

**CITY OF ROCKAWAY BEACH, OREGON  
ORDINANCE NO. 19-437**

**AN ORDINANCE ADOPTING A PROCESS FOR EXCLUDING INDIVIDUALS FROM CITY PROPERTY,  
AUTHORIZING THE MUNICIPAL COURT TO HEAR EXCLUSION APPEALS, AND CREATING A NEW CODE  
CHAPTER 96**

**RECITALS**

**Recital 1.** On occasion, individuals who enter onto city property may act in a manner that violates city policies or ordinances, disrupts other users, or creates a risk of harm.

**Recital 2.** The City of Rockaway Beach has a compelling interest in protecting the health, safety, and welfare of citizens, city staff, and city officials present on city property.

**Recital 3.** The City Council finds that the health, safety, and welfare of citizens, city staff, and city officials are best served by temporary exclusion of certain individuals from city properties.

**Recital 4.** The City Council recognizes that individuals excluded from city properties are entitled to due process.

**Recital 5.** The City Council has determined that appeals of exclusion orders should be reviewed by the Municipal Court Judge.

**Now, therefore, the City of Rockaway Beach ordains as follows:**

**Section 1.** The City of Rockaway Beach Code of Ordinances is hereby amended to add a new Chapter 96 as follows:

**SECTION 96.01. PURPOSE.**

In furtherance of maintaining a safe environment for public employees and citizens, and pursuant to the powers and authority of the Rockaway Beach City Council, this Chapter addresses exclusion from city property.

**SECTION 96.05. DEFINITIONS.**

(A) "City Manager" means the City Manager of the City of Rockaway Beach or the City Manager's designee.

(B) "City Property" means real property owned or leased by the City of Rockaway Beach, including city buildings and parks. "City Property" does not include city rights-of-way.

(C) "Municipal Court" means the Rockaway Beach Municipal Court, or any other court designated by the City Council to act as the municipal court for the City of Rockaway Beach.

(D) "Necessary Official Business" means a prearranged and verifiable meeting with a city employee or official on City Property.

(E) "Prohibited Conduct" means any of the following types of conduct occurring on City Property:

- (1) Behavior that constitutes a crime;
- (2) Disorderly conduct;
- (3) Riotous or violent or threatening behavior;
- (4) Disruption of lawful meetings, events or work;
- (5) Obstruction of access to government services;
- (6) Abusive language or conduct;
- (7) Violation of City policies intended to maintain a safe, orderly and efficient work environment in public buildings and on City property; or
- (8) Conduct that is otherwise disruptive to the efficient functioning of government affairs.

**SECTION 96.10. EXCLUSION FROM CITY PROPERTY.**

(A) Except as provided in paragraph (G) of this section, an individual is subject to immediate exclusion from City Property if that individual is observed to be engaged in Prohibited Conduct.

(B) The City Manager, any City of Rockaway Beach police officer, and any other peace officer have the authority to exclude individuals from City Property in accordance with this Chapter.

(C) An individual who engages in Prohibited Conduct on City Property in violation of this Chapter may be excluded from the particular City Property on which the individual engaged in Prohibited Conduct for a period of up to 180 days (Exclusion Period).

(D) The Exclusion Period shall be as follows:

- (1) If the individual to be excluded has not been excluded from any City Property within the last 30 days, the Exclusion Period shall be for 30 days.
- (2) If the individual to be excluded has been excluded at any time from City Property within in the last 30 days, the Exclusion Period shall be for 90 days.
- (3) If the individual to be excluded has been excluded more than once from City Property within the last 120 days, the exclusion shall be for 180 days.

(E) Except as provided in paragraph (F) of this section, during the Exclusion Period, a person excluded from specific City Property pursuant to this Chapter may not enter or remain upon that specific City Property during the Exclusion Period. If the individual is excluded from any City-owned park property, the individual shall be excluded from all City parks within the City of Rockaway Beach during the exclusion period.

(F) During the Exclusion Period, the individual who has been excluded may, with prior notice to and approval from the City Manager, enter onto the City Property from which the individual has been excluded, to conduct Necessary Official Business.

(G) Individuals will be given a warning and a reasonable opportunity to comply with the law or rule before an exclusion notice is issued. However, an individual will not be given a warning if the Prohibited Conduct on which the exclusion is based includes any of the following:

- (1) Conduct punishable as a felony;
- (2) Controlled substances or alcoholic beverages offenses;
- (3) Actions actually or likely to result in personal injury or property damage;
- (4) Violation of laws concerning the unlawful possession of firearms, unlawful carrying concealed weapon or felon in possession of a restricted weapon; or
- (5) If the individual was previously warned, cited or excluded for the same conduct on City Property.

(H) All exclusion notices shall be in writing, and shall include the following information:

- (1) The signature of the issuing party and date of issuance;
- (2) The effective dates of the exclusion period;
- (3) The specific City Property from which the person is excluded;
- (4) A description of the Prohibited Conduct that forms the basis of the exclusion;
- (5) A statement of the consequences of failure to comply with the exclusion; and
- (6) The process for appealing the exclusion.

(I) This Chapter does not authorize exclusion of a person lawfully exercising free speech rights or other rights protected by state or federal law on City Property.

(J) The exclusion notice shall be personally served on the individual. Service of the exclusion notice is deemed to have occurred on the date of personal service.

(K) The exclusion notice will be kept on file by the City Manager.

(L) The exclusion will remain in effect for the period of time specified in the notice unless modified or rescinded due to an appeal.

(M) Except as provided in paragraph (F) of this section, if an individual who receives a notice of exclusion enters onto or remains upon City Property from which he or she has been excluded, the individual is subject to immediate arrest for criminal trespass.

#### **SECTION 96.15. APPEAL.**

(A) Any exclusion from City Property may be appealed by filing a written appeal with the Municipal Court within ten (10) calendar days after service of notice of exclusion.

(B) Appeal of an exclusion notice automatically stays the exclusion period until a decision on the appeal is issued by the Municipal Court.

(C) If an appeal is not timely filed with the Municipal Court, no appeal hearing will be held and the exclusion notice shall become the final decision of the City.

(D) The Municipal Court will hold an appeal hearing within 35 calendar days of the filing of the appeal unless the hearing date is extended by court order.

(E) The appeal hearing shall be conducted by the Municipal Court Judge. No jury shall be empaneled for a hearing pursuant to this section.

(F) The Municipal Court Judge will review the written appeal and may consider any testimony, evidence, and other argument presented by the City and by the person who is the subject of the notice, as well as any other testimony, evidence, and other argument that the Municipal Court Judge considers relevant to whether the exclusion of prohibition is lawful and consistent with this Chapter or any other applicable law.

(G) The Municipal Court Judge may uphold, amend, or rescind the exclusion. The decision of the Municipal Court Judge is the final decision of the City.

**SECTION 96.20. AUTHORITY OF MUNICIPAL COURT TO HEAR EXCLUSION APPEALS.**

The Municipal Court is hereby authorized to hear, consider, and render a decision upon appeals of exclusions from City Property, following the appeal process described in this Chapter.

**Section 2. Severability Clause.** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this ordinance shall not affect the validity of the remaining parts to this ordinance. *SPW*


**Section 3. Effective Date.** Pursuant to the ~~Rockaway Beach Charter of 1996~~, Section 33, this ordinance shall become effective on the thirtieth day after its adoption.

1st reading by the Rockaway Beach City Council 9/11/19  
2nd reading by the Rockaway Beach City Council 10/9/19

Adopted and Approved by the Rockaway Beach City Council 10/9/19.

  
Sue Wilson, Mayor.

| <u>City Council</u> | <u>Aye/Nay</u>        |
|---------------------|-----------------------|
| Nathan Beeman       | <u>X</u> / <u>   </u> |
| Tom Martine         | <u>X</u> / <u>   </u> |
| Kristine Hayes      | <u>X</u> / <u>   </u> |
| Terry Walhood       | <u>X</u> / <u>   </u> |
| James Doyle         | <u>X</u> / <u>   </u> |

Attest:  
  
City Manager  
*pro - Tom City Manager*  
*Luke Shepard*