

AN ORDINANCE AUTHORIZING THE DESIGNATION OF)
ALCOHOL IMPACT AND ENHANCED ENFORCEMENT)
AREAS, ESTABLISHING PROCEDURES, CHARGES)
AND PENALTIES THEREIN)

ORDINANCE BILL NO. **16**
FOR 2006

ORDINANCE NO. **2707**

WHEREAS, The Lebanon Police Department has, for years, received complaints of certain intoxicated or otherwise obstreperous individuals behaving repeatedly in a hazardous, offensive, or criminal manner; and,

WHEREAS, The Department has worked with downtown merchants and with youth and young adults in the downtown area to formulate a cooperative effort to address the concern of these repeated acts by the same individuals or others who engage in hazardous, offensive or criminal behavior; and,

WHEREAS, certain areas of the city are saturated with certain types of licensed premises selling or serving alcoholic beverages. The placement of additional licensed premises or the renewal of those licenses that have been the source of fights, assaults, excessive noise or other criminal acts may be deleterious to the designated alcohol impact and enhanced enforced area and are not justified by public interest or convenience; and,

WHEREAS, the authority to establish Alcohol Impact and Enhanced Enforcement Areas (AIEEA) under the terms of this ordinance would provide the Department with the ability to temporarily exclude certain repeat offenders from these designated areas or to otherwise limit, as allowed by state law, the issuance or renewal of liquor licenses within the enhanced enforcement area.

NOW, THEREFORE, THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Section 1. There is hereby created Chapter 9.18 of the Lebanon Municipal Code which shall read as follows:

9.18.010. Purpose. The City Council finds and declares that:

A. Certain areas of the City appear to draw disproportionate numbers of lawbreakers and are the source of disproportionate numbers of complaints and requests for police response to deal with alcohol related issues of public drunkenness, lewd behavior, excessive noise, and assaults.

B. Being able to remove these people from these areas for a period of time will give the Police Department and the occupants of these areas a chance to "reclaim" their part of the City, will mitigate the number of offenses occurring in these areas, and will serve as an additional punishment for those who violate the law in these areas.

C. Being able to limit the number, or restrict the operating conditions, of liquor licenses within the AIEEA will reduce alcohol related criminal actions and allow non-alcohol dependent businesses and residents to operate without the negative impact often associated with alcohol related criminal activity.

9.18.020. Definitions. For the purposes of this chapter, the following definitions will apply:

“AIEEA” means Alcohol Impact and Enhanced Enforcement Areas

“Arrest” means to place a person under actual or constructive restraint, or to take a person into custody, for purpose of charging that person with the commission an offense.

“Cite” means to issue a citation to appear to a person for commission of an offense.

“Enforcement officer” means a peace officer as defined by ORS 133.005, or any other person with authority to issue citations under Lebanon Municipal Code.

“Alcohol Impact and Enhanced Enforcement Area” means the geographic area designated as such by City Council ordinance adopted pursuant to this Chapter.

“Enumerated crime” means:

Harassment as defined in ORS 166.065.

Intimidation as defined in ORS 166.155-166.165.

Disorderly Conduct or Riot as in ORS 166.015-166.025.

Discharge of a weapon within City Limits as defined in LMC 9.20

Unnecessary Noise as defined in LMC 8.10.

Drinking in Public as defined in ORS 471 & 472

Assault as defined in ORS 163.160-163.185.

Public Indecency as defined in LMC 9.16 or ORS 163.465.

Trespass as defined in ORS 164.245-164.265.

Rape and Sexual Abuse as defined in ORS 163.355-163.427.

Criminal Mischief as defined in ORS 164.345-164.365.

Prostitution or related offense as defined in ORS 167.007-167.017.

Providing Liquor to a Minor as defined in ORS 471.430.

Possession, Delivery, or Manufacture of a Controlled Substance as defined in ORS 167.203, ORS 475.005-475.285, or ORS 475.940-475.995.

Littering as defined in ORS 164.805.

Menacing as defined in ORS 163.190.

Arson or Reckless Burning as defined in ORS 164.315-164.335.

Burglary, Theft, or UEMV as defined in ORS 164.043-164.057, 164.215-164.235, or ORS 164.272.

Alcohol licensee “serious and persistent problems,” as defined in ORS 471.315

Carrying a Concealed Weapon or Firearms, Destructive Devices and related offenses as defined in LMC 9.20 or ORS 166.180, 166.190, 166.220, 166.240, 166.250, 166.270, or 166.272.

Interfering with Peace Officer or Obstructing Governmental Administration as defined in ORS 162.235-166.245.

DUII as defined in ORS 813.010.

Any attempt to commit as defined in ORS 161.405, or conspiracy to commit as defined in ORS 161.450 of any of the above-enumerated offenses.

“Hearings officer” means the Lebanon Municipal Judge capacity to review civil penalties imposed under this chapter.

“Identified violation” means:

- a. MIP-Alcohol as defined in ORS 471.430.
- b. Possession Drug Paraphernalia as defined in LMC 5.20
- c. PCS-Less than one ounce Marijuana as defined in ORS 475.992.

“OLCC” means the Oregon Liquor Control Commission.

“Pedestrian public ways” means any sidewalk, plaza, alley, parking structure or parking area, or other way designated and regularly used for pedestrian travel, any planter strip or landscaped area located adjacent to or contained within such streets, plazas, alleys, or other ways, and includes that portion of public rights of way used for the parking of vehicles, but does not include that portion of public rights of way regularly and traditionally used for vehicular travel.

“Public Premise” means any city property or other premise under the control or authority of the City of Lebanon or one of its subdivisions.

“Street” means any public right of way or alley designated or regularly and traditionally used for vehicular travel.

“Travel” means movement by foot, vehicle, or other conveyance on a public premise, pedestrian public way, or street, from one point to another, without delay other than to obey traffic control devices.

9.18.030 Authority to Designate Enhanced Enforcement Areas:

A. The city council, by ordinance, may designate a geographic area of the city as an AIEEA if the council determines that the Area has been either identified as a high crime area or determined to be of importance as an area of special historic, business, economic, or other interest to the citizens of Lebanon and/or an area with a history of alcohol related criminal activity.

B. Designation of these Areas will:

1. Lower citizen victimization, chronic nuisance activity, or discourage criminal activity, reduce alcohol related crime, and
2. Increase public safety and awareness within the Area.

C. Designation of each Area shall be valid for a period of three years. The Chief of Police is directed to report to the city council at least ninety days before the end of the three year period as to whether there is a need to re-authorize or re-configure the Area.

9.18.040 Enactment of Ordinances Directed at Specific Areas:

In addition to the general conditions associated with this ordinance, the city council, upon designation of an Enhanced Enforcement Area, may enact

ordinances to address issues of specific importance to the Area designated, such as special ordinances to:

- a. Increase citizen safety,
- b. Reduce identified nuisances, or
- c. Limit certain problem behaviors within the area.

9.18.050 Posting of Areas:

Any AIEEA shall be posted at the intersection of each street (not including alleys) with the border of the Area.

9.18.060 Civil Exclusion/Time Periods:

- A. Any person cited by an enforcement officer for two city ordinance violations, excluding minor traffic or parking violations, within any one year period of time within an AIEEA shall be prohibited from being present on public premises, pedestrian public ways, or streets within the Area for any purpose other than one specified under LMC 9.18.090 (Exemptions), for a period of thirty (30) days.
- B. Any person cited or arrested by an enforcement officer for an identified violation within an Enhanced Enforcement Area shall be prohibited from being on public premises, pedestrian public ways, or streets within the Area for any purpose other than one specified under LMC 9.18.090 (Exemptions), for a period of forty-five (45) days.
- C. Any person cited or arrested by an enforcement officer for an enumerated crime within an Enhanced Enforcement Area shall be prohibited from being present on public premises, pedestrian public ways, or streets within the Area for any purpose other than one specified under LMC 9.18.090 (Exemptions), for a period of ninety (90) days.
- D. Any OLCC licensee whose patrons are cited for three or more city ordinance violations, excluding minor traffic or parking violations, within any one year period of time within an AIEEA shall receive a city recommendation to “deny” renewal of his/her OLCC license at its next renewal and/or shall have its operations restricted by the Lebanon City Council.

9.18.070 Civil Exclusion/Notice:

The exclusion or restriction notice shall be issued by the enforcement officer at the time the person is cited or arrested for the commission of the identified violation or enumerated criminal offense. In the case of City ordinance violations resulting in an exclusion or other restriction, the notice may be sent by mail to the residence address of the involved party. The notice shall be in writing, shall specify the offense or offenses upon which the notice is based, the geographical extent of the exclusion, dates of exclusion, exemptions, and the procedure for filing an appeal. The period of exclusion shall commence at the end of the appeal period specified under LMC 9.18.110 (Appeals).

9.18.080 Civil Exclusion/Aggregating Time Periods:

Any person or business who is issued an additional notice within one hundred eighty (180) days of the expiration of any prior notice shall have an additional one hundred eighty (180) day period of exclusion added onto the period of the additional exclusion/restriction notice.

Any person cited or arrested under LMC 9.18.100 (Criminal Trespass in an AIEEA) shall be issued an additional one year exclusion to take effect on the expiration date of any current exclusion notice.

9.18.090 Exemptions From Exclusion:

Notwithstanding LMC 9.18.070 (Civil Exclusions), a person to whom an exclusion notice has been issued may be present on public premises, pedestrian public ways, or streets within an Enhanced Enforcement Area for the following purposes:

- A. To travel to and from a scheduled meeting with an attorney or criminal justice personnel within the Enhanced Enforcement Area; to and from obligations performed in compliance with an order of the court or a criminal justice agency within the Enhanced Enforcement Area; and to or from an administrative or judicial hearing to which the person is a party within the Enhanced Enforcement Area;
- B. To travel to and from a public or private establishment located in the Enhanced Enforcement Area to obtain goods or services not otherwise reasonably available outside the Area to satisfy essential needs of the person. As used in this paragraph, "essential needs" means food, physical care, or medical attention;
- C. To travel to and from the person's place of employment within the Enhanced Enforcement Area;
- D. To travel to and from a government agency, private non-profit corporation, or treatment provider within the Enhanced Enforcement Area to obtain social services, counseling, or treatment needed for the health or well-being of the person in association with chemical dependency or mental health;
- E. To travel to and from a educational facility within the Enhanced Enforcement Area to enroll as a student or attend scheduled classes;
- F. To travel to and from a educational or day care facility within the Enhanced Enforcement Area for purposes of meetings or dropping-off or picking-up minor children over whom the person has legal custody or guardianship;
- G. To travel to and from a religious institution within the Enhanced

Enforcement Area for the purposes of exercising the person's right to worship;

- H. To travel to and from the person's permanent residence within the Enhanced Enforcement Area, or to travel to and from a residence of an immediate family member within the Enhanced Enforcement Area. For purposes of this paragraph, "immediate family" means the person's parents, in-laws, stepparents, siblings, grandparents, children, or grandchildren.

A person to whom an exclusion notice has been lawfully issued and who is present on a public premise, pedestrian public way, or street pursuant to this section shall travel by the most direct/shortest route to and from the locations specified in this section, and, if stopped by an enforcement officer, has the burden to demonstrate, by clear and convincing evidence, that the person is traveling to or from one of the locations for purposes specified in this section.

9.18.100 Criminal Trespass in an Enhanced Enforcement Area; Violation:

- A. Any person to whom a notice of exclusion has been issued and who knowingly enters or remains in an AIEEA while under the period of exclusion is guilty of a violation of this ordinance for Criminal Trespass in an Enhanced Enforcement Area.
- B. A violation of this section is punishable, upon conviction, by a fine of not more than \$500.00 for each and every incident or by imprisonment for a period not to exceed 30 days or both.
- C. Any OLCC licensee who knowingly fails to observe operational restrictions put in place by the Lebanon City Council as provided in this ordinance is guilty of a violation of this section.
- D. Any OLCC licensee who knowingly allows any person, to whom a notice of exclusion has been issued, to enter into and/or remain in the licensee's business premises may be cited under the terms of this ordinance.

9.18.110 Appeals:

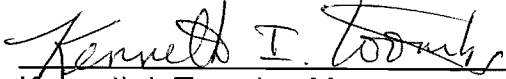
- A. A person to whom an exclusion notice, or extension thereof, has been issued may appeal the notice or extension by filing a written request with the city recorder, within three (3) business days after issuance, setting forth the name and address of the appellant and the appellant's reasons why s/he believes that the notice or extension should be rescinded. Failure to file an appeal within this three (3) day period shall be a waiver of all rights to review the issuance and validity of the notice of exclusion or extension, and the hearings officer shall dismiss any appeal filed outside of this time frame. The name and address set forth in the request shall be deemed conclusively correct, and mailing to the person at that address, by

first class mail, shall be deemed delivery three (3) days after the date of mailing. Failure of the person to actually receive a notice of hearing or the hearings officer's decision if mailed to the address set forth in the request shall not in any way invalidate or otherwise effect the validity of any notice or decision.

- B. If a request for an appeal is filed, the notice or extension shall be subject to a stay until such time as a hearings officer has issued a final decision upholding or rescinding the notice.
- C. The request shall be accompanied by an appeal fee, in an amount established by resolution of the city council. Except as provided in (G) of this section, the appeal fee is not refundable.
- D. Unless the appellant and the city agree to a longer period, a hearings officer shall hear an appeal within ten (10) days of the filing of the request. At least five (5) days prior to the hearing, the city shall mail notice of the time and location of the hearing to the appellant at the address set forth on the request.
- E. The hearings officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the hearings officer deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The city has the burden of proof to demonstrate, by a preponderance of the evidence, that the issuance or extension of the exclusion notice is based upon probable cause that the appellant committed a criminal act or other requisite offense in an Enhanced Enforcement Area. The formal rules of evidence under the Oregon Evidence Code shall not apply.
- F. The hearings officer shall issue a written decision within five (5) business days of the hearing date. A copy of the decision shall be mailed to the person's address as set forth on the request, and shall be deemed effective upon actual receipt, or three (3) days after mailing, whichever is sooner. If upheld, the period of exclusion shall commence immediately upon the effective date of the decision.
- G. The decision of the hearings officer is final, and may include a determination that the appeal fee be refunded to the appellant upon a finding that the issuance of the exclusion notice or extension thereof was not grounded in law or fact.

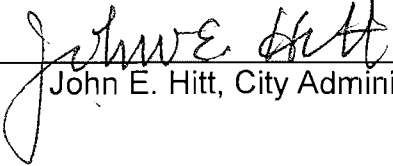
Section 2. This ordinance shall be in full force and effect for a period of three years from the effective date of this ordinance. It shall be automatically revoked three years from the effective date of the ordinance, absent action by the City Council to reconsider and reinstate the provisions of the ordinance.

Adopted by the Lebanon City Council on the 26th day of April, 2006 by a vote of 5 in favor and 0 opposed.



Kenneth I. Toombs, Mayor

Attest:



John E. Hitt, City Administrator

Approved as to form:



CITY ATTORNEY