

Chapter 12.18
CONDUCT IN PUBLIC PLACES
Sections:

- 12.18.010 Purpose.
- 12.18.020 Authority.
- 12.18.030 Definitions.
- 12.18.040 Prohibited acts generally.
- 12.18.050 City manager authorized to adopt rules.
- 12.18.060 Rules of conduct.
- 12.18.070 Enforcement and exclusion.
- 12.18.080 Warning – Conduct subject to exclusion.
- 12.18.090 Notice.
- 12.18.100 Right to appeal – Hearing procedure.
- 12.18.110 Application for waiver.
- 12.18.120 Violation – Criminal trespass.

12.18.010 Purpose.

The purpose of this chapter is to protect law-abiding citizens in their use of public buildings, public parks and city parking lots, and to authorize the city to exclude persons violating applicable laws from specific public places where such conduct is violent or disruptive of other city customers, city employees, or the conduct of city operations.

12.18.020 Authority.

A. In addition to other remedies provided for violation of this code or any laws of the state of California, a code enforcement officer, authorized city employee, or peace officer may exclude any person who violates any applicable provision of law in any place subject to this chapter in accordance with the provisions of this section. In addition, a police officer or authorized employee may exclude any person who violates any applicable provision of the rules of conduct in any place subject to this chapter. Nothing in this section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the California or U.S. Constitution. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable provisions of law or rules of conduct, shall be subject to exclusion from a public place as provided by this chapter.

B. The city manager may delegate his or her authority and assign a person or persons to be in charge of the various city properties for the purpose of enforcing rules of conduct. In addition, police and authorized employees shall have the authority to enforce the rules of conduct on city property, as deemed necessary by the person in charge, or when actually observed by the police officer or authorized employee.

12.18.030 Definitions.

For purposes of this section, the following definitions apply:

A. "Applicable provision of law" includes any applicable provision of this code, of any city ordinance applying to use of public places, any applicable criminal or traffic law of the state of California, any law regarding controlled substances or alcoholic beverages, and any applicable Mendocino County ordinance or regulation. For purposes of this section, "applicable" means relating to the person's conduct in the public place.

B. "City property" means any city owned or leased building, structure, or land, including but not limited to City Hall, Town Hall, and the community center, city parks, trails, and open space, and city parking lots within Fort Bragg.

C. "Public place" means any public property, including city property.

D. "Rules of conduct" means rules and regulations implementing this chapter, including but not limited to FBMC sec.12.18.060, and adopted by the city manager under the authority of FBMC sec.12.18.050.

12.18.040 Prohibited acts generally.

A. Any act or thing prohibited or the failing to do any act or thing commanded to be done in this chapter, in a public place, within the corporate limits of the City of Fort Bragg and such other areas as may be specified in this chapter, is hereby declared to be an offense against the public peace, safety, health, morals and general welfare of the people of the city of Fort Bragg.

B. Any act or omission made unlawful under this chapter shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing any such act or omission.

12.18.050 City manager authorized to adopt rules.

A. The city manager or a designee is authorized to make such rules and regulations implementing this Chapter and not otherwise inconsistent or in conflict with other law, as the city manager finds necessary for the better control and management of city property, including buildings, parking facilities, parks, trails, and open space. The rules of conduct may be posted at various city properties in abbreviated form and are not meant to be all-inclusive of the conduct prohibited or required by this chapter. Any person aggrieved by a rule or regulation may appeal to the city council to amend or repeal a rule by filing with the city clerk a petition which shall be presented to the city council at its next regular meeting. Until and unless amended or repealed by the council, any rule or regulation made by the city manager or a designee shall be in full force and effect as if it were an ordinance, as of the date of notice from the city manager adopting the rule or regulation.

B. Before adopting any rule, the city manager shall provide at least 30 days' notice to the city council with a copy of the proposed rule.

12.18.060 Rules of conduct.

While on or about city property:

A. No person shall violate any federal, state, or City of Fort Bragg law.

B. No person shall enter or remain on any city property for purposes other than to conduct legitimate business with the city or to use that property lawfully under the laws and rules that apply.

C. No person shall enter or attempt to enter any secure portion of any city property that is not open to members of the general public without authorization from the city manager or a designee.

D. No person shall deface, damage, or destroy city property.

E. No person shall engage in conduct that degrades the appearance of city property, including but not limited to depositing trash, defacing property, or spitting, urinating or defecating on city property.

F. No person shall engage in conduct that disrupts or interferes with operations of the city government, or disturbs city customers or employees, including but not limited to conduct that creates unreasonable noise or consists of aggressive or threatening physical behavior offensive to a reasonable person under the circumstances.

G. No person shall engage in conduct that subjects customers or employees of the city government to annoyance or alarm, including but not limited to conduct that involves the use of abusive or threatening language or gestures.

H. Unless specifically authorized, no person shall use a public place for the purpose of housing or camping, including but not limited to placing objects such as vehicles, bicycles, backpacks, carts, or other items in a manner that interferes with free passage.

I. No person shall refuse to obey any direction of a city government employee.

J. No person shall violate any provisions posted on any city parking facility.

12.18.070 Enforcement and exclusion.

A. An exclusion issued under the provisions of this chapter shall be for the following timeframes:

1. Thirty days for an exclusion based on an offense not covered by subsection (A)(2) or (A)(3) of this section.

2. Ninety days if the basis for the exclusion is a misdemeanor offense created by state law. In addition, if the person to be excluded has been excluded from any public place at any time within two years before the date of the present exclusion, the exclusion shall also be for 90 days.

3. One hundred eighty days if the basis for the exclusion is a felony or a sex offense as defined by state law. In addition, if the person to be excluded has been excluded from one or more public places on two or more occasions within two years before the date of the present exclusion, the exclusion shall also be for 180 days.

4. Nothing herein precludes a no-contact condition of pretrial release or probation condition which operates to exclude the individual from specified public properties.

B. If a person is issued a subsequent exclusion while a previous exclusion is stayed pending appeal (or pending judicial review, should a court stay the exclusion), the stayed exclusion shall be counted in determining the appropriate length of the subsequent exclusion. If the previous exclusion is set aside, the term of the subsequent exclusion shall be reduced, as if the previous exclusion had not been issued. If multiple exclusions issued to a single person for one public place are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.

12.18.080 Warning – Conduct subject to exclusion.

Before issuing an exclusion under this chapter, the police officer (or person authorized to enforce rules implementing this chapter) shall first give the person a warning and opportunity to desist from the violation of law or rule. An exclusion shall not be issued if the person promptly complies with the direction and desists from violating the law or rule. Notwithstanding the provisions of this section, no warning shall be required if the person is to be excluded for engaging in conduct that:

A. Is classified as a felony or as a misdemeanor under the following chapters of the California Revised Statutes, or is an attempt, solicitation or conspiracy to commit any such felony or misdemeanor defined in the California Penal Code:

1. Sec. 602. Trespasses; What acts included; Punishment
2. Sec. 594. Vandalism; Punishment;
3. Sec. 242. Battery defined;
5. Sec. 415. Disturbing the peace;
6. Sec. 422. Punishment for threats;
7. Sec. 647. Disorderly conduct; Punishment for violation;
8. Sec. 148. Resisting public or peace officers or emergency medical technicians in discharge of their duties; Removal of weapon from person or presence of public or peace officer; or

B. Otherwise involves a controlled substance or alcoholic beverage; or

C. Has resulted in injury to any person or damage to any property; or

D. Constitutes a violation of any of the following provisions of the Fort Bragg Municipal code:

1. Chapter 6.20, Burning Regulations and Restrictions
3. Chapter 7.16, Animal Regulations;
4. Chapter 9.20, Fireworks;
5. Chapter 9.56, Defacement or Destruction of Property; or

E. Is conduct for which the person previously has been warned or excluded for committing in a public place.

12.18.090 Notice.

Written notice shall be given to any person excluded from any public place. The notice shall identify the provision of law the person has violated and contain a brief description of the offending conduct, the places of exclusion, and the start date and end date of the exclusion period. The notice shall be signed by the officer or authorized employee and shall prominently display a warning of the consequences for failure to comply. The notice shall inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal.

12.18.100 Right to appeal – Hearing procedure.

A. A person receiving a notice under FBMC 12.18.090 may appeal to the **Chief of Police** to have the exclusion rescinded or the exclusion period shortened. An appeal shall be filed by providing a written request for hearing within 10 business days of the date of the exclusion notice. Failure to file written notice of appeal within 10 business days will be deemed a waiver of any appeal rights.

B. The request for an appeal hearing must be in writing, contain a copy or description of the notice of exclusion, and a statement of the basis on which the decision to exclude is invalid, unauthorized, or otherwise improper.

C. The **Chief of Police** shall schedule a hearing on the appeal within 15 business days of receiving the request, unless the appellant requests a later date. Notice of the hearing time and date shall be given to the appellant and to the person issuing the exclusion notice.

D. At the hearing, the appellant may contest the validity of the exclusion and may present evidence. The city shall have the burden of proving the validity of the exclusion by a preponderance of the evidence. The city may present evidence either by testimony or by written report of the officer or employee. If the city's evidence is presented only by written report and the **Chief of Police** cannot resolve a question by information contained in the report, the hearing may be held open for a reasonable time to complete the record.

E. If the **Chief of Police** finds the city has proved each element necessary to issue the exclusion notice, and if the exclusion is otherwise in accordance with law, the **Chief of Police** shall uphold the exclusion.

F. If the **Chief of Police** finds that the city has not met its burden of proof or that the exclusion is otherwise unlawful, then the **Chief of Police** shall enter an order rescinding the exclusion.

G. If an appeal of the exclusion is timely filed under this section, the effectiveness of the exclusion shall be stayed pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion shall be effective immediately upon the issuance of the decision, unless the **Chief of Police** specifies a later effective date.

H. The determination of the **Chief of Police** is a final decision and is not appealable to the city council. Appeals from any determination by the Chief of Police under this chapter shall be by writ of review to the Superior Court of Mendocino County, California, as provided in Govt. Code secs. 1085 or 1094.5 as appropriate.

12.18.110 Application for waiver.

At any time within the period of exclusion, a person receiving such notice of exclusion may apply in writing to the **city manager** for a limited waiver of some or all of the effects of the exclusion for good reason. If the city manager grants a waiver under this section, the city manager shall promptly notify the Fort Bragg police chief and staff, as applicable, of such action. In exercising discretion under this section, the city manager shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in the public place during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the city manager determines to be relevant to the determination of whether or not to grant a waiver. Notwithstanding the granting of a waiver under this section, the period of waiver will be included for purposes of calculating the appropriate length of exclusion under FBMC 12.18.070. The decision of the city manager to grant or deny a waiver, in whole or in part, under this section is committed to the sole discretion of the city manager and is not subject to appeal or review.

12.18.120 Violation – Criminal trespass.

No person shall enter or remain in any public place at any time during which there is in effect a notice of exclusion issued under this chapter excluding that person from that place. A person who knowingly violates a notice of exclusion from public places under this chapter commits the crime of criminal trespass.