



HUMAN SERVICES COMMITTEE

Agenda

Tuesday, May 21, 2013

2:00 pm

Madison Avenue Meeting Room
500 SW Madison

- | | |
|------------------------------------|--|
| Discussion/ Possible Action | I. Healthy Eating Active Living (HEAL) Cities Campaign (Attachment) |
| Discussion/ Possible Action | II. Municipal Code Review: Chapter 5.03, "Offenses" (Alcohol Minimum Fines/Social Host/Special Response Notice) (Attachment) |
| Discussion/ Possible Action | III. Smoking Prohibition in Public Places (Attachment) |
| Information | IV. Other Business |

Next Scheduled Meeting

Tuesday, June 4, 2013 at 2:00 pm

Madison Avenue Meeting Room, 500 SW Madison Ave

Agenda

Social Services Allocations – Fiscal Year 2013-2014

Majestic Theatre Annual Report

Boards and Commissions Sunset Reviews:

Corvallis-Benton County Public Library

Commission for Martin Luther King, Jr.

MEMORANDUM



To: Human Services Committee
From: Karen Emery, Director *KE*
Steve DeGhetto, Assistant Director *SD*
Date: May 21, 2013
Subject: Healthy Eating Active Living Cities Campaign (HEAL)

Issue: To review and consider a recommendation to City Council to participate in the Healthy Eating Active Living Cities Campaign (HEAL).

Background: The Oregon Public Health Institute and the League of Oregon Cities have teamed up to bring the HEAL Cities Campaign to Oregon. The HEAL Cities Campaign helps civic leaders create healthy communities through policy, wellness, built environment and access to healthy choices.

Discussion: The City has been actively working on the four policy areas outlined in the Heal Cities Policy Menu:

- Land Use and Transportation
- Access to Healthy Foods
- Shared Use
- Workplace Wellness

The list of goals, guidelines, and implementation plans align with current work plans in the respective City departments. Collaboration between Departments and outside agencies has been successful for the implementation of Healthy Eating and Active Living strategies. Cities that provide healthy, fit environments rate higher on livability, and are more attractive to families and businesses.

Recommendation: Staff recommends that the Human Services Committee recommend to City Council to adopt a resolution to participate in the HEAL Cities Campaign and become a "FABULOUS CITY" as defined in the HEAL model.

Review and Concur:


James A. Patterson, City Manager


Nancy Brewer, Finance Director

Attachments:

1. Heal Cities Policy Menu
2. Minutes, March 12/2013 City Legislative Committee



HEALTHY EATING
ACTIVE LIVING
CITIES
CAMPAIGN

MODEL RESOLUTION INSTRUCTIONS

The Campaign began in 2012, when the League of Oregon Cities and the Oregon Public Health Institute agreed to partner in the Healthy Eating Active Living (HEAL) Cities Campaign. The Campaign assists public officials to create healthy, fit communities, through policies that expand access to options for healthy eating and active living throughout the community, and that create a culture of health at municipal workplaces. These policies have multiple benefits. A city that adopts a number of HEAL policies will improve local livability and have a profound positive impact on the community's health and well-being.

INSTRUCTIONS

Joining the HEAL Cities Campaign is easy to do.

- **EAGER CITIES** join the Campaign by providing the Campaign with a resolution, proclamation, or letter expressing the intent to work with the Campaign to explore HEAL policies.
- **ACTIVE CITIES** are cities that already had at least one HEAL policy on their books before joining the Campaign. **ACTIVE CITIES** join the Campaign by submitting these policies, together with a resolution, proclamation, or letter expressing the intent to work with the Campaign to explore additional HEAL policies.
- **FIT CITIES** are cities that adopt and implement at least one new HEAL policy, and submit the policy to the Campaign with an implementation plan. A city may join as a **FIT CITY**, or may advance to **FIT CITY** status by adopting and implementing a policy after joining as an **EAGER** or **ACTIVE CITY**.
- **FABULOUS CITIES** are **FIT CITIES** that adopt and implement at least two additional HEAL policies, and submit the policies to the Campaign with implementation plans.

All **EAGER**, **ACTIVE**, **FIT** & **FABULOUS CITIES** are eligible for HEAL City Campaign resources, including use of the HEAL Cities logo and an invitation to free trainings. Participating cities are also eligible for technical assistance. Basic technical assistance is available at no charge.

Use this Resolution form if your city is not ready to adopt a HEAL policy at the present time, but wants to join the Campaign and work with the Campaign to explore HEAL policies. The Resolution allows you to specify whether your city already has at least one HEAL policy on the books. Please modify the Draft Resolution based on local conditions. All highlighted text should be modified.

You may wish to use this Resolution together with the HEAL Cities Policy Menu.

We look forward to working with you, and hope that you will share your adopted resolution and/or policies.

RESOLUTION NO. []
SETTING FORTH [MUNICIPALITY]'S COMMITMENT TO PUT
HEALTHY OPTIONS WITHIN REACH OF ALL RESIDENTS

WHEREAS, improving livability and community health are important goals; and

WHEREAS the nutrition and physical activity choices that individuals make for themselves and their families are influenced by their environment; and

WHEREAS local policies on land use & transportation, access to healthy food, and shared use determine whether options for healthy eating and active living are within reach of the people who live, work, go to school, play or worship in the city; and

WHEREAS high rates of costly chronic disease among both children and adults are correlated to environments with few or no options for healthy eating and active living; and

WHEREAS, (city) is a member of the League of Oregon Cities; and

WHEREAS, in 2010, the League of Oregon Cities Board of Directors resolved to partner with and support the national *Let's Move!* Campaign headed by the First Lady of the United States, and has encouraged Oregon cities to adopt preventive measures to fight obesity; and

WHEREAS, in 2012, the League of Oregon Cities Board of Directors resolved to partner with the Oregon Public Health Institute (OPHI) in the *Healthy Eating Active Living (HEAL) Cities Campaign*, and encouraged all Oregon cities to join the *HEAL Cities Campaign* and qualify as a HEAL City by accepting information, training and technical assistance from OPHI staff on policies to support healthier eating and increased physical activity levels for all residents, create more livable communities, and create a culture of wellness at municipal workplaces, and adopting at least one recommended HEAL policy; and

WHEREAS, <add description of previous HEAL policy actions taken by city, if any>

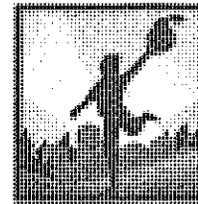
WHEREAS, <add description of other pertinent local conditions, if any>;

NOW, THEREFORE, LET IT BE RESOLVED that the City Council hereby recognizes that joining the HEAL Cities Campaign has the potential to improve local livability and have a positive impact on the community's health and well-being. To that end, [name of city] adopts this HEAL Resolution;

BE IT FURTHER RESOLVED that [name of city] Staff shall work with HEAL Cities Campaign Staff to explore HEAL policies and to identify those policies that are suitable for the City's unique local circumstances.

BE IT FURTHER RESOLVED Staff will report back to this Council with recommendations not later than [] days from the date of this Ordinance.

[Insert Block for Council sign-off]



HEALTHY EATING
ACTIVE LIVING
CITIES
CAMPAIGN

HEAL CITIES POLICY MENU

The Oregon Public Health Institute and the League of Oregon Cities have teamed up to bring the HEAL Cities Campaign to Oregon, with the financial support of Kaiser Permanente.

The HEAL Cities Campaign helps civic leaders create healthy communities. The Campaign has a **policy** focus, because policies establish the rules and shape the environment in which employees, residents and businesses make decisions about nutrition and physical activity. Opinion surveys show that people want to eat better, move more, and feel energized to do the things they love. **It is much more difficult for people to make healthy choices in an unhealthy environment.**

Cities that provide healthy, fit environments rate higher on livability, and are more attractive to families and businesses.

The Campaign provides cities with information about policy options in four areas: Land Use & Transportation, Access to Healthy Food Options, Shared Use, and Workplace Wellness & Nutrition Standards. This Policy Menu is designed to help answer these questions:

1. **What policies might expand options for healthy eating and active living in my city?**
2. **What policies might improve workplace wellness for my city's employees?**

The Campaign will work with participating cities to tailor policies for their communities. If you are interested in learning more about any aspect of the HEAL Cities Campaign, or if you would like technical assistance from the HEAL Cities Campaign to adapt a policy for your city, please see our website, www.HEALCitiesNW.org, or contact Beth Kaye, HEAL Cities Campaign Manager, at bethkaye@orphi.org or 503 227-5502x 230.

315 SW FIFTH AVENUE, SUITE 202
PORTLAND, OR 97204

PHONE: 503-227-5502
FAX: 503-416-3696

www.healcitiesnw.org
info@healcitiesnw.org

HEAL CITIES POLICY MENU

LAND USE AND TRANSPORTATION
Comprehensive Plan, Land Use Plan, and Transportation Plan Updates
1. Include general health goals; promote physical activity and access to healthy food options
2. Promote mixed-use, transit-oriented, and/or compact development
3. Promote street connectivity
4. Promote "complete streets"
5. Promote pedestrian and bicycle safety in all transportation planning
6. Improve access for all residents to existing recreational and natural areas
7. Provide transit access to grocery stores
8. Collaborate with public health agencies and organizations to support programs and activities related to nutrition, including classes in gardening, meal planning, and cooking
9. Increase the number of parks, open spaces, and recreational trails
Establish Guidelines and/or Zoning Controls
10. Adopt incentives for compact, mixed use and/or transit-oriented development
11. Establish pedestrian and bike friendly street design standards
12. Allow new and/or support existing farmers markets
13. Allow new and/or support existing community gardens
14. Create a healthy food zone around schools and parks by allowing or supporting the location or wholesome food retail and community gardens in those areas
15. Allow or support the location of wholesome food retail in neighborhoods that have a concentration of retailers of sugar-loaded beverages, high fat, high salt, and heavily processed foods
16. Allow Community Supported Agriculture distribution points on public property
Bicycle and Pedestrian Plans
17. Establish dedicated pathways for pedestrians and cyclists
18. Address pedestrian and bicycle safety at crossings, along traffic corridors, on routes between residential areas and schools, and in other transportation projects
Healthy Infrastructure Investments
19. Increase accessibility of recreational facilities and other key destinations to pedestrians, cyclists, and transit riders
20. Create Safe Routes to Schools from residential neighborhoods to local elementary, middle, and high schools
21. Prioritize capital improvement projects that fund sidewalks, crosswalks and bike lanes in neighborhoods with high obesity rates
ACCESS TO HEALTHY FOOD OPTIONS
Improving Access to Healthy Food Options
22. Attract retailers that offer fresh fruits and vegetables and wholesome staple items at reasonable prices
23. Provide economic incentives for healthy food retail projects
24. Support availability of fresh fruits and vegetables and wholesome staple items at reasonable prices in

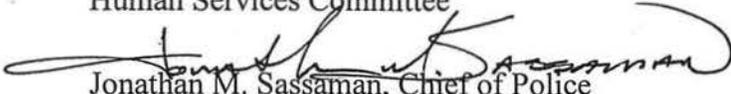
areas identified as 'food swamps' or 'food mirages'
25. Support community gardens
26. Support year-round farmers markets
27. Support Community Supported Agriculture
28. Encourage low-income residents to purchase fresh produce by offering economic incentives (e.g., at your local farmers market, offer \$5 worth of produce for each \$1 of SNAP benefits)
Recognize Retailers that Promote Healthy Eating
29. Recognize restaurants that disclose the calorie amount and grams of fat for each menu item listed on a menu or menu board in a clear and conspicuous manner
30. Recognize restaurants that remove foods containing artificial trans-fat from their menu
31. Recognize restaurants that offer smaller portions of popular high-calorie and high-fat dishes
32. Recognize restaurants that establish pricing structures that encourage consumption of lower-calorie, lower-fat, and less processed foods
33. Recognize restaurants and markets that feature healthy check-out lanes for orders that include only lower-calorie, lower-fat, and less processed or unprocessed foods
SHARED USE AGREEMENTS
34. Negotiate agreements with school districts or other entities to open use of existing recreational facilities (e.g., pools, tennis courts, fields) to general public during off-hours
35. Partner with school districts or other public entities to share the cost and responsibilities of building and maintaining new park and recreation facilities
36. Partner with school districts, religious institutions, or other entities to share the cost and responsibilities of institutional kitchens for public cooking demonstrations, cooking lessons, and/or congregate meal preparation and distribution
37. Partner with school districts, religious institutions, or other entities to share the cost and responsibilities of food distribution centers
WORKPLACE WELLNESS & NUTRITION STANDARDS
Workplace Wellness
38. Require a self-assessment of wellness practices in each municipal workplace
39. Require the city to create a tailored plan to address its needs
40. Schedule activity breaks during the work day
41. Encourage use of stairways
42. Improve breastfeeding accommodations for employees
Healthy Meeting Policies
43. Require that all meetings with food offer a healthy option (e.g., fruit, nuts)
44. Make water the preferred beverage at meetings
45. Encourage walking meetings
46. Establish physical activity breaks for meetings that last more than one hour
Nutrition Standards
47. Set nutrition standards for vending machines located in city owned or leased locations
48. Set nutrition standards for food offered for sale or served at city events, city sponsored meetings, city facilities, city concessions, and city programs

Access to Healthy Food Options in the Workplace
49. Offer Community Supported Agriculture (CSA) programs to city employees
IMPLEMENTATION
50. Prioritize funding for projects and programs that create or expand HEAL options in areas identified as having the fewest options, and/or where obesity rates are highest
51. Create incentives for development project proposals that create or expand HEAL options in areas identified as having the fewest options, and/or where obesity rates are highest

Memorandum

March 28, 2013

To: Human Services Committee

From: 
Jonathan M. Sassaman, Chief of Police

Subject: City-OSU Neighborhood Livability Recommendations to update Corvallis
Municipal Code relative to Alcohol Offenses and Special Response Notice

Issue:

This staff report updates the Corvallis Municipal Code (CMC) relative to alcohol offenses and the Special Response Ordinance consistent with recommendations from the City-OSU Neighborhood Livability Work Group adopted by the Steering Committee. Council action required.

Background:

The City-OSU Neighborhood Livability Work Group was established and charged with examining issues and concerns which could be addressed in order to improve the quality of life in neighborhoods experiencing increased parties, noise and incidents requiring police response. Over the past year and a half the work group reviewed a wide variety of laws, focusing on alcohol enforcement ordinances from other university jurisdictions, finding in general that ordinances which impose significant monetary fines that escalate for repeat offenses were most effective.

In November 2012, the Work Group made a recommendation to the Steering Committee to increase the fine structure of the CMC to be consistent with Oregon Revised Statutes (ORS) for alcohol offenses, as currently there is no fear of the penalties for alcohol-related violations, partially due to Corvallis Police staffing limitations, and partially because the existing fines imposed are not significant enough to act as a deterrent. Based on the Work Group's research of other university communities, the conclusion was drawn to adopt the higher fine amounts intended to act as a stronger deterrent to alcohol violations. The City-OSU Collaboration Steering Committee adopted and approved the recommendations to move forward to City Council. Much discussion surrounded the concept of a Social Host Ordinance which would embody the concept of an escalating fine structure and personal accountability to individuals at these parties. Although a separate and unique "Social Host" ordinance is not being proposed, the concepts are included in the updates to the existing code, without creating duplicate sections.

Discussion:

The City of Corvallis Municipal Code sections related to Alcohol and the Special Response Notice are discussed below with proposed modifications consistent with the City-OSU Collaboration recommendations.

1. CMC 5.03.040.010 Alcohol

The current Alcohol Section 5.03.040 of the CMC lacks a preamble addressing legislative (Council) position related to the offenses. As part of the Neighborhood Livability Work Group’s efforts, staff is proposing the following language to establish a purpose related to alcohol legislation:

“The City Council finds that the unlawful use and/or possession of alcoholic liquor contributes to the commission of offenses defined and made punishable under this code and contributes to the degradation of and poses substantial risks to the public health, safety and welfare concerns for Corvallis citizens.

See Exhibit 1, for language drafted into Ordinance.

2. CMC 5.03.040.010.01.6 Definitions: Oregon Liquor Control Act

The definition for the Oregon Liquor Control Act in the CMC has an outdated statutory reference. The City Attorney’s Office proposes the noted modification updating the definition to the correct language. See Exhibit 1.

3. CMC 5.03.040.010.02 Providing alcoholic liquor to certain persons prohibited

CMC 5.03.040.010.02, “Providing alcoholic liquor to certain persons prohibited”, is the City’s version of ORS 471.410 “Providing liquor to persons under 21 or to intoxicated person” (See Exhibit 2). The CMC Section of “Alcohol” was last updated in 1992. ORS 471.410 was last updated in 2011. Both laws are consistent relative to persons who can and cannot provide alcohol to a person under 21 years of age, both are Class A Misdemeanors, and both have an escalating fine structure. Currently, the CMC fine structure is less than the ORS. The below table depicts the current differences.

CMC: 5.03.040.010.01	ORS: 471.410
Upon a first conviction, a fine of \$350	Upon a first conviction, a fine of at least \$500
Upon a second conviction, a fine of \$1,000	Upon a second conviction, a fine of at least \$1,000
Upon a third conviction, a fine of \$1,000 and not less than 30 days of imprisonment.	Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days of imprisonment.

Staff proposes the following modifications to the Corvallis Municipal Code to be consistent with the Oregon Revised Statute addressing those person(s) who provide alcoholic liquor to persons under the age of 21:

1. Increase the first conviction fine amount to \$500.
2. Maintain the second conviction fine amount at \$1,000.
3. Increase the third conviction fine amount, and subsequent convictions to \$1,500.

Staff has consulted with the City Attorney regarding the recommended change which is allowable under the law. In addition, the City Attorney's Office recommended minor structural changes to the ordinance and the creation of sub-section 4, to include: *"This Section is intended to be a strict liability crime and the court shall not require proof of mental state."* The result of this added language means the City is not required to prove a culpable mental state of either Intentionally, Knowingly, Recklessly or Criminal Negligence at trial; rather as a strict liability offense, the act itself is proof the ordinance has been violated. This language makes a person legally responsible by his/her act.

All other provision of CMC 5.03.040.010.02, remain the same. See Exhibit 1.

4. CMC 5.03.040.010.03 Purchase or possession of alcoholic liquor by minors

Staff, in consultation with the City Attorney's Office desire to replace the existing CMC "Purchase or possession of alcoholic liquor by minors" commonly referred to as a Minor in Possession (MIP), with the Oregon Revised Statute 471.430 MIP language. The full ORS text is included in Exhibit 1. The City of Corvallis adopted the State's text in 2003. In order to remain current with the State law in its entirety, including embedded statutory references, adopting the State's text is preferred. The elements of the offense remain the same, as well as the presumptive fine amount of \$260 per offense, and continues to afford the court existing sanctions related to suspending drivers licenses, treatment and/or community service. The statutory references are updated.

5. 5.03.040.010.07 Arresting Officer to seize property

Modification to this section of the ordinance removes statutory references which are out of date. See Exhibit 1.

6. CMC 5.03.040.010.10 Hosting party for minors

CMC 5.03.040.010.10 Hosting party for minors, is very similar to the ORS related to "Providing liquor to persons under 21 or to intoxicated person" and the CMC "Providing alcoholic liquor to certain persons prohibited". The primary difference is between proving an individual(s) specifically provided a minor alcohol, compared to proving that a location was used for minors to

consume or possess alcohol illegally. The “Hosting a party for minors” CMC provision fills this gap. Any and all persons present who have permitted, allowed or hosted a party under the conditions set forth in this ordinance are subject to enforcement. The following are the elements recommended for ordinance modification and depicted in Exhibit 1:

1. Sub-section 2 of the CMC adds an affirmative defense. An affirmative defense is where the defendant confirms a condition is occurring or has occurred, however offers justification as a defense for any criminal culpability.
2. Sub-section 3, identifies this offense as a strict liability crime, rather than proving a culpable mental state (Intentionally, Knowingly, Recklessly or Criminal Negligence).
3. Sub-section 4, adds an incremental penalty consistent with CMC 5.03.040.010.02 “Providing alcoholic liquor to certain persons prohibited” and with State law.
 - a. Upon a first conviction, a fine of \$500;
 - b. Upon a second conviction, a fine of \$1,00; and,
 - c. Upon a third conviction, a fine of \$1,500 and not less than 30 days of imprisonment.

7. CMC 5.03.150 Special response fee

CMC 5.03.150 Special response fee (SRN) details the ordinance (Exhibit 3), whereas if a provision of any CMC contained within section 5.03 (Offenses) or the Criminal Code of Oregon is violated, an officer gives written notice to one or more persons engaged in the activity or who are in control of such activity, and that any and all subsequent responses within 30 days will be assessed a response fee. The response fee is defined as the total cost incurred by the City in connection with such response, including but not limited to, police officers, equipment, dispatch and supervisor time.

In keeping with the concepts of accountability and escalating fine recommendations, staff has modified the Special Response Fee provisions of the CMC to include capturing the actual cost for the first response, if a subsequent response occurs within 30 days. By way of example, if an officer issues an SRN (first response) and is required to respond a second time within 30 days, staff currently bill for the cost of the second response only. Using the same example, if the ordinance modifications are approved staff would bill for the second response and the cost of the first response. The infrastructure is in place to appropriately account for and bill for a first response identical to the methods used when billing for a second response. All other provisions of the ordinance remain consistent.

Options:

The following options are identified for council consideration:

1. Council could adopt the statutory references as clean up language and make no other modifications to Municipal Code language.
2. Council could adopt some of the Municipal Code modifications, but not all.
3. Council could adopt all modifications updating the Municipal Code.

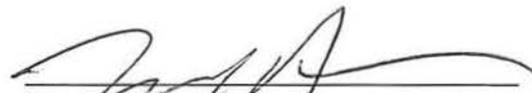
Recommendation:

Staff recommends council adopt option #3. Option #3 includes the work of the City-OSU Collaboration Neighborhood Livability Work Group and Steering Committee which include the concepts of individual and/or corporate accountability, and escalating fine structures.

Review and Concur:


James A. Patterson, City Manager

4/10/2013
Date


Jim Brewer, City Attorney

4/9/13
Date

Attachment:

- Exhibit 1: Copy of CMC 5.03.040 recommended modifications
- a. CMC 5.03.040.010 Alcohol
 - b. CMC 5.03.040.010.01 Definitions
 - c. CMC 5.03.040.010.02 Providing alcoholic liquor to certain persons prohibited
 - d. CMC 5.03.040.010.03 Purchase or possession of alcoholic liquor by minors
 - e. CMC 5.03.040.010.07 Arresting officer to seize property
 - f. CMC 5.03.040.010.10 Hosting party for minors
- Exhibit 2: Oregon Revised Statute 471.410 Providing liquor to persons under 21 or to intoxicated person
- Exhibit 3: CMC 5.03.150.010 Special Response Fee Notice Provisions
CMC 5.03.150.020 Special Response Fee Liability Imposed

EXHIBIT
1

Section 5.03.040.010 Alcohol.

Field Cod

The City Council finds that the unlawful use and/or possession of alcoholic liquor contributes to the commission of offenses defined and made punishable under this code and contributes to the degradation of and poses substantial risks to the public health, safety and welfare concerns for Corvallis citizens. (Ord. ? 2013)

Field Cod

5.03.040.010.01 Definitions.

- 1) Alcoholic liquor - Any alcoholic beverage containing more than one-half of one percent of alcohol by volume and every liquid or solid, patented or not, containing alcohol, and capable of being consumed by a human being.
 - 2) Commission - The Oregon Liquor Control Commission as provided for by the Oregon Liquor Control Act.
 - 3) Juvenile party - A social gathering attended by one or more persons under the age of twenty-one (21).
 - 4) Licensed premises - The room or enclosure at the address within the corporate limits of the City of Corvallis for which a license has been issued by the Commission for the serving, mixing, handling, or selling of alcoholic liquor.
 - 5) Licensee - A person who has an alcoholic liquor license from the Commission authorizing such person to sell or dispense alcoholic liquor.
 - 6) Oregon Liquor Control Act - ~~The State law so designated by ORS 471.027 and includes the Oregon Distilled Liquor Control Act as defined by ORS 472.020. The State law so designated by ORS 471.027 and includes the Oregon Distilled Liquor Control Act.~~
 - 7) Place of residence - A building which regularly or intermittently is occupied by a person for dwelling, lodging or sleeping purposes, whether or not the person is actually present.
 - 8) Sell - Includes soliciting or receiving an order for or keeping, offering, or exposing for sale, delivering for value, or in any way other than gratuitous, peddling, keeping with intent to sell, to traffic in, for any consideration, promised or obtained, direct or indirect, or under any pretext or by any means, procuring or allowing to be procured alcoholic liquor for any other person.
- (Ord. 91-28 § 1 (part.), 1991; Ord. 82-77 § 103.01, 1982, Ord. ? 2013)

Field Cod

5.03.040.010.02 Providing alcoholic liquor to certain persons prohibited.

- 1)(a) No one other than the person's parent or guardian shall sell, give, or otherwise make available any alcoholic liquor to a person under the age of 21 years.
- (b) ~~A person violates this subsection who sells, gives, or otherwise makes available alcoholic liquor to a person with the knowledge that the person will violate this subsection violates this subsection.~~
- 2) A violation of this Section is a Class A Misdemeanor. Upon conviction, the Court shall impose at least a mandatory minimum sentence:
 - a) Upon a first conviction, a fine of \$350500;

- b) Upon a second conviction, a fine of \$1,000; and,
- c) Upon a third conviction, a fine of \$1,050 and not less than 30 days of imprisonment.
- 3) The mandatory minimum penalty provisions of subsection 2) of this Section shall not apply to

persons licensed or appointed by or through the Commission.

4) This Section is intended to be a strict liability crime and the court shall not require proof of a mental state. (Ord. ? 2013)

Field Cod

5.03.040.010.03 Purchase or possession of alcoholic liquor by minors.

I.4) The City of Corvallis adopts ORS 471.430 in its entirety.

(1) A person under 21 years of age may not attempt to purchase, purchase or acquire alcoholic beverages. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardian's consent, a person under 21 years of age may not have personal possession of alcoholic beverages.

Field Cod

(2) For the purposes of this section, personal possession of alcoholic beverages includes the acceptance or consumption of a bottle of such beverages, or any portion thereof or a drink of such beverages. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

(3) Except as authorized by rule or as necessitated in an emergency, a person under 21 years of age may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

(4)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (1) or (3) of this section commits a Class B violation.

(b) A person commits a Class A violation if the person violates subsection (1) of this section by reason of personal possession of alcoholic beverages while the person is operating a motor vehicle, as defined in ORS 801.360.

(5) In addition to and not in lieu of any other penalty established by law, a person under 21 years of age who violates subsection (1) of this section through misrepresentation of age may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order suspending driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(6) If a person cited under this section is at least 13 years of age but less than 21 years of age at the time the person is found in default under ORS 153.102 or 419C.472 for failure to appear, in addition to and not in lieu of any other penalty, the court shall issue notice

under ORS 809.220 to the department for the department to suspend the person's driving privileges under ORS 809.280 (4).

(7) In addition to and not in lieu of any penalty established by law, the court may order a person who violates this section to undergo assessment and treatment as provided in ORS 471.432. The court shall order a person to undergo assessment and treatment as provided in ORS 471.432 if the person has previously been found to have violated this section.

(8) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age.

(9) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age.

(Ord. 2003-03 §1, 01/21/2003; 2002-38 §1, 11/04/2002, Ord.? 2013)

~~2) No person under the age of 21 years shall attempt to purchase, purchase or acquire alcoholic liquor. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardians's consent, no person under the age of 21 years shall have personal possession of alcoholic liquor.~~

~~3) For purposes of this section, personal possession of alcoholic liquor includes the acceptance or consumption of a bottle of such liquor, or any portion thereof or a drink of such liquor. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.~~

~~4) Except as authorized by rule or as necessitated in an emergency, no person under the age of 21 years shall enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.~~

~~5) Any person who violates subsection (2) or (4) of this section commits a Class B violation.~~

~~6) In addition to and not in lieu of any other penalty established by law, a person under the age of 21 years who violates subsection (2) of this section through misrepresentation of age may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be~~

granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

7) In addition to and not in lieu of any penalty established by law, the court:

a) Shall order a person who is at least 18 years of age and not more than 21 years of age, who is

convicted of violation of this section and who has been convicted of violation of this section at least once before when the person was at least 18 years of age, to undergo assessment and treatment as provided in ORS 471.432.

b) May order a person who is at least 18 years of age and not more than 21 years of age and who is convicted of violation of this section to undergo assessment and treatment as provided in ORS 471.432.

8) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years.

9) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years.

(Ord. 2003-03 §1, 01/21/2003; 2002-38 §1, 11/04/2002)

5.03.040.010.04 Misrepresentation of true age of minor.

1) No minor shall falsely represent that she or he is of any age other than his or her true age, or

produce any evidence that would falsely indicate his or her age, for the purpose of securing any right, benefit, or privilege denied minors by Section 5.03.040.010.

2) No person shall falsely represent a minor to be 21 years of age or older for the purpose of securing or assisting such minor in securing any right, benefit, or privilege denied to minors by this Section.

3) A violation of this section is a Class A Infraction.

5.03.040.010.05 Defense of written age statement.

If a licensee or an employee or agent is prosecuted in the Municipal Court for selling alcoholic liquor to a minor or permitting a minor to consume alcoholic liquor or to enter or loiter upon the licensed premises, the licensee or his or her employee or agent may offer in defense any written statement made by or for such minor prior to the violation, which statement was made and taken pursuant to the laws of Oregon and the rules and regulations of the Commission, and such statement shall constitute a prima facie defense.

5.03.040.010.06 Consumption of alcoholic liquor, possession of open container of alcoholic liquor in public places prohibited.

1) Except as otherwise allowed by law, no person shall drink or consume any alcoholic liquor, or

possess any open container of alcoholic liquor while in or upon any street, alley, public grounds,

building, or place open and available to the general public, or while in a motor vehicle on premises open to the public.

2) A violation of this Section is a Class C Misdemeanor.

5.03.040.010.07 Arresting officer to seize property.

When an officer arrests any person for violation of Section 5.03.040.010, the officer may take into his or her possession all alcoholic liquor which the person arrested has in his or her possession, or on the premises, which apparently is being used or kept in violation of Section 5.03.040.010. If the person arrested is convicted and the Court finds that the alcoholic liquor has been used in violation of this Section, such forfeiture proceedings as are authorized by ORS 471.605, 471.610, and 471.615 may be instituted.

5.03.040.010.08 Prohibited sales.

1) No licensee shall sell or offer for sale any alcoholic liquor in a manner, or to a person, other than permitted by the license issued by the Commission.

2) A violation of this Section is a Class C Misdemeanor.

5.03.040.010.09 Liquor Commission to be notified.

When a conviction is obtained against any licensee of the Commission for a violation of Section

5.03.040.010 or a conviction is obtained against any person where the violation of Section 5.03.040.010 was committed on a licensed premise, the Municipal Court shall notify the Oregon Liquor Control Commission of such conviction.

5.03.040.010.10 Hosting party for minors.

1) No person shall permit, allow or host a juvenile party at his or her place of residence or premises under the person's control while alcoholic liquor is consumed or possessed by any minor.

2) It shall be an affirmative defense to this Section that the alcoholic liquor is provided by the minor's parent or guardian in accordance with this Chapter.

3) This Section is intended to be a strict liability crime and the court shall not require proof of a mental state.

Field Cod

4) A violation of this Section is a Class A misdemeanor. Upon conviction, the Court shall impose at least a mandatory minimum sentence:

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a) Upon a first conviction, a fine of \$500;

b) Upon a second conviction, a fine of \$1,000; and,

c) Upon a third conviction, a fine of \$1,500 and not less than 30 days of imprisonment.

(Ord. 92-02 § 1, 1992; Ord. 91-28 § 2, 1991; Ord. 82-77 §§ 103.01.02--103.01.09, 1982, Ord. ? 2013)

(Ord. 92-02 § 1, 1992; Ord. 91-28 § 2, 1991; Ord. 82-77 §§ 103.01.02-103.01.09, 1982)

471.410 Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property; mandatory minimum penalties. (1) A person may not sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian may sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian. A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3)(a) A person who exercises control over private real property may not knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs;

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides; and

(C) Does not apply to a person who exercises control over a private residence if the liquor consumed by the person under the age of 21 years is supplied only by an accompanying parent or guardian.

(4) This section does not apply to sacramental wine given or provided as part of a religious rite or service.

(5) Except as provided in subsection (6) of this section, a person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

(a) Upon a first conviction, a fine of at least \$500.

(b) Upon a second conviction, a fine of at least \$1,000.

(c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days of imprisonment.

(6)(a) A person who violates subsection (2) of this section is subject to the provisions of this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

(b) For a person described in paragraph (a) of this subsection:

(A) A first conviction is a Class A violation.

(B) A second conviction is a specific fine violation, and the presumptive fine for the violation is \$860.

(C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.

(D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

(7) The court may waive an amount that is at least \$200 but not more than one-third of the fine imposed under subsection (5) of this section, if the violator performs at least 30 hours of community service.

(8) Except as provided in subsection (7) of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (5) or (6) of this section. In addition to the mandatory sentence, the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.

(9)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (3) of this section commits a Class A violation.

(b) A second or subsequent violation of subsection (3) of this section is a specific fine violation, and the presumptive fine for the violation is \$1,000.

(10) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor. [Amended by 1963 c.243 §1; 1971 c.159 §5; 1977 c.458 §1; 1977 c.814 §1; 1983 cor. c.736 §1; 1995 c.301 §40; 1995 c.599 §5; 1995 c.756 §1; 1999 c.351 §58; 2009 c.412 §1; 2009 c.587 §4; 2009 c.608 §3; 2011 c.597 §87]

Section 5.03.150.010 Notice provisions.

1) When a police officer determines that one or more persons are engaged in an activity or conduct which violates the provisions of the Corvallis Criminal Code [Municipal Code Chapter 5.03] or the Criminal Code of Oregon, the police shall give written notice to one or more of the persons who are engaged in, or who are in control of, such activity or conduct that the activity or conduct must immediately cease.

2) Notice recipients shall be liable for a special response fee if a subsequent police response arising out of the activity or conduct is required within thirty (30) days following such notice. A special response fee will be charged to each person identified in subsection 5.03.150.020 of this Section. Separate fees shall be charged for the original and each subsequent police responses. The special response fee is defined as the total cost incurred by the City in connection with such response, including but not limited to, police officers, equipment, dispatch and supervisor time. (Ord. 2010-17 §1, 08/16/2010; Ord. 82-77, 1982) (2010-17, Amended, 08/16/2010, Ord. ? 2013)

Section 5.03.150.020 Liability imposed.

1) Each person responsible for, or engaged in, activity or conduct requiring a subsequent police response and resulting in the imposition of a special response fee as defined in subsection 5.03.150.010 of this Section shall be held jointly and severally liable for payment of the costs included in that special response fee. If any person responsible for, or engaged in, the activity or conduct is a minor, the minor's parent(s) or guardian(s) shall also be liable for such fee.

(Ord. 2010-17 §2, 08/16/2010; Ord. 82-77 1972)

(2010-17, Amended, 08/16/2010, Ord. ? 2013)

EXHIBIT
3

MEMORANDUM

TO: Human Services Committee
FROM: Mary Steckel, Public Works Director 
DATE: May 9, 2013
SUBJECT: Ordinance Relating to an Expansion of Smoking Prohibition in Public Places

ISSUE

Staff has received regular complaints from citizens and business owners regarding people smoking in and near City bicycle parking structures, bus shelters and the grounds of the Downtown Transit Center (DTC).

DISCUSSION

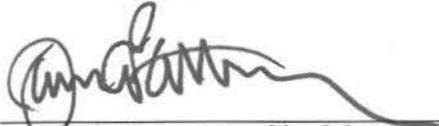
People wishing to utilize these City facilities are subjected to second-hand smoke. To remedy this issue, staff is recommending an expansion of the existing smoking prohibitions within the Municipal Code. The expansion is expected to make the bicycle shelters more available for their intended use and enhance the comfort and health of transit system users.

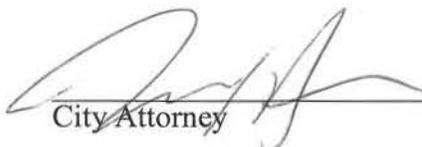
Public Works and Police Department staff met to discuss this proposed change. The result of that discussion was a realization that it would be difficult to enforce a 10-foot smoking restriction at the DTC because there is no specific structure from which to measure. Therefore, staff is recommending that the restriction apply to the entire City Hall block.

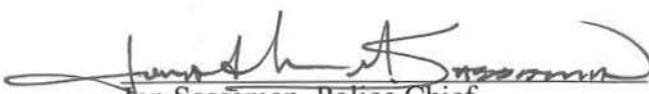
REQUESTED ACTION

Staff requests that the Human Services Committee recommend that the City Council approve an ordinance change to prohibit smoking on the City Hall block and within 10 feet of all CTS bus shelters and City bicycle parking structures.

Reviewed and concur:


James A. Patterson, City Manager


City Attorney


Jon Sassaman, Police Chief

Attachment: Proposed ordinance changes

ORDINANCE 2013-____

AN ORDINANCE RELATING TO A SMOKING PROHIBITION AT COVERED BICYCLE PARKING SHELTERS AND TRANSIT FACILITIES AMENDING CORVALLIS MUNICIPAL CODE CHAPTER 5.03 "OFFENSES," AS AMENDED.

THE CITY OF CORVALLIS ORDAINS AS FOLLOWS:

Section 1. Municipal Code Chapter 5.03 is hereby amended as follows:

5.03.080.160.01 Definitions.

1) Bar - An area which is devoted to the serving of alcoholic beverages for consumption by guests on premises and in which the serving of food is only incidental to the consumption of such beverages.

2) Business - Any sole proprietorship, partnership, joint venture, corporation, or other business entity, including retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.

3) Employee - Any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a non-profit entity.

4) Employer - Any person or entity who employs the services of one or more individuals.

5) Enclosed area - All space between a floor and a ceiling which is exposed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structure.

6) Place of employment - Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms, conference and class rooms, cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

7) Public place - Any City-owned or managed park and recreational facilities, including parks, trails, open space, and special use areas, City-owned bicycle parking structures, and City-owned transit shelters, and any enclosed area to which the public is invited or in which the public is permitted including but not limited to banks, education facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

8) Restaurant - Any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

9) Retail tobacco store - A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

10) Service line - Any indoor line, or any portion of an indoor line that extends out of doors, at which one or more persons are waiting for or receiving services of any kind, whether or not such services involves the exchange of money.

11) Smoking - Any inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, plant, or other tobacco like product or substance in any manner or in any form.

12) Sports arena - Any sports pavilion, gymnasium, health spa, swimming pool, roller rink, bowling alley, and other places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

13) Tobacco product - Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other means of ingestion.

(Ord. 2013 - §1, Ord. 2006-01 §1, 01/03/2006)

5.03.080.160.02 Smoking prohibited in public places.

1) Smoking shall be prohibited in all enclosed public places within the City or located on City owned property, including, but not limited to the following places:

- a) Elevators;
- b) Rest rooms, lobbies, reception areas, hallways, and any other common-use areas;
- c) Buses, taxicabs, and any other means of public transportation under the authority of the City;
- d) Service lines, or within 10 feet of a service line that extends out of doors;
- e) Retail stores;
- f) All areas available and customarily used by the general public located in all businesses patronized by the public, including non-profit and public businesses. Affected businesses include, but are not limited to, professional offices, banks, laundromats, hotels and motels;
- g) Restaurants;
- h) Any facility which is primarily used for exhibiting any motion picture, stage or drama production, lecture, music recital or other similar performances, except performers when smoking is part of a stage or drama production;
- i) Sports arena, including bowling facilities and convention halls;
- j) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council commission, committee, including joint committees, or agencies of the City or any political subdivision of the City during such time as a public meeting is in progress, to the extent such a place is subject to the jurisdiction of the City;
- k) Waiting rooms, hallways, wards, and semiprivate rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctor's and dentist's office;
- l) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; and
- m) Polling places.

2) Smoking shall be prohibited in all City-owned or managed parks and recreational facilities, including all parks, trails, open space, and special use areas. This does not include designated parking areas.

3) Smoking shall be prohibited on all of the City-owned grounds, patios, plazas, steps, ramps, and facilities for the Corvallis-Benton County Public Library. This prohibition includes the library parking garage and library parking lot. This prohibition includes any sidewalk, pedestrian way, driveway, planting area, public right-of-way, street, curb, or gutter within 50 feet of the exterior of the City-owned Corvallis Benton County Public Library building. This prohibition does not include any property that is within 50 feet of the exterior of the City-owned Corvallis Benton County Public Library building that is not owned by the City or part of a public right-of-way. This prohibition does not include smoking within a private automobile with the doors and windows closed, except within the library parking garage or library parking lot, or the associated driveways.

4) Smoking shall be prohibited in the interior of and within 10 feet of the exterior of any City-owned covered bicycle parking structure and transit shelter.

5) Smoking shall be prohibited on all City-owned grounds, steps, ramps, sidewalks, planting areas, transit shelters, curbs, driveways, vehicle parking areas, and bicycle parking facilities for the entire City Hall block. The parcels within this block are identified as Block 8

Lots 1-12, County Addition. This prohibition does not include smoking within a private automobile with the doors and windows closed.

46) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a non-smoking establishment.

57) Any person who violates the provisions of this Code section shall be subject to the penalties as set forth in Section 5.03.080.160.10 of Chapter 5.03 of the Corvallis Municipal Code.

(Ord. 2013 - §2, Ord. 2011-09 §1, 05/16/2011; Ord. 2009-04 §1, 03/02/2009; Ord. 2006-01 §2, 01/03/2006)

PASSED by the City Council this _____ day of _____, 2013.

APPROVED by the Mayor this _____ day of _____, 2013.

EFFECTIVE this _____ day of _____, 2013.

Mayor

ATTEST:

City Recorder