

ORDINANCE NO. 978

AN ORDINANCE DESIGNATING A DRUG FREE ZONE, PROVIDING FOR CIVIL EXCLUSION, ESTABLISHING PROCEDURE EXCLUDING VIOLATORS, AND DECLARING AN EMERGENCY.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Drug-free Zones.

Drug-free zones are those areas of the city designated by the City council under Section 2 of this Ordinance, which are areas where the number of arrests for the crimes listed in Section 3 of this Ordinance for the twelve month period preceding the original designation is significantly higher than that for other similarly sized areas of the City.

Section 2. Designation of Drug-Free Zone.

If the City Council designates an area meeting the criteria of Section 1 of this Ordinance to be a drug-free zone, Council shall do so by Ordinance, said designation to be valid for an initial period of two (2) years. Thereafter, the Council may extend the time of designation as it deems appropriate, but in no event shall the total be more than ten(10) years.

The City Council may also remove the designation in the event it deems that appropriate. The removal of the designation shall be by ordinance.

Section 3. Civil Exclusion.

A person is subject to exclusion for a period of ninety (90) days from the public streets, sidewalks and other public ways in all drug-free zones designated in this Ordinance if that person has been arrested or otherwise taken into custody within any drug-free zone for the unlawful possession, use or distribution of a controlled substance, attempted unlawful possession or distribution of a controlled substance, conspiracy to unlawfully distribute a controlled substance, or an attempt to or conspiracy to distribute an imitation controlled substance. Controlled substance shall mean those substances defined as such in ORS 475.992.

If a person excluded from all designated drug-free zones is found in any drug-free zone during the exclusion period, that person is subject to immediate arrest for criminal trespass in the second degree pursuant to ORS 164.245.

Section 4. Issuance of Exclusion Notices.

The Chief of Police is designated as the person in charge of the public streets, sidewalks and public ways in drug-free zones for purposes of issuing exclusion notices in accordance with this Ordinance. The Chief of Police may authorize employees of the police Department to issue exclusion notices in accordance with this Ordinance.

Section 5. Procedure.

At the time a person is arrested within a drug-free zone for any of the crimes listed in Section 3, the officer making such arrest may deliver to the person a written notice excluding the person from all drug-free zones. The notice shall specify the areas designated as drug-free zones in Section 7 from which that person is excluded and contain information concerning the right to appeal the exclusion notice to the Municipal Judge. The person to whom the exclusion notice is issued shall sign a written acknowledgment of receipt of the exclusion notice. If the person refuses to do so, the arresting officer shall make a written record of the refusal.

Section 6. Appeal and Variance.

The person to whom an exclusion notice is issued shall have a right to an appeal from the issuance of the notice.

1.(a) An appeal of the exclusion must be filed, in writing, within five (5) calendar days of the notice's issuance. A hearing on the appeal shall be provided within 10 days of the receipt of the appeal.

(b) The exclusion shall not take effect during the pendency of the appeal. If no appeal is taken, the exclusion shall take effect on the sixth calendar day after the notice's issuance.

(c) The City shall have the burden to show by a preponderance of evidence that the exclusion is based on conduct which constitutes any of the offenses as set forth in Section 5 of the Ordinance. Copies of documents in its control and which are intended to be used by the City at the hearing shall be made available to the appellant, if requested, at least two (2) days prior to the hearing.

2.(a) A determination by the municipal judge that the officer who issued the exclusion notice at the time, had probable cause to arrest the person to whom the exclusion notice was issued for violation of the offenses set forth in Section 5 of this Ordinance shall be prima facie evidence that the exclusion was based on conduct proscribed by those statutes.

(b) Variances from an exclusion may be granted at any time during the exclusion period by either the Chief of Police or designate or by a social service agency which provides services within the drug-free zone for which the variance is granted, only for reasons relating to the health or welfare, or well-being of the person excluded. The Chief of Police shall grant a variance to any person who can establish that he or

she:

- i. Was a bone fide resident of the drug-free zone prior to receipt of the exclusion notice; or
- ii. Was a bona fide owner, principal or employee of a place of employment located in one of the designated drug-free zones.

The variance will allow access only to the designated drug-free zone specified in the variance.

Only those social service agencies which have written rules and regulations prohibiting the use or sale of controlled substances by their clients and which have entered into a written agreement with the Police Department concerning the applicability and enforceability of those rules are eligible to grant variances.

(c) All variances shall be in writing, for a specified period of time and only to accommodate a specific purpose, all of which shall be stated on the variance. The person shall keep the variance on his or her person at all times the person is within the specific drug-free zone for which the variance was granted. In the event a person having a variance is found to be outside the scope of the variance's terms, that person is thereupon subject to immediate arrest for criminal trespass in the second degree pursuant to ORS 164.245.

(d) In the event a person holding a variance is arrested for conduct prohibited by state or federal law involving controlled substances, the variance shall immediately become void and that person shall be ineligible for any new variances for a period of one (1) year from the date of the arrest.

Section 7. Listing of Drug-Free Zones

Pursuant to Section 1 and 2 of this Ordinance, the following is designated a drug-free zone:

The area bounded on the north by Highway 99E beginning at a point at its intersection with S. Highway 170 east along the south side of Highway 99E to the eastern city limits of the City of Canby, thence south along the Canby City limits to its intersection with SE 13th Street, then west along the Canby City limits to its intersection with Highway 170, then north along the eastern side of Highway 170 to its intersection with Highway 99E at the point of beginning.

Section 8. Emergency Declared.

It being necessary for the health, safety and general welfare of the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 1, 1997, and ordered posted in three (3)

public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, October 15, 1997, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City hall in Canby, Oregon.

Marilyn Perkett
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 15th day of October, 1997, by the following vote:

YEAS _____

NAYS _____

Scott Taylor, Mayor

ATTEST:

Marilyn Perkett

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