

ORDINANCE NO. _____

AN ORDINANCE CONCERNING STATE LAW CONSISTENCY; AMENDING CHAPTER 4 (OFFENSES) AND CHAPTER 5 (TRAFFIC); AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.110 of the Eugene Code, 1971, is amended to provide:

4.110 Sales, Etc., to Certain Persons Prohibited.

- (1) No person shall sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.
- (2) No one other than the person's parent or guardian shall sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. ***A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian.*** A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.
- (3) No person who exercises control over private real property may knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property. The prohibitions of this subsection apply only to a person who is present and in control of the location at the time the consumption occurs. The prohibitions of this subsection do not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.
- (4) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor.

Section 2. Section 4.240 of the Eugene Code, 1971, is repealed.

~~**[4.240 Use or Possession of Less than One Ounce of Marijuana.**~~

- ~~(1) No person shall knowingly or intentionally use or possess less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant marijuana unless used or possessed pursuant to a prescription valid within the state of Oregon.~~
- ~~(2) For purposes of this section, marijuana includes the leaves, stems, flowers and seeds of the plant Cannabis family Moraceae, whether growing or not; but shall not include the resin or oil extracted from any part of such plant, and~~

~~every compound, manufacture, salt, derivative, mixture or preparation from such resin or oil, including hashish and natural or synthetic tetrahydrocannabinol; and shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt derivative, mixture or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.]~~

Section 3. Section 4.241 of the Eugene Code, 1971, is added to provide:

4.241 **Use of Marijuana Items in Public Place.**

- (1) *No person shall engage in the use of marijuana items in a public place.***
- (2) *For purposes of this section, “marijuana items” and “public place” have the meanings given those terms in section 5, chapter 1, Oregon Laws 2015.***

Section 4. Section 4.242 of the Eugene Code, 1971, is added to provide:

4.242 **Marijuana in Public View.**

- (1) *No person may produce, process, or store homegrown marijuana or homemade cannabinoid products or cannabinoid concentrates if the homegrown marijuana or homemade cannabinoid products or cannabinoid concentrates can be readily seen by normal unaided vision from a public place.***
- (2) *For purposes of this section, “produce,” “process,” “homegrown,” “homemade,” “cannabinoid products,” “cannabinoid concentrates,” and “public place” have the meanings given those terms in section 5, chapter 1, Oregon Laws 2015.***

Section 5. Section 4.782 of the Eugene Code, 1971, is amended to provide:

4.782 **Criminal Mischief in the Second Degree.** A person commits the crime of criminal mischief in the second degree if:

- (a)** The person violates section 4.780, and as a result thereof, damages property in an amount exceeding [~~\$100~~] **\$500**; or
- (b)** Having no right to do so nor reasonable ground to believe that the person has such right, the person intentionally damages property of another, or, the person recklessly damages property of another in an amount exceeding [~~\$100~~] **\$500**.

Section 6. Section 4.805 of the Eugene Code, 1971, is amended by amending the definition of "Enter or remain unlawfully" to provide:

4.805 **Trespassing - Definitions.** As used in sections 4.806 to 4.810, except as the context requires otherwise:

"Enter or remain unlawfully" means:

- (a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public [or] **and** the entrant is not otherwise licensed or privileged to do so; or
- (b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge; or
- (c) To enter premises that are open to the public after being lawfully directed not to enter the premises.

Section 7. Section 4.812 of the Eugene Code, 1971, is amended to provide:

4.812 **Violating Privacy of Another.**

- (1) No person, other than an officer performing a lawful duty, shall enter upon land or into a building used in whole or part as a dwelling not the person's own without permission of the owner or person entitled to possession thereof and while so trespassing look through or attempt to look through a window, door or transom of the dwelling or that part of the building used as a dwelling with the intent to violate the privacy of any other person.
- (2) No person shall knowingly make or record a photograph, motion picture, videotape or other visual recording of another person in a state of nudity without the consent of the person being recorded if, at the time the recording is being made or recorded, the person being recorded is in a place and circumstance where the person has a reasonable expectation of personal privacy.
- (3) No person shall, for the purpose of arousing or gratifying the sexual desire of the person, be in a location to observe another person in a state of nudity without the consent of the other person while the other person is in a place and circumstance where the person has a reasonable expectation of personal privacy.
- (4) ***No person shall knowingly make or record a photograph, motion picture, videotape or other visual recording of another person's intimate area without the consent of the person being recorded and the person being recorded has a reasonable expectation of privacy concerning the area.***
- (45) Subsections (2) and (3) of this section shall not apply to:
 - (a) Any legitimate medical procedure performed by or under direction of a person licensed to provide medical service for the purpose of medical diagnosis, treatment, education or research, including, but not limited to, the recording of medical procedures; and
 - (b) Any activity undertaken in the course of bona fide law enforcement or corrections activity or necessary to the proper functioning of the criminal justice system, including but not limited to the operation and

management of jails, prisons and other youth and adult corrections facilities.

- (56) As used in subsections (2), (3), and (4) **and (5)** of this section, the following terms and phrases mean:

Intimate Area. Means nudity, or undergarments that are being worn by a person and are covered by clothing.

Make or record a photograph, motion picture, videotape or other visual recording. Includes, but is not limited to, making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

Nudity. Means uncovered, or less than opaquely covered, post-pubescent human genitals, pubic areas or a post-pubescent human female breast below a point immediately above the top of the areola. Nudity includes a partial state of nudity.

Place and circumstance where the person has a reasonable expectation of personal privacy. Includes, but is not limited to, a bathroom, dressing room, locker room that includes an area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

Public view. Means that an area can be readily seen and that a person within the area can be distinguished by normal unaided vision when viewed from a public place as that term is defined in Section 4.890 of this code.

Reasonable expectation of privacy concerning the intimate area. Means that the person intended to protect the intimate area from being seen and has not exposed the intimate area to public view.

Section 8. Section 4.888 of the Eugene Code, 1971, is amended to provide:

4.888 Weapons - Unlawful Possession of Firearms.

- (1) Except as otherwise provided in this section, section 4.889, ORS 166.260, 166.270, 166.274, 166.280, 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm if the person knowingly:
- (a) Carries any firearm concealed upon the person, without having a license to carry the firearm as provided in ORS 166.291 and 166.292;
 - (b) [~~Carries~~] **Possesses a handgun that is** concealed and readily accessible [~~about~~] **to** the person within any vehicle ~~which is under the person's control or direction any handgun, without having a license to carry such firearm as provided in ORS 166.291 and 166.292;~~ or
 - (c) Possesses a firearm and:
 - 1. Is under 18 years of age;

2. Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;
 3. Was committed to the Mental Health and Development Disability Services Division under ORS 426.130 within four years prior to January 1, 1990; or
 4. Was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness.
- (2) This section does not prohibit:
- (a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:
 1. Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or
 2. Temporarily for hunting, target practice or any other lawful purpose; or
 - (b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270 and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or keep any such firearm at the person's place of residence or place of business is required of any such citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.
- (3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

Section 9. Section 4.990 of the Eugene Code, 1971, is amended by repealing the penalty for 4.240; adding penalties for 4.241, 4.242 and 4.812(4) in numerical order to the list of penalties; and amending the penalty for 4.729 to provide:

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>
4.240	250 fine
4.241	1000 fine
4.242	1000 fine
4.729	[500] 2500 fine or [400 days] 1 year in jail, or both
4.812(2), [and] (3) and (4)	5,000 fine or one year in jail, or both

Section 10. Section 5.005 of the Eugene Code, 1971, is amended to provide:

5.005 **State Traffic Laws.** The provisions of ORS Chapters 801, 802, 803, 805, 806, 807, 809, 810, 811, 813, 814, 815, 816, 818, 819, 820, 821, 822, 823, 825 and OAR 740.100.0010 issued thereunder, and Chapter 153, except for ORS 153.019, ORS 153.020, and ORS 153.021, are hereby adopted, and violations thereof shall constitute an offense against the city.

Section 11. The City Recorder, at the request of, or with the concurrence 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.

Section 12. As a result of certain Bills that passed during the 2015 Legislation Session which have become effective, it is necessary to amend the City Code provisions relating to City offenses and State Traffic Laws immediately. Therefore, pursuant to the provisions of Section 32(2) of the Eugene Charter of 2002, with the affirmative vote of two-thirds of the members of the City Council, this Ordinance shall become effective upon adoption by the Council and approval by the Mayor, or passage over the Mayor's veto.

Passed by the City Council this

_____ **day of January, 2016**

Approved by the Mayor this

_____ **day of January, 2016**

City Recorder

Mayor