

4.873 **Downtown Public Safety Zone - Boundaries.** For purposes of sections 4.874 through 4.879 of this code, the downtown public safety zone includes that area generally bounded on the north by, and including, the south sidewalk of 7th Avenue, then south along, and including, the east sidewalk of Lawrence Street, then east along, and including, the south sidewalk of 8th Avenue, then south along, and including the west sidewalk of Lincoln Street, then east along, and including, the south sidewalk of 11th Avenue, then north along, and including, the east sidewalk of Pearl Street, then west along, and including, the south sidewalk of 8th Avenue, then north along, and including, the west sidewalk of Oak Street to the south sidewalk of 7th Avenue.

(Section 4.873 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.874 Downtown Public Safety Zone - Civil Exclusion.

- (1) The municipal court may exclude a person pursuant to subsections (1), (3), or (4) of section 4.876 for violation of any of the provisions in sections 4.110(2), 4.230, 4.240, 4.726, 4.729, 4.730, 4.731, 4.770, 4.780 and 4.782 of this code, and for violation of any of the provisions of ORS 163.185, ORS 164.365, ORS 166.165, ORS 167.262, ORS 167.808, ORS 475.840, ORS 475.846 through ORS 475.894, ORS 475.904, and ORS 475.906.
- (2) The municipal court may exclude a person pursuant to subsection (5) of section 4.876 of this code for violation of any of the provisions in sections 4.080, 4.115, 4.190, 4.230, 4.240, 4.685, 4.705, 4.707, 4.725, 4.726, 4.728, 4.729, 4.730, 4.731, 4.755, 4.760, 4.770, 4.780, 4.782, 4.806, 4.807, 4.808, 4.809, 4.820, 4.822, 4.825, 4.882, 4.930, and 4.977, of this code, and for violation of any of the provisions of ORS 163.165, ORS 163.175, ORS 163.185, ORS 164.365, ORS 164.395, ORS 164.405, ORS 164.415, ORS 166.165, ORS 166.170, ORS 166.220, ORS 166.240, ORS 166.250, ORS 167.262, ORS 167.808, ORS 475.840, ORS 475.846 – ORS 475.894, ORS 475.904, and ORS 475.906. In addition, persons who attempt, as defined in section 4.015 of this code or ORS 161.405, to commit offenses listed in this section are subject to exclusion pursuant to section 4.876 of this code.
- (3) The municipal court may exclude a person from the public parks and public streets, alleys, sidewalks and other public ways in the downtown public safety zone for a period of one (1) year from the date of conviction if the person is convicted of any of the offenses enumerated in subsection (2) of this section and the person committed the offense while in the downtown public safety zone.
- (4) Except as allowed under section 4.878 of this code, a person excluded under authority of this section may not enter the downtown public safety zone except to:

 - (a) Attend a meeting with an attorney;
 - (b) Attend a scheduled meeting with a medical or social service provider;
 - (c) Comply with court- or corrections-ordered obligations or appearances;
 - (d) Contact criminal justice personnel at a criminal justice facility;
 - (e) Attend any administrative or judicial hearing relating to an appeal of:
 1. The person's notice of exclusion; or
 2. The denial, revocation or amendment of the person's variance; or

- (f) Travel through the downtown public safety zone on a Lane Transit District vehicle. Travel on a Lane Transit District vehicle includes reasonable time spent waiting to transfer to another Lane Transit District vehicle.
- (5) While in the downtown public safety zone, a person who is otherwise excluded but enters the zone pursuant to subsections (3)(a) - (f) of this section may only travel directly to and from the purposes enumerated in subsections (3)(a) - (f) of this section.
- (6) If an excluded person is in the downtown public safety zone in violation of the exclusion during the exclusion period, that person is subject to immediate arrest for violation of downtown public safety zone restrictions pursuant to section 4.879 of this code.

(Section 4.874 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.875 Downtown Public Safety Zone - Issuance of Notice to Show

Cause. When a peace officer arrests a person or issues a citation for any of the offenses enumerated in subsection (1) of section 4.874 of this code, the officer shall also issue to the person being arrested or cited a notice to show cause. The notice shall require the person to appear at municipal court at a designated time within three (3) to five (5) business days, at which time the court will set a date and time for the hearing for the person to show cause why the person should not be excluded from the downtown public safety zone. The notice shall contain:

- (a) The date, time and place the person is to appear;
- (b) The name of person ordered to appear;
- (c) The name of the peace officer issuing the notice;
- (d) A brief explanation of the purpose of and procedure for the court appearance;
- (e) The following statement: Alf you fail to appear at Municipal Court at the date and time set forth above, the Municipal Court may enter an order excluding you for ninety days from the Downtown Public Safety Zone, shown on the attached map;@
- (f) A statement that the person has the right to be represented by an attorney, at the person's own expense, at the hearing.
- (g) A statement that, if the person is convicted of the offense for which the person was arrested or cited, the person may be excluded from the downtown public safety zone for an additional period of one year from the date of conviction;
- (h) A map showing boundaries of the downtown public safety zone; and
- (i) A brief description of the reasons for which the court may grant a variance and the procedure for requesting a variance.

(Section 4.875 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.876 Downtown Public Safety Zone - Exclusion Orders - Procedure.

- (1) At the date and time set forth in the notice described in section 4.875 of this code, if the person appears, the court shall set a date and time for the show cause hearing, which shall be not less than five (5) nor more than fourteen (14) calendar days from the date the person was required to appear under section 4.875 of this code. The court may impose a temporary exclusion order, to be in effect only until the show cause hearing, if, based on a police report or an affidavit from a witness and after considering any response by the person, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone. If the person does not appear, the court shall not schedule a show cause hearing and if, based on a police report or affidavit from a witness, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order excluding the person from the downtown public safety zone for a period of ninety (90) calendar days, effective at 12:01 a.m. the next day.
- (2) At the show cause hearing, the person shall have the opportunity to show cause why the person should not be excluded from the downtown public safety zone.
- (3) If the court at the show cause hearing finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order excluding the person from the downtown public safety zone for a period of ninety (90) calendar days effective at 12:01 a.m. the next day.
- (4) If the person does not appear at the show cause hearing, and, based on a police report or an affidavit from a witness, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order of exclusion as described in subsection (1) of this section.

- (5)** Upon receipt of a copy of the conviction for an offense enumerated in subsection (2) of section 4.874 of this code and based on information in a police report or an affidavit from a witness that the conduct supporting the conviction occurred in the downtown public safety zone, the municipal court may enter an order excluding the convicted person from the downtown public safety zone for one (1) year from the date of conviction. The person shall be informed of the exclusion order by first-class mail sent to the person's last-known address. The excluded person may request a hearing on the exclusion. The only issues at such hearing shall be whether the person was convicted of an offense

enumerated in subsection (2) of section 4.874 of this code and whether the conduct supporting the conviction occurred in the downtown public safety zone. A certified copy of the conviction shall be conclusive evidence of the conviction.

- (6) A person subject to an exclusion order under subsection (1), (3), (4) or (5) of this section may apply for a variance pursuant to section 4.878 of this code.
- (7) An exclusion ordered by the court pursuant to subsections (1), (3) or (4) of this section shall terminate upon acquittal, dismissal of charges, or failure to prosecute.

(Section 4.876 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.877 Downtown Public Safety Zone - Variances. Variances shall be granted, denied or revoked in accordance with section 4.878 of this code. All variances shall be in writing; shall be valid for a specific period of time and shall only accommodate a specific purpose, all of which shall be stated on the variance. The purpose of the variance is to allow travel to and from locations within the downtown public safety zone according to the terms of the variance. In order for the variance to be effective, the excluded person must carry the variance on his or her person while in the downtown public safety zone and must present the variance to a police officer upon request. In the event a person who has been granted a variance is found in the downtown public safety zone in violation of the terms of the variance, that person is subject to immediate arrest for violation of downtown public safety zone restrictions pursuant to section 4.879 of this code.

(Section 4.877 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.878 Downtown Public Safety Zone - Variances - Application/Revocation Procedure.

- (1) At any time after an order of exclusion is entered against a person, the person may apply in writing to the municipal court for a variance from the exclusion. The application shall be made on forms provided by the court. A variance granted under this subsection allows travel in the downtown public safety zone only according to the terms specified in the variance.
 - (a) General Variance. The municipal court may for any reason grant a variance from an exclusion at any time during an exclusion period.
 - (b) Residential Variance. The court shall grant a residential variance to an excluded person if the person certifies:

1. That the person lived in the downtown public safety zone, other than transient occupancy in a hotel or motel, when excluded; and
 2. Continues to live in the downtown public safety zone.
- (c) Essential Needs Variance. The court may grant an essential needs variance to an excluded person if the excluded person certifies:
1. That the excluded person possesses a residential variance;
 2. That the excluded person must access a public or private place within the downtown public safety zone that fulfills an essential need; and
 3. That the essential need sought by the excluded person cannot reasonably be accessed by the excluded person without violating the downtown public safety zone exclusion.
- (d) Employment Variance.
1. The court shall grant an employment variance to an excluded person if the excluded person certifies that the person is an owner, principal, agent or employee of a place of lawful employment located in a downtown public safety zone.
 2. The court may grant an employment variance to an excluded person to allow travel within the downtown public safety zone in accordance with the terms of the variance if the excluded person certifies:
 - a. That the person is an owner, principal, agent or employee of a place of lawful employment; and
 - b. The excluded person will be required to perform employment-related services in the downtown public safety zone.
- (e) Social Services Variance. The court may grant a social services variance to an excluded person if the excluded person certifies:
1. That the person is in need of social services located in the downtown public safety zone;
 2. The social services are sought for reasons relating to the health or well-being of the excluded person; and
 3. The social services agency has written rules and regulations prohibiting the unlawful use and sale of controlled substances by their clients.
- (f) Educational Variance.
1. The court shall grant an educational variance to an excluded person if the excluded person certifies:

- a. That the person was enrolled as a student at an educational facility located within the downtown public safety zone when excluded; and
 - b. Is currently enrolled as a student at the same educational facility.
 2. The court may grant an educational variance to an excluded person if the excluded person certifies that the person will be enrolled at an educational facility within the downtown public safety zone if the variance is granted.
- (2) Revocation of Variances. Variances may be revoked in accordance with the following provisions:
 - (a) The grounds for revocation of any variance other than a residential variance are as follows:
 1. The applicant provided false information in order to obtain the variance;
 2. The person is arrested or cited for any of the offenses enumerated in subsection (2) of section 4.874 of this code in the downtown public safety zone subsequent to the issuance of the variance; or
 3. The circumstances giving rise to the issuance of the variance no longer support a continuation of the variance.
 - (b) Residential Variance Exception. A residential variance may be revoked only:
 1. If the applicant provided false residential information in order to obtain the variance; or
 2. If the circumstances giving rise to the issuance of the variance no longer support a continuation of the issuance of the variance.
- (3) Revocation Procedure.
 - (a) A peace officer who has probable cause to believe a person who has been granted a variance has violated its terms or conditions may issue to the person a notice to show cause that requires the person to appear at municipal court at a specified date and time, at which time the court will set a date and time for a show cause hearing.

- (b) If the person fails to appear at the time and date specified in the notice, the court may revoke or modify the variance. If the person does appear, the court shall set a time for a hearing, at which the person shall have the opportunity to show cause why the variance should not be revoked or modified. At the hearing, the city shall have the burden to prove by a preponderance of the evidence that the person violated the terms or conditions of the variance. If the court finds that the city proved by a preponderance of the evidence that the person violated the terms or conditions of the variance, the court may revoke or modify the variance.
- (4) Definitions.
 - (a) Arrest. As used in this section and sections 4.874, 4.875, and 4.877, of this code, “arrest” includes taking a person under 18 years of age into custody as defined in ORS 419C.080(1)(a).
 - (b) Essential Needs. As used in this section, "essential needs" means food, physical care and medical attention for both physical and mental conditions.
 - (c) Travel. As used in this section and section 4.874 of this code, Atravel@ means the movement on foot or within or upon a vehicle within the downtown public safety zone from one point to another without delay other than to obey traffic control devices.

(Section 4.878 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

4.879 Violation of Downtown Public Safety Zone Restrictions.

- (1) A person commits the crime of violation of downtown public safety zone restrictions if the person enters or remains unlawfully in or upon premises in the downtown public safety zone.
- (2) The term “enter and remain unlawfully” shall have the meaning provided in section 4.805 of this code. For purposes of this section, “premises” means the public parks and public streets, alleys, sidewalks and other public ways in the downtown public safety zone.

(Section 4.879 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010.)

PENALTIES

4.990 Penalties - Specific.

- (1) Violation of the following sections is punishable by fine or confinement in jail, or both, up to the amounts indicated opposite each. In addition, the court may order any treatment, related to the violation, deemed necessary for rehabilitation of the offender and the safety of the community.

Section
4.879

Penalty
500 fine or 30 days in jail, or both