ORDINANCE NO. 1637

AN ORDINANCE OF THE CITY OF LYNDEN, COUNTY OF WHATCOM, AMENDING CHAPTER 12.24 OF THE LYNDEN MUNICIPAL CODE TO ALLOW FOR THE EXCLUSION OF ANYONE WHO VIOLATES PROVISIONS OF THE LYNDEN MUNICIPAL CODE, REVISED CODE OF WASHINGTON, OR PARK RULES IN A CITY OF LYNDEN PARK BY WRITTEN NOTICE

WHEREAS, the City of Lynden ("City") has experienced an increase in certain behavior among visitors to city parks that is damaging to park infrastructure or disruptive to the enjoyment of such parks by the wider public, including harassment, bullying, and other violations of the City code; and

WHEREAS, the City passed an ordinance addressing prohibited uses and activities in City parks but provided no process for law enforcement to follow to exclude persons from the parks; and

WHEREAS, the City desires to amend the Lynden Municipal Code to expressly allow any law enforcement officer of the City of Lynden to temporarily exclude from city parks anyone who violates provisions of the City code, the Revised Code of Washington, or any park rules; and

WHEREAS, this ordinance is declared to be an exercise of the policy power of the City of Lynden, and its provisions shall be liberally construed for the preservation and protection of the natural environment, public peace, health, safety, and welfare; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council;

NOW THEREFORE, BE IT ORDAINED as follows:

Section 1. Chapter 12.24.200 - .230 of the Lynden Municipal Code are hereby added to the Code as follows:

12.24.200 Exclusion.
Any law enforcement officer of the City of Lynden may exclude from a Lynden city public park ("city park"), by delivering an exclusion notice, anyone within a city park who:

A.   Violates any provision of or within this chapter; or

B.   Violates any park rules as defined in this chapter; or

C.   Violates any provision of the City of Lynden Municipal Code or Revised Code of Washington.

The person subject to exclusion ("subject") need not be charged, tried or convicted of any crime or infraction in order for any exclusion notice to be issued or effective. The exclusion may be based upon observation by the law enforcement officer or upon civilian reports that would be ordinarily relied upon by the law enforcement officer in determination of probable cause. At the time of exclusion of any person from a city park, the law enforcement officer shall deliver to the subject the exclusion notice either in person or by First Class Mail and Certified Mail to said subject at their last known address. The exclusion notice shall be deemed issued and effective immediately upon in person delivery, or in the event of mail delivery, two business days after the date of mailing, as documented by an affidavit of mailing.

The issuance of an exclusion notice shall be in addition to other penalties authorized under this chapter.

12.24.210 Duration of exclusion.
A. If the subject has not been excluded from any city park by an exclusion notice issued within one year prior to a committing a violation identified in LMC 12.24.200 ("violation") and the current violation is not a felony offense or an offense involving possession or use of weapons or controlled substances, then the subject may be excluded from all city parks for a period of thirty (30) days from the date of issuance of the exclusion notice.

B. If the subject has been issued only one prior exclusion notice within one year prior to the violation and neither the current violation nor the previous violation is a felony or an offense involving possession or use of weapons or controlled substances, then the subject may be excluded from all city parks for a period of ninety (90) days from the date of issuance of the exclusion notice.

C. If the subject has been issued two prior exclusion notices within one year prior to the violation and neither the current violation nor the previous violations are a felony or an offense involving possession or use of weapons or controlled substances, then the subject may be excluded from all city parks for a period of six (6) months from the date of issuance of the exclusion notice.

D. If the subject has been issued three prior exclusion notices within one year prior to the violation and neither the current violation nor the previous violations are a felony or an offense involving possession or use of weapons or controlled substances, then the subject may be excluded from all city parks for a period of one (1) year from the issuance of the exclusion notice.

E. If the subject has committed a felony offense, or an offense involving possession or use of weapons or controlled substances, the subject may be

excluded from all city parks for a period of one (1) year from the issuance of the exclusion notice.

F.   If the subject returns to any city park during the time of exclusion, he or she will be subject to arrest and prosecution for criminal trespass.

The exclusion notice rules set forth herein are summarized below:

Type of Offense	First	Second	Third	Fourth
Park Rules Violation; LMC Violation or Misdemeanor offense	30 days	90 days	6 Months	1 Year
Felony/Weapons/Drugs	1 Year			

12.24.220 Notice and appeal.
A.   The exclusion notice shall be in writing and shall contain the date of issuance. The exclusion notice shall specify the length and places of exclusion. It shall be signed by the issuing law enforcement officer. Warning of the consequences for failure to comply shall be prominently displayed on the notice.

B.   Only the park hearings officer as defined in LMC 12.24.230, and only after a hearing, may shorten or rescind an exclusion notice.

C.   A subject receiving an exclusion notice longer than thirty (30) days may seek a hearing before the park hearings officer to have the exclusion notice shortened or rescinded. The request for a hearing shall be delivered to the park hearings officer's office no later than ten (10) days after the issuance date of the exclusion notice, as determined under LMC 12.24.200. The request for a hearing shall be in writing and shall be accompanied by a copy of the notice on which the hearing is sought. The hearing should occur within fourteen (14) days after the park hearings officer receives the request, or as soon thereafter as reasonably feasible. The park hearings officer shall take reasonable steps to notify the subject of the date, time, and place of the hearing.

D.   At the hearing, the violation must be proven by a preponderance of the evidence in order to uphold the exclusion notice. If the notice was issued because of the alleged violation of any criminal law, the offender need not be charged, tried or convicted for the exclusion notice to be upheld. The notice establishes a prima facie case that the subject committed the violation as described. The park hearings officer shall consider a sworn report or a declaration under penalty of perjury as authorized by RCW 9A.72.080, written by the issuer, without further

evidentiary foundation. The park hearings officer may consider information that would not be admissible under the evidence rules in a court of law but which the hearings officer considers relevant and trustworthy. The proceedings of any hearing held under this section shall be recorded.

E.   If the violation is proven, the exclusion notice shall be upheld; but upon good cause shown, the park hearings officer may shorten the duration of the exclusion. If the violation is not proven by a preponderance of evidence, the park hearings officer shall rescind the exclusion. If the exclusion is rescinded it shall not be considered a prior exclusion.

F.   The final decision of a park hearings officer is the final decision of the City. Such final decision shall be in writing and issued within seven (7) days of the hearing's conclusion. A subject seeking judicial review of the park hearing's officer decision on his or her exclusion notice must file an application for a writ of review in the Whatcom County superior court within twenty-one (21) days of the date of issuance of the final decision. The date is issuance shall be the date of delivery of the written decision to the subject of the exclusion in person or by First Class and Certified Mail to his or her last known address as documented by an affidavit of service or mailing. For delivery by mail, the date of delivery shall be within two (2) business days following the date of said written decision.

G.   The exclusion shall remain in effect during the pendency of any administrative or judicial proceeding.

H.   When excluding a person under the age of thirteen, a reasonable effort will be made by the person issuing the exclusion to notify the parents/guardian of the exclusion.

12.24.230 Park hearings officer.
The park hearings officer shall be the city administrator, or his or her designee. The park hearings officer shall conduct a hearing if an appeal is filed pursuant to LMC 12.24.220 and shall have the authority to issue subpoenas to compel attendance.

Section 2. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 3. Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

PASSED by the City Council of the City of Lynden, Whatcom County, Washington on the _____ day of _____, 2021 and signed and approved by the Mayor on the same date.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY