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DRUG FREE ZONES IN PORTLAND, OREGON: LEGITIMATE SOCIAL POLICY OR LEGAL MOVING TARGET?

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In 1992, the Portland City Council instituted a trespassing ordinance entitled Drug Free Zones (DFZ) which sought to break up entrenched, visible markets for drugs in high crime areas. If an individual were arrested for a drug crime, he would receive an exclusion, banning him from the neighborhood for ninety days. Under the DFZ policy, arrestees who reappeared in the neighborhood of arrest were subject to immediate re-arrest, having committed no crime at the time, nor necessarily having been convicted of the original arrest. Portland has been unique among cities that attempted similar ordinances in that following adverse rulings, the drafters have continually reworked the Ordinance, rather than surrender the policy. Whether this refining is meant to craft a more just policy, or simply is a means of invalidating these court decisions remains unclear. The DFZ's drafters' commitment results from strong community support, declines in drug arrests and marked improvements in these neighborhoods. Yet it remains unclear if these effects would have resulted from an increased police presence alone. Given the disproportionate and sometimes offensive effects of this policy on already marginalized citizens, the city must determine if the positive aspects of the policy can be retained in a less oppressive form.

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“Our concern about a police power to exclude may be theoretical—particularly considering the success of the program in Portland and how badly certain parts of the city are afflicted by drugs and prostitution. But the challenge is to fight crime and criminals with limited resources and without tracking mud across the state and federal constitutions.” The Oregonian, May 30, 1997

*“The primary victim is the community and its legitimate claim to the peaceful use of public space.”*¹ State of Oregon vs. Ingram, Grant, Tolbert, Whitfield, et al.

I. IMPETUS FOR THE DFZ

In the late eighties and early nineties, downtown Portland neighborhoods were saturated with intractable, open-air drug markets. Residents of these neighborhoods complained that drug dealers would be back on the streets within hours of their arrest, due in part to a serious lack of jail space. A Federal “cap” of 476 prisoners had been placed on the jail system; upon reaching this number the jail simply had to release prisoners, based upon the severity of their crimes.² To rid the neighborhoods of these markets, police officers would have needed to witness and re-arrest offenders who continued to participate in the drug markets. Businesses suffered as many Portlanders were loath to enter these neighborhoods, particularly during evening hours. The heavy presence of homeless, mentally ill and drug addicts in these downtown areas made the neighborhoods seem unsafe and effectively off limits to large segments of the population.

Portland City Council members created the DFZ for the following reason:

“the designated zones had a significantly higher incidence of drug trafficking than other areas in the city; that the drug activity contributed to the degradation of the areas and adversely affected the quality of life for the areas’ residents, business and visitors; . . . that arrest and prosecuting for drug crimes had not proven adequate to control the drug activities in the designated zones; and that the city’s health, safety and welfare would best be served by temporary exclusion of people arrested for drug crimes from the designated zones.”³

DFZs constituted roughly 2% of the city acreage, and only applied to neighborhoods with significantly higher arrest rates for drug crimes. Initially, zones were established in Old Town, a portion of the downtown area, Washington Park and the Central Eastside. The policy had

¹ Ibid. Cited from Exhibit 1, Boland, B., *Crime and Disorder*, at 12.

² Robinson, Jennifer. “The Drug Free Zones, The Police, Locations and Trends of Drug Sales in Oregon, 1990-1998.” Temple University Doctoral Dissertation, 2002. pg 41.

³ Portland City Ord. No. 170913 as cited in *State of Oregon vs. James*. 159 Ore. 502; 978 P.2d 415.

support from a variety of neighborhood associations, business associations and the Portland Police Bureau.

Anticipating future court challenges, the City Council deemed exclusions a civil order and not a criminal sanction. The exclusion would be subject to appeal at a City Code Hearing, which meant that the order could be justified by a preponderance of the evidence, rather than the “beyond a reasonable doubt” standard required for a criminal conviction. A violation of the order, however, could be prosecuted as a trespass violation, which was a criminal misdemeanor.

As the Ordinance was originally written, excluded individuals could obtain an automatic variance for a narrow class of reasons including visiting an attorney, complying with court-ordered obligations, or riding through the zone on a bus. In addition, the Ordinance allowed excluded individuals the right to apply for a variance to travel to and from specified locations within the zones. These variances were issued by officers at police stations and had to be carried by the excluded individual at all times when in the DFZ. Arrestees could also file an appeal against the exclusion order within ten days if excluded due to an arrest, or as the Ordinance was later expanded, within five days, if sentenced due to a conviction.

To address the obvious legal implications of the Zones, the City Council essentially constructed an ordinance which has been a legal moving target. Each time the constitutionality of certain aspects of the law was challenged in court, the City altered the law to address the concern. No judge has yet ruled on the constitutionality of the Ordinance as a whole.

II. HISTORY & BACKGROUND

The Drug Free Zone policy has expanded considerably in the years since its initial implementation. DFZ status has been extended into additional business districts and residential neighborhoods, though a few neighborhoods have shed their DFZ status as well. A 1993 decision stated that exclusions granted in one DFZ would apply to all DFZs and not just the original zone of arrest. The grounds for an exclusion were also extended to cover people possessing as well as selling drugs. In 1994 the Ordinance expanded to cover people police believed to be attempting to buy or sell drugs; eliminated the Washington Park Zone, due to a decrease in the number of arrests; and expanded the boundaries of the downtown zone. In 1997 the Ordinance was expanded to reach into residential neighborhoods in North and Northeast Portland and downtown zones were expanded once more. The Ordinance was broadened to

exclude those convicted for a drug crime for one year following the date of their conviction, and applied to include as violators those asking others to purchase drugs for them. In 1999, one residential zone was expanded and another added. The DFZ Ordinance appeared to be gaining momentum during this time.

The policy was originally denoted a “community policing partnership aimed at deterring drug dealers.” This movement grew out of increasing concern not with violent crime, but rather threats to quality of life. The zones were created in a time when cities were seeking innovative policing strategies, often involving the prosecutor as a problem solver, rather than enforcer:

“The approach. . .often dubbed problem-solving or community prosecution, attempts to tackle local crime problems strategically, by targeting chronic offenders or prime locations responsible for the most persistent crime in the neighborhood.”⁴

Through these high profile efforts, Portland was a lead the Community Prosecution movement. President Clinton, upon proposing a \$200 million program to strengthen Community Prosecution efforts, cited Portland as one of three model cities where Community Prosecution had “lead to strategically oriented, successful crime fighting.”⁵ However, community prosecution has historically been linked to obtaining services for the offender. This is notably absent in Portland’s DFZs.

III. MEASURING SUCCESS

By 1997, following the implementation of the DFZs, drug arrests had decreased 35% in North and Northeast Zones, 30% in Beech and 50% in Alberta. *The Oregonian* stated, “[t]he zones are clearly a tool that works for those neighborhoods.”⁶ During the same time, however, drug arrests increased by 12% citywide. In a statistical analysis, it was found that increased policing in the DFZs decreased the number of arrests for drug sales, but displacement of drug crimes did occur, both to adjacent blocks and at least one adjacent city.⁷

Proponents of the Ordinance disagree with this assessment. Deputy City Attorney David Woboril explained neighborhood associations near DFZs initially feared that strict enforcement would cause the drug activity to simply migrate a few blocks into adjacent neighborhoods.

⁴ *CQ Researcher*, 1011.

⁵ CQ 1024, as cited in “The Clinton Administration’s Law Enforcement Strategy: Combating Crime with Community Policing and Community Prosecution.” March, 1999.

⁶ *The Oregonian* August 30, 1999.

⁷ Robinson, 196-7.

Despite citizens' fears, this did not appear to occur. The factors Woboril cited as necessary for a good drug market, namely anonymous streets, good transportation and a concentration of poor people, simply do not exist everywhere. Woboril further mentioned that during the winter of 2002 when the DFZs had been briefly suspended, drug market activity increased. There appeared to be a correlation.⁸ However in her dissertation, Criminologist Jennifer Robinson was unable to statistically determine if falling arrest rates were a result of DFZ implementation, or simply attributable to the increased police presence accompanying the Ordinance: "if the drug free zones mark the boundaries of the places to be supervised and controlled, then their effect would depend on the supervision and controlling efforts of both the police and the residents of the block so designated."⁹

Proponents of the policy are quick to point out that the positive effects of Community Prosecution can be impossible to verify through statistical means. Perhaps more telling is the continuing community support for the DFZ policy. In part at the request of community members, the zones have expanded into additional downtown and Northeast Portland business districts, as well as North and Northeast Portland residential districts. Police commitment to the program is another sign that DFZs have been successful.

Vice Sergeant Mike Stevenson of the Portland Police Department believes that the Ordinances greatly reduced drug activity. Initially, there were large numbers of trespass arrests. After some time, however, "that part of the community, the criminal element, got the word." These individuals either altered their activity, went "underground" or transferred to another area. Community livability was greatly enhanced and all drug activity, not just visible transactions, declined. Stevenson found that neighborhoods prefer the Ordinance. They had become cleaner; there was no longer a problem with needles or condoms lying around in the streets and residents were no longer subject to watching sex acts and drug deals. These changes have contributed to an increased feeling of safety for community members.¹⁰ Deputy City Attorney David Woboril concurred, stating that, "[n]eighborhoods love it." He felt that there had been a "huge" effect on some neighborhoods, remarkably changing what the streets looked like. The "feeling in town" is that there has been a drop in drug and prostitution activity because of the DFZs.¹¹

⁸ Woboril Interview November 23, 2003.

⁹ Robinson, 176.

¹⁰ Stevenson interview December 9, 2003.

¹¹ Woboril interview November 23, 2003.

The relationship between police and neighborhood residents and business owners appears to have benefited from the policy, while police/offender relations remain static. Vice Sergeant Stevenson feels that the Ordinance is a good use of police time and resources. Officers no longer need to spend so much of their time addressing street level drug crimes, and thus have more time to deal with other important matters. Stevenson feels that those sentenced under the Ordinances understand the rationale behind them and accept that the police are simply doing their job. And yet, while Metropolitan Public Defender Paul Levy expressed that his clients accepted the policy, it is unclear if this is because they truly understand the law enforcement strategy or, simply because they are, “powerless, homeless and downtrodden. They just take it. It’s another insult that is their lot in life.”¹² District Attorney Jim Hayden, by contrast, described how the DFZs can stimulate positive police-community relations: “The neighborhood unity that is fostered from their perception of increased police involvement and from the very real interaction that occurs when they exchange information with the police cannot be overstated.”¹³

IV. LEGAL HISTORY

Drug Free Zones have been subject to constant legal attacks since their inception. Though many of these cases were brought to contest the constitutionality of the Exclusionary Zones, the courts have largely avoided handing down a clear ruling on the constitutionality of DFZs themselves. For each challenge brought in court, the City Council has slightly altered the Ordinance in response. This has prevented the complete dissolution of DFZs, but it has made their legality questionable.

The arguments brought to dispute the legitimacy of the Zones are primarily rooted in the language of federal constitutionally protected rights, but also pertain to the Oregon Constitution and its specific definitional issues. Critics argue that exclusions essentially punish people twice for the same crime and thus violate the constitutional ban against double jeopardy. Proponents respond that exclusions are civil in nature, more akin to a restrictive condition of probation or a limitation in response to an order of protection. Deputy District Attorney Jim Hayden made this distinction, stating, “The Ordinances do not focus on the person, but on the geographic area. Their purpose is not retribution or deterrence, typical goals of punishment. Instead, the

¹² Levy Interview. November 15, 2003.

¹³ *CQ Researcher*, 1025.

Ordinances try to fix neighborhood crime problems.”¹⁴ They also argue that the ordinance restricts freedom of movement and the rights to travel and free association, provisions granted under the Fourteenth Amendment of the United States Constitution. Proponents respond that the Fourteenth Amendment guarantees only the right to interstate travel, and that rights to intrastate travel are less clearly defined under the law. They note that the ability to apply for a variance to enter the Zones for legitimate reasons protects against these constitutional claims. Opponents also claim that the City may not create such laws under the Oregon State Constitution, which expressly forbids vagrancy laws on the city level. Critics also attempt to label exclusion as banishment, though historically the legal definition of banishment has been applied to much more serious exclusions, such as from an entire state or community.

In 1997, after several lower courts ruled against DFZs on grounds which included double jeopardy and illegal banishment, the ordinance was taken to the County Court of Appeals. In 1997, Multnomah County Circuit Judge Wittmayer concluded in *State of Oregon vs. James*¹⁵ that DFZs constitute double jeopardy if those arrested are also prosecuted for these crimes. In the ruling, the Court noted that the City must choose between engaging in a criminal prosecution against the arrestees or excluding them from the zones in a civil action. In this case, prosecutors argued that exclusion was not a criminal sanction, but rather a solution to the problem of crime. In response, city officials declared a change in the policy. Exclusions would not be issued by police officers, but rather as a condition of release from jail.

Upon appeal, this ruling was overturned in the Oregon Court of Appeals one year later. The court found that exclusions were intended as civil, not criminal penalties. “Concerns about property values and citizen’s quality of life in a specific geographical area are essentially civil in nature...the city’s finding on the need for the ordinances, demonstrate a concern for the quality of life in the designated zones in general and not a desire to seek retribution against individuals who commit crimes.” This reading was affirmed by the Supreme Court of Oregon in 2000. The court found that offenders’ ability to obtain a variance to enter the zones for legitimate reasons supported the city’s claims. From this ruling, the city reverted to allowing police officers to issue the exclusions upon arrest.

¹⁴ *The Oregonian*, March 27, 1997.

¹⁵ 159 Ore.App. 502; 978 P.2d415; 1999 Ore.App.

In a 2002 ruling in *Blehschmidt v. Shatzer*¹⁶, a Multnomah County Court ruled that Portland's drug free zones violated the 4th Amendment--the right to travel. The ruling held that the Ordinance was a violation, denying people the right to engage in legal activity. In response to this ruling, the Ordinance was altered to reflect the court's concerns. Under the new ordinance, the exclusion applied only to the DFZ from which the arrestee was originally arrested, and could not be applied to other zones. In addition, the City changed the Ordinance to allow immediate access to the excluded zone for several specified purposes, without requiring the offender to apply for a variance. Following this ruling, the City Council redrew the boundaries of the zones, turning five distinct zones into two.

In 2000, a similar ordinance was overturned in an Ohio district court, affirmed by the Ohio Supreme Court and upheld by the Federal Court of Appeals for the Sixth Circuit in *Johnson vs. City of Cincinnati*. The Court of Appeals found that the ordinance infringed on the defendants' rights to travel and association. Following this ruling, the future of the Oregon ordinance became uncertain. However city officials felt the Portland Ordinance differed in significant ways from that of Cincinnati's. Woboril stated that Cincinnati was, "way behind in terms of intrusiveness." He noted that Portland has kept changing the law to make it less intrusive while still having an effect. The Court left open the possibility that a similar ordinance, more narrowly tailored, could well prove constitutional. "In striking down the Ordinance, we do not foreclose the possibility that a narrower version of the Ordinance, supported by a clearer record, could withstand strict scrutiny."¹⁷

Most recently, in December of 2003, numerous cases disputing the legality of the Ordinances were rolled into one case brought before the Circuit Court in State of Oregon vs. Ingram, Grant, Tolbert, Whitfield, et al. In this case, though all of the earlier mentioned arguments were brought to bear by the defendants, the court chose to focus narrowly on the procedural argument in its ruling. The defendants contended that:

"[t]he Ordinance is fatally defective in failing to provide an adequate pre-exclusion hearing, in relegating the decision to a non-judicial officer, in providing discovery only on demand, in not providing counsel, and in entitling the state to prevail merely upon a demonstration of probable cause to support the arrest for a drug-related crime."¹⁸

¹⁶ Mult. Co. No. 0108-08565

¹⁷ *Johnson vs. City of Cincinnati*.

¹⁸ *State of Oregon vs. Ingram, Grant, Tolbert, Whitfield, et al.*

Though the Court found the goals of the Ordinance compelling, it stated that the rights of defendants must be balanced against these public interests. The Court focused on the due process rights of those appealing exclusions. The final ruling declared that the standards used by City Hearing Officers to determine the outcome of an appeal were flawed, as they simply assessed whether the arresting officer had probable cause, without requiring additional evidence to support that claim. The ruling pertained only to those excluded for ninety days, and not to those convicted and subsequently sentenced to one year exclusions. The Statistical Office of the Portland Police is currently purging the records of all those who were issued exclusions, but, though arrested, were never convicted of drug crimes.¹⁹

No ruling has struck down Portland's DFZ Ordinance as a whole. Cases have highlighted troubling and potentially unconstitutional aspects of the policy, all of which were subsequently addressed by means of altering the Ordinance. Elise Marshall, the Portland Mayor's police liaison, said, "[u]ntil we get shut down, we are going to keep on working on them."²⁰ This brief legal analysis raises the question: do proponents believe the Ordinance to be constitutionally unsound on its face, and simply rework it to avoid inevitable condemnation by court rulings, or is the City committed to creating a fair and equitable Ordinance? The answer may be some combination of the two.

V. EXCLUSION AS SOCIAL POLICY

Clearly there is a conflict of interest between the legitimate goals of public policy necessitating the Ordinance and the rights of those excluded from the zones. Creating a feeling of safety in public spaces, reducing visible crime and disrupting markets for drugs are laudable goals. Continuing community support and DFZ expansion point to the policy's success in achieving these goals. However, beyond the legal arguments presented, the Ordinance infringes on the rights of powerless Portland citizens in a number of ways which deserve analysis and review.

First, public space has historically been thought of as an essential component of a free society, providing a place where all members of the community can gather at will, as a "space of

¹⁹ Conversation with Steve Beetle Portland Police Bureau 4/2/04.

²⁰ The Oregonian May 5, 2002.

freedom.”²¹ It serves as a corridor, allowing people to navigate from one private space to another, and as a respite for those members of society, such as teenagers or the homeless, who have no private space of their own.²² Unless individuals are currently violating law or ordinances, they are free to occupy public space without being forced to account for their presence by showing identifying papers. While individuals who are selling or buying drugs legally forfeit their right to be in this space, it is less clear if they should be excluded after abandoning the illegal action and paying some criminal penalty. As the exclusion is civil in nature, rather than criminal, the exclusion plays the role of protecting against future offenses, regardless of the actor’s future intention.²³

Next, there is a tremendous amount of individual police discretion built into the Ordinance. The officer alone chooses not only who to arrest, but also who will receive an exclusion. It was found that whites receive the majority of DFZ exclusions issued by the courts and District Attorney’s Offices, but that exclusions issued by police officers within the zones go mostly to minorities.²⁴ When an offender re-enters a DFZ, it is the officer’s duty to approach that person to arrest him or her. While it is true that officers have beats and thus can easily recognize many excluded individuals, the task of memorizing more than two-thousand individuals who have exclusions at any given time is daunting at best for any officer. It is clear that people are often approached and questioned based upon their appearance.

Public Defender Levy noted that while the police do recognize people, the process is more invidious; officers use the Ordinance as an excuse to approach and harass people, ask for their identification, and run their names through police systems. Levy stated how truly insulted he would be if approached in such a manner by the police, noting that in his suit and tie, he never would be. While people are legally justified in refusing to speak with the police, the power dynamic inherent in such a situation makes this unlikely. Levy believes this extended police power was in fact the original, though hidden, purpose of the Ordinance, which grants police officers the power to approach and question individuals who are committing no offense whatsoever.

²¹ Von Hirsch, Garland, Wakefield, Editors, “Ethical and Social Perspectives in Situational Crime Prevention.” 2000. pg 79.

²² Ibid 82-84.

²³ Ibid 91.

²⁴ The Oregonian July 30, 2000.

The ability to apply for a variance has been built into the Ordinance to allow flexibility in the application of the sanction, and to respond to the legitimate needs an arrestee might have to visit a restricted zone. However, the class of people affected by the Ordinance may preclude the frequent use of the variance, despite legitimate needs to visit a DFZ. Though the state claims that no plausible request for a variance will be denied, “[t]he only numbers recited suggest that the number of applications is extremely small.”²⁵ To address this concern, officers now issue variances as they issue the exclusion. The exclusion lists acceptable reasons the offender may enter the zone. Offenders must carry the variance on their person at all times when in the DFZ and must appear to be actively conducting their purported legitimate business. Hayden commented, “[i]f they’re not traveling, they’re in violation. They have to be moving.”²⁶ This alteration addresses the concern that excluded individuals would be unwilling to visit the issuing police precinct to obtain the variance, despite legitimate need.²⁷

The system of appeal suffers from similar problems. While it provides the alleged offender with an opportunity for a hearing, thus fulfilling the right to due process in letter, it fails in spirit. Those already burdened by poverty, mental illness, drug addiction and homelessness may not be able to file an appeal within the specified 15-day window, nor put forth a compelling case on their own behalf. Evidence “reflects that only 26 appeals were filed during the same period in which the city issued 1,982 exclusions. The success of the city’s program quite clearly flows from close to 2,000 exclusions with no review whatsoever of an officer’s determination of guilt.”²⁸

There may well be good reason for a city to issue additional sanctions to those caught selling drugs on city streets. It may contribute to an improvement in the urban environment, an argument well known from the “Broken Windows” debate. Wilson and Kelling argue that minor quality of life crimes, such as panhandling or public urination, spread fear in communities, and to members’ subsequent withdrawal from public space.²⁹ This, they argue, initiates a cycle of community deterioration that inevitably leads to more serious

²⁵ State of Oregon vs. Ingram, Grant, Tolbert, Whitfield, et al. Cited: see STATE OF OREGON’S MEMORANDUM IN RESPONSE TO DEFENDANT’S DEMURRER, exhibits 4-8, and exhibit 1 at the hearing, Boland, B., *Law and Disorder*.

²⁶ Hayden Interview 3/18/04.

²⁷ Rogoway Interview. 12/5/03.

²⁸ Ibid 32.

²⁹ Wilson and Kelling. “Broken Windows: The Police and Neighborhood Safety.”

crimes and levies a disproportionate police response upon the most marginalized members of society.

Oregon Police Vice Sergeant Stevenson claims that the Ordinance does not have a disparate impact, as, “drug use crosses all economic lines.” However, it is disingenuous to claim that disparate impact does not result from this bifurcated level of sentencing. Drug users and sellers caught in their own homes located within the zones are not subject to exclusion; only those who transact their illegitimate business in the public’s view are vulnerable. Here Levy’s claim that the Ordinance punishes poor people and “leaves everyone else alone,” seems more compelling.

In addition, disparate impact may result from the nature of the DFZ neighborhoods themselves. Downtown neighborhoods draw the disadvantaged in no small part because of the numerous social service providers located in these areas. Many of Portland’s homeless shelters and social services providers are located downtown. The Ordinance may in fact discourage those who most require these vital services from accessing them. The notion that those excluded can be approached by the police if not in continual movement while in these neighborhoods may discourage their entrance as well. The automatic issuance of a variance that allows offenders to visit social service providers is one positive policy change which partially addresses this concern.

While the claim of disparate impact holds true for downtown and business districts, it may prove false in the analysis of residential neighborhoods. DFZs were expanded into North and Northeast Portland residential neighborhoods at the insistence of community members. These neighborhoods house the majority of Portland’s African American residents. Prosecuting quality of life crimes in primarily black, historically less wealthy neighborhoods ensures that these neighborhoods receive adequate police protection. “What the conventional prosecutorial system creates when it continually dismisses petty behavior. . .is inequality of peace of mind between low-income neighborhoods and wealthy neighborhoods.”³⁰

Finally, there may be compelling political reasons to maintain the visibility of the homeless, drug-addicted or mentally ill. Rendering these citizens invisible to the middle and upper class—those who have access to political power—may relieve the pressure on government to provide social services and find long-lasting solutions to their very real problems. Oregon’s

³⁰ CQ 1019.

budget shortfalls in recent years have ravaged the essential social services provided to these marginalized communities.

VI. ANALYSIS & RECOMMENDATIONS

If these laws *are* constitutional, are they a good response to the intractable outdoor drug markets thriving in some Portland neighborhoods? The Ordinance may make sense as a temporary means of breaking up markets for drugs by separating clients from distributors. Where drug selling has been notably destructive to the social environment, and where regular police action has been unable to curb this activity, there may be a place for a DFZ policy. In Portland, while some displacement likely occurred, the goal of reducing visible criminal transactions and disrupting markets seems to have been somewhat achieved.

However, while some zones have been declassified as their crime problems decreased, the number of neighborhoods added far surpasses those removed. As the majority of downtown Portland is now classified as a DFZ; it is still uncertain how far the city hopes to extend the DFZs. It also seems unlikely, given Portland's small size, that the compelling conditions which precipitated the Ordinance are present in so many neighborhoods. Arguably, Drug Free Zones should not be a first response to heightened incidents of drug crimes in neighborhoods.

Given the inconclusive evidence found by Robinson, that the ameliorative affects of the Ordinance can not be disentangled from the increased police presence, it would be sensible for the city to increase police presence in proposed DFZ areas before further expanding DFZs. Indeed, if increasing police presence has an outcome equivalent to that of the Ordinance, it would argue for the scaling back or elimination of the use of DFZs in other neighborhoods. The Ordinance was enacted primarily as a means of ensuring a feeling of safety in communities and enhancing neighborhood livability. These may be goals that an increased police presence could accomplish.

VII. CONCLUSION

The DFZ Ordinance has been successful in many neighborhoods in Portland. Drug Free Zones have fundamentally changed the feel of downtown Portland neighborhoods, largely eradicating an intractable problem while causing little displacement. And yet there is simply not

enough evidence to ascertain a direct causation between the Ordinance and neighborhood improvements. Absent this data, it remains unclear if these positive effects could be achieved through less oppressive means. Though legal challenges have forced drafters to craft a more equitable Ordinance, it remains an unsettling policy. The City Council has a responsibility to create policy it believes to be constitutionally sound from its inception, not merely as a response to a barrage of lawsuits. The Council should not forget its equal responsibility to those affected by the policy, who are generally forgotten constituents worthy of respect and consideration.

References

- Anderson, David. "Banishment Comes Under Legal Attack."
The Oregonian 27 March 1997.
- Anderson, David. "Drug Free Zone Law Collapses as Judge Drops More Charges"
The Oregonian 2 May 1997.
- Borrelli, Mathew. "Note: Banishment: the Constitutional and Public Policy Arguments Against this Revised Ancient Statute." 36 *Suffolk University Law Review* 469, 2003.
- Callimachi, Rukmini, "Judge Finds Portland's Drug-Free Zone Unconstitutional."
Associated Press 1 Dec. 2003.
- "City's Drug Free Zone is Unconstitutional."
Juvenile Justice Digest 15 Oct. 2002, pg. 5.
- Editorial, "Drugs Can't Just Be Zoned Away"
The Oregonian 30 Aug. 1999.
- Editorial.
The Oregonian 30 May 1997.
- Franzen, Robin. "City May Alter Enforcement of Drug-Free Zones."
The Oregonian 5 May, 2003.
- Franzen, Robin. "Judge Takes Time to Study Case of Drug-Free Zones."
The Oregonian June 22 2000.
- Franzen, Robin. "*Officer's Secret List: Livability Tool or Hip-Pocketed Justice?*"
The Oregonian 15 Nov. 2003.
- Franzen, Robin. "*Judge Rules Appeals are Flawed.*"
The Oregonian 2 Dec. 2003.
- Glazer, Sarah. "Community Prosecution."
CQ Researcher 15 Dec. 2000. Vol 10, Iss. 43. pg: 1011-1026.
- Gould, John. "Zone Defense."
The Washington Monthly June 2002. Vol. 34, Iss. 6: pg. 33.
- Green, Ashbel "Drug Free Zone Law Violates Right to Travel, Judge Rules"
The Oregonian 18 Oct. 2003.

Green, Ashbel “State High Court will Hear Challenge to Crime Zones at Issue is Whether Excluding People from Drug-and Prostitution-Free Areas and Prosecuting Them is Double Jeopardy.” *The Oregonian* 31 Dec. 1999.

Hayden, Jim. “Should Cities Create Drug-Free Zones that Exclude Drug Users and Dealers from Neighborhoods with Drug Markets?” *CQ Researcher* 15 Dec. 2000. Vol 10, Iss. 43. pg:1025.

Hayden, Jim. Personal Interview. 18 March 2004.

Johnson vs. City of Cincinnati. 310 F.3d 484; 2002 U.S. App. LEXIS 20418; 2002 FED app. 0332P (6th Cir.).

Levy, Paul. Personal Interview. 11 Dec. 2003.

Mode, Michael. “Portland’s Expanding Zones Exclusion by Race.” *The Oregonian*, 30 July 2000.

Pickett, Nelson. “Anti-Drug Pact Made by Police, Citizens, A ‘Drug Free’ Zone is Declared from Washington Park to the Central East Side.” *The Oregonian* 24 Aug 1991.

“Police Seek Reauthorization of Drug Free Zones, Changes Proposed.
Portland Independent Media Center, 14 May 2002.

Portland City Code. PSF 2.06 Drug Free Zone Ordinance.

Portland City Code. 14B.20.010 Drug-Free Zones.

Robinson, Jennifer. “The Drug Free Zones, The Police, Locations and Trends of Drug Sales in Oregon, 1990-1998.” Temple University Doctoral Dissertation, 2002. 196-7.

Robinson, Jennifer. Personal Interview. 12 Dec. 2003.

Rogoway, Edie. Personal Interview. 5 Dec. 2003.

State of Oregon vs. Ingram, Grant, Tolbert, Whitfield, et al
www.ojd.state.or.us/mul/criminal.html

State of Oregon vs. James 159 Ore. App. 502; 978 P.2d 415; 1999 Ore. App. Lexis 507

State of Oregon vs. Lhasawa. 334 Ore. 543; 55 P. 3d 477; 2002 Ore. Lexis 612.

Stevenson, Mike. Personal Interview. 5 Dec. 2003.

Stern, Henry. “Council Toughens Standard in Drug-Free Zones”
The Oregonian 4 Dec 2003.

Von Hirsch, Andrew, Garland, David, Wakefield, Alison, Editors. "Ethical and Social Perspectives on Situational Crime Prevention." Hart Publishing and Biddles, Ltd. Portland, OR and Oxford, Great Britain, 2000.

Wilson, James Q and Kelling, George. "Broken Windows: The Police and Neighborhood Safety," in *Atlantic Monthly*, March 1982, pp. 29-38 [Available at <http://www.theatlantic.com/politics/crime/windows.htm>]

Woboril, David. Personal Interview. 25 Nov. 2003.