

TIGARD MUNICIPAL CODE

Chapter 7.58 RULES OF CONDUCT ON CITY PROPERTY

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7.58.010 General Purposes of Chapter

The general purposes of the provisions set forth in Chapter 7.58 are to prevent and prohibit conduct that threatens harm to individual or public interests, or interferes with serving the public, to preserve the enjoyment, safety, comfort and convenience of the public, and to enhance the orderly administration and operation of city business on city property, by prohibiting conduct that unreasonably interferes with the administration and lawful use of city property and providing fair warning of the nature of the conduct declared to constitute an offense.

7.58.020 Definitions

A. "City property" means any property including but not limited to parks, greenways, buildings, parking lots or other land or physical structures owned or managed by the city.

B. "Police officer" means a member of the Oregon State Police, municipal police officer,

sheriff, and officer of the Tigard Police Department, including sworn members of the Tigard police reserves.

C. "Authorized employee" means any employee of the City of Tigard authorized and designated by the city manager or department director to enforce any rules within city property, including buildings and parking lots. These rules shall be established by sign or notice or contained specifically within the Tigard Municipal Code.

7.58.030 Penalty for Violation

Unless a different penalty is specifically provided, any violation of any provision of this chapter shall upon conviction be punished by a fine of not more than \$500, or by imprisonment of not more than six months, or by both. However, no greater penalty shall be imposed than allowed under Oregon law.

7.58.040 Prohibited Acts Generally

A. Any act or thing prohibited or the failing to do any act or thing commanded to be done in this chapter, on city property, within the corporate limits of the City of Tigard and within such other areas as may be specified in this chapter is hereby declared to be an offense against the public peace, safety, health, morals, and general welfare of the people of the City of Tigard.

B. Any act or omission made unlawful under this chapter shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing any such act or omission.

7.58.050 Consistency with State Criminal Law

This chapter shall be construed so as to render it consistent with State of Oregon criminal law, and any procedures or defenses made available in the prosecution of the same or similar

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offenses under State of Oregon criminal law shall apply in prosecutions under this chapter.

7.58.060 Authority of the City Manager

The city manager shall designate a person or persons to be in charge of the various city properties for the purpose of enforcing the rules of conduct. In addition, police and authorized employees shall have the authority to enforce the rules of conduct on or about city properties, as deemed necessary by the person in charge, or when actually observed by the police officer or authorized employee. The city manager shall also appoint the authority to hear exclusion appeals.

7.58.070 Public Works Director to Make Rules and Regulations

The director of public works is authorized to make such rules and regulations not in conflict with the ordinances of the city as the director finds necessary for the better control and management of city parks, greenways and city-owned or managed buildings and parking facilities. These regulations may be posted at various city properties in abbreviated form and are in no way meant to be all inclusive of the conduct prohibited or required by this chapter. If any person feels aggrieved by any such rule or regulation, the person may appeal to the council for its amendment or repeal by filing with the city recorder a petition which shall be presented to the council at its next regular meeting. Until and unless amended or repealed by the council, any rule or regulation made by the director shall be in full force and effect as if it were an ordinance.

7.58.080 Rules of Conduct on City Property

While on or about city property:

A. No person shall violate any federal, state or City of Tigard law.

B. No person shall enter or remain on any city property for purposes other than to conduct legitimate business with the city or to use that property lawfully under the rules provided by the city.

C. No person shall enter or attempt to enter any secure portion of any city government building that is not open to members of the general public, without authorization from the city manager or a designee.

D. No person shall deface, damage, or destroy city property.

E. No person shall engage in conduct that degrades the appearance of city property, including but not limited to, depositing trash, spitting, urinating, or defecating upon the property.

F. No person shall engage in conduct that disrupts or interferes with the normal operations of the city government, or engage in conduct that disturbs customers or employees of the city government, including but not limited to, conduct that creates unreasonable noise, or conduct that consists of loud or boisterous physical behavior.

G. No person shall engage in conduct that subjects or may subject customers or employees of the city government to annoyance or alarm, including but not limited to, conduct that involves the use of abusive or threatening language or gestures.

H. No person shall use city property for the purpose of housing or camping, including but not limited to, placing objects such as vehicles, bicycles, backpacks, carts, or other items in a manner that interferes with free passage.

I. No person shall refuse to obey any reasonable direction of a city government employee.

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J. No person shall violate any provisions posted on any city parking facility, whether that parking is generally available to the public or not. Private vehicles may not be left overnight in any city parking facility without the express consent of the person in charge of that facility. Violators are subject to cite and tow without notice where posted.

7.58.090 Enforcement and Exclusion from City Property

A. Persons who violate any of the rules of conduct on any city property may be immediately ejected from the premises and excluded from city property for a period of 30 to 180 days.

B. In addition to other measures provided for violation of this chapter, or any of the laws of the State of Oregon, police officers and authorized employees may exclude from city property, any person who, while on that city property violates any law regarding controlled substances, or engages in conduct that:

1. Is classified as a felony, misdemeanor, or violation under the following chapters of the Oregon Revised Statutes, or is an attempt, solicitation or conspiracy to commit any such felony or misdemeanor defined in ORS:

a. Chapter 162, Offenses Against the State and Public Justice;

b. Chapter 163, Offenses Against Person(s);

c. Chapter 164, Offenses Against Property to Include Offensive Littering;

d. Chapter 165, Offenses Involving Fraud or Deception;

e. Chapter 166, Offenses Against Public Order; Firearms and Other Weapons; Racketeering;

f. Chapter 167, Offenses Against Public Health, Decency and Animals;

g. Chapter 475, Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors; or

2. Otherwise involves a controlled substance; or

3. Has resulted in injury to any person or damage to any property; or

4. Constitutes a violation of any of the following provisions of the Tigard Municipal Code:

a. Chapter 7.20, Offenses Against Persons;

b. Chapter 7.24, Offenses Against Property;

c. Chapter 7.28, Obstructing Law Enforcement;

d. Chapter 7.32, Offenses Against Public Order;

e. Chapter 7.36, Minors;

f. Chapter 7.38, Truancy;

g. Title 6, Nuisance Violations;

h. Chapter 7.52, Public Property Use;

i. Chapter 7.56, Indecent Conduct;

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j. Chapter 7.70, Secondhand Dealers and Transient Merchants;

k. Chapter 7.80, Camping Prohibited in Certain Places.

C. Nothing in the City of Tigard Municipal Code shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or any other rights protected by the state or federal constitutions. However, a person engaged in such protected activity who commits acts that are not protected, but which violate applicable provisions or law, may be subject to exclusion.

D. An exclusion issued under this chapter shall be for 30 days. If the person to be excluded has been excluded from city property at any time within one year before the date of the present exclusion, the exclusion shall be for 90 days. If the person to be excluded has previously been excluded from city property on two or more occasions within one year before the date on the present exclusion, the exclusion shall be for 180 days.

E. If the person's behavior does not rise to the level of behavior described in subsections B.1 through B.4 of this section, but is causing either a significant and immediate threat to public health and safety, or a serious disturbance that is preventing other people from enjoying city property, the person may be excluded from that city property for a period of 24 hours only. If a person receives two 24-hour exclusions under this section and then commits additional violations, any further exclusion the person receives under this section may be for a period of at least 30 days.

F. No person shall enter or remain in any city property at any time during which there is in effect a notice of exclusion issued under this chapter excluding that person from all city properties. A person who knowingly violates an

order of exclusion from city property commits the crime of criminal trespass in the second degree (ORS 164.245).

G. Before issuing an exclusion under this chapter, a police officer or authorized employee shall first give the person a warning and reasonable opportunity to desist from the violation. An exclusion shall not be issued if the person promptly complies with the warning and desists from the violation. Notwithstanding the provisions of this subsection, no warning shall be required if the person is to be excluded for committing any act:

1. Punishable as a misdemeanor or felony;
2. Involving controlled substances;
3. Which resulted in an injury to any person;
4. Which resulted in damage to any property; or
5. City of Tigard chapter violation.

H. Written notice shall be given to any person excluded from any city property under this chapter. The notice shall specify the date, length and place of the exclusion; shall identify the provision of law the person has violated and contain a brief description of the offending conduct. It shall be signed by the issuing police officer or authorized employee. Warnings of consequences for failure to comply shall be prominently displayed on the notice. All relevant information on the hearings and appeal process shall be included with the notice. (Ord. 12-02 §3)

7.58.100 Right to Appeal

A. A person receiving notice of exclusion from city property may request a hearing before

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the City of Tigard municipal court judge, or a hearings officer appointed by the city manager to have the exclusion rescinded or the period shortened. Written notice of the appeal must be filed with the city manager within 10 business days of receipt of the exclusion notice. When the city manager receives a notice of appeal, the city manager or designee shall promptly notify the Tigard Police records section of the notice to appeal. Failure to file written notice of appeal within 10 business days will be deemed a waiver of further action.

1. If an appeal of the exclusion is timely filed, the effectiveness of the exclusion shall be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion shall be effective immediately upon the issuance of the municipal court judge or hearings officer's decision, unless the municipal court judge or hearings officer specifies a later effective date.

2. If a person is issued a subsequent exclusion while a previous exclusion is stayed pending appeal, or pending judicial review should a court stay the exclusion, the stayed exclusion shall be counted in determining the appropriate length of the subsequent exclusion. If the predicate exclusion is set aside, the term of the subsequent exclusion shall be reduced, as if the predicated exclusion had not been issued. If multiple exclusions issued to a single person for city property are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.

B. Hearing Procedures.

1. When a timely request for a hearing is made, a hearing shall be held before the City of Tigard municipal court judge, or hearings officer appointed by the city manager.

2. The hearing shall be set and conducted within five business days of receipt of the request, excluding holidays, Saturdays and Sundays. The hearing may be scheduled for a later date if the person excluded so requests, but in any case, no later than five additional business days from the original request.

3. At the hearing, the person excluded may contest the validity of the exclusion and may present evidence.

4. At the hearing on an appeal the city shall have the burden of proving by a preponderance of the evidence the validity of the exclusion. The city may present evidence either by testimony or written report of the officer. If the city's evidence is presented only by written report and the municipal court judge or hearings officer cannot resolve a question by information contained in the officer's report, the hearing may be held open for a reasonable time to complete the record.

5. If the municipal court judge or hearings officer finds by a preponderance of the evidence that each element necessary to issue the exclusion notice has been proven, and if the exclusion is otherwise in accordance with law, the municipal court judge or hearings officer shall uphold the exclusion.

6. If the municipal court judge or hearings officer finds that the city has not met its burden of proof, or that the exclusion is otherwise unlawful, then the municipal court judge or hearings officer shall enter an order rescinding the exclusion. If the municipal court judge or hearings officer finds that the city has met its burden of proof, but that the length of the exclusion is unreasonable under the circumstances, the municipal court judge or hearings officer may issue an order shortening the length of the exclusion.

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7. The decision of the municipal court judge or hearings officer is final.

7.58.110 Variances

A. At any time within the period of exclusion, a person receiving a notice of exclusion may apply in writing to the city manager or designee for a waiver of some or all of the effects of the exclusion. The application must show good cause for waiver requested. If the city manager or designee grants a waiver, the city manager or designee shall promptly notify the Tigard Police Department records section of such action.

B. In exercising discretion under this subsection, the city manager or designee shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be on city property during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (*without regard to the content of any speech associated with that event*), and any other criterion the city manager or designee determines to be relevant to the determination of whether or not to grant a waiver. Notwithstanding the granting of a waiver, the exclusion will be included for purposes of calculating the appropriate length of exclusions.

C. The decision of the city manager or designee to grant or deny, in whole or in part, a waiver is committed to the sole discretion of the city manager or designee, and is not subject to appeal or review. (Ord. 08-18) ■