street has signed a Trespass Letter. So, when alleged vagrants come onto 13th Street, this officer tells them, on behalf of the property owners, "You've caused problems before, and you have no legitimate reason to be here." He makes a cursory acknowledgement that everyone has the legal right to stand and walk on the sidewalk, but reasserts that he feels justified in telling them to leave since they have no business (literally) to do there.

This officer has developed other strategies, as well. During our interview, he brought out stacks of papers including police reports and spreadsheets he created that track incidents of crime involving transients and serve as his own statistical data. In a hand-written report titled "Community Policing" that he created for the Eugene Police Department, he states "prior to when the term 'data led policing' was coined, I collected the relevant data involving calls for

service in the neighborhood.” He determines that “the criminal vagrants who inhabit the neighborhood regularly abuse the properties in the area. Trespassing, drinking, vandalism, littering, drug use, camping, and just plain rude behavior are the main problems.”

This officer decided to take matters into his own hands. In the report, he presents his plan: a “No Tolerance Zone.” He includes a copy of the flyer he began giving to people on the street, which states,

ZERO TOLERANCE ZONE

Due to the continual illegal and anti-social behavior that is having an adverse effect on the quality of life and the businesses in the area, bounded by E 11th Ave, E 12th Ave, Patterson St, and Ferry St – including property on the north side of E 11th Ave and the Oregon Community Credit Union property – has been declared a “**No Tolerance Zone**”.

Effective Feb 1, 2010, all crimes committed by you in this area will result in your going to jail.

YOU WILL NOT BE CITED!

Parenthetically, a consultation with a public interest lawyer confirmed the legality of this approach. Law enforcement officers have the authority to arrest people whenever they have probable cause to allege that the suspect committed a crime. Note, however, that “anti-social behavior” is not inherently illegal.

He began dissemination of these flyers warning of the Zero Tolerance Zone no later than the first week in January, 2010, and possibly earlier. At the time of this interview, January 26th, this officer said that Chief Kerns had told him not to hand out the documents. However, in April, the local media reports that Eugene Police Officer Randy Ellis dubbed Patterson Alley in the West University Neighborhood, “The Alley of Evil,” and implemented the zero tolerance policy, posting flyers as a warning. Officer Ellis was happy to report that, as a result of his efforts, “it is now rare to even receive a single call to the area” (Adams 2010). The KVAL news anchor touted this get tough approach as “a victory for community policing.”

Indeed, this approach demonstrates great sympathy and attentiveness to the business and University of Oregon “community.” These are the groups who pay the WUPSS officer’s salary and also have the greatest voice in the community. This situation illustrates the dilemma of funding public services with private dollars. The Downtown Safety Task Force suggested that the City could fund additional law enforcement through private dollars, as well. The City of Eugene may look to the West University Neighborhood as a case example in deciding whether or not this method of fund-raising will further community interests... or private interests.

The scenario in the West University Neighborhood also shows the issues that arise with informal and formal data-led policing. The police “put the most resources where the most problems occur,” which they define largely by citizen calls to service (Eugene Police Department 2009). As Officer Schulke says, “You can tell crime is higher downtown because there are more calls for assistance from people downtown.” When more people in the downtown complain about crime, the Police Department assumes crime is a great problem and then allocates more resources to that area. In the West University Neighborhood, the officer decided to adopt tactics that address the issues that receive the most complaints. The squeaky wheel gets the grease, so to speak. Those who express themselves through money or conversations with law enforcement are most likely shape police department policy.

Citizen complaints have led police to defend the sidewalks downtown, as well. Near the Lane Transit District station, police painted the sidewalk to remind people of the laws pertaining to pedestrians. While people have the right to stand, sit, talk, smoke, and do other legal acts on the sidewalk, when someone asks them to move, they must comply. "If you are blocking a pedestrian's freedom of movement through the sidewalk, you need to move," Sergeant Fitzpatrick of the Eugene Police Department Said. Noncompliance violates Eugene’s pedestrian

law 4.707, constituting obstruction of sidewalk and can lead to a \$280 citation. According to Carol Berg-Caldwell, who conducted interviews with people downtown, youth were told they would be cited for even stepping onto certain areas of the sidewalk (Harrington 2010). The voice of some people has again driven police to get tough on other community members and changed access to public space.

This leads one to wonder about those who have no voice. One homeless caseworker said that the homeless feel alienated from the police and do not view the police as source of protection. In fact, he said, “police routinely enforce standards of conduct that are routinely violated by the homeless.” This creates a dynamic in which the homeless cannot contact the police for assistance for fear of the very real possibility of their own arrest. Based upon the WUPSS officer’s remarks about the types of problem people and behaviors he targets (e.g. “vagrants,” “transients,” trespassing, camping, rude behavior), further investigation and analysis is necessary to explore how he applies his policies and to ensure the equal treatment of all people in the neighborhood. The homeless, addicts, and mentally ill have entitlement to public space and protection under the law.

d. Public Land, Private Servants

Private interests permeate the public sphere in another significant way. With the employment of private security guards arise similar issues to those associated with the WUPSS officer. Private security guards hold positions of authority but use their power to promote the interests of their employer.

Downtown Eugene, Inc. (DEI) is a not-for-profit association of Downtown property and business owners. The mission of Downtown Eugene Inc. is to “represent the interests of its members to create and maintain a safe, clean and economically viable city center.” While the

organization itself is not a money-making entity, it aims to promote the interests of for-profit businesses.

Accordingly, their organization contracts to have private security guards (known as “Red Hats,” “Red Coats,” or “Guides”) patrol the Downtown. “The Guides are extra eyes and ears for the Eugene Police, assist people in distress, give information and directions and effectively deal with behaviors that may not be criminal but are disruptive to Downtown businesses, employees and customers” (Downtown Eugene, Incorporated).

DEI hires The Guides, and so the guards’ allegiance is to the private businesses. They will be helpful to people that come Downtown to do business. Then the question becomes how will they treat those who come to the Downtown for other purposes, especially if they interfere with business activity?

The City has allocated public money to fund these private security guards, spending \$125,000 from 2006-2008 (Russo 2009). According to a City of Eugene Budget Committee member, the City continues to fund the Guides indirectly through a special district in the downtown that the City administers, instead of the previous arrangement. One Eugene Police Officer justifies the funding by explaining that “the Police Department is stretched so thin.” Without adequate resources dedicated to public security, businesses must compensate by hiring their own. This officer described the relationship between the private security and police to be positive, although “some security guards are more talented than others in dealing with people.”

“The Red Coats need a workshop on how to work with youth,” one youth interviewee reflected. She noted that the Red Coats make the downtown feel safer, but at the same time, “they have nothing but negative interactions with youth. They loiter, they eavesdrop, and they wait.”

One homeless youth wondered why there are security officers in the downtown instead of other places, citing a store in the Whittaker neighborhood that had been robbed twice. A different interviewee, who had an exclusion citation, thought he knew the answer to this question.

“Because they want to make it high end so it will attract people that have a lot more disposable income and spend a lot.” He felt that private security represent the City’s attempt to sanitize the downtown of undesirable people and attract people who have more money.

One woman recalled an interaction she witnessed between a Guard and a group of young people. The youth were sitting on public sidewalk in the downtown. A Guard approached them, said something, and the youth stood and walked away. She approached the Guard, asking what had just transpired. He proudly replied that he had told the youth “move along.” She thought the guard expected her to approve and thank him. Instead, she felt deeply concerned. According to multiple interviews, this is a common occurrence. Sometimes, the Guards enforce trespass laws by reminding people that they cannot lean against a building. Other times, they oblige people to “move along” from one place to another on the sidewalk, so as not to hang around for too long. The former involves private property, the latter public spaces.

The enforcement by these security guards implies that the activity of the youth was somehow illegitimate. This raises the question of what constitutes legitimate use of public space. It acts as an example of how police and security “engage in the battle over real and imagined entitlements to community property and land-use decisions” (Sanchez). The police and security become part of a larger social problem involving who has access to where and for what.

In this situation, public sidewalks in the downtown have a narrow intended purpose that often excludes sitting, sleeping, or behaving in a manner deemed to be “disruptive.” Businesses largely make the determination about what qualifies appropriate uses for the public space, as they own a

lot of the land in the area and pay for many of its security guards. It benefits the businesses to remove those individuals who may potentially intimidate and deter customers. As a result, this presents the danger that access to the downtown may be limited to individuals with money, or who appear to have money. “Plainly, ‘all are welcome’—except the homeless and others who threaten to undermine bourgeois consumerist values” (Amster 2003). Private police (the Guards) promote the private interests of property owners, and this may transform who does and does not gain access to the public space downtown. One interviewee, speaking about enforcement downtown as a whole, said, “There is a balance between civil rights and pacifying business owners,” and he felt the city has not found this balance.

Unfortunately, “civility and legality are generally determined by those in positions of power and advantage who manipulate such standards to suit their interests and protect their domains of property and authority” (Amster). The businesses and institutions in the West University and Downtown largely create neighborhood notions of public safety and neighborhood livability. They exercise great influence over the City, and define the problem people and behaviors that guide police policy. Conversely, “it must be noted that images of ‘public safety’ and ‘community standards’ specifically exclude the homeless and the poor from participation, since these groups are constructed as not part of the community, the public, or those with a stake in political decisions and city affairs” (Amster). Rarely do the police, much less the City, create meaningful opportunities to talk with the homeless and poor. Rather, their processes and policies cater to more affluent people. The homeless are a problem, and not community members with important needs and contributions.

In working for the community, policymakers and law enforcers often serve seemingly conflicting interests. Their enactment and enforcement of codes supports and legitimizes

community standards and power structures. Policymakers and law enforcement officials have a significant role in determining who has the greatest entitlement to occupy space or access resources. Public funds, officers, and land are designated for certain purposes and for certain people. The rigorous enforcement of trespass laws and the enactment of the Exclusion Ordinance in the downtown act as a testament to the City's priorities. The public sidewalks are not places for young people to socialize or for homeless people to rest, but rather, for consumerism and other business matters. The right to private property precedes the right to public space, and the right of the affluent community to use public resources precedes that of the right of the poor.

VI. Criminalizing Eugene's Homeless

By their very nature, many community standards and laws have a disparate impact on the poor and other marginalized groups. Sometimes, this may be due to discriminatory enforcement practices in police departments. However, in many circumstances, the laws are most likely to be violated by these groups as a result of their unmet needs and greater societal problems. This section explores how the Exclusion Ordinance and other laws may disproportionately criminalize the homeless. It specifically discusses prohibited camping, trespass, obstruction of sidewalk, and public urination and defecation codes. It also includes a brief discussion of how the community interacts with youth who, for a variety of reasons, are also on the street and vulnerable. Finally, it provides some options for working with the homeless and the youth in a more meaningful, compassionate manner.

a. Criminalizing Survival

In the words of one homeless caseworker, “the world is an exclusion zone for some of those who are not welcome.” State and local police have often been mechanisms to marginalize groups and separate unwanted persons from certain places. For at least six centuries, homelessness has been associated with disorder and criminality. Across the nation, cities have enacted laws that criminalize homelessness, even in communities like Berkeley that have considered themselves progressive (Amster 2010). The homeless have historically been displaced from public places through enforcement of public order laws (vagrancy, anti-loitering, etc.), usually in the name of public health and safety. In the 1960s and 1970s, courts cited the Equal Protection Clause, the Due Process Clause, and the Eighth Amendment’s ban on Cruel and Unusual Punishments, and the right to travel and movement to strike down such laws. (Zick 2008).

“Numerous studies have pointed to a strong relationship between homelessness and criminality. Yet contrary to popular opinion, the typical chronically homeless person is not a hardened violent felon, but someone with a disproportionately high arrest rate for crimes such as public intoxication, petty theft, and trespassing” (Chamard). The daily lives of the homeless “are all but outlawed through a plethora of new statutes and enforcement strategies regarding sitting, sleeping, begging, loitering, and ‘urban camping’” (Ferrell 2001). People must engage in certain behaviors for survival. However, some of these are illegal in public spaces.

Homeless people account for the majority of arrests in the downtown. As mentioned previously, 55% of individuals arrested in the Downtown in the period of September, 2008 through December, 2009 were homeless. The City of Eugene, the Eugene Police Department, and many community members often say that their tactics target behaviors, not groups of people. However, “one may pass laws under the guide of universal applicability that plainly affect only the target community.” For example, in Eugene, camping, trespass, public urination and defecation, and obstructing a sidewalk statistically have a disparate impact on the homeless. For lack of resources and alternatives, most homeless people commit crimes daily out of necessity. “If homeless people can only live in public, and if things one must do to live are not allowed in public space, then homelessness is not just criminalized; life for homeless people is made impossible” (Mitchell 1998). Without places to sleep, use the bathroom, and socialize, the homeless must carry out these actions on public land (or another person’s private property). A common theme that arose throughout the interviews was that homeless people have no place to go. As a result, many crimes the homeless commit in Eugene are the manifestation of unaddressed social issues.

b. Prohibited Camping

The City of Eugene prohibits camping “in or upon any sidewalk, street, alley, lane, public right-of-way, park or any other publicly-owned property or under any bridge or viaduct” (Eugene City Code 4.815). Camping is not a crime subject to exclusion, but it is noteworthy for its salience in the lives of the homeless. In 2009, homeless people accounted for 92% of the total prohibited camping arrests. Arrests only account for a fraction of camping cases; most result in a visit from a St. Vincent DePaul social worker, a warning, or citation.

According to Michele Mortensen, EPD had over 800 complaints of illegal camping in 2009. This included those with vehicles and without. Since prohibited camping is overwhelmingly a crime committed by people without housing, its criminalization disparately impacts the homeless.

The City of Eugene allows private property owners to accommodate one to three homeless individuals, depending on the type of property, and on the condition that they provide a bathroom, garbage, and do not charge rent (Eugene City Code 4.816). It also has a supervised program for people to register for a campsite (although spaces are very limited and insufficient to meet the demand). The First Christian Church accommodates three people with trailers, also providing water and electricity. Pastor Dan Bryant deliberates on the need for single room occupancy units to accommodate individuals with modest needs and financial resources. “Our system is built upon certain assumptions,” he says. The options available are too expensive and unattainable for many people.

According to the U.S. Department of Housing and Urban Development, a lack of affordable housing and the limited scale of housing assistance programs have contributed to the current housing crisis and to homelessness. The National Coalition for the Homeless adds that, since 2000, the incomes of low-income households has declined as rents continue to rise

(National Coalition for the Homeless 2009). The high costs of housing, limited options, insufficient social programs, and difficulty finding and keeping employment often lead to homelessness. Local social workers also cite mental health, substance use, and domestic violence among these factors that put people at risk.

A woman who works with City of Eugene Human Rights Program, points out that most homeless people contend with this painful irony: people cannot obtain housing without a job, but becoming employed without a home is exceedingly difficult and “horrendously daunting for a homeless person.” She advises people to imagine what they need when preparing for an interview: sleep, certain morning routines, nice clothing. Homeless people do not have these luxuries, and as a result, experience significant barriers in gaining employment that would help them to afford housing.

Similarly, a homeless caseworker says that people “need a place to go off the streets if they are cured.” On the street, people are less likely to show resilience towards alcohol and drug abuse. Ron Chase of Sponsors said that, without housing and support, people who have been incarcerated are more likely to gravitate towards people and behaviors that have a negative influence. Housing must be the first step in reintegrating people into society. Just as housing can act as a buffer between people and dangerous or criminal activity, having no home can prevent people from becoming self-sufficient, contributing members of society.

Social workers say that high costs associated with housing act as barrier to homeless people getting off of the streets. Initial costs include: first and last month’s rent, a deposit, and an application fee. Individuals with pets may face additional charges, as well.

People with disabilities are among those who struggle to obtain and maintain housing. In 2006, on a national average, monthly rent for a one-bedroom apartment was 113.1% of a person’s on

Supplemental Security Income (SSI) monthly income, and only 9% of SSI recipients also had housing assistance (National Coalition for the Homeless). This marked the first time that the national average rent for a studio apartment rose above the entire income of a person who relies only on SSI.

Beyond the personal and social impacts of living without a home, there are financial considerations, as well. A study by the U.S. Department of Housing and Urban Development found that it costs less to house the homeless in rental homes than shelters (Marisol 2010). However, shelters serve important functions, including as a safety net to those who experience emergencies and crises. Unfortunately, options for shelters are extremely limited in Eugene, as well.

In Eugene, a few programs exist that offer residential and affordable housing services, or shelter to families or women survivors of domestic violence. Otherwise, there is only one emergency shelter that serves adults: the Eugene Mission, or “the Mission”. The Mission provides emergency housing for men, women, and mothers with children (separately). Provisions include meals, beds, clothing, showers, haircuts and a dayroom. After 3 nights, a person must work or pay \$2 per day to continue to receive accommodations.

Some community members take issue with the Mission. They paint a picture of an organization that completely strips away a person of their autonomy and dignity. In the words of one homeless young man, “You’re given a number and told to put your clothes into a cart. You are a number.” Common criticisms include: people must participate in religious activities (chapel) in order to receive food; some units of the facility are not wheelchair accessible; couples cannot sleep together; people cannot bring their pets; people must shower together and share bars of soap; people feel unsafe because they are mixed together with people who use substances or

are threatening; and, at the same time, they have a strict “zero-tolerance” policy for disruptive behavior and substances that leaves some people on the street or even forbidden from returning. One man who was homeless describes the Mission as “a cesspool of predators. It defies freedom, and forces religion on you. People will choose not to go to a stable environment than go there.”

Ron Chase believes that, while many people blame the Mission, the problem is mainly one of limited options. Some people thrive at the Mission and appreciate its environment and structure. For others, it is inappropriate, but still they find themselves on the Mission’s doorstep, or on the street with no place to go. The fact that the Mission cannot accommodate certain people with disabilities, that it infringes upon one’s freedom of religion, or that it denies people service based on their dependency on substances, becomes an issue when the community offers no other alternatives.

The City of Eugene (in addition to the Federal and State governments) has failed to ensure that there is housing available that does not discriminate based on disability, religion, or status as an addict. Also, the City punishes people for camping and other crimes related to homelessness while negligible options exists for housing or shelter. Due to the circumstances, people cannot prevent or address their homelessness. As a result, they find themselves subject to a community with rigid and exclusive rules that punishes them for their misfortune.

c. Trespass, Obstructing Sidewalk, and Violation of Park Rules

According to Police Department numbers, homeless people comprised 73% of arrests for trespass in 2009. Trespass laws are overwhelmingly enforced against the homeless. They also account for a large number of the arrests among homeless persons: one-third of the homeless persons arrested in the Downtown from September 2008 to December 2009 were arrested for trespassing.

Homeless people accounted for eight of the ten arrests for obstructing a sidewalk in 2009. Obstructing pedestrian traffic can also constitute disorderly conduct, and in 2009, homeless people equaled more than a third of arrests for that crime.

Homeless people accounted for more than three quarters of arrests for violation of park rules. The homeless have very few places to go to rest, socialize, and generally exist. For lack of other options, they are more likely to hang out in public parks, and there find themselves subject to park rules more than the average person.

People who cannot rent or own property have two options: exist on private property or exist on public property. The former requires the consent of the property owner and without such can result in charges of criminal trespass. The latter relies heavily on the community's comfort with homeless peoples' presence, and can result in multiple charges, including obstructing the sidewalk.

Homeless people compose a disproportionate majority of those arrested for trespass, obstructing the sidewalk, and disorderly conduct, and are therefore statistically more likely to be subject to exclusions based on these crimes.

d. Public Urination and Defecation

Here is a story about a homeless man whom we will call "Mike." Mike is homeless, and is also excluded from the Downtown Public Safety Zone. At the same time, he lives in the Downtown. This is where someone allows him to sleep in their doorway at night, which gives him some degree of shelter from the elements, as well as a sense of security in knowing he will not trespass in order to find a place to rest. On multiple occasions, people have complained to

law enforcement when Mike uses the public bathrooms. Perhaps they find his presence unsettling or threatening. In any case, to avoid further conflict with the law, Mike seeks other options.

Mike is in the late stage of live failure. As a result, he has less control over his bodily functions. He attempts to walk to one of the White Bird facilities located in the West University Neighborhood when he needs a bathroom. However, due to his serious health condition, he frequently finds himself with the dilemma of choosing between relieving himself in an alley (a crime), or soiling himself.

In response to a City Council work session on homeless issues (titled the Homeless Initiative Action Plan), a group of city staff researched the availability of bathrooms in areas where there are higher concentrations of homeless people (the Downtown, Washington-Jefferson, and Whittaker neighborhoods). This group determined that, in these neighborhoods, only one public bathroom exists that is open 24-hours per day, 7 days per week. All others are limited in hours, days in the week, or even seasons. This bathroom is located in Eugene City Hall, located on Pearl St. Downtown (outside the Downtown Safety Zone boundaries). This bathroom is located in the same building complex as the Eugene Police Department. Multiple homeless caseworkers pointed out that many homeless people and youth have a distrustful relationship with law enforcement. These individuals may worry about coming in contact with the police and feel as though this bathroom is not an option.

The report cited these challenges to increasing access to current public restroom facilities: 1) securing the restrooms from illicit activity and ensuring customer safety; 2) determining restroom amenities, such as lockable external doors, running water, flushable toilet vs. portable toilet, or sinks for sanitizing; and 3) operational and maintenance costs, including custodial services, utility costs for heating and lighting restrooms, and repairing broken or vandalized

equipment. While the City Council ponders these factors, access to public bathrooms continues to have a significant impact on the homeless population. In 2009, homeless people accounted for half of arrests for public urination and defecation.

A few businesses may allow the homeless to use their facilities, but generally such private bathrooms are intended for the exclusive use of customers (i.e. people with dispensable income, who tend not to be homeless). If the community and City fail to make bathrooms accessible to the homeless, the homeless will have little choice but to urinate and defecate on public or private property.

This situation is degrading, disgusting, and detrimental to everyone in the City of Eugene. It deprives individuals of their dignity, and punishes them for acts that are circumstantial and beyond their control. Access to bathrooms is a fundamental human right, and it is unconstitutional and inhumane to criminalize people for exercising such rights. Furthermore, it creates unsanitary conditions in our community spaces that imperil public health and stifle economic and social activity.

e. The Meaning of Citations

Cory, who was a prostitute in Portland, Oregon, described how the Prostitution-Free Zone Ordinance impacted her. After its enactment, her customers continued to solicit prostitution. They insisted on taking her to more remote locations to avoid being excluded from the area themselves. On one such occasion, a customer took her to a wooded area on the outskirts of town. This seclusion allowed for her to be raped and thrown from the car naked (Sanchez, 870), brutality she had not experienced in town.

For people who do not have a home, public places with high traffic can provide the most safety. A homeless caseworker explained that the downtown may be safer than other

neighborhoods for the homeless. The downtown has more people around; there are more witnesses, a deterrent for victimization. Another social worker expressed concern that the exclusion from this area may increase a person's risk for sexual abuse, assault, and other forms of victimization.

Another homeless caseworker offered a different perspective regarding safety. Some homeless people keep away from the downtown to avoid police, as well as people who go to the bars at night. However, she expressed great concern that an exclusion citation may impact a person's ability to access essential resources, should they choose to go into the area. The Lane Transit District bus station, the Library, and the Food for Lane County Dining Hall are all included in the zone. As mentioned previously, from her discussions with clients, this caseworker had misconceptions about the rules of the ordinance, including whether or not people could request variances to come into the downtown for legitimate purposes. It is very likely that some people will not understand the process, and may then lose access to the important social services in the downtown.

This caseworker also pondered the implications for the homeless in receiving an exclusion citation, or an additional citation for trespassing into the Downtown Safety Zone. "If they violate, they will just have more charges on top of charges." She wondered how this will address the issues experienced by the homeless or larger community. Indeed, one police officer notes that citations frequently go to collections, and people do not pay.

A third homeless caseworker felt the exclusion "just punishes people who are already abused and in pain." He wondered, "How do we find comfort in that?" The ineffectiveness of criminal citations in altering crime brings to question how beneficial an additional citation, or two citations, can be, especially when the population is so downtrodden and desperate. Similarly,

some people question the extent to which jail serves as a deterrent or punishment, since it offers shelter and food to those who have neither. To the homeless, another citation translates into more lofty fines and further alienation from the police and community.

f. Safety Issues

Most Eugene community members know of the death of Herbert Bishop, "PacMan," in May, 2009. Two drunk men beat the homeless Bishop to death and stole his belongings while he slept in Skinner Butte Park beneath a tree. "Mr. Bishop was a human being. He had worth. People cared about him. He had friends." Judge Foote said, as he convicted the perpetrators. "He was a welcome member of this community" (Rillos 2010). Two months before this hearing, in November, 2009, Foote presided over another case involving the murder of a homeless person, Gerald Wudarski (KVAL.com 2009). James Pelfrey was the third homeless person murdered in 2009 (KVAL.com 2009).

These cases brought attention to a serious problem in the community: the victimization of the homeless. During the Downtown Solutions Forum in November 2009, Chuck Gerard, a program coordinator for White Bird, said that homeless people are more often victims of violence than perpetrators (KVAL.com 2009). Indeed, over the nine-year period from 1999 to 2007 in the United States, 217 homeless people were killed by those who were not homeless (National Coalition for Homeless).

Homeless people are a vulnerable population. They have no protection from other people, and a man who coordinates programs for the homeless lists the issues that may arise as a result: physical altercations with friends, sexual assault, and random assault by strangers. "Perpetrators prey on the homeless because they have no house," Another homeless caseworker explains. Additionally, many homeless people cannot meet their basic needs such as sufficient food,

shelter, and medical care. He describes these other safety concerns as “on-going health problems that affect the body, mind, and heart.”

There is little awareness regarding the magnitude of this issue. On December 21st, 2009, Dan Bryant of the First Christian Church held a service for 25 homeless people who had died in Lane County in 2009. On this evening, community members, many homeless, gathered in the WOW Hall to pay their respects to those who had passed away due to the elements, poor health, assault, or other harsh realities known to those who live in extreme poverty. “When you die on the street, you don’t get a nice church service,” Bryant reflected, as he recalled the service. Most homeless people leave this world with little thought or recognition, and very little fanfare from the media. In the 1998 service for 12 homeless people, Bryant said, “They were sacrificed on the alters of passivity, self-indulgence, and greed” (Williams 1998). An apathetic and self-interested community allowed for them to live and die in need.

g. What is Neighborly?

If you have ever moved to or visited an unfamiliar city, perhaps you have appreciated the challenges of being in a new place. Simple tasks such as navigating transportation and finding places can be complex. A recent study of 50,000 cell phone users showed that most people stay within an area with a six-mile radius day-to-day (Song 2010). Our places of employment, food, and socialization show little variation. We have knowledge about our neighborhood, and we have discovered how to enjoy a good quality of life in it that is hard to find in strange places.

According to local social workers, this is true for many homeless, as well. Ninety-five percent of the homeless in Lane County come from Lane County, and as a homeless caseworker discusses, a homeless person may live in a specific neighborhood, even if he or she does not have a roof. They possess certain knowledge of the neighborhood that may include where to

sleep, store belongings, and access essential social services, including drinking water, food, and a shower. Other individuals who work with the homeless suggested this same idea, one adding that neighborhoods are also a place to socialize and be with whoever they consider their “friends and family.”

In multiple interviews, people expressed the view that homeless people come to Eugene from other communities because of its reputation for having many social services. The compassionate nature is “what makes Eugene a good place to live and a bad place to live,” according a police officer. Another man framed it, “you can’t solve a rat problem by leaving out cheese” (other interviewees, including several who work as social service providers, expressed that there are not enough resources). However, it is apparently the case that most of the homeless in Eugene are, in fact, members of the community. Also, contrary to the hypothesis of a data analyst for the Eugene Police Department, the homeless who are accused of crimes are also overwhelmingly from here. According to Eugene Police data, at least 90% of homeless people arrested in the Downtown between September 2008 and December 2009 live in Eugene.

As Sanchez points out, in Portland, the community assumes “that street workers are alienated strangers who could not possibly live in an area,” and overlooks the fact that they may have other reasons to exist in public spaces and “denies them of the opportunity to shift their energies onto other work, family, and activities.” Similarly, many Eugene locals who live, work, or shop in the Downtown neighborhood do not understand that there are homeless people who live, socialize, and do productive things in that neighborhood. They are neighbors.

h. Opportunities

One homeless advocate bemoans the “huge missed opportunities” to provide programs for the homeless. Some communities around the United States have developed innovative ways to work with the homeless population. Here is an introduction to some highlighted by the National Law Center for Homelessness and Poverty and National Coalition for the Homeless (2006):

- Broward County, FL: a not-for-profit agency has teamed with the police to create their Homeless Outreach Team. The team informs chronically homeless individuals of social services available in the community, and often revisits the same individuals multiple times to build trust and encourage them to utilize services available. This team also creates workshops for police to raise their awareness on how to best work with the homeless population.
- Pasadena, CA: a program with police, creating a crisis-intervention training program and team that aims to work with mentally ill individuals in a compassionate manner, preventing incarceration and hospitalization.
- Washington, D.C.: a day center provides a space, food, and periodic medical attention to individuals who have no place to go during the day when night shelters are closed.
- San Diego, CA: the nation’s first Homeless Court Program (HCP) in 1989, to improve homeless peoples’ access to the judicial system. The HCP is a special monthly Superior Court session held at local shelters for homeless defendants to resolve outstanding misdemeanor criminal cases.

A man who works with the City of Eugene Parks and Open Spaces discussed a similar idea called “Safe Parks.” In the program, social workers would go to the parks and have a conversation with the homeless. It would cover park rules and laws, as well as resources

available in the community. This increases the likelihood that the homeless will behave appropriately and access resources. “Park staff are not social workers,” he points out. While they receive training on how to interact with people in the parks, they lack the skills of a social worker to adequately address the needs of the homeless.

Similarly, a homeless caseworker discussed how the police receive training to solve crime. “It’s a waste of police resources” to use law enforcement to deal with homelessness. The City could better serve the homeless and general population by investing in social service agencies. This would free police and park employees to do their job, and employ people with a more appropriate skill set for working with people on the streets.

In January 2010, the City announced a list of plans to address public safety issues in the downtown, and among them, they mentioned a long-term plan of utilizing social service agencies in dealing with people with mental health concerns, and the creation of shelters for those who use substances. These approaches require long-term resolve and commitment. Considering the issues the community faces, these approaches are the most promising in terms of successfulness and human rights.

i. Youth in the Downtown

According to a prosecutor, the City does not currently enforce the Exclusion Ordinance against youth because of “ambiguity” in the statute. However, the ordinance may apply to minors in the future. An adjudicated youth may agree to stay out of the downtown as part of a probation or parole agreement. The director of a homeless youth program gave some deeper insight into this. While “minor” refers to people under the age of 18, many people older than this qualify as youth. Physical and mental developments continue well into the mid-twenties. For some young adults, this point is particularly salient. Family life, peers, school and work experiences, life

skills, all these factors can contribute to an individual's level of maturity and ability to function in the world.

This period of growth and curiosity draws youth to the downtown. The program director lists some of the many reasons that youth come to the city center. For one, they experience a lot of boredom, as well as emotional volatility, and they seek drama and excitement. The downtown becomes "the epicenter of all things in their world" because it provides a place to socialize, make connections, and party." For many youth, the downtown is a space that allows them to meet their vital needs as social creatures.

For a variety of reasons, adults may disapprove of youth choosing to spend their time on the streets of the downtown. "Merchants often oppose youth gathering in front of their stores because they scare away the legitimate customers. City officials, parents, and other adults interpret their hanging out as unproductive use of time that will lead to delinquency" (Owens 2002). According to multiple interviewees, discomfort and fear of youth prevent many people from going to places such as the Public Library. "It's a mob scene outside the library," said the youth program director. People worry about foul language or even aggressive behavior. One community member describes the groups of youth, "they're acting cool, but they are totally clueless about other people. Sometimes they're offensive." At the same time, he says, they are harmless, and will not hurt anybody.

The downtown has struggled with how to deal with the presence of youth for a long time. The previous Pedestrian Mall rules prohibited skateboards and groups of people without permits, activities common for youth. More recently, over one third of arrests in the downtown between September 2008 and December 2009 involved suspects who were twenty-four years and younger

(40% of these young arrestees were homeless). The police dedicate a lot of resources to moderating the threat of young people.

One young man who was previously homeless, “Tim,” describes a dynamic he often observed occurring between business owners and youth. Teens stand in front of a business, and “huff and gruff,” changing the atmosphere. Their presence drives customers and other people away. The business owner may approach the youth, and in a gentle, friendly way, encourage them to change their behavior or leave. To exercise their autonomy and spite the business owner, the youth move to the curb and continue behavior. In the future, the business owner addresses the youth in a harsher tone, which escalates the youth, and perpetuates the antagonism.

This anecdote overly generalizes the interactions that occur between youth and community members. However, the moral of the story has far-reaching relevance and implications. “They have to choose that working with people is better,” Tim says. He felt that the community must empower the youth in order to resolve these problems through community services and education.

Control and choice are central issues for youth who are on the streets. While some leave home because of abuse or other familial problems, the desire for freedom and autonomy can act as contributing factors. When working with people who so greatly value their independence, Tim says, authoritative pressure creates resistance and anger towards authority. “It’s so important you don’t try to control them.” He said. “People don’t rebel as long as they don’t feel suppressed.”

He also noted that homelessness requires a certain skill set that some people on the street find easier. Finding food, places to sleep, and finding companions are tasks a homeless youth must learn. Emotional and mental skills such as self-control, motivation, long-term planning, and patience can be much harder to build. “It’s hard to support oneself and be an adult. You must be

master of yourself.” He also lists basic skills such as keeping and caring for a home. “They need more than job skills and money.” He ponders how if youth never learn these skills, they cannot pass them on to their children, and the absence of knowledge continues through generations.

Tim discusses some of the reasons they cannot gain essential skills. When you’re on the street, “your entire existence is based around getting necessities, getting food for today.” Their poverty may prevent them from learning about cooperation and communal living. Tim wondered about the consequences of “giving people the resources to survive without the education to survive.” Food and shelter are not enough. People need to know how to collaborate, socialize, organize, argue constructively, and be active citizens in the community.

The youth program director describes how poor relationship skills manifest in the lives of young people on the street. Some youth become best friends instantly upon meeting each other, or make plans for marriage within a week. Then something happens and they feel betrayed. These experiences contribute to their emotional volatility and perception of trust.

A girl who works as a peer-advocate for youth, “Sarah,” sees a need for many skills. Nutrition, budgeting, relationships, street smarts, knowing the laws, making a doctor appointment, these day-to-day tasks that many adults take for granted can present challenges for people who never learned how to perform them. She also discussed job skills, such as finding employment, resume-writing, and interviewing, as very important.

One homeless youth shared what he thought would be helpful for him. He wished the City would provide life coaches instead of police, someone who offers support and helps create a plan. Sarah does something like this, listening to her peers and connecting them to resources in the community. “I’ve never seen a person who is trying to fail,” said Sarah. “If the youth can do

good, they will do good.” She advocates for a strength-based approach that builds on the youth’s positive attributes and the resources available.

Tim recalls what was ultimately helpful in getting him off of the streets. Being in an atmosphere where he felt valued, accepted, and empowered. He had a job where people truly felt that he made important contributions, and this motivated him to continue. People need meaningful opportunities to contribute to the community to feel invested and empowered.

Just as much as the youth need opportunities to become valued members of the community, they also need physical spaces for developing community. Many youth come to the downtown to socialize. A peer-advocate for youth points out that the downtown is a central location for public transportation. Also, since standing in a public place costs no money, it is affordable. Coffee shops, supermarkets, health clubs, and other private businesses have largely overtaken public spaces in serving as a social place for people. However, young people still need public spaces as social gather spaces (Owens 2002). “It’s accessible and it’s free, and that’s the right price.” For some youth, the downtown serves as one of their limited options for entertainment. A young man who was once homeless made a similar observation saying, “The only entertainment for homeless kids is to hang out where people go. They have no money and no place to go.”

One homeless youth said that the downtown’s popularity is largely attributable to the fact that it is safe. Drugs, fights, and sexual violence are among the threats many of our local youth experience. Law enforcement, security guards, and businesses in the downtown offer youth a sense of security. Also, the large number of youth in the downtown lessens some of their fear; youth feel stronger in packs. A man who works with homeless youth said that the youth often seek groups because they perceive them to be a safer alternative to being alone. He warns,

however, that these groups of young people lack supervision, and that situation can pose new threats.

A woman who works with youth in a school said that youth need a “third place” to go. Youth need a place other than the home and school to socialize. She says a rule enforcer is unnecessary, but rather, an adult presence and clear expectations will create norms and regulate behavior. She cites businesses as an example. Restaurants provide positive social pressure to behave in an appropriate manner. She envisions a program where the City provides youth with tokens to use at local restaurants, which would give youth a place to go for socialization, and provide businesses with the customers necessary to create a vibrant downtown.

Sarah wants a place where youth can go after school other than home and businesses. She imagines a place in a central location where youth can just hang out. It offers educational opportunities such as workshops to build basic skills, as well as provide computers and food. It has clear rules and the youth must follow, and provides a safe environment where youth can “chill.”

Youth come into the downtown because it is free of cost, and also provides a social outlet. All of these interviews suggest that youth congregate on the streets of the downtown partially because they have no other resources. Eugene can address the needs of youth and other community members who feel the impacts of their presence by providing venues to socialize.

Another option involves reconceptualization of the downtown space. “Perhaps if the intended use of a place included the social and recreational activities of teens, they would be accepted instead of banned” (Owens 2002). The City could revitalize the downtown by tapping into the youthful creativity and energy already available.

Many of the negative interactions that transpire in the downtown result from a lack of awareness and understanding on the part of youth, law enforcement, and other community members. Eugene has the opportunity to address the fear and anti-social behavior it experiences through skill development, education on how to coexist, and creating opportunities for youth to socialize and engage in the community.

Similarly, the criminal activity of the homeless largely stems from unmet needs. The lack of shelters, day-use facilities, bathrooms, healthcare and other programs leaves many people with no choice. Currently, the City chooses to punish and exclude those in need. Rather than continue to alienate, demoralize, and disempower the disadvantaged and vulnerable, Eugene should embrace and support these community members. Social services, facilities and opportunities to serve basic needs and promote emotional, physical, and spiritual well-being will enable individuals and the community to rise. By focusing on the unmet needs of the homeless and youth on the street, the City will address Eugene's overarching needs to be a safe, healthy, and cohesive community. Inclusion, not exclusion, will provide sustainable solutions to the challenges the community faces today.

VII. Conclusion: What Kind of a City is Eugene

With the birth of suburbia and modern transport, Eugene's growth has been outwards, leaving behind what some may call a decrepit downtown of empty, aging buildings. Fewer people visit the downtown for private business. As a result, many who remain are those who utilize the public spaces because they have nowhere else to go, many of whom have little resources. For some community members, this dynamic creates fear that the downtown is unsafe, and some attribute the lack of vibrancy in the downtown to the people who hang out there. To address public safety concerns regarding the downtown, the City enacted the Exclusion Ordinance to keep repeat criminal offenders out of the area.

The Exclusion Ordinance embodies a variety of issues related to human rights and justice. It presents the struggle to achieve a balance between civil liberties and government power to protect the public through its challenges to the Sixth Amendment, Fifth Amendment, Eighth Amendment, and Fourteenth Amendment of the U.S. Constitution. It demonstrates the tension that exists between the rights of the individual and the rights of the community and the role of law enforcement in protecting both. It shows how the line between public and private becomes gray through the privatization of public resources, officials, and land. Finally, it represents the failure of a community to care for neighbors who are young, old, sick, poor, and generally downtrodden.

The vision of the Eugene City Council includes to “value all people, encouraging respect and appreciation for diversity, equity, justice, and social well-being. We recognize and appreciate our differences and embrace our common humanity as the source of our strength” (Eugene City Council). The City of Eugene aspires to be a place that advocates for human rights. At the same time, the City has chosen to deal with challenging times by dividing the

community, banishing and abandoning those who are most vulnerable. “Eugene gave up and made an exclusion zone – shame on them,” one social worker said.

In enacting the Exclusion Ordinance, Tim felt the message from the City was clear. “You don’t belong here, and we don’t care what you do so long as you don’t do it around us.” He said that “the City says, ‘we don’t care where you go or if your die.’ They kick you out of where there are people and food.” The issues in the downtown and around the community are complex. The City should choose to deal with these issues in way that shows thoughtfulness and compassion.

Ironically, the City of Eugene identifies itself as a place that promotes diversity. One excluded man said, “There are strange people downtown and all over Eugene—that’s Eugene.” At the same time, the poor, the mentally ill, the substance users, the youth—possibly other groups—experience alienation and banishment through current policies.

Further research is necessary to paint a complete picture of the community’s perception of the downtown and public safety, as well as how to develop a comprehensive downtown revitalization plan. Other areas for future research include: police policies and procedures in dealing with the homeless, youth, mentally ill, and those who are under the influence of substances; and an assessment of the City’s programs, services, and policies in dealing with the homeless and youth on the streets, as well as best practices in these areas.

Eugene is a community with ideals, hope, and creativity. Restorative justice, collaboration with social service agencies, day-use and night-use facilities, volunteerism and skill training are among the many ideas interviewees shared. Dan Bryant said that, “if you give people a chance, they will rise to the occasion.” He was referring to the homeless, but this is true for everyone in the community. If the City of Eugene explores the issues with greater depth and

invests in the ideas that are plentiful and everywhere, we can create a safe, inclusive, and vibrant community.

Appendices

Appendix A

Eugene City Code 4.873-4.849

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Appendix A: Eugene City Code 4.873-4.879

DOWNTOWN PUBLIC SAFETY ZONE

4.873 Downtown Public Safety Zone - Boundaries. For purposes of sections 4.874 through 4.879 of this code, the downtown public safety zone includes that area generally bounded on the north by, and including, the south sidewalk of 7th Avenue, then south along, and including, the east sidewalk of Lawrence Street, then east along, and including, the south sidewalk of 8th Avenue, then south along, and including the west sidewalk of Lincoln Street, then east along, and including, the south sidewalk of 11th Avenue, then north along, and including, the east sidewalk of Pearl Street, then west along, and including, the south sidewalk of 8th Avenue, then north along, and including, the west sidewalk of Oak Street to the south sidewalk of 7th Avenue.

(Section 4.873 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.874 Downtown Public Safety Zone - Civil Exclusion.

- (1) The municipal court may exclude a person pursuant to subsections (1), (3), or (4) of section 4.876 for violation of any of the provisions in sections 4.110(2), 4.230, 4.240, 4.726, 4.729, 4.730, 4.731, 4.770, 4.780 and 4.782 of this code, and for violation of any of the provisions of ORS 163.185, ORS 164.365, ORS 166.165, ORS 167.262, ORS 167.808, ORS 475.840, ORS 475.846 through ORS 475.894, ORS 475.904, and ORS 475.906.
- (2) The municipal court may exclude a person pursuant to subsection (5) of section 4.876 of this code for violation of any of the provisions in sections 4.080, 4.115, 4.190, 4.230, 4.240, 4.685, 4.705, 4.707, 4.725, 4.726, 4.728, 4.729, 4.730, 4.731, 4.755, 4.760, 4.770, 4.780, 4.782, 4.806, 4.807, 4.808, 4.809, 4.822, 4.882, 4.930, and 4.977, of this code, and for violation of any of the provisions of ORS 163.165, ORS 163.175, ORS 163.185, ORS 164.365, ORS 164.395, ORS 164.405, ORS 164.415, ORS 166.165, ORS 166.170, ORS 166.220, ORS 166.240, ORS 166.250, ORS 167.262, ORS 167.808, ORS 475.840, ORS 475.846 – ORS 475.894, ORS 475.904, and ORS 475.906. 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.
- (3) The municipal court may exclude a person from the public parks and public streets, alleys, sidewalks and other public ways in the downtown public safety zone for a period of one (1) year from the date of conviction if the person is convicted of any of the offenses enumerated in subsection (2) of this section and the person committed the offense while in the downtown public safety zone.
- (4) Except as allowed under section 4.878 of this code, a person excluded under authority of this section may not enter the downtown public safety zone except to:
 - (a) Attend a meeting with an attorney;
 - (b) Attend a scheduled meeting with a medical or social service provider;
 - (c) Comply with court- or corrections-ordered obligations or appearances;
 - (d) Contact criminal justice personnel at a criminal justice facility;

- (e) Attend any administrative or judicial hearing relating to an appeal of:
 - 1. The person's notice of exclusion; or
 - 2. The denial, revocation or amendment of the person's variance; or
 - (f) Travel through the downtown public safety zone on a Lane Transit District vehicle. Travel on a Lane Transit District vehicle includes reasonable time spent waiting to transfer to another Lane Transit District vehicle.
- (5) While in the downtown public safety zone, a person who is otherwise excluded but enters the zone pursuant to subsections (4)(a) - (f) of this section may only travel directly to and from the purposes enumerated in subsections (4)(a) - (f) of this section.
- (6) If an excluded person is in the downtown public safety zone in violation of the exclusion during the exclusion period, that person is subject to immediate arrest for violation of downtown public safety zone restrictions pursuant to section 4.879 of this code.

(Section 4.874 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; administratively corrected Section (5) January 20, 2009; amended by Ordinance No. 20446, enacted December 14, 2009, effective January 1, 2010.)

- 4.875** **Downtown Public Safety Zone - Issuance of Notice to Show Cause.** When a peace officer arrests a person or issues a citation for any of the offenses enumerated in subsection (1) of section 4.874 of this code, the officer shall also issue to the person being arrested or cited a notice to show cause. The notice shall require the person to appear at municipal court at a designated time within three (3) to five (5) business days, at which time the court will set a date and time for the hearing for the person to show cause why the person should not be excluded from the downtown public safety zone. The notice shall contain:
- (a) The date, time and place the person is to appear;
 - (b) The name of person ordered to appear;
 - (c) The name of the peace officer issuing the notice;
 - (d) A brief explanation of the purpose of and procedure for the court appearance;
 - (e) The following statement: AIf you fail to appear at Municipal Court at the date and time set forth above, the Municipal Court may enter an order excluding you for ninety days from the Downtown Public Safety Zone, shown on the attached map;@
 - (f) A statement that the person has the right to be represented by an attorney, at the person's own expense, at the hearing.
 - (g) A statement that, if the person is convicted of the offense for which the person was arrested or cited, the person may be excluded from the downtown public safety zone for an additional period of one year from the date of conviction;
 - (h) A map showing boundaries of the downtown public safety zone; and
 - (i) A brief description of the reasons for which the court may grant a variance and the procedure for requesting a variance.

(Section 4.875 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.876 Downtown Public Safety Zone - Exclusion Orders - Procedure.

- (1) At the date and time set forth in the notice described in section 4.875 of this code, if the person appears, the court shall set a date and time for the show cause hearing, which shall be not less than five (5) nor more than fourteen (14) calendar days from the date the person was required to appear under section 4.875 of this code. The court may impose a temporary exclusion order, to be in effect only until the show cause hearing, if, based on a police report or an affidavit from a witness and after considering any response by the person, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone. If the person does not appear, the court shall not schedule a show cause hearing and if, based on a police report or affidavit from a witness, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order excluding the person from the downtown public safety zone for a period of ninety (90) calendar days, effective at 12:01 a.m. the next day.
- (2) At the show cause hearing, the person shall have the opportunity to show cause why the person should not be excluded from the downtown public safety zone.
- (3) If the court at the show cause hearing finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order excluding the person from the downtown public safety zone for a period of ninety (90) calendar days effective at 12:01 a.m. the next day.
- (4) If the person does not appear at the show cause hearing, and, based on a police report or an affidavit from a witness, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order of exclusion as described in subsection (1) of this section.
- (5) Upon receipt of a copy of the conviction for an offense enumerated in subsection (2) of section 4.874 of this code and based on information in a police report or an affidavit from a witness that the conduct supporting the conviction occurred in the downtown public safety zone, the municipal court may enter an order excluding the convicted person from the downtown public safety zone for one (1) year from the date of conviction. The person shall be informed of the exclusion order by first-class mail sent to the person's last-known address. The excluded person may request a hearing on the exclusion. The only issues at such hearing shall be whether the person was convicted of an offense

enumerated in subsection (2) of section 4.874 of this code and whether the conduct supporting the conviction occurred in the downtown public safety zone. A certified copy of the conviction shall be conclusive evidence of the conviction.

- (6) A person subject to an exclusion order under subsection (1), (3), (4) or (5) of this section may apply for a variance pursuant to section 4.878 of this code.
- (7) An exclusion ordered by the court pursuant to subsections (1), (3) or (4) of this section shall terminate upon acquittal, dismissal of charges, or failure to prosecute.

(Section 4.876 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.877 **Downtown Public Safety Zone - Variances.** Variances shall be granted, denied or revoked in accordance with section 4.878 of this code. All variances shall be in writing; shall be valid for a specific period of time and shall only accommodate a specific purpose, all of which shall be stated on the variance. The purpose of the variance is to allow travel to and from locations within the downtown public safety zone according to the terms of the variance. In order for the variance to be effective, the excluded person must carry the variance on his or her person while in the downtown public safety zone and must present the variance to a police officer upon request. In the event a person who has been granted a variance is found in the downtown public safety zone in violation of the terms of the variance, that person is subject to immediate arrest for violation of downtown public safety zone restrictions pursuant to section 4.879 of this code.

(Section 4.877 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.878 **Downtown Public Safety Zone - Variances - Application/Revocation Procedure.**

- (1) At any time after an order of exclusion is entered against a person, the person may apply in writing to the municipal court for a variance from the exclusion. The application shall be made on forms provided by the court. A variance granted under this subsection allows travel in the downtown public safety zone only according to the terms specified in the variance.
 - (a) **General Variance.** The municipal court may for any reason grant a variance from an exclusion at any time during an exclusion period.
 - (b) **Residential Variance.** The court shall grant a residential variance to an excluded person if the person certifies:
 - 1. That the person lived in the downtown public safety zone, other than transient occupancy in a hotel or motel, when excluded; and
 - 2. Continues to live in the downtown public safety zone.
 - (c) **Essential Needs Variance.** The court may grant an essential needs variance to an excluded person if the excluded person certifies:
 - 1. That the excluded person possesses a residential variance;
 - 2. That the excluded person must access a public or private place within the downtown public safety zone that fulfills an essential need; and
 - 3. That the essential need sought by the excluded person cannot reasonably be accessed by the excluded person without violating the downtown public safety zone exclusion.

(d) Employment Variance.

1. The court shall grant an employment variance to an excluded person if the excluded person certifies that the person is an owner, principal, agent or employee of a place of lawful employment located in a downtown public safety zone.
2. The court may grant an employment variance to an excluded person to allow travel within the downtown public safety zone in accordance with the terms of the variance if the excluded person certifies:
 - a. That the person is an owner, principal, agent or employee of a place of lawful employment; and
 - b. The excluded person will be required to perform employment-related services in the downtown public safety zone.

(e) Social Services Variance. The court may grant a social services variance to an excluded person if the excluded person certifies:

1. That the person is in need of social services located in the downtown public safety zone;
2. The social services are sought for reasons relating to the health or well-being of the excluded person; and
3. The social services agency has written rules and regulations prohibiting the unlawful use and sale of controlled substances by their clients.

(f) Educational Variance.

1. The court shall grant an educational variance to an excluded person if the excluded person certifies:
 - a. That the person was enrolled as a student at an educational facility located within the downtown public safety zone when excluded; and
 - b. Is currently enrolled as a student at the same educational facility.
2. The court may grant an educational variance to an excluded person if the excluded person certifies that the person will be enrolled at an educational facility within the downtown public safety zone if the variance is granted.

(2) Revocation of Variances. Variances may be revoked in accordance with the following provisions:

- (a) The grounds for revocation of any variance other than a residential variance are as follows:
 1. The applicant provided false information in order to obtain the variance;
 2. The person is arrested or cited for any of the offenses enumerated in subsection (2) of section 4.874 of this code in the downtown public safety zone subsequent to the issuance of the variance; or
 3. The circumstances giving rise to the issuance of the variance no longer support a continuation of the variance.

- (b) Residential Variance Exception. A residential variance may be revoked only:
 1. If the applicant provided false residential information in order to obtain the variance; or
 2. If the circumstances giving rise to the issuance of the variance no longer support a continuation of the issuance of the variance.
- (3) Revocation Procedure.
 - (a) A peace officer who has probable cause to believe a person who has been granted a variance has violated its terms or conditions may issue to the person a notice to show cause that requires the person to appear at municipal court at a specified date and time, at which time the court will set a date and time for a show cause hearing.
 - (b) If the person fails to appear at the time and date specified in the notice, the court may revoke or modify the variance. If the person does appear, the court shall set a time for a hearing, at which the person shall have the opportunity to show cause why the variance should not be revoked or modified. At the hearing, the city shall have the burden to prove by a preponderance of the evidence that the person violated the terms or conditions of the variance. If the court finds that the city proved by a preponderance of the evidence that the person violated the terms or conditions of the variance, the court may revoke or modify the variance.
- (4) Definitions.
 - (a) Arrest. As used in this section and sections 4.874, 4.875, and 4.877, of this code, “arrest” includes taking a person under 18 years of age into custody as defined in ORS 419C.080(1)(a).
 - (b) Essential Needs. As used in this section, "essential needs" means food, physical care and medical attention for both physical and mental conditions.
 - (c) Travel. As used in this section and section 4.874 of this code, Atravel@ means the movement on foot or within or upon a vehicle within the downtown public safety zone from one point to another without delay other than to obey traffic control devices.

(Section 4.878 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.879 Violation of Downtown Public Safety Zone Restrictions.

- (1) A person commits the crime of violation of downtown public safety zone restrictions if the person enters or remains unlawfully in or upon premises in the downtown public safety zone.
- (2) The term “enter and remain unlawfully” shall have the meaning provided in section 4.805 of this code. For purposes of this section, “premises” means the public parks and public streets, alleys, sidewalks and other public ways in the downtown public safety zone.

(Section 4.879 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

Appendix B: Downtown Public Safety Zone Map



Created by the Eugene Police Department

Appendix C: Excludable Crimes

Category 1 Offenses: Felonies and Person Offenses

Offensive physical contact EC4705
Disorderly conduct EC4725
Harassment EC4726
Assault EC4729
Assault in the third degree ORS163165
Assault in the second degree ORS163175
Assault in the first degree ORS163185
Menacing EC4730
Intimidation in the second degree EC4731
Intimidation in the first degree ORS166165
Robbery in the third degree ORS164395
Robbery in the second degree ORS164405
Robbery in the first degree ORS164415
Discharging fire arms ORS166170
Pointing firearm at another ORS166220
Carrying a concealed weapon ORS166240
Unlawful possession of fire arms ORS166250
Recklessly endangering another person EC4728
Interfering with public transportation EC4977

Category 2 Offenses: Drug Offenses and Criminal Mischief

Inhaling toxic vapors EC4230
Unlawful possession of inhalants ORS167808
Use or possession of less than one ounce of marijuana EC4240
Unlawful manufacture of marijuana ORS475856
Unlawful manufacture of marijuana within 1000 feet of school ORS475858
Unlawful delivery of marijuana ORS475860
Unlawful delivery of marijuana within 1000 feet of school ORS475862

Unlawful possession of marijuana ORS475864
Unlawful possession of heroin ORS475854
Unlawful manufacture of heroin ORS475846
Unlawful manufacture of heroin within 1000 feet of school ORS475848
Unlawful delivery of heroin ORS475850
Unlawful delivery of heroin within 1000 feet of school ORS475852
Unlawful manufacture of 34 methylenedioxy methamphetamine MDMA
or Ecstasy ORS475866
Unlawful manufacture of 34 methylenedioxy mentamphetamine within
1000 feet of school ORS475868
Unlawful delivery of 34 methylenedioxy mentamphetamine ORS475870
Unlawful delivery of 34 methylenedioxy mentamphetamine within 1000
feet of school ORS475872
Unlawful possession of 34 methylenedioxy mentamphetamine ORS475874
Unlawful manufacture of cocaine ORS475876
Unlawful manufacture of cocaine within 1000 feet of school ORS475878
Unlawful delivery of cocaine ORS475880
Unlawful delivery of cocaine within 1000 feet of school ORS475882
Unlawful possession of cocaine ORS475884
Unlawful manufacture of methamphetamine ORS475886
Unlawful manufacture of methamphetamine within 1000 feet of school ORS475888
Unlawful delivery of methamphetamine ORS475890
Unlawful delivery of methamphetamine within 1000 of school ORS475892
Unlawful possession of methamphetamine ORS475894
Adult using a minor in commission of controlled substance offense ORS167262
Unlawful manufacture delivery or possession of a controlled substance ORS475840
Unlawful manufacture or delivery of a controlled substance within1000
feet of a school ORS475904
Distribution of a controlled substance to a minor ORS475906
Criminal mischief in the first degree ORS164365

Criminal mischief in the second degree EC4782

Criminal mischief in the third degree EC4780

Category 3 Offenses: Property Offenses

Criminal mischief in the second degree by a guest EC4806

Criminal trespass in the second degree EC4807

Criminal trespass in the first degree EC4808

Criminal trespass while in possession of a firearm EC4809

Petty larceny EC4820

Theft EC4822

Shoplifting EC4825

Theft of services EC4930

Unlawful Entry into a motor vehicle EC4882

Category 4 Offenses: Miscellaneous Offenses

Noise disturbance EC4080

Purchase or possession of liquor by a minor EC4115

Consumption or possession of alcohol in unlicensed public places EC4190

Unaccompanied or unemancipated minors in public places during certain
hours EC4685

Interference with pedestrians EC4707

Public indecency EC4755

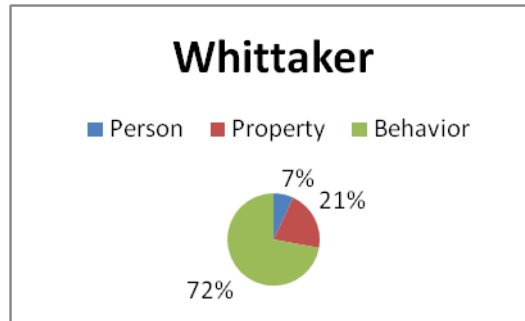
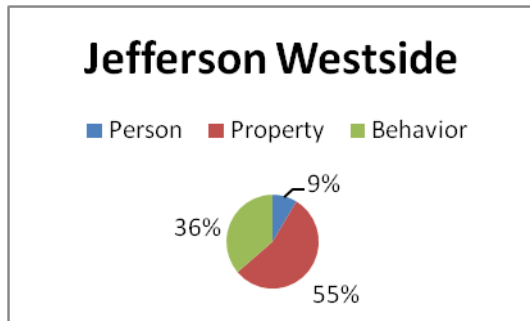
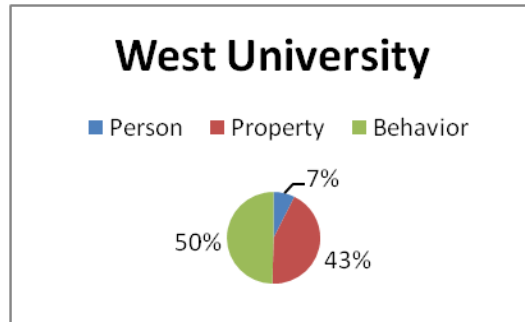
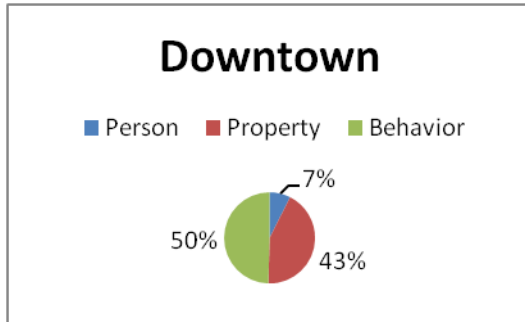
Prohibited nudity EC4760

Urination and defecation in public places EC4770

Appendix D: Neighborhood Crime Statistics

NEIGHBORHOOD CRIME: TOTAL NUMBER OF CASES

| Neighborhood | Type | 2008 | 2009 | Change |
|--------------------|----------|------|------|--------|
| Downtown | Person | 293 | 289 | -1.4 |
| | Property | 1791 | 1669 | -6.8 |
| | Behavior | 2035 | 1925 | -5.4 |
| West University | Person | 95 | 118 | 24.2 |
| | Property | 1051 | 1023 | -2.7 |
| | Behavior | 863 | 1123 | 30.1 |
| Jefferson-Westside | Person | 79 | 85 | 7.6 |
| | Property | 548 | 549 | 0.2 |
| | Behavior | 419 | 362 | -13.6 |
| Whittaker | Person | 138 | 127 | -8.0 |
| | Property | 460 | 383 | -16.7 |
| | Behavior | 1584 | 1318 | -16.8 |



Work Cited

- Adams, Tom. 2010. "Eugene Police Clean Up 'Alley of Evil'" *KVAL News*. April 7, 2010.
- Amster, Randall. 2003. "Patterns of Exclusion: Sanitizing Space, Criminalizing Homelessness." *Social Justice*. 30:195.
- Babrier v. Brady. 1985. U.S. 113: 27.
- Bello, Marisol. 2010. "Apartment Rents Cheaper Than Stays in Homeless Shelters." *USA Today*. March 25.
- Berkley, Blair, and John Thayer. 2000. "Policing Entertainment Districts." *Policing: An International Journal of Police Strategies and Management*. 23:466-491.
- Burgess, Ernest, Park, Robert E., and McKenzie, R.D. 1925. *The City*. Chicago, IL: University of Chicago Press.
- Chamard, Sharon. 2007. "Home Encampments." *U.S. Department of Justice Office of Community Oriented Policing Services Problem-Specific Guides Series*.
- City of Eugene. 2010. "City Moves Forward with Downtown Safety Solutions." *News Release*. January 27.
- Coffin v. US. 1985. U.S. 156: 432
- Citizens for Public Accountability. 2008. Retrieved May 3, 2010. (<http://www.lanecpa.org/cpa/exclusion.htm>).
- City of Eugene. *Eugene City Council*. Retrieved May 3, 2010. (<http://www.eugene-or.gov/citycouncil>).
- City of Eugene. 1989. *Eugene City Code*. 19605
- City of Eugene. 2000. *Eugene City Code*. 20196
- City of Eugene. 1998. *Eugene City Code*. 4.816.
- City of Eugene. 1983. *Eugene City Code*. 4.815.
- City of Eugene. 2008. *Eugene City Code*. 4.873.
- City of Portland v. Burrage. 2005. OR Cir.
- City of Portland v. James. 1968. OR 251: 8.
- Constitution of the United States. 2010. Amendment 5.

Constitution of the United States. 2010. Amendment 6.

Constitution of the United States. 2010. Amendment 14.

Downtown Eugene, Incorporated. 2010. *Downtown Eugene*. Retrieved May 3, 2010.
(<http://downtowneugene.com>)

Dunn v. Blumstein. 1972. U.S. 405: 330.

Dworkin, Andy. 2008. "Drug-Free Zones End on Bias Issue Report." *The Oregonian*. September 27.

Eugene City Council. 2008. *Minutes*. July 21.

Eugene City Council. 2008. *Minutes*. August 11.

Eugene Police Department. *Annual Person/Property/Behavior with Crime Subgroups for Neighborhoods*. Retrieved May 28, 2010. (http://www.eugene-or.gov/portal/server.pt/gateway/PTARGS_0_2_358118_0_0_18/icapar2an.pdf)

Eugene Police Department. 2009. "Eugene Police Department Rolls Out New Initiative to Impact Property Crime." *News Release*. December 16.

Eugene Police Department. *About the West University Public Safety Station*. Retrieved May 3, 2010.
(<http://www.eugene-or.gov/portal/server.pt?space=CommunityPage&parentid=0&control=SetCommunity&CommunityID=657&PageID=1394>)

Ferrell, Jeff. 2001. "Remapping the City: Public Identity, Cultural Space, and Social Justice." *Contemporary Justice Review*. 4: 2.

Gideon v. Wainwright. 1963. U.S. 372: 335.

Harrington, Elissa. 2010. "Can You Stand Here or Not?" *KVAL News*, May 27.

Helvering v. Mitchell. 1938. U.S. 303: 391.

Hudson v. United States. 1997. U.S. 522: 93.

Jacobs, Jane. 1961. *The Death and Life of Great American Cities*. New York, NY: Random House.

Johnson v. City of Cincinnati. 2003. F3d. 310: 484.

KVAL.com. 2009. *Downtown Solutions Forum*. Retrieved May 3, 2010.
(<http://search.kval.com/default.aspx?ct=r&q=downtown+solutions+forum>).

KVAL.com. (2009). *Homeless Hit Hard*. Retrieved May 3, 2010.
(<http://www.kval.com/news/local/55146537.html>).

- KVAL.com. (2009). *Man Gets Prison for Killing Homeless Man Looking for Cans*. Retrieved May 3, 2010. (<http://www.kval.com/news/local/55146537.html>).
- Larimer, et al. 2009. "Health Care Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons with Severe Alcohol Problems." *Journal of the American Medical Association*. 301:1349.
- Memorial Hospital v. Maricopa County. 1974. U.S. 415: 250.
- Michael Pottinger, Peter Carter, Berry Young, et al. v. City of Miami. 1992. FL Supp. 810: 1551.
- Mitchell, Don. 1998. "Anti-Homeless Law and the Public Space: Begging and the First Amendment." *Urban Geography*. 19: 1.
- National Coalition for the Homeless, National Law Center on Homelessness and Poverty. 2006. *A Dream Denied: the Criminalization of Homelessness in U.S. Cities*.
- National Coalition for the Homeless. 2009. *Why Are People Homeless?*
- Owens, Patsy. 2002. "No Teens Allowed: The Exclusion of Adolescents from Public Spaces." *Landscape Journal*. 21:156-163.
- Pittman, Alan. 2008. "Preconviction Zone: City to Ban Hundreds of People from Downtown." *Eugene Weekly*. August 14.
- Reardon, Emily. 2009. "Holding on to Fundamental Rights is no Walk in the Park: Challenging the Constitutionality of the Park Ban Upheld in Standley v. Town of Woodfin." *North Carolina Law Review*. 87:1979.
- Rillos, Laura. 2010. "He was a welcome member of this community. You are not'." *KVAL News*. January 27.
- Russo, Edward. 2010. "A Place to Call Home." *The Register-Guard*. February 25, 2010.
- Russo, Edward. 2009. "Downtown Funds Misspent, Audit Finds." *The Register-Guard*. April 18, 1.
- Sanchez, Lisa. 2004. "The Global E-rotic Subject, the Ban, and The Prostitute-Free Zone: Sex Work and the Theory of Differential Exclusion." *Environment and Planning D: Society and Space*. 22:861-883.
- Scharff, Robert. 2004. "An Analysis of Municipal Drug and Prostitution Exclusion Zones." *George Mason University Civil Rights Law Journal*. 15:321.
- Shaw, Clifford R. and McKay, Henry D. 1969. *Juvenile Delinquency in Urban Areas*. Chicago: University of Chicago Press.
- Song, Chaoming, and et al. 2010. "Limits of Predictability in Human Mobility." *Science*. 327:1018.

Stafford, Jonathan. 2001. "Heart Mumurs: Resuscitation Downtown." *Eugene 1945-2000: Decisions that Made a Community*. Bloomington, IN: Xlibris Corporation.

State v. Lhasawa. 2002. OR 334: 543.

State of Ohio v. Burnett. 2001. OH3d. 93: 419.

Strategy Research Institute, City of Eugene. 2009. *Downtown Revitalization Plan*. Retrieved May 3, 2010. (http://www.eugene-or.gov/portal/server.pt/gateway/PTARGS_0_2_344714_0_0_18/Manross%20Slide%20Show%209.14.09.pdf).

Vibrant Eugene. 2009. Retrieved May 3, 2010. (<http://www.vibranteugene.org>).

Williams, Anne. 1998. "Event Marks 1998 Deaths of Homeless." *The Register-Guard*. December 22, 1.

Wilson, James, and George Kelling. 1982. "Broken Windows." *The Atlantic Monthly Review*. 29-36.

Zick, Timothy. 2008. "Constitutional Displacement." *Washington University Law Review*. 86:541.