

ORDINANCE NO. 00001

**AN ORDINANCE AMENDING TITLE IX OF THE HERMISTON MUNICIPAL CODE
BY AMENDING CHAPTER 92 ENTITLED “NUISANCES” AND BY ADDING
CHAPTER 96 ENTITLED “RULES OF CONDUCT FOR CITY PROPERTY”**

WHEREAS, the staff of the City of Hermiston (City) is conducting a review of the City’s Code of Ordinances (Code); and

WHEREAS, an amendment to Chapter 92 is necessary to allow City staff to effectively maintain, clean, remove snow and/or ice, repair or excavate the City’s bridges, roads, streets, highways, and parking lots; and

WHEREAS, the City has determined that Code lacks an ordinance establishing rules of conduct for City properties and for enforcement purposes; and

WHEREAS, the City desires that residents, visitors, and staff should be free in accessing public buildings and facilities; and

WHEREAS, any limiting of access to public building and facilities is disruptive to the operation of the City; now therefore,

THE CITY OF HERMISTON ORDAINS AS FOLLOWS:

(New language is in red and underlined and repealed language has a ~~line through it~~.)

Section 1. Section 92.29 of the Hermiston Municipal Code is amended to read:

92.29 EXEMPTIONS.

Sounds caused by the following are exempt from the prohibitions of § 92.28 and are in addition to the exemptions specifically set forth in that section:

- (A) Motor vehicles on highways or premises open to the public; provided, that the prohibition in §§ 92.28(H) and (K) continues to apply.
- (B) Repairs of utility structures which pose a clear and immediate danger to life, health or significant loss of property.
- (C) Sirens, whistles, or bells lawfully used by emergency vehicles, or alarm systems used to signal an emergency, provided the prohibition under § 92.28(K) continues to apply.
- (D) The emission of sound for the purpose of alerting individuals to the existence of an emergency or the emission of sound in the performance of emergency work.
- (E) Maintenance, cleaning, snow and/or ice removal, rRepairs or excavations of bridges, roads,

streets, ~~or~~ highways, or City owned parking lots by or on the behalf of the City, state, or federal government, between the hours of 7:00 p.m. and 7:00 a.m., when public welfare and convenience render it impractical to perform the work between 7:00 a.m. and 7:00 p.m.

(F) Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to school athletic and school entertainment events.

(G) Outdoor gatherings, public dances, shows, and sporting events, and other similar outdoor events; provided, that a special permit has been obtained, beforehand, from the City's proper permitting authority; or the event is being sponsored by the City; or the event has been sanctioned by the City on City owned property.

(H) Noise emanating from the combustion, detonation, or concussion caused by using lawful fireworks or other similar devices, from July 1 until July 5 of each year.

Section 2. Title IX of the Hermiston Municipal Code is amended by adding Chapter 96, related to Rules of Conduct for City Property as follows:

96.01 Purpose

96.02 Definitions

96.03 Designation of Persons-in-Charge

96.04 Rules of Conduct at City Property

96.05 City Property Exclusions

96.06 Violation – Criminal Trespass

96.01 Purpose

The purpose of this chapter is to protect citizens in their use of city property and to authorize the city to exclude persons violating applicable rules, ordinances, and laws from specific public places where such conduct is disruptive to other users. Nothing in this section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the Oregon or U.S. Constitution. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable provisions of law or rules of conduct, shall be subject to exclusion as provided by this section.

96.02 Definitions

The following definitions may apply:

(A) "City Property" means any city owned or leased building, structure, facility, or land (excluding City Parks), including but not limited to buildings/facilities currently referred to as City Hall, Hermiston Public Library, the Community Center, EOTEC, Harkenrider Center, and city parking lots with Hermiston.

- (B) “Public Place” means any public property, including city property.
- (C) “Rules of Conduct” means rules and regulations implementing this chapter, including but not limited to HMC 96.04, or adopted by the City Manager under the authority of HMC 96.04.

96.03 Designation of Persons-in-charge

- (A) The City Manager may delegate his or her authority and assign a person or persons to be in charge of the various city properties for the purpose of enforcing rules of conduct. In addition, police and authorized employees shall have the authority to enforce the rules of conduct on city property, as deemed necessary by the person in charge, or when observed by the police officer or authorized employee.
- (B) Delegation to a designee shall be made in writing. Any person so designated shall be a Person-in-Charge as that term is defined in ORS 164.205(5) until the delegation is terminated or the designated person ceases to be an employee or officer of the City of Hermiston.
- (C) For purposes of ordering persons to leave a public meeting of a City board or commission, the following are Persons-in-Charge:
 - (1) The presiding officer of the public meeting of a City board or commission.
 - (2) Any person providing security services at the public meeting of a City board or commission.
 - (3) Any person designated as a Person-in-Charge in Subsection 96.04(A).
- (D) The authority granted to a Person-in-Charge by this Chapter are in addition to, and not in lieu of, any other authority granted under this Code.

96.04 Rules of Conduct at City Property

- (A) To maintain an environment that promotes orderly administrative and business operations, and to take reasonable and prudent actions to protect the health, welfare, and safety of all persons at City Property, the Rules of Conduct in this Section apply and are to be enforced at all City Property except where specific rules of conduct or prohibitions have been adopted for designated real property the City owns or has a property interest or property management responsibilities.
- (B) The Rules of Conduct for City Property are as follows:
 - (1) No person shall engage in any activity that would constitute a violation of federal, state, or local law or regulation.
 - (2) No person may deface, damage, or destroy City Property or City-owned personal property.

(3) No person shall enter, attempt to enter or remain in any areas of City Property designated as secured or restricted, or closed to public access.

(4) No person shall engage in activity that disrupts or interferes with the normal operation or administration of City business at City Property; lawful use by City employees and authorized users at City Property; or City permitted activities.

(5) No person shall refuse or fail to obey any reasonable direction of a Person-in-Charge of a City Property. A direction of a Person-in-Charge is reasonable: if it directs a person to obey or to cease a violation of any rule of conduct, law, or regulation; if it is otherwise reasonably related to the protection of the health, welfare or safety of the person or any other person at the City Property, or to the prevention of damage to property; or if it is reasonably necessary to preserve the peace or to prevent the disruption of City operations or permitted activities, including dangerous or threatening behavior as defined in the Code.

(7) No person shall smoke or carry any lighted smoking instrument at City Property. Smoking instrument additionally includes inhalant delivery system that delivers nicotine in the form of vapor or aerosol, and electronic cigarette, personal vaporizer, or electronic nicotine delivery system. Smoking additionally includes inhaling or exhaling from a smoking instrument.

(8) No person shall make use of facility materials, equipment, furniture, or fixtures of a City Property in a manner inconsistent with their customary or designated uses, or in a manner likely to cause property damage or personal injury to the actor or others.

(9) No person shall interfere or obstruct free passage of City employees or authorized visitors in or on City Property, including but not limited to placing objects that impede free passage.

(10) No person shall use City Property for unauthorized storage of personal property or leave personal property unattended.

(11) No person shall make or continue a noise disturbance as defined under HMC 92.23 or operate sound producing device or sound producing equipment except as permitted by the property manager of the City Property. Bullhorns and megaphones are not permitted in the interior of any building on City Property, or within the loggia or portico of any structure on City Property, except as permitted by the property manager for the City Property.

(12) No person shall use, sell, distribute or deliver any alcoholic beverage on City Property, except as permitted by the property manager for the City Property.

(13) No person shall use, sell, distribute or deliver any controlled substances on City Property. This does not prohibit a person from providing caretaking functions or assisting another in taking legally prescribed medication. Controlled substance shall have the meaning provided in Chapter 475 of the Oregon Revised Statutes.

(14) No person may bring animals onto City Property, or leave animals tethered or unattended at City Property, except as permitted by the property manager for the City Property. This does not preclude entry by service animals defined under the Americans with Disabilities

Act while performing services or task the animals are trained to do, animals employed in official performance of police or rescue activities, or animals authorized for entry by the property manager for the City Property.

(15) No person shall solicit for or conduct business at City Property except as permitted by the City Manager, or designee.

(16) No person shall use any wheeled devices, including but not limited to unicycles, bicycles, skateboards, roller skates, motorized or non-motorized scooters, inside the property boundary of City Property. All persons must dismount at City Property boundary. No bicycles and motorized wheel devices are allowed in the interior of any building on City Property except as permitted by the property manager of the City Property. The prohibition in this Paragraph does not apply to persons with mobility devices for mobility disability or medical purposes, child strollers or baby carriages.

(17) No person shall use City Property for housing or camping except as permitted by the City Manager, or designee, and provided such use conforms with land use, zoning, building and other property regulations.

(18) No person shall misuse or damage the City's technology systems or network, including its telecommunication equipment and data.

(19) No person shall enter, attempt to enter or remain in any areas of City Property for purposes other than to conduct legitimate business with City offices or tenants located at City Property, to enjoy the publicly accessible amenities at a City Property when the City Property is open to the public, or to lawfully assemble for social or public interaction at portions of City Property specifically designated for such assembly. The City Manager or director of the department with property management responsibility for the City Property may adopt space use policy to manage conditions for property use including but not limited to establishing a reservation protocol, priority regarding uses and users, hours of use, and fees for use.

(C) The City Manager or a designee is authorized to make such rules and regulations implementing HMC 96 and not otherwise inconsistent or in conflict with other law as the City Manager finds necessary for the better control and management of city property, including buildings, structures, parking facilities, and open space. The rules of conduct may be posted at various city properties in abbreviated form and are not meant to be all-inclusive of the conduct prohibited or required by this chapter. Any person aggrieved by a rule or regulation may appeal to the City Council to amend or repeal a rule by filing with the City Recorder a petition which shall be presented to the City Council at its next regular meeting. Until and unless amended or repealed by the council, any rule or regulation made by the City Manager or a designee shall be in full force and effect as if it were an ordinance, as of the date of notice from the City Manager adopting the rule or regulation.

96.05 City Property Exclusions

(A) The exclusion procedures in this Section shall be used for City Property subject to the Rules of Conduct in Section 96.04.

(1) If a person violates any Rule of Conduct at City Property described in Section 96.04 while in or upon City Property, any Person-in-Charge may eject and direct the person to leave the City Property for a period of 24 hours.

(2) In addition, the City Manager may also issue an exclusion for any period of time up to 1 year from City Property.

(B) Notwithstanding this Section, if public meetings of the City Council, or of City Boards and Commissions are held in a City Property, an ejection from the public meeting must comply with the *Rules of Order and Procedure for the City Council*. Any further exclusion from public meetings shall follow the procedure set forth in this chapter.

(C) Before an issuing an ejection or exclusion under this section, the Person-in-Charge shall first give the person a warning and opportunity to desist from the violation of law or Rule of Conduct. An ejection or exclusion shall not be issued if the person promptly complies with the direction and desists from violating the law or Rule of Conduct. Notwithstanding the provisions of this section, no warning shall be required if the person is to be ejected or excluded for engaging in conduct that:

(1) Is classified as a misdemeanor or felony crime.

(2) Otherwise involves a controlled substance or alcoholic beverage.

(3) Is conduct for which the person previously has been warned or excluded for committing in a public place.

(C) In determining the appropriate length of exclusion under this Section, the City Manager shall consider: the seriousness of the conduct that led to the exclusion; prior instances of violations of the Rules of Conduct at City Property by the person to be excluded; the availability of alternative means for the person to conduct business with City officials and offices; and any other facts or circumstances that the person issuing the exclusion deems relevant.

(D) The notice of exclusion shall be in writing, signed by the City Manager and served on the person excluded by a police officer. The notice shall identify the provision of law or rule of conduct the person has violated and contain a brief description of the offending conduct, the places of exclusion, and the start date and end date of the exclusion period. It shall contain a warning of consequences for failure to comply with the notice of exclusion and information concerning the right to appeal the exclusion.

(E) A person receiving a notice of exclusion may appeal, in writing, to the Code Hearings Officer in accordance with Chapter 136 of the Code to have the notice of exclusion rescinded. Notwithstanding the provisions of Chapter 136, the appeal to the Code Hearings Officer shall be filed within 5 days of issuance of the notice of exclusion, unless extended by the Code Hearings

Officer for good cause shown. The sworn statement of the Person-in-Charge who requested the notice of exclusion shall be used as evidence on appeal, unless the appellant requests, in writing, the presence of the Person-in-Charge at the appeal hearing.

(F) A person receiving a notice of exclusion may request a limited modification from the City Manager for the purpose of attending a City Council or other public meeting or conducting specific business with a City official or office located at a City Property identified in the exclusion notice. The request must be in writing and must identify good cause for the desired modification. The City Manager may deny the request if the business with the City official or office may be conducted through alternate means or deferred until the exclusion period ends, or may deny the request on any reasonable basis. If modification is allowed, the City Manager may impose reasonable conditions for the limited entry and may include a requirement that the person arrange with the City Manager to be escorted into and out of the location where the meeting is to be held or the business is to be conducted.

96.06 Violation – Criminal Trespass

No person shall enter or remain in any public place at any time during which there is in effect a notice of exclusion issued under this chapter excluding that person from that place. A person who knowingly violates a notice of exclusion from public places under this chapter commits the crime of criminal trespass. (ORS 164.245)

Section 3. Effective Date. This ordinance shall take effect on the 30th day after its adoption.
(POTENTIAL EMERGENCY CLAUSE TO HAVE IT GO INTO EFFECT IMMEDIATELY)

ADOPTED by the Common Council this ____ day of _____ 2023.

SIGNED by the Mayor this ____ day of _____ 2023.

Dr. David Drotzmann, Mayor

ATTEST:

Lilly Alarcon-Strong, CMC City Recorder