

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Action: 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: January 28, 2013
Department: Eugene Police
www.eugene-or.gov

Agenda Item Number: 3
Staff Contact: Sgt. David Natt
Contact Telephone Number: 541-682-5154

ISSUE STATEMENT

This proposed ordinance addresses neighborhood livability issues arising from unruly gatherings throughout the City and reflects changes proposed to address concerns raised at the public hearing in November 2012.

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.

In September 2011, a report was presented to the City Council outlining strategies to improve livability, and one of those strategies was the development of a social host ordinance for the City of Eugene.

In April 2012, a preliminary draft ordinance was presented to the City Council at a work session. The approval schedule for this ordinance was modified to better accommodate the schedules of students at the University of Oregon.

In October 2012, a second draft ordinance was presented to the City Council at a work session that addressed the issues raised at the first work session.

In November 2012, a public hearing was held on a third draft ordinance that addressed the issues raised earlier.

This draft ordinance makes additional changes, based on the public comment received and the council direction at the November public hearing. Outlined below are the substantive issues raised and how the issues were addressed in this draft.

- The number of five people was too few to constitute an “unruly gathering” and this would result in citations for a gathering of roommates within one house. *The number of participants needed to constitute an “unruly gathering” is increased from more than five to 10 or more.*
- Everyone in a large multi-family complex would be penalized as if they’d violated the social host ordinance, even if it was a different unit that had been responsible for the unruly gathering. *The language in the appeals section is clarified to specify that only the people receiving the citation should receive the notices from property owners.*
- Owners of multi-family properties should not be assessed recovery costs after four offenses, because the offenses could come from four different units in a very short time frame. *For owners of properties of more than 10 units, the City is to consider whether the owner implemented measures to prevent or discourage unruly gatherings. Clear direction will be provided to the hearings examiner that the intent is to hold property owners responsible who do not take reasonable steps to abate this problem. To address the primary concern of livability for all innocent neighbors including those in multi-family units, no change was made to the number of citations before a property owner is responsible.*
- Including the offense of littering is not appropriate, as littering is not an indicator of the types of unruly gatherings this ordinance is intended to address. *Littering was struck from the list of offenses.*
- Options for community service or restorative justice should be explicitly listed. *Community service and restorative justice are explicitly listed as possible penalties.*

The following concerns were raised. Staff considered the issues, and no resulting changes were made.

- The number of offenses required before property owner liability is triggered in multi-family housing should be increased. *Because this ordinance is intended to reduce the repeated negative impact from unruly gatherings on residents, regardless of the type of housing they reside in, the number of unruly gatherings property owner liability was not changed.*
- The ordinance imposes significant financial burdens on students. *Although fine amounts will be established by the courts, similar offenses have a first offense fine of approximately \$200. Additionally, restorative justice and community service were added as penalty options.*
- The ordinance redirects Eugene Police Department resources on to students rather than more pertinent outlets. *Based on the experience in other communities, a social host ordinance can serve as an effective deterrent and actually reduce the demand for police response.*

Additional Background

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 the City Manager's Office and 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. Staff have also revised the ordinance in response to council and community feedback during the two previous work session cycles, and the public hearing in November 2012.

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 Special Response Ordinance has not been 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.

The Municipal Court Presiding Judge is responsible for establishing the "presumptive fine," or suggested fine amount, up to the maximum fine called out in the ordinance of \$1,000. A maximum fine of \$1,000 allows progressively increasing penalties for repeat offenses, as determined by the presiding judge. 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 a \$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 third offense.

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. This is a significant increase from the six properties reported during the 2010-2011 school year.

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.

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 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. A primary focus would be 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

There are several options the council may pursue.

1. Approve the ordinance, which would repeal the special response fee and implement a social host ordinance.
2. Amend the ordinance.
3. Not approve the ordinance.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends that the ordinance be approved.

SUGGESTED MOTION

I move to adopt Council Bill 5081, an ordinance concerning unruly gatherings.

ATTACHMENTS

- A. Draft Ordinance – changes since November public hearing
- B. Draft Ordinance – clean copy

FOR MORE INFORMATION

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Key to revisions made after November 19 Public Hearing:

Additions are shown in double underline;

Deletions are shown in 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, and 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.**

***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 ten or 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 – 4.084 of this code;*
- (h) Criminal mischief, as defined in sections 4.780 and 4.782 of this code;*
and
- (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 or group of dwelling units at a single street number address, including but not limited to a house, duplex, triplex, apartment(s), condominium(s) or other structure(s) with one or more dwelling units, hotel or motel room(s);*
- (b) A hall, meeting room or other structure that serves as a gathering place;*
- (c) Any private real property adjacent to, and under the same ownership as, the location of a structure described in section (a) or (b) of this definition;*
- (d) Public right-of-way.*

“Property” does not include a restaurant, bar or tavern.

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

4.672 Unruly Gatherings – Provisions.

- (1) No person shall organize or host an unruly gathering if the person knows or reasonably should know that it is 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 or hosted 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~~ owner’s agent 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 to the residents of the**

dwelling unit where the unruly gathering occurred that future violations may result in initiation of eviction proceedings.

2. *On the second occurrence of an unruly gathering at the same dwelling unit, 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 at the same dwelling unit, 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.*

(c) In an appeal by an owner of property where ten or more dwelling units are located, if no more than two of the violations occurred at the same dwelling unit, the city manager shall consider, in addition to the factors listed in subsection (8)(b) of this section, whether the owner or owner's agent implemented other measures to prevent or discourage unruly gatherings. Such measures may include, but are not limited to, employing a resident manager, providing a local agent who is accessible to tenants at all times for emergencies, hiring on-site security, and including behavioral standards in the rental agreement.

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)	<u>Fine not to exceed \$1,000, or community service as determined by the court (which may include restorative justice), or both.</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

Approved by the Mayor this

___ day of _____, 201_

___ day of _____, 201_

City Recorder

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, and criminal mischief. 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.*

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 ten or more 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 – 4.084 of this code;**
- (h) **Criminal mischief, as defined in sections 4.780 and 4.782 of this code; and**
- (i) **Public urination or defecation, as defined in section 4.770 of this code.**

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

Property.

- (a) **Any dwelling unit or group of dwelling units at a single street number address, including but not limited to a house, duplex, triplex, apartment(s), condominium(s) or other structure(s) with one or more dwelling units, hotel or motel room(s);**
- (b) **A hall, meeting room or other structure that serves as a gathering place;**
- (c) **Any private real property adjacent to, and under the same ownership as, the location of a structure described in section (a) or (b) of this definition;**
- (d) **Public right-of-way.**

“Property” does not include a restaurant, bar or tavern.

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

4.672

Unruly Gatherings – Provisions.

- (1) No person shall organize or host an unruly gathering if the person knows or reasonably should know that it is 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 or hosted 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 owner’s agent 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 to the residents of the dwelling unit where the unruly gathering occurred that future violations may result in initiation of eviction proceedings.**
 - 2. On the second occurrence of an unruly gathering at the same dwelling unit, 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 at the same dwelling unit, 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.*
- (c) *In an appeal by an owner of property where ten or more dwelling units are located, if no more than two of the violations occurred at the same dwelling unit, the city manager shall consider, in addition to the factors listed in subsection (8)(b) of this section, whether the owner or owner's agent implemented other measures to prevent or discourage unruly gatherings. Such measures may include, but are not limited to, employing a resident manager, providing a local agent who is accessible to tenants at all times for emergencies, hiring on-site security, and including behavioral standards in the rental agreement.*

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 that 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, or community service as determined by the court (which may include restorative justice), or both.</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
____ day of _____, 201__

Approved by the Mayor this
____ day of _____, 201__

City Recorder

Mayor