

ORDINANCE NO. 4906

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLensburg, WASHINGTON, RELATING TO USE OF CITY PROPERTY AND ADDING A NEW CHAPTER “5.72 EXCLUSION AND TRESPASS FROM CITY PROPERTY” TO THE ELLensburg CITY CODE.

WHEREAS, the safety of the general public and providing a secure workplace for our employees are both very high priorities for the City of Ellensburg; and

WHEREAS, all individuals have the right to use and enjoy public property and parks, and to engage with City departments and employees, so long as their behavior is not threatening, dangerous, or unreasonably disruptive; and

WHEREAS, as an employer, the City also has a duty to protect its employees from any potential risks of harm from individuals who engage in such behavior; and

WHEREAS, the City seeks to adopt a civil exclusion process that can be used when a person’s behavior involves activity which is in violation of other people’s rights to peaceful enjoyment of public spaces and/or a safe workplace; and

WHEREAS, the proposed new chapter authorizes law enforcement officers and other city employees to issue civil exclusions under purposely narrow guidelines that balance all individuals’ rights to engage in legitimate activities while preserving public safety and a safe workplace; and

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

**Section 1. Findings.** The City Council hereby finds that the recitals set forth above are hereby adopted as findings for this Ordinance and incorporated herein as such.

**Section 2. A new chapter entitled “5.72 Exclusion and Trespass from City Property” is hereby added to the Ellensburg City Code to read as follows:**

**Chapter 5.72**

**Exclusion and Trespass from City Property**

**5.72.010      Purpose, authority, and applicability.**

**5.72.020      Exclusion from city property.**

**5.72.030      Duration of exclusion.**

**5.72.040      Appeal procedure.**

**5.72.050 Education and de-escalation.**

**5.72.060 Violation - trespass - penalty.**

**5.72.010 Purpose, authority, and applicability.**

A. The purpose of this chapter is to adopt a legally sound policy and process for excluding from city property individuals whose behavior is dangerous, unsafe, illegal, or unreasonably disruptive to other users while recognizing the rights of individuals to engage in legitimate activities that may occur on city-owned property. This chapter is enacted as an exercise of the city's authority to protect and preserve the public health, safety and welfare, and to further the city of Ellensburg's policy of providing a safe workplace for its employees.

B. The city manager is authorized to adopt rules and procedures consistent with this chapter.

**5.72.020 Exclusion from city property.**

A. Any city police officer or employee designated by the city manager or city department head may, by delivering an exclusion notice in person to the offender, or by First Class Mail and Certified Mail to the offender at the offender's last known address, exclude from city property, anyone who upon or within city property:

1. Violates any posted rule of conduct for a city park, city property or city facility; or

2. Violates any provision of this chapter; or

3. Violates any provision of the Ellensburg City Code or Revised Code of Washington.

B. The offender need not be charged, tried, or convicted of any crime or infraction in order for an exclusion notice to be issued or be effective. The exclusion may be based upon observation by the police officer, city employee or upon civilian reports that would ordinarily be relied upon by police officers in the determination of probable cause.

C. The exclusion notice shall be in writing and shall contain the date of issuance, the length and place(s) of exclusion, and be signed by the issuing police officer or city employee. Warning of the consequences for failure to comply shall be prominently displayed on the notice.

**5.72.030 Duration of exclusion.**

A. When the exclusion notice is issued due to illegal conduct that presents a danger to persons or property, or is issued due to dangerous or unsafe conduct, or is issued as a result of a violation of an existing exclusion notice, then the warning may exclude the person for a period of up to one year.

B. When an exclusion notice is issued due to any conduct other than that identified in subsection (A) of this section, then the duration of exclusion shall be as follows:

1. For the first exclusion notice issued within a period of one year, a period not exceeding thirty (30) days.
2. For the second exclusion notice issued within a period of one year, a period of more than thirty (30) days, but not more than ninety (90) days.
3. For the third exclusion notice issued within a period of one year, and for all subsequent exclusion notices, a period of more than 90 days, but not more than one year.

C. An exclusion notice for a certain place or places must not prohibit access to another place or places that are unrelated to or not a part of the place(s) where the conduct that is the subject of the exclusion notice occurred. Notwithstanding the foregoing, conduct included in subsection A above may result in exclusion from more than one place.

D. Only the hearing examiner after a hearing may rescind, shorten, or modify an exclusion notice.

**5.72.040 Appeal procedure.**

A. An offender receiving an exclusion notice may seek a hearing to have the exclusion notice rescinded, the period of exclusion shortened, or the areas of exclusion reduced. The request for a hearing shall be delivered to the city clerk or postmarked no later than ten (10) calendar days after the issuance date of the exclusion notice. The request for hearing shall be in writing and shall be accompanied by a copy of the exclusion notice on which the hearing is sought. It shall include the appellant's name, address and phone number, if any. No fee shall be required to file the appeal. The city clerk shall take reasonable steps to notify the appellant of the date, time, and place of the hearing.

B. Appeals shall be heard by a hearing officer pursuant to Chapter 1.70A of the Ellensburg City Code.

C. The appeal hearing shall be conducted as follows:

1. At the hearing, the violation must be proved by a preponderance of the evidence in order to uphold the exclusion notice.
2. If the exclusion notice was issued because of the alleged violation of any criminal law, the offender need not be charged, tried, or convicted for the exclusion notice to be upheld.
3. The exclusion notice establishes a *prima facie* case that the offender committed the violation as described. The hearing examiner shall consider a sworn report, or a declaration made under penalty of perjury, written by the individual who issued the exclusion notice, without further evidentiary foundation.

4. The hearing examiner may consider information that would not be admissible under the evidence rules in a court of law but which the hearing examiner considers relevant and trustworthy.
5. The hearing examiner may consider whether the offender was afforded reasonable warnings that their conduct might lead to an exclusion notice, and reasonable opportunities to correct their conduct, and weigh these factors against the egregiousness of the conduct itself.

D. If the violation is proved, the exclusion notice shall be upheld; but upon good cause shown, the hearing examiner may shorten the duration of the exclusion or reduce the areas covered by the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing examiner shall rescind the exclusion. If the hearing examiner rescinds an exclusion, the exclusion shall not be considered a prior exclusion for the purposes of section 5.72.030(B) of this chapter.

E. The decision of the hearing examiner shall be in writing and is final. An offender seeking judicial review of hearing examiner's decision must file an application for a writ of review in the Kittitas County Superior Court within fourteen (14) days of the date the decision is issued.

F. The exclusion shall remain in effect during the pendency of the appeal or any subsequent judicial proceeding.

G. No determination of facts made by a person conducting a hearing under this section shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

#### **5.72.050 Education and de-escalation.**

- A. In the application of this chapter's provisions, law enforcement and city staff shall prioritize education, de-escalation, and voluntary compliance whenever reasonably possible so that inadvertent minor violations can be corrected without resort to an exclusion notice. This may include explaining the rules, providing warnings of potential consequences for rule violations, and giving people who violate rules an opportunity to correct their behavior.
- B. Whenever reasonably possible, the issuance of an exclusion notice to a person should be used after other techniques and de-escalation attempts have proved ineffective.
- C. Nothing in this section is intended to preclude law enforcement or city staff from immediately issuing an exclusion notice to a person when that person's conduct jeopardizes or threatens to jeopardize the safety of others, involves criminal behavior, or is so egregious that there is no reasonable solution short of an exclusion notice.

**5.72.060 Violation - trespass - penalty.**

Any person who is found on city property or in a city facility in violation of an exclusion notice issued in accordance with this chapter, except as otherwise provided in this chapter, may be arrested for trespassing, pursuant to RCW 9A.52.070, 9A.52.080, and any other applicable statutes. The penalty under this chapter is cumulative of any other penalties that may apply under state or local law.

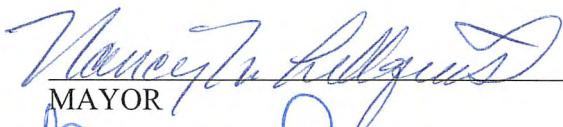
**Section 3. Severability.** If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

**Section 4. Corrections.** Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 5. Effective Date.** This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

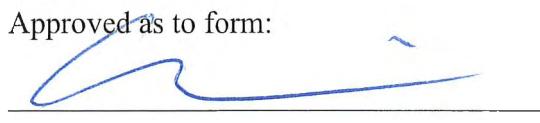
The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 3<sup>rd</sup> day of January, 2023.

ATTEST:

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CITY CLERK

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY

Publish: 1-5-2023

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4906 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4906 was published as required by law.

  
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BETH LEADER