



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date: June 19, 2023</b>		<b>Subject: Resolution No. 3059</b> A Resolution of the City of Wilsonville Approving a Civil Exclusion Policy  <b>Staff Member:</b> Amanda Guile-Hinman, City Attorney and Megan Adams, Law Clerk  <b>Department:</b> Legal	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> N/A	
<b>Staff Recommendation:</b> Approve Resolution No. 3059.			
<b>Recommended Language for Motion:</b> I move to approve Resolution No. 3059.			
<b>Project / Issue Relates To:</b>			
<input type="checkbox"/> Council Goals/Priorities:	<input type="checkbox"/> Adopted Master Plan(s):	<input checked="" type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:**

Consider approval of a civil exclusion policy as a refinement of the City’s current civil exclusion regulations to allow City staff to administer progressive exclusion consequences based on an individual’s conduct. The proposed civil exclusion policy is attached as **Exhibit A** to Resolution No. 3059.

## **EXECUTIVE SUMMARY:**

The City currently has two mechanisms to exclude individuals from City facilities when exhibiting certain inappropriate behavior in those facilities. However, the City lacks clear guidance for progressive discipline that is linked to the behavior exhibited. Unlike Wilsonville, many other cities, and particularly, public libraries, have progressive civil exclusion policies as a resource for individuals' disruptive conduct. As a tangent to the City's recent Wilsonville Code update regarding camping for survival, City staff identified the need for a more comprehensive, nuanced, and uniform policy for civil exclusions from City facilities, particularly the library and parks and recreation buildings and parks.

At the June 5, 2023 work session, Council reviewed a draft of the proposed civil exclusion policy. This staff report reviews current civil exclusion regulations, provides an overview of the proposed civil exclusion policy, and highlights the revisions to the proposed policy since the June 5, 2023 work session.

### **I. Current Civil Exclusion Regulations**

#### **A. Wilsonville Code 10.540**

Wilsonville Code (WC) 10.540 states that a person may be excluded from city property for violating "any applicable provision of law or regulation in or on any City Property from that City Property...." WC 10.540(2). Generally, a warning must first be given, but then the civil exclusion is issued for the following time periods:

- First offense within a two-year period: 30-day exclusion
- Second offense within a two-year period: 90-day exclusion
- Third (or more) offense within a two year period: 180-day exclusion

There is no provision that allows for a shorter exclusion period than 30 days, and, while the provision covers "any applicable provision of law or regulation," it is unclear whether certain disruptive conduct, such as continually making loud noises in the library or leaving personal items unattended, would be subject to the Code provision. Furthermore, the Code is, at best, unclear if an individual is only excluded from the one City facility where the disruptive conduct occurred or excluded from all City facilities. At times, staff encounter situations where an individual is disruptive in one City facility, told to leave, and then enters another City facility and continues to engage in the disruptive behavior.

#### **B. Clackamas County Sheriff's Office Exclusion Program**

Since the City contracts with the Clackamas County Sheriff's Office (CCSO), the City may also utilize CCSO's exclusion program. The CCSO exclusion program is a means to potentially charge individuals with criminal trespass when they engage in certain conduct and refuse to leave a premises. While the City has utilized this program, staff identified the need for intermediate steps that allow for shorter term exclusions and exclusions across all City facilities when an individual

is engaging in disruptive conduct at multiple City facilities. City staff also seek authorization to enforce an exclusion policy without requiring a police response.

## **II. Proposed Civil Exclusion Policy**

The proposed civil exclusion policy is attached as **Exhibit A** to Resolution No. 3059. The policy breaks Conduct Violations into three (3) categories: disruptive personal conduct, disruptive property conduct, and criminal violations. The personal conduct and property conduct violations were developed by examining other cities' and other public libraries' exclusion policies. The criminal violations were also derived from other exclusion policies as well as the violations listed in WC 10.540(4).

The proposed policy explains that an individual may be excluded from all City property (not just the particular City facility where the violation occurred) if any of the following circumstances exist: (a) the individual engages in one or more of the Conduct Violations on different City Properties within the same day or within a previously imposed exclusion period; (b) the individual commits more than one of the disruptive personal or property conduct violations (Conduct Violations 1-21); (c) the individual commits any of the criminal violations (Conduct Violations 22-43); or (d) the individual demonstrates intentional or willful disregard of patrons, employees, or City Property when engaging in any of the Conduct Violations or when receiving compliance instructions from City employees or Excluding Officers.

The policy also states that repeated violations will lead to longer exclusion periods. It further notes that any civil exclusions may be in addition to other criminal penalties, orders, or exclusions issued by law enforcement or courts.

As discussed in more detail in Section III below, the proposed policy provides a dual track for appeals where an individual may either have their exclusion appeal heard by the City Manager or by the Municipal Court. These appeals are the only local process that an individual may pursue before seeking a remedy in court.

The shortest exclusion period provided in the policy is for the remainder of the day, and is for disruptive personal conduct and disruptive conduct regarding property such as leaving trash, inappropriate use of the public restrooms, and blocking access to facility services.

Criminal conduct, depending on the type of conduct, will result in an immediate exclusion for the remainder of the day without warning, an immediate exclusion for seven (7) days without warning, or an immediate exclusion for 30 days. The policy does not contemplate a first offense as having a longer period than 30 days due to the limitations stated in WC 10.540(3), which states that a first offense will result in a 30-day exclusion. This minimum exclusion does not preclude the ability to use longer exclusion timeframes in the Wilsonville Code, the CCSO program, or other legal remedies, but provides some flexibility for City employees to respond based on the nature of the conduct and the circumstances of the particular incident.

### III. Revisions Since Work Session

**Attachment 2** attached hereto shows the revisions made to the policy since the version provided to Council at the June 5, 2023 work session. Below is a summary of the revisions made.

- Excluded sidewalks and rights-of-way from the “City Property” definition because the City cannot exclude people from traveling on a sidewalk or street. The City has other regulations, in addition to state statutes, that outline offenses and related consequences for conduct on City streets and sidewalks (e.g., littering).
- Council sought language for exclusion from all City Property when one incident is severe enough to warrant such an exclusion. Staff added language that intentional or willful disregard of patrons, employees, or City Property when engaging in a Conduct Violation may cause an exclusion from all City Property.
- For added flexibility for staff depending on the situation, the policy now states that an Excluding Officer may issue an exclusion for a duration up to and including the number of days stated for an offense. Staff recognized that there are times when an individual may need to be excluded for the remainder of the day on one occasion and again need to be excluded months later, but the conduct does not warrant a more severe exclusion.
- Employees noted that a person may be excluded and leave before the employee can communicate this to the person. The policy now has language regarding notice that the Excluding Officer needs to provide notice as soon thereafter to the fullest extent possible.
- Council discussed a dual track appeal process in recognition of the shorter appeal period that this policy provides. As such, the policy now allows an individual to either appeal to the City Manager or the Municipal Court, with specific requirements for each. The policy also explains that the next step after a decision from either the Municipal Court or the City Manager is a writ of review in circuit court pursuant to ORS 34.010 through 34.102.
- The matrix of offenses generally remained unchanged except as to the following:
  - Minor grammatical and formatting changes
  - Removal of duplicative offenses
  - Clarifying cannabis violation as to only smoking or otherwise using any cannabis products that are prohibited from use on City Property
  - Increasing the allowed exclusion period for certain criminal conduct, such as disorderly conduct, homicide, assault, kidnapping, coercion, sexual offenses, invasion of privacy, stalking, extortion, money laundering, arson, criminal mischief, and animal abuse
  - Clarifying that the firearm possession does not apply to individuals who are licensed to carry concealed handguns, as stated in ORS 166.370(3)(g)

**EXPECTED RESULTS:**

Clearer guidance for City employees and patrons of City facilities regarding rules of conduct and consequences for violating such rules.

**TIMELINE:**

Staff recommends that this refined civil exclusion policy be implemented concurrent with the effective date of the City's new regulations governing camping for survival, which is July 1, 2023.

**CURRENT YEAR BUDGET IMPACTS:**

N/A

**COMMUNITY INVOLVEMENT PROCESS:**

N/A

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

Disruptions, particularly at the Library, Community Center, and City Parks, have demonstrated a need for clearer regulations and processes when individuals are engaging in the disruptive conduct. A policy that has flexibility with duration of the exclusion based on the conduct and circumstances will mean that situations can be handled without law enforcement involvement.

**ALTERNATIVES:**

Continue to process civil exclusions through WC 10.540 and the CCSO policy.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Resolution No. 3059
  - A. Civil Exclusion Policy
2. Redline of Revisions to Policy Since June 5, 2023 Work Session