

## **PSF-2.06 - Drug Free Zone Ordinance**

### **DRUG FREE ZONE ORDINANCE**

*Administrative Rules Adopted by Police Bureau Pursuant to Rule-Making Authority*

ARB-PSF-2.06

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#### ***Section 1 - Policy***

Members will vigorously act on narcotic offenses and utilize all available state statutes and local ordinances to include the DFZ Ordinance.

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#### ***Section 2 - Procedure***

##### **Directive Specific Definitions**

A Drug Free Zone (DFZ) Exclusion Notice is a notice issued by a sworn member to the defendant arrested within the boundaries of a Designated DFZ for any of the listed ORS criminal drug related offenses. The notice informs the defendant of the right to appeal, effective dates of the exclusion and the criminal charge for violating the exclusion.

A Drug Free Variance Form is used to record variances for social service needs, employment, or residency for persons who have received DFZ Exclusion Notices. The variance permits a person who has been excluded to enter the DFZ solely for the purpose and by the route stated in the variance. This form may only be filled out by a Bureau designee or Bureau authorized social service agency employee.

A DFZ Map is a notice containing a visual display issued by a member to a defendant receiving a DFZ Exclusion Notice. The map defines all boundaries and areas for Designated DFZs from which the defendant has been excluded in both written and visual formats.

A Social Service Agency (SSA) DFZ Variance Agreement is a form which, when signed by a Bureau designee and a SSA, authorizes the SSA to grant social service variances to persons excluded from DFZs.

When geographic areas of the City have a significantly higher level of narcotics activity than other areas of the City substantiated by objective analysis, that area may be considered for recommendation as a Designated DFZ to the City Council as allowed for by City Code 14.100. The Commander of the precinct in which this situation exists will provide the Operations Branch manager with an objective analysis of the level of narcotic activity in the area. Based on that report, the Operations Branch manager will make a recommendation to the Chief as to whether the area will be submitted to City Council for recommendation as a Designated DFZ. Areas already designated as DFZs must be

recommended for or against continuance every two years at the City Council review. The Bureau must support a recommendation for continuance with documented evidence in the form of arrest statistics, etc.

## **RU Commander Responsibilities**

RU commanders or their designees will ensure that:

a. The RU designated by the Operations Branch manager will be responsible for the identification and training of the appropriate SSAs under the guidelines of the DFZ Ordinance regarding the issuance of social service variances. The designated RU will maintain a file that will contain SSA contracts and SSA information identifying employees that have been trained to issue variances. The designated RU will assign a sergeant or sworn member to coordinate the DFZ Program to include associated training and variance review.

The designee will have the right to reject variances if improperly issued or written.

b. Photographs of persons excluded along with current exclusion forms will be attached and maintained in all involved RUs. Polaroid or X-Imaging photographs may be used to record excluded persons.

c. The RU of origin of arrest and exclusion will supply photographs of all excluded persons to SSAs that are authorized to issue a DFZ variance within that RU's boundaries.

## **Sworn Member Responsibilities**

a. Upon arrest of person within a Designated DFZ area for Attempt Possession of a Controlled Substance, ORS 161.405; Criminal Conspiracy to Possess a Controlled Substance, ORS 161.450; Possession of a Controlled Substance, ORS 475.992; Conspiracy to Commit Delivery of a Controlled Substance, ORS 475.992; Delivery of a Controlled Substance, ORS 475.992; Attempt Delivery of an Imitation Controlled Substance, ORS 161.405; Conspiracy to Commit Delivery of an Imitation Controlled Substance, ORS 161.405; or Delivery of an Imitation Controlled Substance, ORS 475.991, the arresting member will issue a DFZ Notice of Exclusion in either English or Spanish determined by the arrested person's primary language. The charge of PCS for less than one ounce of marijuana does not constitute grounds for exclusion under the ordinance.

b. Complete the DFZ Notice of Exclusion while attempting to obtain the signature acknowledging receipt of a copy of the Exclusion notice of the person to whom the exclusion is being issued. Members will not compromise their safety or the safety of the public in an effort to gain a signature. If members reasonably believe that the removing of handcuffs from a person under arrest would compromise safety, they will write "handcuffed" in the signature block on the notice of exclusion. Members will write "refused" in the signature block of the exclusion notice if a person under arrest refuses to sign the notice of exclusion. Members will record in the narrative of the Custody Report that a signature of the person arrested was not obtained due to member safety or public safety concerns or refusal to sign the

notice of exclusion.

c. Issue a DFZ Map to persons receiving a DFZ Notice of Exclusion. Members will issue English or Spanish versions of the map and Notice of Exclusion based upon the primary language of the arrested person. Members will record in the narrative portion of the Custody Report the language version of the issued map, exclusion notice and the location where both were issued. Members will fully complete in writing the Notice of Exclusion. Members should be aware that the exclusion will not be valid until six days after the exclusion form is issued, and exclusions are effective for a 90 day period beginning on the sixth day after the DFZ Exclusion Notice was issued. The beginning or effective date for the exclusion should be computed by counting six days from the date of issuance, i.e., if February 1st was the date the exclusion notice was issued to the excluded person, then February 7th is the beginning date the exclusion will take effect. The ending date for the exclusion should be computed by counting ahead 90 days starting with the beginning date and ending 90 days later, i.e., if February 7th was the beginning date then May 7th would be the ending date. No person should be arrested for Criminal Trespass in the Second Degree if he if she is found in a Designated DFZ on the ending day.

d. Upon observing a person reasonably believed to be in violation of a previously issued exclusion notice or variance, the member may stop and detain that person and conduct an investigation to determine if a crime has been committed. The crime of Criminal Trespass in the Second Degree, ORS 164.245, is committed by a person within a DFZ while on a public street, sidewalk or public right of way when one or more of the following situations exist:

1. A valid DFZ Notice of Exclusion was issued with no associated valid variance.
2. The person is outside any provision of a valid variance.
3. The person does not have a valid variance in their possession.

e. Determine if a valid exclusion and variance exists by first requesting a PPDS inquiry through BOEC or conducting the same inquiry through a PPDS terminal or MDC. Verification of exclusions and variances is accomplished by first selecting the PPDS Name Search, PF10 key, then making an inquiry into the PPDS Miscellaneous Name Information Field by selecting the PPDS PF5 key which will advise members if exclusion notices or variances were issued, the status of both, and the time frame for the validity of both.

f. Make an arrest for the violation of either an exclusion notice or variance upon confirming that a violation has occurred unless otherwise authorized by their supervisor. Members will not issue CILC for violations of exclusion notices or variances. When an arrest is made for Criminal Trespass in the Second Degree, members may search persons incident to arrest for member safety reasons as required by DIR 870.20 whenever a person is taken into custody and will be booked into jail. Members may add

additional charges if contraband is found upon the person under arrest for Criminal Trespass in the Second Degree. All persons arrested for Criminal Trespass in the Second Degree by violation of an exclusion notice or variance will be lodged at MCDC.

g. Complete Custody Report documenting the specific location the offense took place, i.e., SW corner of NW 3rd Ave. at NW Couch on the sidewalk, or the sidewalk area of NW 4th Ave. near its intersection with NW Davis St. Members will document how they obtained conformation regarding the violation of an exclusion notice or variance. Members will record the original case number for the DFZ Notice of Exclusion in the refer to case number box on the Custody Report.

### **Complaint Signer's Responsibilities**

The Complaint Signer will:

a. Review all copies of DFZ Exclusion Notices monitoring the completeness and accuracy of those forms. Exclusions will be revoked by the CS if any of the following information is not present on exclusion forms being reviewed: defendant's name, dates of exclusion specific to the date of the arrest, date the exclusion takes effect, date the exclusion is to end, signature of the defendant or the reason for not obtaining the defendant's signature reported on the exclusion form or the connected Custody Report.

b. Upon finding incomplete information or errors on a DFZ Exclusion Notice, the Records Division (Records) will be notified in writing through a Special Report that the notice is void.

c. Monitor criminal court cases connected to the issuance of a DFZ Exclusion Notice. In the event that a criminal case connected to the issuance of a DFZ Exclusion Notice is declined, dismissed or not issued, Records will be notified through a Special Report that the connected exclusion notice is to be voided.

d. Monitor the District Attorney Case Tracking System (DACTS) weekly. Exclusions will continue to be valid only if the defendant is charged or found guilty of PCS or DCS.

e. Upon being notified by the Hearings Officer regarding the appeal of an exclusion, notify Records through a Special Report to void the exclusion due to receiving an appeal notification; notify the precinct DFZ designee of the appeal; contact the District Attorney's (DA's) Intake Office to obtain a certified copy of the Probable Cause (PC) Affidavit, Judge's PC Order and/or the Grand Jury Indictment if available. Records will be notified through a Special Report regarding exclusions being upheld or denied at the termination of the appeal hearing process.

f. Forward all copies of exclusion variances issued by and received from SSAs to the RU designee responsible for reviewing variances.

g. Notify Records regarding the revoked status of the variance through the use of a Special Report

when notified by members having contacted a person with a valid exclusion outside the guidelines of a variance or a SSA reporting a variance that has been revoked on a person with a valid exclusion.

h. Notify the appropriate SSA when a person with a valid exclusion is contacted by members outside the guidelines of a variance.

i. Maintain the files on: DFZ Exclusion Notice report whether valid or void and with or without variance; all SSA personnel authorized to issue variances; and appealed exclusion notices to include connected variances and other associated reports.

## **Exclusion Variances**

Variances for exclusions issued under the DFZ Ordinance fall under one of the following three categories: social service, employment/employer or residential. These variances will be issued to persons who have been excluded from Designated DFZs while in need of accessing the specific assigned location for the reason stated in the variance. Only persons specifically authorized and trained by the Bureau to issue variances and designated members may issue variances.

a. Social service variances will be issued only by SSA within a Designated DFZ who have drug and alcohol recovery programs, and have signed the SSA DFZ Variance Agreement with the Bureau. The SSA signing the agreement must:

1. Have written rules and regulations prohibiting violations of all state laws related to the enforcement of the DFZ Ordinance and be willingly able to enforce those rules.

2. A variance to an existing exclusion may only be issued for outpatient therapy and support services or medical care and treatment. A person receiving a variance must be enrolled in one of the listed social service or treatment programs/services of the agency issuing the variance. Variances will not be issued for day shelter, overnight shelter or meal services. The agency will forward all variances issued to the CS's by the end of the business day of issuance. If an agency finds that a person who has applied for or received a variance is in violation of any state law related to the enforcement of the DFZ Ordinance or terms of the variance issued, that agency must refuse issuance of a variance or immediately revoke the existing variance for the person in violation. Upon revoking a variance the SSA must notify the variance holder and CS of the revocation by 1200 hours of the next business day.

3. Employment/employer variances will be issued only by the Bureau designee of the RU assigned to coordinate the DFZ Program. A person applying for such a variance must show proof of employment as an employee or employer within a Designated DFZ at the time they were arrested. A variance can only be issued for the Designated DFZ

containing the business address or employment location.

4. Residential variances will be issued by only the designee of the RU assigned to coordinate the DFZ Program. A person applying for such a variance must show proof of residency within a Designated DFZ at the time he/she were arrested. Acceptable proof of residency will exist in a rental or lease agreement which displays a 30 day or longer residency contract period.

5. On each variance the following will be recorded: the specific purpose for the variance, destination for the person issued the variance, most direct route to be taken to the from the listed location of the variance, dates the variance will be in effect and the specific days of the week and time of day the variance will be valid. Persons or members issuing variances will ensure that variance holders understand the terms of the variance and the sanctions that could be imposed if the terms of the variance are violated. Multiple variances may be issued to the same person for reasons of residency, employment/ employer location or social service provision if the locations for these separate variance issues exist in different DFZs.

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### ***Section 3 - References***

ORS 161.405 Attempt, described

ORS 161.450 Conspiracy, described

ORS 164.245 Criminal Trespass in the Second Degree

ORS 475.991 Unlawful Delivery of an Imitation Controlled Substance

ORS 475.992 Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses

City Code 14.100 Drug Free Zone Ordinance

DIR 631.33 Immigration and Naturalization Services

Drug Free Variance (English and Spanish Version) (DVD)

Drug Free Zone Map (English and Spanish Version) (DVD)

Notice of Exclusion/Drug Free Zone (English and Spanish Version) (DVD)

Social Service Agency Contract to Issue Variances (DVD)

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### ***HISTORY***

Submitted for inclusion in PPD March 6, 2002.

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