



## It's Time to End Eugene's Exclusion Zone

Briefing Paper

People have the right to move freely through our public sphere, to access the public library, transit station and other public spaces in downtown. Those who break the law should be held accountable. However, individuals should not be subjected to banishment based solely on an accusation that they have committed a crime, unless they have first been found guilty. That is what is happening now in Eugene's downtown under the exclusion program.

Under the current exclusion program, officially called the Downtown Public Safety Zone (DPSZ), police officers are using unfettered discretion to choose who will receive an exclusion notice when issuing a ticket or making an arrest within the downtown zone. Once cited, these individuals face a court process that does not require that defendants be provided with a court-appointed attorney. In addition, these individuals face exclusion even before they have been found guilty of the offense for which they are being banned.

The ACLU of Oregon opposes the continuation of this flawed program. The city has created a short-cut around important criminal due process protections without providing any objective evidence that it has improved public safety in Eugene. Serious questions remain about its impact on crime in other parts of the city as well as its impact on homeless residents downtown. Unless the city can show evidence that the program is not being used to unfairly target individuals and that it has been effective in reducing crime, it should not be extended – and certainly should not be made permanent. **It is time for this program to end!**

### Due Process Concerns:

- **Low standard required for exclusion** - The ordinance only requires that a judge find that there is a "preponderance of evidence" that the person committed an offense within the zone. This is too low a standard to allow for banishing a person for one year. The higher standard of "beyond a reasonable doubt" required for a criminal conviction should be the threshold for exclusion. Judges currently have the power to exclude someone as part of their sentence after a criminal conviction and do not need the DPSZ to impose exclusion.
- **No requirement to provide an attorney** – Even though the penalty for violating an exclusion order is criminal, the process for fighting an exclusion order is nominally civil, and the city does not provide an attorney to those who cannot afford one. This means people are attempting to defend themselves in a confusing maze where they

have to negotiate at least two tracks at once – the exclusion process and the underlying violation or criminal offense. The court advocate program created by the city has not been effective in assisting those facing exclusion.

- **No clear standards for when an exclusion citation is issued** - According to the police department, officers have been encouraged to use their judgment in deciding when to issue an exclusion citation. This raises concerns around racial profiling and other types of discrimination. While having officers exercise judgment is generally a positive thing, if there is unequal or haphazard enforcement it can lead to unfair targeting of individuals by officers. The department has not indicated whether or not there are standards or criteria to guide officers in deciding when to issue an exclusion citation. It is critical that there be clearly defined criteria in order to avoid profiling and ensure that the program is not being used to target people unfairly.

#### **No Evidence of DPSZ Effectiveness:**

- **Lack of sufficient data** - The report provided by the Police Department on the DPSZ offers no evidence that the program has been effective in reducing crime or removing repeat offenders from the downtown core. There is no data on which specific offenses led to exclusions. In addition, the police have stated that this program is necessary to deal with repeat offenders, but they have provided no data to show that repeat offenders are the targets of the exclusion citations. The lack of data on who is receiving exclusion citations is troubling as this should be the primary focus of the data collection for the DPSZ. Without clear data on who is being excluded and why, it is impossible to evaluate the program's effectiveness and fairness.
- **High dismissal rate by municipal court** - Almost a quarter (23.5%) of all 90-day exclusion citations have been denied or dismissed once they reach the court. The police have provided no explanation for this high rate of dismissal or denials. The City of Eugene should be investigating these questions in order to properly analyze how this program is functioning and whether it is being administered fairly by police and the municipal court.

**The City Council is set to vote on renewing the DPSZ on February 27, 2012**

**Contact Mayor Piercy and the Eugene City Council and tell them to end the downtown exclusion zone today! [mayorcouncilandcitymanager@ci.eugene.or.us](mailto:mayorcouncilandcitymanager@ci.eugene.or.us) or phone: (541) 682-5010.**