ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. [2888]

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD ADDING ARTICLE XVIII TO CHAPTER 7 OF THE OXNARD CITY CODE RELATING TO PUBLIC LIBRARY RULES OF CONDUCT AND EXCLUSION PROCESS

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. Article XVIII of Chapter 7 of the Oxnard City Code is hereby added to read as follows:

"ARTICLE XVIII. PUBLIC LIBRARY RULES OF CONDUCT AND EXCLUSION PROCESS

SEC. 7-320. PURPOSE.

It is the intent of the city council in enacting this ordinance to protect the rights of library customers, staff and volunteers. Library customers, staff and volunteers using library buildings, materials, and services have at least the following rights:

(A) To use library buildings, materials and services without being unreasonably disturbed or impeded by others;

(B) To use and work in library buildings that are safe, secure, sanitary, and attractive; and

(C) To use and work with library materials and equipment, which are accessible and in good condition in a quiet and orderly atmosphere conducive to every customer's exercise of his or her right to receive and read recorded communication.

SEC. 7-321. DEFINITIONS.

For purposes of this article:

(A) "Library" shall mean the Oxnard Public Library and each and all of its branch libraries.

(B) "Library customer" shall mean a member of the public who uses library facilities, materials and services.
(C) “Library building” means any building, structure or enclosure in which the library keeps, displays and makes available for inspection or borrowing printed or audio-visual material or information or information that is kept in other form, but for purposes of this article, does not include the exterior appurtenances to such building, structure or enclosure nor land on which such building, structure or enclosure is located.

(D) “Library director” shall mean the person appointed by the city manager to be responsible for the overall administration of the library.

(E) “Library facility” shall mean a library building, all exterior appurtenances to such building and the real property upon which the library building and exterior appurtenances are located.

(F) “Library privileges” shall mean access to any printed or audio-visual material or information that is kept in any other form at a library facility and the right to physically enter and be present in any library building.

(G) “Library staff” shall mean public employees who work for the city and are assigned to work at library facilities.

(H) “Library volunteer” shall mean a member of the public who volunteers and works at library facilities.

(I) “Rules of conduct” means the activities identified in and prohibited by section 7-322.

(J) “Serious violation of the rules of conduct” shall mean engaging in activities prohibited by law at a library facility or violating any other rule of conduct that poses an immediate threat to the safety of any person or to the orderly operation of the library.

SEC. 7-322. RULES OF CONDUCT.

In order to protect the rights of library customers, staff and volunteers, the following activities that a reasonable person would find disruptive to the normal functions being carried on at the library are prohibited:

(A) Engaging in activities prohibited by law including but not limited to:
(1) Penal Code section 415 (Fighting; Causing Loud Noise or Using Offensive Words in a Public Place),

(2) Penal Code section 484 (Theft),

(3) Penal Code section 490.5 (Theft of Library Books and Materials),

(4) Penal Code section 594 (Vandalism),

(5) Penal Code section 602.1(b) (Interfering with Library Business),

(6) Penal Code section 602q (Refusing or Failing to Leave a Library Building),

(7) Penal Code section 647 (Lewd and Dissolute Conduct, Solicitation, Loitering, Public Intoxication),

(8) Education Code section 19910 (Maliciously Damaging Library Materials),

(9) Education Code section 19911 (Failure to Return Materials After Notice), and

(10) Government Code section 7597(a) (Smoking Any Tobacco Product Inside a Library Building or Within Twenty Feet of a Main Exit, Entrance, or Operable Window of a Library Building);

(B) Engaging in any activity or behavior (either oral or physical) that is loud, disruptive, disturbing, offensive, intimidating, threatening, unsafe or annoying and which unreasonably interferes with another person's use of any library facility or with the ability of library staff or volunteers to perform their duties including creating excessive noise, using loud language, abusive, threatening or insulting language, screaming, running, verbal or physical threats, having body odor constituting a nuisance to other persons or engaging in any other activity or behavior that unreasonably disturbs and inhibits others from using library buildings, materials or services;

(C) Eating or drinking in unauthorized public areas within any library building;
(D) Sleeping, appearing to sleep, lying down, loitering or interfering with free passage within any library building or at the entrance or exit of any library building;

(E) Leaving packages, backpacks, luggage, or other personal items unattended within any library building or at the entrance or exit of any library building;

(F) Leaving a child under the age of twelve unattended within any library building. This prohibition shall not apply to a child’s unattended participation in library programs or services;

(G) Distributing or posting printed materials, soliciting signatures for petitions or conducting surveys within any library building;

(H) Not using library furniture for its intended purpose (e.g., placing one’s feet on library desks, tables or chairs);

(I) Moving library furniture or equipment when doing so presents a safety hazard;

(J) Using library building restrooms for inappropriate purposes such as loitering, bathing, shampooing, doing laundry, changing clothes, etc.;

(K) Skateboarding or rollerblading in or about any library facility;

(L) Bringing any animal into any library building, with the exception of a service animal accompanying a person with disabilities. As defined, a “service animal” is individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The animal’s work or tasks must directly relate to the handler’s disability;

(M) Photographing, audio recording or filming within any library building without permission from the library director except at governmental meetings open to the general public;

(N) Leaning on railings or security gates within any library building;

(O) Throwing items over railings located within any library building;
(P) Failing to wear shoes and shirts at all times within any library building;

(Q) Entering any library building with firearms or other dangerous weapons with the exception of those individuals authorized to possess weapons in a local public building or open public meeting pursuant to Penal Code section 171b;

(R) Disseminating, downloading, viewing or printing from public library computers illegal materials including but not limited to obscene or harmful matter as those terms are used in Penal Code section 331, et seq. and 313, et seq.;

(S) Violating a term or condition of a warning notice or an exclusion notice.

SEC. 7-323. RULES OF CONDUCT ENFORCEMENT.

(A) General Provisions. A library customer is subject to exclusion from the library or may otherwise have his or her library privileges restricted or suspended if he or she (or a person under his or her control or direction) violates any of the rules of conduct specified in section 7-322 within ninety days after he or she was given a verbal warning for a violation of the rules of conduct and a subsequent written warning notice of a violation of the rules of conduct. Serious violations of the rules of conduct may result in the issuance of a written warning notice without a verbal warning.

(B) Persons Authorized to Issue Warning or Exclusion Notices. The library director shall designate those library staff who are authorized to issue warning and exclusion notices.

(C) Issuance of Warning or Exclusion Notices.

(1) Warning Notice. After the issuance of a verbal warning to a library customer for a violation of the rules of conduct or immediately upon the occurrence of a serious rules of conduct violation, library staff designated by the library director may issue a written warning notice for a rules of conduct violation. The warning notice shall specify that the recipient must leave the library for the remainder of the day, and that in the event a second violation of the rules of conduct occurs within ninety days of the date of issuance of the warning notice, that person shall be subject to exclusion from the library facility for a period of time not to exceed two years or the loss of some or all of his or her library
privileges as the library director designee may determine to be appropriate. The warning notice shall also contain information concerning the right to appeal to the library director. The person to whom the warning notice is issued shall sign a written acknowledgment of its receipt. If the recipient refuses to sign, the person issuing the warning notice shall make a written record of refusal.

(2) Exclusion Notice. If a library customer has received a warning notice as set forth in section 7-323(C)(1) above and again violates a rule of conduct within ninety days of the date of issuance of the warning notice, library staff designated by the library director may issue a written exclusion notice excluding the person from the library facility or setting forth the loss of some or all of his or her library privileges as the library director designee may determine to be appropriate. If the person is excluded from the library facility, the exclusion shall be for a period of no less than one month and no more than two years. The exclusion notice shall specify the person that is to be excluded from the library facility, the period of the exclusion, the time the exclusion is to commence, and library privileges being lost and the specified period of loss, and information concerning the right to appeal the exclusion notice to the library director. The person to whom the exclusion notice is issued shall sign a written acknowledgment of its receipt and allow his or her photograph to be taken. If the recipient refuses to sign or take a photograph, the person issuing the exclusion notice shall make a written record of the refusal.

SEC. 7-324. APPEAL PROCEDURE.

(A) The individual to whom a warning or exclusion notice is issued shall have the right to an appeal from the issuance of the notice.

(B) A notice of appeal of a warning notice or an exclusion notice must be filed, in writing, with the library director within five calendar days of the issuance of the warning or exclusion notice. The notice of appeal shall state the following:

(1) The appellant’s name;

(2) The appellant’s address and a telephone number where he or she can be reached;
(3) A concise statement as to why the appellant believes that the issuance of the warning notice or the exclusion notice was invalid or unjustified; and

(4) A copy of the warning notice or exclusion notice shall be attached.

(C) A hearing on the appeal shall be held no more than fifteen calendar days after the filing of the appeal, except the library director may postpone the hearing date at the request of the appellant or the library staff for good cause. The appellant shall be provided notice of the hearing date, time, and location at least five calendar days prior to the hearing date. The hearing shall afford a reasonable opportunity for the appellant to be present and present evidence that the warning notice or exclusion notice is invalid or unjustified.

(D) Copies of all library staff documents to be used by the library staff at the hearing shall be made available to the appellant at least five calendar days prior to the hearing.

(E) At the hearing on the appeal, the library staff shall have the burden to show by a preponderance of evidence that the warning notice or exclusion notice was based on and justified by a violation of the rules of conduct described in section 7-322. The library director shall conduct the hearing in an informal fashion and shall not be bound by the technical rules of evidence.

(F) Within thirty calendar days of the conclusion of the hearing, the library director shall issue and mail the appellant a written decision containing a statement of the reasons on which the decision is based. The written decision shall include a notice that the parties have ninety days to pursue a petition for a writ of administrative mandamus of the decision under Code of Civil Procedure sections 1094.5 and 1094.6. The library director shall serve a copy of such decision to the city manager. The decision of the library director shall be final.

SEC. 7-325. VIOLATION OF WARNING OR EXCLUSION NOTICE.

Any person who violates a provision of a warning notice or an exclusion notice to stay away from the library by physically entering a library facility during the exclusion period is guilty of a misdemeanor punishable as set forth in section 1-10 of this code.”
Part 2. If any provision(s) of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

Part 3. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City. Ordinance No. _____ was first read on __________, 2014 and finally adopted on ______________, 2014 to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

________________________________________
Tim Flynn, Mayor

ATTEST:

________________________________________
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

______________________________
Stephen M. Fischer, Interim City Attorney