

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Work Session: An Ordinance Concerning Unruly Gatherings; Adding Sections 4.670 and 4.672 to the Eugene Code, 1971; Repealing Section 4.775 of that Code; and Amending Sections 4.990 and 4.996 of that Code

Meeting Date: October 10, 2012
Department: Eugene Police
www.eugene-or.gov

Agenda Item Number: A
Staff Contact: Lt. David Natt
Contact Telephone Number: 541-682-5642

ISSUE STATEMENT

This work session provides an opportunity to discuss how a social host ordinance could help address neighborhood livability issues, particularly in the areas surrounding the University of Oregon campus.

BACKGROUND

In July 2010, the Neighborhood Livability Working Group (NLWG) formed to help address behaviors and practices in the neighborhoods around the University of Oregon that negatively impact quality of life and public resources. Staffed by the City Manager's Office and Eugene Police Department and with participation from campus area neighborhood associations, the University of Oregon, Lane County, rental property managers/owners and college students, the NLWG identified a number of strategies to improve campus area livability, presenting a report to the City Council in September 2011. One of those strategies was the development of a Eugene social host ordinance.

The traditional approach to resolving noise, behavior issues and related problems has been increased police response followed by an aggressive enforcement action against individual party attendees for violations such as minor-in-possession. This costly approach has not been effective as existing ordinances do not provide a sufficient deterrent effect, and potential offenders have learned how to avoid the most significant sanctions. However, the experience of other communities with large higher education institutions has shown that a social host ordinance can be an effective tool in deterring the hosting of large parties in near-campus environments.

A staff team with representatives from Neighborhood Services and the Police Department has developed a draft ordinance, and the attached draft includes best practices identified in the NLWG report. That stakeholder group also has provided input throughout the process, as the ordinance was initially being drafted, and in the review of subsequent drafts.

In November 2000, the City Council adopted Ordinance 20217, known as the Special Response Ordinance, which established a fee for police responses to gatherings with more than 25 people. The ordinance is not effective in abating negative impacts from loud gatherings; only one first response fee has been assessed since the ordinance's adoption, and no money was collected. The proposed social host ordinance would address several of the problems with existing code, and is further addressed in the section entitled "Stakeholder Perspectives."

Social host ordinances are considered best practices in other communities with large higher education institutions to reduce the negative impacts of unruly alcohol-fueled parties, and to reduce the serious public health problems associated with binge drinking by young adults. This is accomplished through increasing accountability and liability for repeated offenses, for both the person holding or hosting the parties, as well as for the property owner on whose property the parties are held.

Metrics and Goals

This proposed ordinance aims to reduce the perceived negative impacts caused by alcohol-fueled parties. To assess the impact and effectiveness of the ordinance, staff will monitor the number of complaints received over time that are related to loud parties. For the period of September 1, 2011, through June 30, 2012, there were 1,209 complaints for loud parties, loud noise, or loud music citywide. Of this total, 530 originated in the near-campus area. In addition to these calls with an identified complainant, there were an additional 725 calls citywide related to noise where the complainant wished to remain anonymous.

In addition to analyzing complaints, staff will monitor the frequency the civil penalties are assessed, to determine if this is a tool that is effective at addressing the problem of properties that are chronically hosting unruly gatherings. During the 2011-2012 school year, there were 22 properties where four or more complaints for loud parties were received during the Thursday through Saturday timeframe. Each of these could have been subject to this ordinance. The number of properties receiving four or more complaints has increased significantly from six properties in school year 2010-2011, to 22 in 2011-2012.

It is believed that this strategy will contribute to a reduction in the frequency of unruly gatherings by holding both organizers and property owners accountable. Social host ordinances are now a common tool used to address this issue and have been enacted in over 150 cities and counties in 27 states. While not a “silver bullet” to what is a complex community problem, other communities have found social host ordinances to be an effective deterrent. Research conducted at 14 public universities in California revealed the largest decrease in off-campus binge drinking at those institutions that had aggressive enforcement programs that included social host ordinances coupled with strong media campaigns.

This has also been the experience in St. Cloud, Minnesota, which recently implemented a similar ordinance and presented their findings at the 2011 International Town and Gown Association Conference attended by staff.

Changes Since April 2012 City Council Work Session

At the April work session, several concerns were raised:

- 1. The fine should not be excessive, and should take into account the person who accidentally held a single unruly party.**

Language was added specifying, that to be cited, the person hosting or organizing the party should know or have reasonably known that the party was likely to become unruly. If a roommate is out of town and was not involved in organizing the party, s/he cannot be deemed to have reasonably known. Additional language was added to explicitly state that if a host or organizer contacts the police in an attempt to control a party that would be considered an affirmative defense.

2. **The fines should be reduced for a first offense.**

Upon further review, it was determined that the fine schedule should be removed from the ordinance, as Municipal Court establishes fine schedules. The ordinance proposes a \$1,000 maximum fine amount. The Municipal Court presiding judge would be responsible for establishing the "presumptive fine," or suggested fine amount. The presumptive fine is often not the actual fine that might be imposed but rather the amount that can be posted and forfeited without a court appearance. The presiding judge would also create internal sanctioning guidelines for judicial staff to follow.

Since each case is often unique, the guidelines would be applied with judicial discretion and could increase or decrease within the maximum fine limits depending on the severity of the case, the number of related violations and the overall sanction being imposed. When establishing the fine, similar violations and fines will be considered. The only current violation that holds a maximum penalty of \$1,000 is "Allowing Unlawful Consumption of Alcohol on Private Premises." The offense carries a presumptive fine of \$375, a fine of \$200 for a first offense, \$300 for a second offense and \$375 (presumptive fine amount) for the 3rd offense.

3. **Terms such as "Social Host" need better definitions.**

Additional definitions were provided for *host*, *facilitate* and *organize*.

Stakeholder Perspectives

The NLWG includes a diversity of interests and perspectives on how best to combat the impacts to livability in the campus area neighborhoods. While many in the group strongly support a social host ordinance, others have expressed reservations about this strategy. Although consensus was not reached, there is strong support. Staff has attempted to respond to input. The following is a summary of the main concerns raised within the group followed by any staff response.

University of Oregon staff expressed concern that any legislation be scheduled to allow full input and discussion by university students. The originally scheduled council dates in June 2012 were deferred to October through December to allow full and meaningful input and conversation with the University of Oregon students and leadership. The newly elected vice-president of the student government, Associated Students of the University of Oregon (ASUO), attended the last working group meeting and provided comments, and student representatives have had an open invitation to participate in the work of the NLWG since its inception.

Neighbors and property owners expressed concern that existing regulations are not fully enforced, and that additional regulations are not needed until existing regulations are fully enforced. There is a list of violations that will continue to be used, including noise, and violations of liquor laws.

Property owners have expressed concerns that the assessment of "response costs" is uncapped and unknown. A response cost is not calculated in the ordinance, because it will be based on the true costs of responding to each incident. Using the existing party-patrol staffing model and response times, the police response cost would be approximately \$864 for a 1.5-hour response, involving five officers and one sergeant. This cost includes salary, benefits, overtime, and vehicle costs. If the services were needed, additional costs could be added for emergency medical, or Public Works. They expressed concern that they could be liable for recovery costs for the fourth event at a property address even if the tenants have changed. They expressed concern that the impact is measured by property, so the fourth event at a single property address could result in assessment of civil penalties, even if the address was a large multi-family complex.

Communications Plan

When considering implementation of a social host ordinance, research of other jurisdictions has shown that education is a key component to success. A clear communication strategy will help residents and hosts better understand the ordinance and avoid the consequences of enforcement. The City of Eugene and the University of Oregon will work together using mostly non-paid outreach methods, similar to the outreach made to the area as new students arrive in the fall.

A team of communications professionals from the City and University of Oregon will coordinate on communications goals, and identify audiences, key messages and communications methods. Any efforts would be timed to population increases and residency changes in the area: for instance, as new students and residents, move into the university, west and south university areas in the fall, information would be pushed before, during and after the ordinance's implementation. A primary focus would be on using low- or no-cost news, social media, and face-to-face methods. In addition, information on the ordinance will be provided to other community residents and neighborhoods.

RELATED CITY POLICIES

This topic relates to the following:

- Council Goal - Safe Community Vision: A community where people feel safe, valued and welcome, and increased downtown development, as well as support for small and local businesses.
- Growth Management Policy 6 – Increase new housing density development while maintaining the character and livability of individual neighborhoods.
- Envision Eugene Pillar – Protect, Repair and Enhance Neighborhood Livability

COUNCIL OPTIONS

1. Proceed with the public hearing tentatively scheduled for November 19, 2012.
2. Postpone the hearing and ask for additional information or another work session.
3. Table or end the work on the proposed ordinance.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends that the ordinance be the subject of a public hearing on November 19. The ordinance could be subject to additional council discussion and refinement following the hearing.

SUGGESTED MOTION

No recommendation is being made for this work session.

ATTACHMENTS

- A. Draft Ordinance with formatting
- B. Draft Ordinance without formatting

FOR MORE INFORMATION

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Key to amendments made after 4/23 Work Session:

- Additions shown with double underline.
- Deletions shown with ~~double strikethrough~~.

ORDINANCE NO. _____

AN ORDINANCE CONCERNING UNRULY GATHERINGS; ADDING SECTIONS 4.670 AND 4.672 TO THE EUGENE CODE, 1971; REPEALING SECTION 4.775 OF THAT CODE; AND AMENDING SECTIONS 4.990 AND 4.996 OF THAT CODE.

The City Council of the City of Eugene finds as follows:

A. Unruly gatherings, often involving loud noise and unlawful consumption of alcohol by minors, foster a range of criminal conduct. Some of the typical offenses include obstruction of public streets, assault, menacing, harassment, disorderly conduct, criminal mischief, and littering. Unruly gatherings and associated criminal behavior disturb the peace of nearby residents, pose a danger to persons attending the gathering and to other persons in the vicinity, detract from the livability of the neighborhood, and reduce the value of nearby properties.

B. Property owners, by themselves or through their agents, have the ability to prevent unruly gatherings and to deter recurrences. Although they may not themselves commit any of the offenses at issue, owners should be held responsible, not only if they organize, host, or facilitate unruly gatherings, but also if they allow or tolerate those offenses on property that they control as owner.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Sections 4.670 and 4.672 of the Eugene Code, 1971, are added to provide as follows:

Morals and Public Conduct

4.670 Unruly Gatherings - Definitions. As used in sections 4.672, 4.990(1), and 4.996(5) and (6) of this code, the following words and phrases mean:

***Alcoholic liquor.* An alcoholic beverage containing more than one-half of one percent of alcohol by volume.**

Facilitate. To encourage, support or participate in unruly conduct at a gathering.

Host. To invite or to receive persons to a social gathering on property of which one has control as owner, lessee, tenant or licensee.

Organize. To encourage attendance (at an unruly gathering).

Response costs. The costs associated with responses by law enforcement, fire and other emergency response providers to unruly gatherings, including but not limited to:

- (a) Salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with unruly gatherings, and the administrative costs attributable to such response(s);
- (b) The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured while responding to, remaining at or leaving the scene of an unruly gathering.
- (c) The cost of repairing any city equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of an unruly gathering.

Juvenile. Any person under eighteen years of age.

Minor. Any person under twenty-one years of age.

~~Unruly conduct. Any Unruly gathering. A party or gathering of more than five persons at the property where unruly conduct occurs, and where alcohol is served or consumed, and where any two or more of the following behaviors that occur on the property where the gathering occurs takes place or which occur on adjacent public or private property adjoining the property where the gathering occurs:~~

- (a) Any violation of state or city of Eugene laws relating to the sale, service, possession or consumption of alcoholic liquor;
- ~~(b) Groups of more than five persons who have moved from the gathering into public streets;~~
- (b) Assault, as defined in section 4.729 of this code;
- (c) Menacing, as defined in section 4.730 of this code;
- (d) Harassment, as defined in section 4.726 of this code;
- (e) Intimidation, as defined in section 4.731 of this code;
- (f) Disorderly conduct, as defined in section 4.725 of this code;
- (g) Noise disturbance, as defined in sections 4.080 – 4.083 of this code;
- (h) Criminal mischief, as defined in sections 4.780 and 4.782 of this code;
- (i) Public urination or defecation, as defined in section 4.770 of this code; and
- ~~(k) Interfering with a police officer, as defined in section 4.907 of this code; and~~
- (j) Littering, as defined in section 6.805 of this code, by a person who attended the party or gathering.

Owner. The person or entity listed as the owner in the Lane County property tax records.

Property.

- (a) Any dwelling unit, including but not limited to a house, home, apartment, condominium, hotel or motel room; a duplex, triplex, apartment house or other building with multiple dwelling units;

- (b) A hall, meeting room, shelter or other structure that serves as a gathering place;
- (c) Any private real property adjacent to and under the same ownership as the structure described in sections (a) and (b) of this definition; and
- (d) Public right-of-way.

Twelve-month period. The twelve months immediately preceding the most recent citation.

4.672 Unruly Gatherings – Provisions.

- (1) No person shall organize, host or facilitate an unruly gathering if the person knows or reasonably should know that it is, or is likely to become, an unruly gathering.
- (2) It is an affirmative defense to a citation issued for a violation of subsection (1) of this section that the person who organized, hosted or facilitated an unruly gathering contacted the police as soon as any of the violations or offenses listed in the definition of “unruly gathering” occurred.
- (3) A person who violates subsection (1) of this section shall be subject to a fine prescribed by subsection (1) of section 4.990 of this code. In addition, a person who is convicted of violating subsection (1) of this section for a second time, and for any additional time, within a twelve-month period shall pay an administrative civil penalty in the amount of response costs, regardless of whether the offense occurred at the same or a different property, as provided in subsection (5) of section 4.996 of this code.
- (4) If an unruly gathering occurs at the same private property more than three times in a twelve-month period, the owner of the property shall be liable for response costs for the fourth and any subsequent occurrence that occurs within a twelve-month period of three other occurrences at the same property.
- (5) After an unruly gathering occurs at a private property, and after any future occurrence of an unruly gathering at the same property, city staff will notify the owner(s) of the property. The notice shall include a copy of this ordinance and a description of the owner’s potential liability for response costs under subsection (~~34~~) of this section.
- (6) If a juvenile violates subsection (1) of this section or is the owner of the property and the juvenile is or, but for the juvenile’s age would be, responsible for payment of response costs under this section, the person’s parent(s) or legal guardian(s) are responsible for response costs.
- (7) Financial liability under this section is joint and several.
- (8) Appeals.
 - (a) If a civil penalty is imposed upon a property owner as provided in subsection (~~34~~) of this section, and subsection (6) of section 4.996 of this code, the property owner or property manager may appeal the determination that a violation occurred or amount of the penalty to the city manager in accordance with section 2.021 of this code.
 - (b) In an appeal under this section, when determining to what extent, if any, the owner should be responsible for response costs, the city

manager shall consider evidence of the following actions on the part of the property owner to prevent or abate the nuisance, even if unsuccessful:

- 1. On the first occurrence of an unruly gathering, the owner or owner's agent issued a written warning that future violations may result in initiation of eviction proceedings.**
- 2. On the second occurrence of an unruly gathering, the owner or owner's agent issued a written notice that termination of the rental agreement will be initiated for the tenant(s) responsible for any future unruly gatherings.**
- 3. On the third occurrence of an unruly gathering, the owner or owner's agent initiated eviction proceedings against the tenant(s) responsible for the unruly gathering.**
- 4. Prior to the fourth occurrence of an unruly gathering, new tenants replaced those who committed the previous violations, and the owner or owner's agent implemented reasonable precautions to deter or prevent any additional unruly gatherings.**

Section 2. Section 4.775 of the Eugene Code, 1971, is repealed.

~~4.775~~ Special Response Fee.

- ~~(1) Applicability. Subject to the limitations contained in subsections (2) through (7) of this section, the city may impose a special response fee when the police respond to a gathering of 25 or more persons on private property ("the premises") and they arrest or cite two or more individuals for violation of the Oregon criminal statutes or provisions of this code listed in this subsection. As used in this section, "the premises" means each separate address to which a response is made, including its curtilage.~~
- ~~(a) All criminal homicide offenses in ORS 163.095 through 163.145.~~
 - ~~(b) All sexual offenses in ORS 163.355 through 163.445 and 163.670 through 163.700, and section 4.755 of this code.~~
 - ~~(c) All felony drug offenses as enumerated in ORS 475.992.~~
 - ~~(d) Endangering Welfare of a Minor, ORS 163.575.~~
 - ~~(e) All arson offenses in ORS 164.315 and 164.325.~~
 - ~~(f) Reckless Burning, ORS 164.335.~~
 - ~~(g) All criminal mischief offenses in ORS 164.345 through 164.365, and sections 4.780 and 4.782 of this code.~~
 - ~~(h) All assault offenses in ORS 163.160 through 163.185, ORS 163.208, and section 4.729 of this code.~~
 - ~~(i) Recklessly Endangering Another Person, ORS 163.195.~~
 - ~~(j) All gambling offenses in ORS 167.122 through 167.147.~~
 - ~~(k) Hazing, ORS 163.197.~~
 - ~~(l) Sale, Possession and Use of Fireworks, ORS 480.120.~~
 - ~~(m) All intimidation offenses in ORS 166.155 and 166.165, and section 4.731 of this code.~~
 - ~~(n) All weapon offenses in ORS 166.180 through 166.480 with the exception of ORS 166.370.~~
 - ~~(o) All escape offenses in ORS 162.145 through 162.165, and section 4.915 of this code.~~

- ~~(p) Offensive Littering, section 6.805 of this code.~~
- ~~(q) Disorderly Conduct, section 4.725 of this code.~~
- ~~(r) Minor in Possession, section 4.115 of this code.~~
- ~~(s) Furnishing Alcohol to a Minor, section 4.110 of this code.~~
- ~~(t) Allowing Alcohol Consumption by Minors on Private Premises, section 4.131 of this code.~~
- ~~(u) Prohibited Sales, section 4.155 of this code.~~
- ~~(v) False Swearing on a Keg Receipt, section 4.908 of this code, made unlawful under section 4.191 of this code.~~
- ~~(w) Prohibited Noise, sections 4.080 through 4.083 of this code.~~
- ~~(x) Interfering with a Peace Officer, ORS 162.247, and section 4.907 of this code.~~
- ~~(y) Harassment, section 4.726 of this code.~~
- ~~(z) Menacing, section 4.730 of this code.~~
- ~~(aa) Hindering Prosecution, section 4.912 of this code.~~
- ~~(bb) Resisting Arrest, section 4.910 of this code.~~
- ~~(cc) Urinating/Defecating, section 4.770 of this code.~~
- ~~(2) Notice.~~
 - ~~(a) Upon the occurrence of a response under subsection (1) of this section, and in circumstances where the person(s) responsible for the gathering was not the first to call police to request assistance, a "First Response Warning Notice" shall be provided to:

 - ~~1. The person(s) responsible for the gathering;~~
 - ~~2. The person(s) in charge of the premises, if different than the person specified in (a)1., and if present at the time of the gathering; and~~
 - ~~3. Owner(s) of the premises, if different than the persons specified in (a)1. and (a)2., and if present at the time of the gathering.~~

~~If the activity or conduct occurs on premises not occupied by the owner and the owner is not present at the gathering, a copy of the notice shall be mailed to the owner. An owner who receives notice pursuant to the immediately preceding sentence shall not be deemed a notice recipient for purposes of liability for the special response fee as set forth in subsection (4) of this section. If a notice recipient is a minor, such notice shall be mailed to the parents or guardians of the minor by certified mail, return receipt requested.~~~~
 - ~~(b) Any person to whom a first response warning notice has been issued may contest the validity of the notice by filing a written request for review with the municipal court. The request must be filed within 15 days from the date the notice was issued and shall set forth with particularity the reason(s) the determination is invalid. The decision of the municipal court shall be based on the report of the incident giving rise to the notice and the written information provided by the person to whom the notice was issued. The municipal court's decision on the validity of the notice shall be final, and shall be issued within ten days from the date the request is received. If the notice is found invalid, it shall be so noted on all entries in the city's records. The filing of a written request for review with the municipal court shall not toll the running of the 90 day period specified in subsection (3) of this section.~~
- ~~(3) Special Response Fee. Each notice recipient shall be liable for a special response fee as set forth in subsection (4) of this section if within 90 days after~~

~~issuance of the notice the police respond to a subsequent gathering of 25 or more persons on the same premises and the police arrest or cite two or more persons for violation of the Oregon criminal statutes or provisions of this code listed in subsection (1) of this section. Notwithstanding the prior sentence, a notice recipient at a gathering shall not be liable for the special response fee if the notice recipient was the person who was the first individual to call the police to request assistance, and the person can demonstrate that he or she took reasonable steps to prevent the violations. Other notice recipients at the same gathering likewise shall not be held liable for the special response fee if those persons can demonstrate they took reasonable steps to prevent the violation(s). A separate special response fee may be charged for each subsequent police response. The special response fee is defined as the total cost incurred by the city caused by the response, including, but not limited to, the actual cost of police department personnel, medical costs, equipment utilized or damaged, and administrative overhead; however, the initial special response fee imposed shall not exceed the sum of \$1,500.00.~~

- ~~(4) Liability for Payment of Special Response Fee. All notice recipients who are:
 - ~~(a) Person(s) responsible for the gathering; or~~
 - ~~(b) Person(s) in charge of the premises, if different than the person specified in (4)(a); or~~
 - ~~(c) Owner(s) of the premises, if different than the persons specified in (4)(a) and (4)(b), and who are present at any subsequent gathering within the 90 day period specified in subsection (3) of this section on the same premises where they received the "First Response Warning Notice" that gives rise to liability for payment of the special response fee shall be jointly and severally liable for the full amount of the fees imposed.~~~~
- ~~(5) Adoption of Special Response Fee Schedule. The city manager shall adopt a fee schedule, billing procedures and other matters necessary for the administration of this section in the manner provided in section 2.020 of this code.~~
- ~~(6) Special Response Cost Recovery - Collection. A statement for the costs incurred by the city for each subsequent police response shall be delivered to each notice recipient liable for payment pursuant to subsection (3) of this section. The amount shall constitute a debt due to the city from each notice recipient, may be collected in any manner authorized by law, and is recoverable in a civil action brought in the name of the city in a court of competent jurisdiction for recovery of the amount plus reasonable attorney fees. A full refund of funds paid by an individual notice recipient will be issued to any notice recipient who has paid any portion of a special response fee assessed pursuant to subsection (3) of this section, if the notice recipient can demonstrate that all persons cited or arrested at the gathering for which the fee has been assessed were acquitted in court. For purposes of this section, the term acquitted does not include cases that are dismissed pursuant to the successful completion of any Eugene Municipal Court or City Prosecutor diversion agreement.~~
- ~~(7) Special Response Cost Recovery - Appeal. A person who is issued a statement of costs under subsection (6) of this section may appeal in the manner provided by section 2.021 of this code. The appeal shall be heard and determined by a hearings officer in the manner set forth in section 2.021 of this code.~~

~~(8) Remedies Not Exclusive. The remedies set forth in this section are nonexclusive and are in addition to any and all other remedies available to the city as provided by operation of law.]~~

Section 3. Subsection (1) of Section 4.990 of the Eugene Code, 1971, is amended by adding the following entry in numerical order to the list of penalties as follows:

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.

<u>Section</u>	<u>Penalty</u>
4.672(1)	\$500 fine for first offense; \$750 fine for second offense occurring within a twelve-month period (See section 4.996(5) for administrative civil penalties); \$1,000 fine for third and subsequent offenses occurring within a twelve-month period (See section 4.996(5) for administrative civil penalties). <u>Fine not to exceed \$1,000.</u>

Section 4. Subsections (5) and (6) of Section 4.996 of the Eugene Code, 1971, are added to provide as follows:

4.996 Administrative Civil Penalty.

(5) *Second and subsequent violations of subsection (1) of section 4.672 of this code within a twelve-month period are subject to the imposition of response costs as defined in section 4.670 of this code.*

(6) *Upon fourth and any subsequent violation of subsection (1) of section 4.672 of this code within a twelve-month period, at a property as defined in section 4.670 of this code, the owner of the property is subject to the imposition of response costs as defined in section 4.670 of this code.*

Section 5. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this

___ day of May, 2012

City Recorder

Approved by the Mayor this

___ day of May, 2012

Mayor

ORDINANCE NO. _____

AN ORDINANCE CONCERNING UNRULY GATHERINGS; ADDING SECTIONS 4.670 AND 4.672 TO THE EUGENE CODE, 1971; REPEALING SECTION 4.775 OF THAT CODE; AND AMENDING SECTIONS 4.990 AND 4.996 OF THAT CODE.

The City Council of the City of Eugene finds as follows:

A. Unruly gatherings, often involving loud noise and unlawful consumption of alcohol by minors, foster a range of criminal conduct. Some of the typical offenses include obstruction of public streets, assault, menacing, harassment, disorderly conduct, criminal mischief, and littering. Unruly gatherings and associated criminal behavior disturb the peace of nearby residents, pose a danger to persons attending the gathering and to other persons in the vicinity, detract from the livability of the neighborhood, and reduce the value of nearby properties.

B. Property owners, by themselves or through their agents, have the ability to prevent unruly gatherings and to deter recurrences. Although they may not themselves commit any of the offenses at issue, owners should be held responsible, not only if they organize, host, or facilitate unruly gatherings, but also if they allow or tolerate those offenses on property that they control as owner.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Sections 4.670 and 4.672 of the Eugene Code, 1971, are added to provide as follows:

Morals and Public Conduct

4.670 Unruly Gatherings - Definitions. As used in sections 4.672, 4.990(1), and 4.996(5) and (6) of this code, the following words and phrases mean:

***Alcoholic liquor.* An alcoholic beverage containing more than one-half of one percent of alcohol by volume.**

***Facilitate.* To encourage, support or participate in unruly conduct at a gathering.**

***Host.* To invite or to receive persons to a social gathering on property of which one has control as owner, lessee, tenant or licensee.**

***Organize.* To encourage attendance (at an unruly gathering).**

Response costs. *The costs associated with responses by law enforcement, fire and other emergency response providers to unruly gatherings, including but not limited to:*

- (a) Salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with unruly gatherings, and the administrative costs attributable to such response(s);*
- (b) The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured while responding to, remaining at or leaving the scene of an unruly gathering.*
- (c) The cost of repairing any city equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of an unruly gathering.*

Juvenile. *Any person under eighteen years of age.*

Minor. *Any person under twenty-one years of age.*

Unruly gathering. *A party or gathering of more than five persons where alcohol is served or consumed, and where any two or more of the following behaviors occur on the property where the gathering takes place or on adjacent property:*

- (a) Any violation of state or city of Eugene laws relating to the sale, service, possession or consumption of alcoholic liquor;*
- (b) Assault, as defined in section 4.729 of this code;*
- (c) Menacing, as defined in section 4.730 of this code;*
- (d) Harassment, as defined in section 4.726 of this code;*
- (e) Intimidation, as defined in section 4.731 of this code;*
- (f) Disorderly conduct, as defined in section 4.725 of this code;*
- (g) Noise disturbance, as defined in sections 4.080 – 4.083 of this code;*
- (h) Criminal mischief, as defined in sections 4.780 and 4.782 of this code;*
- (i) Public urination or defecation, as defined in section 4.770 of this code; and*
- (j) Littering, as defined in section 6.805 of this code, by a person who attended the party or gathering.*

Owner. *The person or entity listed as the owner in the Lane County property tax records.*

Property.

- (a) Any dwelling unit, including but not limited to a house, home, apartment, condominium, hotel or motel room; a duplex, triplex, apartment house or other building with multiple dwelling units;*
- (b) A hall, meeting room, shelter or other structure that serves as a gathering place;*
- (c) Any private real property adjacent to and under the same ownership as the structure described in sections (a) and (b) of this definition; and*
- (d) Public right-of-way.*

Twelve-month period. *The twelve months immediately preceding the most recent citation.*

4.672 Unruly Gatherings – Provisions.

- (1) **No person shall organize, host or facilitate an unruly gathering if the person knows or reasonably should know that it is, or is likely to become, an unruly gathering.**
- (2) **It is an affirmative defense to a citation issued for a violation of subsection (1) of this section that the person who organized, hosted or facilitated an unruly gathering contacted the police as soon as any of the violations or offenses listed in the definition of “unruly gathering” occurred.**
- (3) **A person who violates subsection (1) of this section shall be subject to a fine prescribed by subsection (1) of section 4.990 of this code. In addition, a person who is convicted of violating subsection (1) of this section for a second time, and for any additional time, within a twelve-month period shall pay an administrative civil penalty in the amount of response costs, regardless of whether the offense occurred at the same or a different property, as provided in subsection (5) of section 4.996 of this code.**
- (4) **If an unruly gathering occurs at the same private property more than three times in a twelve-month period, the owner of the property shall be liable for response costs for the fourth and any subsequent occurrence that occurs within a twelve-month period of three other occurrences at the same property.**
- (5) **After an unruly gathering occurs at a private property, and after any future occurrence of an unruly gathering at the same property, city staff will notify the owner(s) of the property. The notice shall include a copy of this ordinance and a description of the owner’s potential liability for response costs under subsection (4) of this section.**
- (6) **If a juvenile violates subsection (1) of this section or is the owner of the property and the juvenile is or, but for the juvenile’s age would be, responsible for payment of response costs under this section, the person’s parent(s) or legal guardian(s) are responsible for response costs.**
- (7) **Financial liability under this section is joint and several.**
- (8) **Appeals.**
 - (a) **If a civil penalty is imposed upon a property owner as provided in subsection (4) of this section, and subsection (6) of section 4.996 of this code, the property owner or property manager may appeal the determination that a violation occurred or amount of the penalty to the city manager in accordance with section 2.021 of this code.**
 - (b) **In an appeal under this section, when determining to what extent, if any, the owner should be responsible for response costs, the city manager shall consider evidence of the following actions on the part of the property owner to prevent or abate the nuisance, even if unsuccessful:**
 1. **On the first occurrence of an unruly gathering, the owner or owner’s agent issued a written warning that future violations may result in initiation of eviction proceedings.**
 2. **On the second occurrence of an unruly gathering, the owner or owner’s agent issued a written notice that termination of**

- the rental agreement will be initiated for the tenant(s) responsible for any future unruly gatherings.*
3. *On the third occurrence of an unruly gathering, the owner or owner's agent initiated eviction proceedings against the tenant(s) responsible for the unruly gathering.*
 4. *Prior to the fourth occurrence of an unruly gathering, new tenants replaced those who committed the previous violations, and the owner or owner's agent implemented reasonable precautions to deter or prevent any additional unruly gatherings.*

Section 2. Section 4.775 of the Eugene Code, 1971, is repealed.

~~[4.775] **Special Response Fee.**~~

- ~~(1) **Applicability.** Subject to the limitations contained in subsections (2) through (7) of this section, the city may impose a special response fee when the police respond to a gathering of 25 or more persons on private property ("the premises") and they arrest or cite two or more individuals for violation of the Oregon criminal statutes or provisions of this code listed in this subsection. As used in this section, "the premises" means each separate address to which a response is made, including its curtilage.~~
- ~~(a) All criminal homicide offenses in ORS 163.095 through 163.145.~~
 - ~~(b) All sexual offenses in ORS 163.355 through 163.445 and 163.670 through 163.700, and section 4.755 of this code.~~
 - ~~(c) All felony drug offenses as enumerated in ORS 475.992.~~
 - ~~(d) Endangering Welfare of a Minor, ORS 163.575.~~
 - ~~(e) All arson offenses in ORS 164.315 and 164.325.~~
 - ~~(f) Reckless Burning, ORS 164.335.~~
 - ~~(g) All criminal mischief offenses in ORS 164.345 through 164.365, and sections 4.780 and 4.782 of this code.~~
 - ~~(h) All assault offenses in ORS 163.160 through 163.185, ORS 163.208, and section 4.729 of this code.~~
 - ~~(i) Recklessly Endangering Another Person, ORS 163.195.~~
 - ~~(j) All gambling offenses in ORS 167.122 through 167.147.~~
 - ~~(k) Hazing, ORS 163.197.~~
 - ~~(l) Sale, Possession and Use of Fireworks, ORS 480.120.~~
 - ~~(m) All intimidation offenses in ORS 166.155 and 166.165, and section 4.731 of this code.~~
 - ~~(n) All weapon offenses in ORS 166.180 through 166.480 with the exception of ORS 166.370.~~
 - ~~(o) All escape offenses in ORS 162.145 through 162.165, and section 4.915 of this code.~~
 - ~~(p) Offensive Littering, section 6.805 of this code.~~
 - ~~(q) Disorderly Conduct, section 4.725 of this code.~~
 - ~~(r) Minor in Possession, section 4.115 of this code.~~
 - ~~(s) Furnishing Alcohol to a Minor, section 4.110 of this code.~~
 - ~~(t) Allowing Alcohol Consumption by Minors on Private Premises, section 4.131 of this code.~~
 - ~~(u) Prohibited Sales, section 4.155 of this code.~~

- ~~(v) False Swearing on a Keg Receipt, section 4.908 of this code, made unlawful under section 4.191 of this code.~~
- ~~(w) Prohibited Noise, sections 4.080 through 4.083 of this code.~~
- ~~(x) Interfering with a Peace Officer, ORS 162.247, and section 4.907 of this code.~~
- ~~(y) Harassment, section 4.726 of this code.~~
- ~~(z) Menacing, section 4.730 of this code.~~
- ~~(aa) Hindering Prosecution, section 4.912 of this code.~~
- ~~(bb) Resisting Arrest, section 4.910 of this code.~~
- ~~(cc) Urinating/Defecating, section 4.770 of this code.~~
- ~~(2) Notice.~~
 - ~~(a) Upon the occurrence of a response under subsection (1) of this section, and in circumstances where the person(s) responsible for the gathering was not the first to call police to request assistance, a "First Response Warning Notice" shall be provided to:
 - ~~1. The person(s) responsible for the gathering;~~
 - ~~2. The person(s) in charge of the premises, if different than the person specified in (a)1., and if present at the time of the gathering; and~~
 - ~~3. Owner(s) of the premises, if different than the persons specified in (a)1. and (a)2., and if present at the time of the gathering.~~If the activity or conduct occurs on premises not occupied by the owner and the owner is not present at the gathering, a copy of the notice shall be mailed to the owner. An owner who receives notice pursuant to the immediately preceding sentence shall not be deemed a notice recipient for purposes of liability for the special response fee as set forth in subsection (4) of this section. If a notice recipient is a minor, such notice shall be mailed to the parents or guardians of the minor by certified mail, return receipt requested.~~
 - ~~(b) Any person to whom a first response warning notice has been issued may contest the validity of the notice by filing a written request for review with the municipal court. The request must be filed within 15 days from the date the notice was issued and shall set forth with particularity the reason(s) the determination is invalid. The decision of the municipal court shall be based on the report of the incident giving rise to the notice and the written information provided by the person to whom the notice was issued. The municipal court's decision on the validity of the notice shall be final, and shall be issued within ten days from the date the request is received. If the notice is found invalid, it shall be so noted on all entries in the city's records. The filing of a written request for review with the municipal court shall not toll the running of the 90-day period specified in subsection (3) of this section.~~
- ~~(3) Special Response Fee. Each notice recipient shall be liable for a special response fee as set forth in subsection (4) of this section if within 90 days after issuance of the notice the police respond to a subsequent gathering of 25 or more persons on the same premises and the police arrest or cite two or more persons for violation of the Oregon criminal statutes or provisions of this code listed in subsection (1) of this section. Notwithstanding the prior sentence, a notice recipient at a gathering shall not be liable for the special response fee if the notice recipient was the person who was the first individual to call the police to request assistance, and the person can demonstrate that he or she~~

~~took reasonable steps to prevent the violations. Other notice recipients at the same gathering likewise shall not be held liable for the special response fee if those persons can demonstrate they took reasonable steps to prevent the violation(s). A separate special response fee may be charged for each subsequent police response. The special response fee is defined as the total cost incurred by the city caused by the response, including, but not limited to, the actual cost of police department personnel, medical costs, equipment utilized or damaged, and administrative overhead; however, the initial special response fee imposed shall not exceed the sum of \$1,500.00.~~

- ~~(4) **Liability for Payment of Special Response Fee.** All notice recipients who are:
 - ~~(a) Person(s) responsible for the gathering; or~~
 - ~~(b) Person(s) in charge of the premises, if different than the person specified in (4)(a); or~~
 - ~~(c) Owner(s) of the premises, if different than the persons specified in (4)(a) and (4)(b), and who are present at any subsequent gathering within the 90-day period specified in subsection (3) of this section on the same premises where they received the "First Response Warning Notice" that gives rise to liability for payment of the special response fee shall be jointly and severally liable for the full amount of the fees imposed.~~~~
- ~~(5) **Adoption of Special Response Fee Schedule.** The city manager shall adopt a fee schedule, billing procedures and other matters necessary for the administration of this section in the manner provided in section 2.020 of this code.~~
- ~~(6) **Special Response Cost Recovery – Collection.** A statement for the costs incurred by the city for each subsequent police response shall be delivered to each notice recipient liable for payment pursuant to subsection (3) of this section. The amount shall constitute a debt due to the city from each notice recipient, may be collected in any manner authorized by law, and is recoverable in a civil action brought in the name of the city in a court of competent jurisdiction for recovery of the amount plus reasonable attorney fees. A full refund of funds paid by an individual notice recipient will be issued to any notice recipient who has paid any portion of a special response fee assessed pursuant to subsection (3) of this section, if the notice recipient can demonstrate that all persons cited or arrested at the gathering for which the fee has been assessed were acquitted in court. For purposes of this section, the term acquitted does not include cases that are dismissed pursuant to the successful completion of any Eugene Municipal Court or City Prosecutor diversion agreement.~~
- ~~(7) **Special Response Cost Recovery – Appeal.** A person who is issued a statement of costs under subsection (6) of this section may appeal in the manner provided by section 2.021 of this code. The appeal shall be heard and determined by a hearings officer in the manner set forth in section 2.021 of this code.~~
- ~~(8) **Remedies Not Exclusive.** The remedies set forth in this section are nonexclusive and are in addition to any and all other remedies available to the city as provided by operation of law.]~~

Section 3. Subsection (1) of Section 4.990 of the Eugene Code, 1971, is amended by adding the following entry in numerical order to the list of penalties as follows:

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.

<u>Section</u>	<u>Penalty</u>
4.672(1)	<i>Fine not to exceed \$1,000.</i>

Section 4. Subsections (5) and (6) of Section 4.996 of the Eugene Code, 1971, are added to provide as follows:

4.996 Administrative Civil Penalty.

(5) *Second and subsequent violations of subsection (1) of section 4.672 of this code within a twelve-month period are subject to the imposition of response costs as defined in section 4.670 of this code.*

(6) *Upon fourth and any subsequent violation of subsection (1) of section 4.672 of this code within a twelve-month period, at a property as defined in section 4.670 of this code, the owner of the property is subject to the imposition of response costs as defined in section 4.670 of this code.*

Section 5. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this

Approved by the Mayor this

___ day of _____, 2012

___ day of _____, 2012

City Recorder

Mayor