

CITY OF MILWAUKIE
ORDINANCE NO. 1806

AN ORDINANCE OF THE CITY OF MILWAUKIE AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING CHAPTER 9.20, EXCLUSION.

WHEREAS, the City of Milwaukie has experienced an increase in certain types of unlawful activity in its Core Area and Transit Zone in excess of that experienced in other areas of the City;

WHEREAS, this increased unlawful activity adversely impacts the pursuit of commercial, recreational and other lawful activities in that Core Area and Transit Zone;

WHEREAS, the City believes that exclusion of individuals (for limited periods) for identified types of unlawful conduct or activity that adversely impacts the lawful use and enjoyment of the Core Area and Transit Zone by citizens and visitors will enhance the over-all quality of that Core Area and Transit Zone for its commercial, recreational and other users.

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 9.20, Exclusion, is added to the Milwaukie Municipal Code to read as follows:

9.20.010 **DEFINITIONS.**

As used in this Chapter, the term "Milwaukie Core Area and Transit Zone" shall mean all public buildings and their surrounding grounds; Tri-County Metropolitan Transportation District (Tri-Met) transit stations and shelters including any and all adjoining stairways, ramps and elevators, (if any); City or County owned parks; streets; sidewalks; alleyways and any and all other public rights of way located within that area bounded on the west by the Willamette River (River), then north along the River to Johnson Creek (Johnson), then easterly along the shore until Johnson meets Oregon State Highway 224 (224), thence eastward down the southerly side of 224 until the intersection of 224 and SE 23rd, then westerly down the easterly side of SE 23rd until the intersection with the southern side of SE Harrison Street (Harrison), then westerly down Harrison to the eastern side of SE 21st, then southerly down SE 21st to the intersection of Lake Road then drawing an imaginary line from the intersection of SE 21st and Lake Road to the northern shoreline of Kellogg Creek thence west along the shoreline of Kellogg Creek until the confluence of Kellogg Creek and the River.

9.20.020 - **EXCLUSION FROM MILWAUKIE CORE AREA.**

A person is subject to exclusion from the Milwaukie Core Area and Transit Zone for a period of up to ninety (90) days in the event they have been arrested and/or convicted for any of the following conduct within the Milwaukie Core Area and Transit Zone:

1. Assault as defined in ORS Chapter 163 (1995) in and/or around the Milwaukie Core Area and Transit Zone;
2. Stalking as defined in ORS Chapter 163 (1995);
3. Criminal mischief as defined in ORS Chapter 164 (1995);
4. Any of the graffiti-related offenses as defined in ORS Chapter 164 (1995) involving publicly owned structures within the city limits of Milwaukie;
5. Offensive littering as defined in ORS 164.805 (1995);
6. Riot, disorderly conduct, or harassment as defined in ORS 166.015, 166.025, 166.065 (1995);
7. Possession of a firearm or dangerous weapon in a public building as prohibited by ORS 166.370 (1995);
8. Criminal Trespass as defined in ORS 164.243 to 164.265 (1995).
9. Unlawful possession of a controlled substance in violation of ORS 475.992 (1995) (or attempt thereof);
10. Unlawful delivery of a controlled substance in violation of ORS 475.992 (1995) (or attempt thereof);
11. Purchase or Possession of Liquor by a person under 21 in violation of ORS 471.430(1995).
12. Possessing or consuming alcoholic liquor on public property in violation of Milwaukie City Code (MCC) 9.06.010;
13. Being a minor in violation of MCC 9.08.010 (curfew); and
14. Violating the provisions of MCC 10.44.070 (skateboards and roller skates).

9.20.030 **PERSONS AUTHORIZED TO ISSUE EXCLUSION OR WARNING NOTICES.**

The Chief of Police and the City Manager are hereby authorized to issue exclusion notices to individuals for the conduct identified in Section 9.20.020. Either the Chief of Police or the City Manager may authorize other Milwaukie Police or personnel to issue exclusion notices consistent with this Chapter. In addition, the Chief of Police shall have the ability to authorize law enforcement personnel other than that employed by the City to enforce the terms of this Chapter.

9.20.040 - ISSUANCE OF EXCLUSION NOTICES OR WARNING NOTICES.

At the time of the arrest of an individual for any of the conduct(s) identified in Section 9.20.020, (or within thirty (30) calendar days thereafter) the arresting officer, the Chief of Police or the City Manager (or such other person(s) as either the City Manager or Chief has authorized) may issue a written exclusion notice excluding the person from the Milwaukie Core and Transit Zone. The notice shall specify that the person is to be excluded from the Milwaukie Core Area and Transit Zone; the period of the exclusion; the time the exclusion is to commence as well as contain information concerning the right of the person to appeal the exclusion notice to the Municipal Judge as provided for under MCC Chapter 1.10.

The person to whom the exclusion notice is issued shall sign a written acknowledgment of the receipt of the exclusion notice; if the person refuses to so sign, the arresting officer shall make a written record of the refusal.

9.20.050 RIGHT OF APPEAL.

1. The individual to whom an exclusion notice is issued shall have the right to appeal the issuance of the notice.
2. An appeal of the exclusion must be filed, in writing, within five (5) calendar days of the notice's issuance with either the office of the City Manager or the Chief of Police. The notice of appeal shall contain information relative to the following:
 - i. the appellant's name;
 - ii. their address and a telephone number where they can be reached;
 - iii. a concise statement as to why the issuance of the exclusion notice was in error; and,
 - iv. attach a copy of the notice of exclusion appealed from.
3. A hearing on the appeal shall be had before the Municipal Court. The hearing will take place no more than ten (10) calendar days after the filing of the appeal, except in the event the Municipal Judge determines otherwise.
4. The City shall have the burden to show by a preponderance of evidence that the exclusion is based on conduct enumerated in MCC Section 9.20.020(b). A determination by a court of competent jurisdiction that the arresting officer had probable cause to effect the arrest of the individual for the conduct used as the basis of the exclusion shall be a rebuttable presumption that the exclusion was well founded.

5. Copies of any and all documents are intended to be used by the City at the hearing which are in its control shall be made available to the appellant at least two (2) days in advance of the hearing.

9.20.060 CONSEQUENCE OF NOTICE OF EXCLUSION.

In the event no appeal is properly and timely filed, then the exclusion shall continue for the period set out in the notice, but in no event, longer than ninety (90) days from the date of the notice's issuance. In the event a person found in the Milwaukie Core Area and Transit Zone is the subject of a valid Notice of Exclusion, that person shall be subject to arrest for Criminal Trespass as provided in ORS 164.245 (1995).

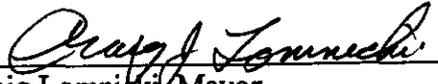
9.20.070 VARIANCES.

1. Variances from the exclusion may be granted at any time during the exclusion by either the Chief of Police or the City Manager in the event:
 - a. The individual is able to make a showing that he/she resides in the Core Area and Transit Zone and did so prior to the issuance of the exclusion notice;
 - b. The individual is employed by (or is a principal of) a business located in the Core Area and Transit Zone and was so prior to the issuance of the notice of exclusion;
 - c. The individual is attending a bona fide educational institution located in the Core Area and Transit Zone and was a registered student at that institution at and prior to the time of the issuance of the notice of exclusion; or
 - d. The individual is able to show they have an appointment with a health professional whose office is located within the Core Area and Transit Zone.
2. Provided that one or more of the conditions for issuance of the variance are met, the Chief of Police or the City Manager are authorized to adjust the terms of the variance such that the individual is allowed ingress to and egress from the Core Area and Transit Zone for the appropriate time period. Failure to comply with the terms of the variance as issued by either the City Manager or the Chief of Police will result in the variance being immediately voided and without effect and the person so affected will thenceforth be excluded from the Core area and Transit Zone for the remainder of the period originally set.

Read the first time on June 18, 1996 and moved to second reading by 5 - 0 vote of the City Council.

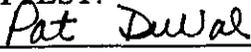
Read the second time and adopted by the City Council on June 18, 1996.

Signed by the Mayor on June 19, 1996.



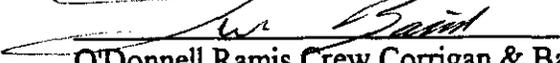
Craig Lomnicki, Mayor

ATTEST:

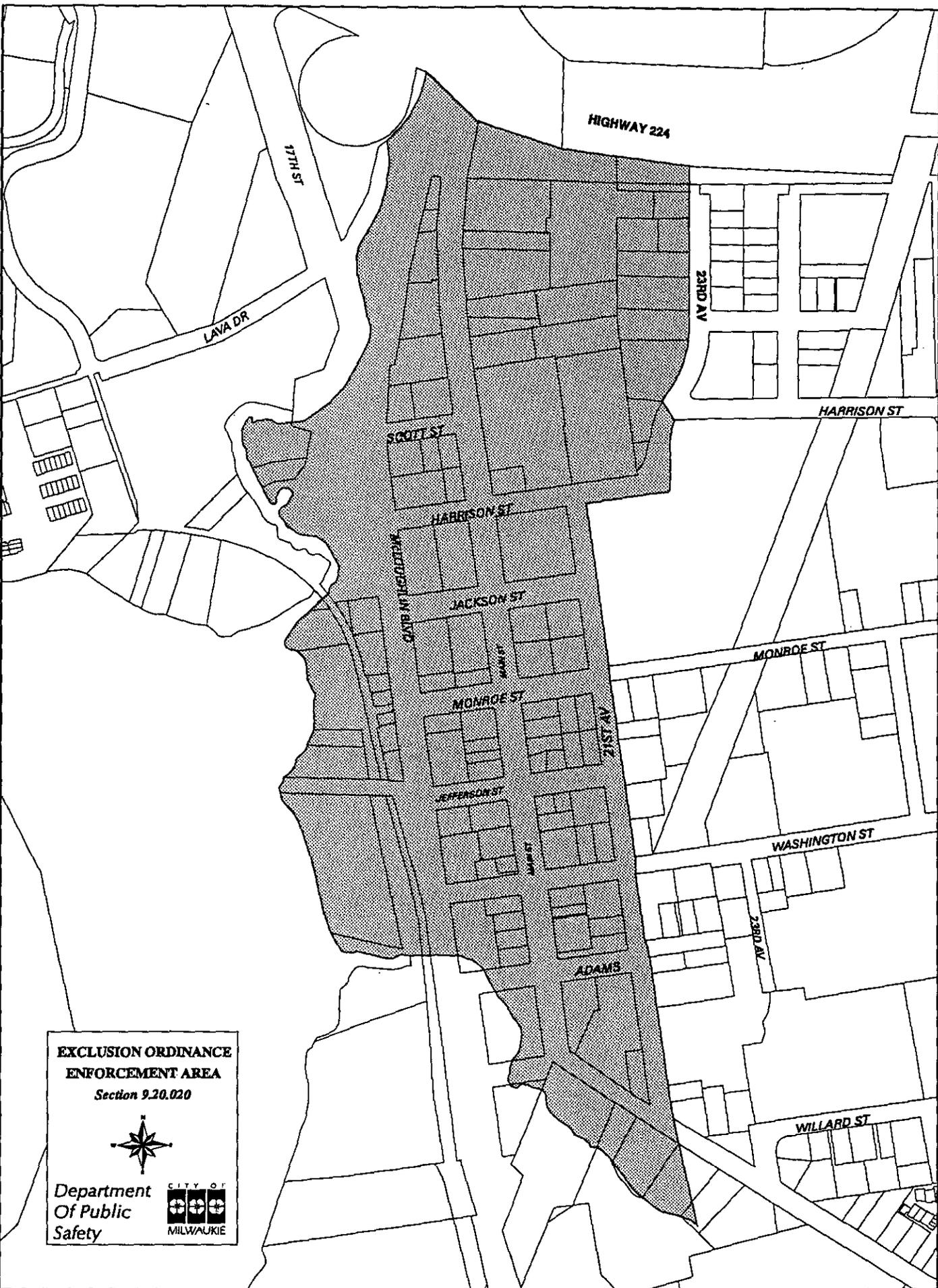


Pat DuVal, City Recorder

APPROVED AS TO FORM:



O'Donnell Ramis Crew Corrigan & Bachrach
pcc/acm/65021/exclusio.or3(4/25/96)



**EXCLUSION ORDINANCE
ENFORCEMENT AREA**
Section 9.20.020



Department
Of Public
Safety

