

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
REPEALING AND REPLACING CHAPTER 9.36 “SPECIAL EVENTS” AND  
REPEALING AND REPLACING CHAPTER 12.40 “PARK REGULATIONS” OF  
THE CITY OF CAPITOLA MUNICIPAL CODE**

**WHEREAS**, the United States Constitution and California Constitution guarantee the right of the people to peaceably assemble and speak or protest in public places; and

**WHEREAS**, the City of Capitola intends to protect these Constitutional rights of the people of Capitola to peaceably assemble and protest in the City’s public spaces; and

**WHEREAS**, the City wishes to provide a coordinated process for managing special events and events in City parks and recreation facilities to ensure the health and safety of event patrons, residents, workers, and other visitors, and to prohibit illegal activities from occurring at special events consisting of expressive activities; and

**WHEREAS**, the City also wishes to create a mechanism for cost recovery and use charges, to the extent authorized by law, while not unduly impacting the viability of events; and

**WHEREAS**, the City intends to update its existing permitting requirements for the City’s streets, sidewalks, parks, and open spaces to protect the rights of the people to peaceably assemble, as well as to protect and conserve those parks and open spaces.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:**

**Section 1: Findings.** The above recitals are hereby declared to be true and correct findings of the City Council of the City of Capitola.

**Section 2: Repeal and Replace Chapter 9.36 – Special Events, of Title 9 – Public Peace, Morals and Welfare of the Capitola Municipal Code.** Chapter 9.36 – Special Events, of Title 9 – Public Peace, Morals and Welfare is hereby repealed in its entirety and replaced to read as set forth in Exhibit A, attached hereto and incorporated herein by reference.

**Section 3: Repeal and Replace Chapter 12.40 – Park Regulations, of Title 12 – Streets, Sidewalks and Public Places of the Capitola Municipal Code.** Chapter 12.40 – Park Regulations, of Title 12 – Streets, Sidewalks and Public Places is hereby repealed in its entirety and replaced to read as set forth in Exhibit B, attached hereto and incorporated herein by reference.

**Section 4: Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**Section 5: Codification.** This ordinance shall be codified in the Capitola Municipal Code.

**Section 6: CEQA.** The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

**Section 7: Publication; Effective Date.** This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption.

**Section 8: Certification.** The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

This Ordinance was introduced at the meeting of the City Council on the 14<sup>th</sup> day of March, 2024, and was adopted at a regular meeting of the City Council on the 28<sup>th</sup> day of March, 2024, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Kristen Brown, Mayor

Attest: \_\_\_\_\_  
Julia Gautho, City Clerk

Approved as to form:

\_\_\_\_\_  
Samantha W. Zutler, City Attorney

Exhibits:  
A. Chapter 9.36 – SPECIAL EVENTS  
B. Chapter 12.40 – PARKS REGULATIONS

## **Exhibit A**

### **Chapter 9.36 – SPECIAL EVENTS**

#### Sections:

- 9.36.010 – Purpose and intent.
- 9.36.020 – Definitions.
- 9.36.030 – General provisions.
- 9.36.040 – Minor Special Event Permit application.
- 9.36.050 – Neighborhood Street Closure Event Permit application.
- 9.36.060 – Major Special Event Permit application.
- 9.36.070 – Review process.
- 9.36.080 – Denial/revocation of Special Event Permit.
- 9.36.090 – Applicable fees.
- 9.36.010 – Appeals.
- 9.36.110 – Interference with Expressive Activity prohibited.
- 9.36.120 – Hold harmless.
- 9.36.130 – Display of Special Event Permit.
- 9.36.140 – Administrative regulations or policies.
- 9.36.150 – Penalties.

#### **9.36.010 – Purpose and intent.**

The purpose of this Chapter is to protect the First Amendment rights of the people of Capitola to peaceably assemble and/or protest in the City’s public places and to establish the least restrictive and reasonable time, place, and manner regulation of these activities. It is further intended to provide a coordinated process for managing special events to ensure the health and safety of event patrons, residents, workers, and other visitors, to prohibit illegal activities from occurring at special events, and to create mechanisms for cost recovery and use charges, to the extent authorized by law, while not unduly impacting the viability of special events.

#### **9.36.020 – Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this Chapter:

1. “Applicant” means any individual, corporation, partnership, trust, non-profit organization, association, group or other business entity or organization who seeks a Special Event Permit under this chapter to Organize a Special Event. For purposes of this Chapter, “Applicant” includes sponsors of the proposed Special Event.
2. “Application” means a form approved by the city manager or his/her designee, which an Applicant must submit pursuant to Section 9.36.030.
3. “Assembly” means the assembling or coming together of a number of persons for a particular purpose.

4. “City property” means all real property and improvements owner, operated or controlled by the City within the City’s jurisdiction. City property includes, but is not limited to, City Hall, police and fire facilities, recreational facilities, parks, libraries, and streets and sidewalks.

5. “Expressive Activity” means conduct, the sole or principal object of which is the expression of opinion, views, or ideas, protected by the First Amendment of the U.S. Constitution. Expressive activity includes, but is not limited to, public oratory and distribution of literature.

6. “Issuing Entity” means either:

- A. the police chief or designee for Minor Special Events, Neighborhood Street Closure Events, and recurring Major Special Events that were held in the prior year with no major public safety or traffic issues and which do not require new or different levels of City services from the prior year;
- B. the City Council for Major Special Events or upon referral by the police chief or designee.

7. “Major Special Event” means any of the following:

A. Any organized assemblage of more than two hundred (200) persons at any public place, public property, or public facility which is to gather for a common purpose under the direction or control of a person; or

B. Any organized assemblage at any public place, public property, or public facility which is to gather for a common purpose under the direction or control of a person or organization and that requires closure of a Major Street; or

C. Any other organized assemblage conducted by a person for a common or collective use, purpose or benefit which shall require extensive use of City public services for police regulation, monitoring or control, erecting barriers, or traffic control, parking needs that will exceed the capacity of the venue, or that will significantly interfere with normal use and operation of public right-of-way for travel.

8. “Major Streets” means the streets in the City of Capitola which serve to deliver significant traffic through the City, and include: 38<sup>th</sup> Avenue, 41<sup>st</sup> Avenue, 42<sup>nd</sup> Avenue between Jade Street and Capitola Road, 45<sup>th</sup> Avenue, 47<sup>th</sup> Avenue between Portola Drive and Capitola Road, 49<sup>th</sup> Avenue between Capitola Road and Wharf Road, Bay Avenue, Capitola Avenue, Capitola Road, Clares Street, Cliff Drive, Esplanade (not including the portion of the Esplanade directly adjacent to Esplanade Park), Gross Road, Hill Street, Jade Street, Kennedy Drive, McGregor Drive, Monterey Avenue, Park Avenue, San Jose Avenue between Esplanade and Capitola Avenue, Stockton Avenue, and Wharf Road..

9. “Minor Special Event” means an organized assemblage of at least seventy-five (75) and at most two hundred (200) persons at any public place, public property, or public facility which is to gather for a common purpose under the direction or control of a person and which does not

require Major Street closure and does not require closure of a street in a single-family or multi-family zone.

10. “Neighborhood Street Closure Event” means an event organized for the assemblage of up to two hundred (200) persons requiring the closure of a street in a single-family or multi-family zone.

11. “Organize” means to organize, operate, manage, stage, promote, sponsor or carry on a Special Event, as defined.

12. “Organizer” means the person responsible for managing and leading the proposed Special Event, as defined, on the day or days of the Special Event.

13. “Permittee” means any person that has been issued a Special Event Permit in accordance with this Chapter.

14. “Special Event” refers to any or all of a Major Special Event, Minor Special Event, or a Neighborhood Street Closure Event.

15. “Special Event Permit” means a permit issued by the Issuing Entity to Organize a Major Special Event, a Minor Special Event, or a Neighborhood Street Closure Event, as defined, consistent with the provisions of this Chapter.

### **9.36.030 – General provisions.**

A. Permit Required. Except when expressly provided pursuant to the terms of a permit, lease, or contract which has been specifically authorized by the City Council, no person shall operate any Special Event regulated by this Chapter without first obtaining a Special Event Permit in accordance with the provisions of this Chapter, unless exempt as set forth below. Special Event Permits must set forth the applicable noise limit if the proposed event shall exceed the noise regulations set forth in Chapter 9.12.

B. Exempt Activities:

1. Any Expressive Activity on City owned, controlled, or maintained property not otherwise considered a Minor Special Event, Major Special Event, or Neighborhood Street Closure Event.
2. Activities on school grounds, which are exempt from the requirements of this Chapter.
3. Spontaneous events which are occasioned by news or affairs coming into public knowledge less than forty-eight hours prior to such event may be conducted on City property without the Organizers having to obtain a Special Event Permit if all of the following factors are satisfied:
  - i. The spontaneous event does not impede vehicular traffic or violate regulations regarding pedestrian and vehicular traffic;
  - ii. The Organizer provides the police chief or designee with at least four (4) hours of prior notice of the spontaneous event; and

- iii. The location where the spontaneous event it to be conducted has not been previously rented, reserved, or otherwise obligated to another use in accordance with established City policies and procedures for use and/or rental of City facilities.
  - 4. Activities comprising or involving construction, maintenance, or requiring a City-issued encroachment permit.
  - 5. Filming, as regulated by Chapter 9.62.
- C. Events or gatherings which require a permit pursuant to other chapters of the Municipal Code, including but not limited to group activities in City-owned parks pursuant to Chapter 12.40, shall not be considered spontaneous events.
- D. Major Streets: The police chief or designee shall review all Applications to determine whether closure of Major Streets is required. The police chief or designee shall make factual findings supporting his or her determination, including whether the proposed Special Event poses specific health or and safety issues requiring closure of Major Streets, including but not limited to impacts to traffic and use of City resources, as a result of the proposed Special Event.

#### **9.36.040 – Minor Special Event Permit Application.**

- A. To receive a Minor Special Event permit, an Applicant must file a complete Application with the police chief or his/her designee on a form approved by the city manager at least forty-five (45) days before the proposed Minor Special Event. An Application is considered complete when it includes all of the following information:
  - 1. A description of the proposed use, event, or activity;
  - 2. The street or other public property and the specific area or areas thereof which will be utilized in connection with the proposed Minor Special Event, including a whether the proposed Minor Special Event will require closure of any street, a description of noise generating equipment, as well as circulation plan and site layout;
  - 3. The manner in which the public property will be utilized;
  - 4. Proof of insurance, as required by the City;
  - 5. The date or dates and the specific times thereof, including set-up and tear-down, that the public property is to be utilized for the proposed Minor Special Event;
  - 6. The name, address, and telephone number of the Applicant(s) for the proposed Minor Special Event permit;
  - 7. The name, address, and telephone number of the Organizer, in the event the City must contact said individual on the day or day(s) of the proposed Minor Special Event; and
  - 8. Other information as deemed necessary by the police chief or his/her designee to ensure public safety.
- B. The police chief or designee shall review and issue or deny the Minor Special Event Application within thirty days (30) of receipt of a completed Application, unless the applicant and the City mutually agree to a later date.
- C. Minor Special Event permits are issued on the condition that the Applicant receives approvals and/or any other necessary permits from relevant governmental agencies.

#### **9.36.050 – Neighborhood Street Closure Permit Application**

A. To receive a Neighborhood Street Closure permit, the applicant must file a complete Application with the police chief or his/her designee on a form approved by the city manager at least thirty days (30) days before the proposed Neighborhood Street Closure Event. An Application is considered complete when it includes all of the following information:

1. A description of the proposed use, event, or activity;
2. The specific area of the street that will be closed in connection with the Neighborhood Street Closure Event;
3. Evidence of the Applicant's and Organizer's residence on the specific area of the street request for closure.
4. Consent of at least six (6) additional households or fifty percent (50%) of the households located within the requested street closure area, whichever is less;
5. Map or site layout of the Neighborhood Street Closure Event site;
6. Proof of insurance, as required by the City;
7. The manner in which the public property will be utilized;
8. The date and the specific times thereof, including set-up and tear-down that the street is to be closed;
9. The name, address, and telephone number of the Applicant and Organizer(s) to be contacted regarding the Application, permit, and the Neighborhood Special Event;
10. Other information as deemed necessary by the police chief or his/her designee to ensure public safety.

B. The police chief or designee shall review and issue or deny the Neighborhood Street Closure Event Permit Application within thirty (30) days of receipt of a completed Application unless the applicant and the City mutually agree to a later date.

C. Neighborhood Street Closure Event permits are issued on the following conditions:

1. The Applicant submits proof that all households within the street closure area are notified of the street closure ten (10) days prior to the Neighborhood Street Closure Event; and
2. The Applicant has received approvals and/or any other necessary permits from relevant governmental agencies.
3. All households located within the street closure area shall be permitted to attend Neighborhood Street Closure Events free of charge.

### **9.36.060 – Major Special Event Permit Application**

A. To receive a Major Special Event permit, an Applicant must file a complete Application with the police chief or his/her designee on a form approved by the city manager at least ninety (90) days before the proposed Major Special Event. An Application is considered complete when it includes all of the following information:

1. A description of the proposed use, event, or activity;
2. The street or other public property and the specific area or areas thereof which will be utilized in connection with the proposed Major Special Event, including a whether the proposed Major Special Event will require closure of Major Streets or other streets, a description of noise generating equipment, a circulation plan and site layout, including a parking or shuttle plan for transportation to and from the proposed Major Special Event;

3. The manner in which the public property will be utilized;
4. The date or dates and the specific times thereof, including set-up and tear-down, that the public property is to be utilized for the described Major Special Event;
5. The name, address and telephone number of the Applicant(s);
6. Proof of insurance, as required by the City;
7. The name, address and telephone number of the Organizer of the proposed Major Special Event, in the event the City must contact said Organizer on the day or day(s) of the proposed Major Special Event;
8. A completed safety and security plan;
9. Other information as deemed necessary by the police chief or his/her designee to ensure public safety;
10. Certification of completeness by the police chief or his/her designee.

B. The City Council shall review and issue or deny the Application no later than the second regular City Council meeting following the submission of a completed Application or thirty days, whichever is later, unless the applicant and the City mutually agree to a later date.

C. Major Special Event permits are issued on the condition that the Applicant receives approvals and/or any other necessary permits from relevant governmental agencies.

### **9.36.070 – Review process.**

A. Subject to the criteria for denial set forth in Section 9.36.080, the Issuing Entity shall issue a Special Event Permit if it is determined that all of the following criteria have been met:

1. The proposed use of City property for the Special Event is not otherwise governed by or subject to any other permit procedures provided elsewhere in this Code.

2. The Application is complete and includes all the information required by this Chapter.

3. The preparation for or the conduct of the proposed Special Event will not unduly impede, obstruct, or interfere with the operation of emergency vehicles or equipment in or through the particular Special Event area or adversely affect the City's ability to perform municipal functions or furnish City services in the vicinity of the Special Event area.

4. The proposed Special Event does not otherwise present a substantial safety, noise, environmental, or traffic hazards, considering the number of participants and proposed location, such as to endanger the health or safety of the event participants, general public, or City employees, which cannot be adequately remedied by reasonable traffic control and other safety measures.

B. In deciding whether to approve an Application, no consideration may be given to the message of the proposed Special Event, the content of speech, or the identity or associational relationships of the Applicant(s) or Organizer(s).

C. The Issuing Entity may condition the Special Event Permit to mitigate health, safety, and impacts to City services.

D. Recurring Special Events: Major Special Events that recur every year, and which do not require new or different levels of City services from year to year and which did not present major public safety or traffic issues in the prior year may be reviewed and issued by the police chief or designee without City Council approval.



E. Annual Special Event Update: The police chief or designee shall provide the City Council with an annual report on the Minor and Major Special Event Permits that were issued in the prior year, summarizing any issues that were identified and, to the extent necessary, outlining any procedural changes for the following year.

### **9.36.080 – Denial/revocation of Special Event Permit.**

The Issuing Entity may deny any Application for a Special Event Permit or revoke such a Permit if the Issuing Entity finds any of the following:

- A. One or more of the approval criteria specified in Section 9.36.070 is not or can no longer be met;
- B. The Applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the Application process;
- C. The Application is incomplete or does not contain the information required by this Chapter;
- D. The Application does not satisfy the requirements of this Chapter;
- E. The Applicant fails to comply with any conditions of approval, including, but not limited to:
  - 1. Remittance of fees, charges, or deposits,
  - 2. Submittal of an indemnification agreement and/or proof of insurance for the Special Event as required by the City;
  - 3. Timely submittal of all required documents; or
  - 4. Obtaining approvals and/or any other necessary permits from relevant governmental agencies.
- F. The Applicant or Organizer has damaged City property and has not paid in full for such damage or has other outstanding and unpaid debts related to a prior Special Event Permit issued by the City.
- G. The proposed Special Event is scheduled to occur at a location and time in conflict with another Special Event already permitted or that can be permitted to another Applicant that submitted an Application first in time, or is in conflict with City-sponsored programming.
- H. The proposed Special Event would require the diversion of public safety or other City employees from their normal duties so as to unreasonably reduce adequate levels of service to any other portion of the City, or the proposed Special Event will adversely affect the City's ability to reasonably perform municipal functions or furnish City services.
- I. The proposed Special Event is in conflict with applicable provisions of any federal, state and/or local laws.
- J. The Application was submitted less than 30 days before the proposed Neighborhood Street Closure Event, 45 days before the proposed Minor Special Event, or 90 days before the proposed Major Special Event.

### **9.36.090 – Applicable fees.**

Special Event Permit Application fees pursuant to this Chapter shall be established by Resolution of the City Council. Applicants shall pay Application fees upon submittal of the Application to

the City for review. Where a Special Event requires street closure, barriers, or other infrastructure, the Applicant shall pay such fees as may be established by resolution of the City Council for traffic control and relating municipal expenses, including, but not limited to, public safety, services, solid waste and recycling services, building inspections, City lifeguard services, traffic control, and any other applicable fees. Additionally, use of City buildings or facilities shall be subject to any use or rental fees established by the City.

#### **9.36.010 – Appeals.**

An Applicant may appeal the denial or revocation of a Special Event Permit by the police chief or designee in accordance with the appeal process set forth in Chapter 2.52 of this Code.

#### **9.36.110 – Interference with Expressive Activity prohibited.**

It shall be unlawful for any person to interfere with a Special Event permitted under this Chapter by engaging in the following acts when done with the intent to cause interference:

- A. Blocking, obstructing, or impeding the passage of participants, vehicles, or animals in the Special Event along the Special Event route;
- B. Walking or running, driving a vehicle, riding a bicycle or skateboard, or using any similar device through, between, with, or among participants, vehicles, or animals in the Special Event;
- C. Dropping, throwing, rolling, or flying any object toward, among, or between participants, vehicles, or animals in a Special Event.

#### **9.36.120 – Hold harmless.**

Each Permittee shall execute a hold harmless agreement in a form approved by the City agreeing to defend, indemnify, and hold harmless the City against losses and liabilities incurred from the willful or negligent acts or omissions of the Permittee or its officers, employees, and agents. If City property is destroyed or damaged by reason of Permittee's Special Event and the damage or destruction is directly attributable to the Permittee, the Permittee shall reimburse the City for the actual replacement or repair cost of the destroyed or damaged property. Nothing in this provision shall require a Permittee to indemnify the City from claims or losses occasioned by the reaction of third parties to Expressive Activity at the Permittee's Special Event.

#### **9.36.130 – Display of Special Event Permit.**

A copy of the Special Event Permit shall be available at the event site and shall be exhibited upon demand of any City official.

#### **9.36.140 – Administrative regulations or policies.**

The city manager, or designee, may adopt administrative regulations or policies that are consistent with and that further the terms and requirements set forth within this Chapter, and as may be necessary to coordinate multiple uses of public property, assure preservation of public property

and public places, prevent dangerous, unlawful uses, protect the safety of persons and property and to control vehicular and pedestrian traffic. All such administrative regulations or policies must be in writing.

**9.36.150 – Penalties.**

Violations of this chapter may be enforced pursuant to any laws and remedies available to the City including but not limited to enforcement as a misdemeanor and/or public nuisance pursuant to Title 4 of this Code.

## **Exhibit B**

### **Chapter 12.40**

#### **PARK REGULATIONS**

Sections:

- 12.40.010 – Purpose of chapter.
- 12.40.020 – Definitions.
- 12.40.030 – General Principles.
- 12.40.040 – Group activities – Permit required.
- 12.40.050 – Sound standard.
- 12.40.060 – Application for permit.
- 12.40.070 – Criteria for issuance.
- 12.40.080 – Conditions of approval.
- 12.40.090 – Permit holder responsibilities.
- 12.40.100 – Revocation of permit.
- 12.40.110 – Appeal of decision.
- 12.40.120 – Establishment of fees.
- 12.40.130 – Prohibited activity in parks or facilities.
- 12.40.140 – Park regulations.
- 12.40.150 – Park and Recreation facility hours.
- 12.40.160 – Penalty for violation.

#### **12.40.010 Purpose of chapter.**

The purpose of this chapter is to regulate the use of parks and other recreation facilities of the City for the optimum use and enjoyment of residents of Capitola; to establish standards to prevent the misuse and destruction of the facilities; to establish regulations to insure the safety and comfort of users of the facilities as well as persons residing or owning property in the vicinity of the facilities; and to protect the First Amendment rights of the People of Capitola to peaceably assemble in the City's public parks.

#### **12.40.020 Definitions.**

1. "Applicant" means any individual, corporation, partnership, trust, non-profit organization, association, group or other business entity or organization who seeks a Permit under this chapter. For purposes of this Chapter, "Applicant" includes the organizer of the event, responsible for coordination and management of the event on the day or days of the event.
2. "Expressive Activity" shall have the same definition as set forth in Chapter 9.36 of this Code.
3. "Park(s)" means and includes every park owned and maintained by the City together with any accompanying parking lot or staging area, which is owned, managed, or

controlled by the City of Capitola for the recreational use and/or enjoyment of the public. Parks do not include the beach.

4. “Permit” means a permit issued by the City of Capitola issued pursuant to this Chapter.

5. “Recreation Facility” means fields, courts, pools, amphitheaters, the Capitola Bandstand at Esplanade Park, areas specifically designed for organized activities such as, but not limited to, baseball, softball, soccer, tennis, basketball, skateboarding, bicycling, and organized group gatherings which are owned, managed, or controlled by the City of Capitola for the recreational use and/or enjoyment of the public.

6. “Refuse” means any garbage, trash, bottles, cans, papers, ashes, food and vegetable material, rubbish, industrial wastes, animal waste, grass clippings, tree or shrub pruning or any other discarded substance, matter, or thing, whether liquid or solid.

#### **12.40.030 General principles.**

The following principles shall govern use of Parks and Recreation Facilities:

A. Parks and Recreation Facilities primarily are intended for the use and enjoyment by residents of Capitola;

B. Public recreation services should be available to all Capitola residents without discrimination as to race, religion, gender identity, economic status, or any protected status;

C. The public recreation program should include a wide variety of activities, including passive enjoyment, to appeal to different interests, ages, and abilities, and should not merely be limited to physical activities, outdoor activities, daytime activities, or to the interests of children or others of special categories;

D. Parks and Recreation Facilities are intended to be used, subject to applicable regulations, for:

1. Informally by residents,
2. For programs sponsored by the city,
3. For joint city-school programs,
4. For organized group activities.

E. Commercial activities in Parks and Recreation Facilities are not permitted, except for activities sponsored by the City of Capitola or as otherwise authorized in this Code.

#### **12.40.040 Permit required.**

A. To ensure equal access to City Parks and open space areas, preservation of these spaces and due to limitations of size, parking availability, and open areas, activities involving the exclusive use of any area of a Park is prohibited, except with a permit for the specific Parks.

Specific areas within all city Parks that are available for exclusive use shall be identified in the Parks Policy.

B. Activities involving the exclusive use of Recreational Facilities shall require a permit and are subject to the standards and regulations contained in this Chapter.

C. Use of Powered Equipment or Temporary Structures, including, but not limited to, shade structures and bounce houses: Any person wishing to use equipment requiring a power source or erect a structure larger than 100 square feet or taller than 10 feet in a Park shall obtain a permit therefore, and is subject to the standards and regulations contained in this chapter.

D. Applicants shall remit an application review fee upon submittal of a permit application to the City for review.

E. It shall be unlawful for any person to engage in any use of any Park or Recreational Facility for which a permit is required pursuant to this Chapter without obtaining such a permit, except where such activity is regulated by other provisions of this Code, such as Chapter 9.36. Nothing in this section shall require persons or entities to obtain a permit for Expressive Activities, where such activity is addressed by Chapter 9.36 of this Code.

F. All Park use permits must also comply with the Parks Policy adopted by the City Council by resolution as amended from time to time.

#### **12.40.050 Sound standard.**

A. In recognition of the rights of residents in the vicinity of Parks to enjoy the comfort of their homes in normal peace and quiet, as well as the right of citizens to enjoy a reasonable peace and quiet in appropriately designed Parks, the use of any radio receiving set, musical instrument, machine or device for producing or reproducing sound, or any device which produces noise in such a manner as to unreasonably disturb the peace, quiet, and comfort of persons is prohibited in all Parks, unless otherwise specified on a permit issued by the City.

#### **12.40.055 Open Play Hours at the Capitola Bandstand**

A. For purposes of this Section, "Open Play Hours" means between 9:00 a.m. through 12:00 p.m. on Saturdays and Sundays.

B. The sound limitations in this Chapter shall not apply to the use of musical instruments at the Capitola Bandstand at Esplanade Park during Open Play Hours, however amplification of any kind is not permitted.

#### **12.40.060 Application for permit.**

1. Any individual or group desiring to reserve any Park or Recreation Facility, or any portion thereof, pursuant to Section 12.40.040, shall apply to the city manager, or his/her

designee, in writing on a form approved by the city manager.

2. A complete application must be submitted to the city manager, or his/her designee, not less than seventy-two (72) hours prior to the desired reservation.

**12.40.070 Criteria for denial.**

The city manager, or his/her designee, shall deny a permit pursuant to the provisions of this Chapter if the city manager, or his/her designee, determines the application meets any of the following criteria:

A. The information contained in the application, or supplemental information provided, is not complete or is materially false or misleading.

B. The Applicant has failed to submit a complete application, supply satisfactory evidence of insurance, or has not remitted the fees or deposits as required by the Chapter.

C. The Park or Recreation Facility, or portion thereof, is unavailable for the period for which the permit is requested.

D. The area proposed for the Applicant's use or activity could not physically accommodate the number of participants expected to participate in a safe manner.

E. The proposed use, activity or event is not compatible with the uses established for the requested Park or Recreation Facility or portion thereof during the date or time requested, in that it unreasonably interferes with use of the Park by others.

F. The proposed use has a realistic potential to create a threat to the public health, safety or welfare, or to damage public property, which may not be adequately remedied by reasonable traffic control, barriers, and/or other safety measures.

G. The proposed use would require the diversion of public safety or other City employees from their normal duties so as to unreasonably reduce adequate levels of service to any other portion of the city, or the event will adversely affect the City's ability to reasonably perform municipal functions or furnish city services.

H. The proposed use, event or activity will have a substantial adverse environmental impact.

I. The proposed use would be in conflict with applicable provisions of any federal, state and/or local law.

J. The proposed use is commercial and not otherwise authorized by this Code.

#### **12.40.080 Conditions of approval**

Permits issued pursuant to this Chapter are subject to such reasonable conditions as the city manager or his/her designee may determine necessary to coordinate multiple uses of public property, assure preservation of public property and public places, prevent dangerous, unlawful uses, protect the safety of persons and property, ensure compliance with noise requirements set forth in Chapter 9.12, and to control vehicular and pedestrian traffic in and around the Park and/or Recreation Facility. These conditions may include conditions for waste management and restoration of the Park, environmental protection, conditions to ensure safe accommodation of an event's pedestrian and vehicular traffic, indemnification and hold harmless of the City, and reasonable designation of alternate sites, times, or dates in the event of conflict with available resources.

#### **12.40.090 Permit holder responsibilities.**

After a person obtains a permit pursuant to the provisions of this Chapter, that permit holder must:

1. Comply with all rules and regulations and all applicable City Ordinances as though the same were incorporated into the permit.
2. Comply with all conditions imposed by the permit.
3. Inform all attendees of the conditions of the permit and the applicable rules and regulations.
4. Make Permit available at the event site and shall be exhibited upon request of any City official.

#### **12.40.100 Revocation of permit.**

Any permit for the use of the premises shall contain a provision that the city manager or his/her designee shall have the power to revoke such permit and to require the immediate removal of all persons from said premises upon their finding:

- A. That the Applicant misrepresented or misstated any material fact in their application; or
- B. Applicant damaged City property or violated permit conditions; or
- C. That the activity or any significant part thereof taking place on said premises is contrary to State or local law or is endangering life and/or property.

#### **12.40.110 Appeal of decision.**

An Applicant may appeal the denial or revocation of a permit by the city manager or designee in accordance with the appeal process set forth in Chapter 2.52 of this Code.



#### **12.40.120 Establishment of fees.**

Application fees pursuant to this Chapter shall be established by Resolution of the City Council. Where an event organized pursuant to this Chapter requires City services or infrastructure, the Applicant shall pay such fees as may be established by resolution of the City Council for municipal services, including but not limited to public safety services, solid waste and recycling services, traffic control, and any other applicable fees. Additionally use of City buildings or facilities shall be subject to any use or rental fees established by the City.

#### **12.40.130 Prohibited activity in Parks and Recreation Facilities.**

The following activities are prohibited in any Park or Recreation Facility:

- A. Exclusive use of any Park or Recreation Facility without a permit therefor, or use of any Park or Recreation Facility by any group for which a permit is required without such permit;
- B. Commercial activities not otherwise authorized by this Code;
- C. Golf, except in designated areas;
- D. Motor-driven vehicles;
- E. Discharging weapons;
- F. Removal of turf, soil, grass, tree, shrub, or portion thereof; except as such work may be done by authorized City employees;
- G. Lighting or maintaining fires, except as otherwise permitted by this Code or posted notices in specific Parks, however UL or ASMI listed manufactured gas (LPG or NG) outdoor flame devices (such as gas BBQs or gas fire-pits) that comply with the Fire Code are permitted at Jade Street and Monterey Parks;
- H. Overnight use of parks, other than city-sponsored activities or other activities which have received a permit from the City to conduct such after-hours activities;
- I. Play or practice baseball or softball in areas not specifically designated for baseball and softball activities;
- J. To possess or consume alcoholic beverages, except as expressly permitted by the Department of Alcohol Beverage Control;
- K. To cause, create, encourage, or threaten to cause any disturbance which may reasonably result in injury or property damage, or disturb the peace, comfort and security of the park patrons or employees;

L. Off-leash dogs, except as designated pursuant to applicable park regulations; dogs shall be permitted on leash pursuant to Section 6.14.200.

M. Use of a Park or Recreation Facility in such a fashion as to violate a posted notice restricting that Park or Recreation Facility's use to one or more specified recreational uses.

N. Bounce houses shall not be permitted at Esplanade Park.

O. Any activity that is contrary to applicable law or is endangering life and/or property.

#### **12.40.140 Park and Recreation Facility regulations.**

The city manager shall be and is authorized and directed to promulgate such rules and regulations that are consistent with and that further the terms of the requirements herein. The regulations may permit any of the activities prohibited in this chapter in any defined and prescribed area provided that a suitable area is set aside for such activity, and said areas are signed and posted, indicating the type of use permissible, and the rules applicable to said use, if any.

#### **12.40.150 Park hours.**

All Parks located in the City shall, except for areas otherwise posted, be closed from sunset (the time when the upper limb of the sun disappears below the sensible horizon as a result of the diurnal rotation of the earth) until six a.m. in the morning, unless explicitly extended in a permit issued by the City.

#### **12.40.170 Penalty for violation.**

Violations of this chapter may be enforced pursuant to any laws and remedies available to the City including, but not limited to, enforcement as a misdemeanor and/or public nuisance pursuant to Title 4 of this Code.