



# MEDINA, WASHINGTON

## AGENDA BILL

Monday, December 13, 2021

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**Subject:** Ordinance Approving New MMC Chapter 12.26 Addressing Exclusion and Trespass on City Property

**Category:** Consent

**Staff Contact:** Stephen R. Burns, Chief of Police

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### **Summary**

A recent review of the Medina Municipal Code regarding trespass on City of Medina property identified several issues that need to be updated to meet legal requirements for enforcement. The updated ordinance fulfills the necessary requirements for the City of Medina and the Medina Police Department to legally remove subjects that's behavior is disruptive in nature.

Other municipalities and cities encounter the same or similar conditions, problems and issues within their public parks and properties, and have found that an "exclusion and trespass" program creates a low-key mechanism to immediately address and stop unpermitted or disruptive behavior by requiring offenders to immediately leave the specific park or public property, and to stay away from and refrain from reentering such place for a short period of time.

The ordinance allows for police officers to trespass and remove a subject whose behavior is disruptive and an appeal process to contest the action. The proposed changes are consistent with other jurisdictions.

### **Attachments**

1. Summary Brief Medina Municipal Code Chapter 12.26 – Exclusion and Trespass on City Property; and
2. Ordinance No. 1006 Adding Chapter 12.26 in the Medina Municipal Code – Exclusion and Trespass on City Property

**Budget/Fiscal Impact:** None

**Recommendation:** Adopt ordinance.

**City Manager Approval:**

**Proposed Council Motion:** I move adopt Ordinance No. 1006 adding new Medina Municipal Code Chapter 12.26 – Exclusion and Trespass on City Property.

**New Chapter MMC 12.26**

**Exclusion from City Property; Trespass on City Property**

**12.26.010 – Purpose and Scope**

The purpose of this chapter is to enable the city’s police personnel to take immediate action when they observe unpermitted or other improper conduct occurring in or on city parks and other city properties, to talk with the individual(s) acting in such manner and, when appropriate, to issue an exclusion notice requiring the individual(s) to promptly exit the park or other property and remain outside the boundaries of such location for a defined period of time.

**12.26.020 – Definitions**

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

“Chief of Police” means the chief executive officer of the City of Medina Police Department, established by MMC 2.08.030 and his/her designees, which includes officers of the Medina Police Department.

“City Parks” means all or any of the following City properties and includes their appurtenant structures, facilities, docks, playgrounds, recreation equipment, dog facilities, open spaces, tennis courts and fixtures: Fairweather Park and Nature Preserve, Lake Lane Public Dock, Medina Beach Park, and Medina Park. City Parks are a subset of City Property.

“City Property” means all real property and appurtenant structures and fixtures, in whole or in part, owned or leased by the City of Medina, now or in the future. City Property shall include but is not limited to Medina City Hall, the Medina Post Office property, and City Parks. City Property does not include publicly accessible City streets, sidewalks, and rights of way.

“Exclusion Notice” means a written notice issued by an officer pursuant to this chapter advising the recipient thereof that he/she has committed a violation and is prohibited by the Exclusion Notice from entering or remaining in or upon certain City Property, the reasons therefore, and the time period of such exclusion. The Exclusion Notice shall be on the form approved by the Chief of Police and shall be delivered to the recipient as set forth in this chapter.

“Hearing Examiner” means the City of Medina Hearing Examiner, established by MMC Chapter 2.72.

“Officer” means a commissioned member of the Medina Police Department or other duly authorized law enforcement personnel covered under the Police Officers Powers Act.

“Violation” means acts or conduct that violate any park rule set forth in MMC Chapter 12.20 while in a City Park, any provision of the Medina Municipal Code while on City Property, or any provision of the Revised Code of Washington while on City Property.

“Weapon violation” means the possession or use of a weapon in violation of RCW Chapter 9.41 (Firearms and Dangerous Weapons).

**12.26.030 – Exclusion from City Property**

A. An officer may, by delivering an Exclusion Notice in person to the recipient, exclude from City Property anyone who:

1. Violates any park rule as set forth in MMC Chapter 12.20 while in a City Park; or

2. Violates any provision of the Medina Municipal Code or Revised Code of Washington while in or on City Property.

B. An Exclusion Notice is effective immediately upon receipt by the recipient. The recipient need not be cited for, nor be charged, tried, or convicted of any crime or infraction, as a precondition to issuance of an Exclusion Notice. The exclusion may be based upon observation by the officer or upon the sort of reports that would ordinarily be relied upon by officers in the determination of probable cause.

C. The Exclusion Notice shall be issued using the approved form and shall contain the information designated thereon, specifically including its duration, place(s) of exclusion, and a warning of the consequences for failure to comply. Every Exclusion Notice shall be signed by the issuing officer.

D. The duration of an Exclusion Notice shall be determined as follows:

1. If the recipient has not been excluded from any City Property by an Exclusion Notice issued within one (1) year prior to the current violation and the current violation is not a felony violation or weapon violation, then the recipient may be excluded from the City Property in which the current violation occurred for a period not exceeding seven (7) days from the date of the Exclusion Notice.

2. If the recipient has been the subject of only one (1) prior Exclusion Notice issued within one (1) year prior to the current violation and neither the current nor the past violation was a felony violation or weapon violation, then the recipient may be excluded from the City Property in which the current violation occurred for a period of ninety (90) days from the date of the Exclusion Notice.

3. If the recipient has been the subject of two (2) or more prior Exclusion Notices issued within one (1) year prior to the current violation, all from the same City Property in which the current violation occurred, or if the current violation is a felony violation or weapon violation, then the recipient may be excluded from the City Property in which the current violation occurred for a period of one (1) year from the date of the Exclusion Notice.

4. If the recipient has been the subject of two (2) prior Exclusion Notices within one (1) year prior to the current violation and, in combination, the current violation and those prior violations took place in two (2) or more City Properties, then the recipient may be excluded from all City Property for a period of one (1) year from the date of the Exclusion Notice.

**12.26.040 – Administrative Appeal**

A. General. Only the recipient of an Exclusion Notice may appeal such notice. Every appeal shall be made in accordance with the requirements of this section. No appeal is provided for an Exclusion Notice of seven (7) days duration or less. The recipient of an Exclusion Notice with a duration exceeding seven (7) days may seek a hearing before the Medina Hearing Examiner to have the Exclusion Notice rescinded or the period of exclusion shortened. No other relief is available. Only the Hearing Examiner after a hearing may rescind or shorten an Exclusion Notice.

B. Request for Hearing. The request for hearing shall be in writing, shall contain a concise statement explaining the basis for the appeal and the relief sought, shall include a copy of the Exclusion Notice which is the subject of the hearing, and shall include payment of the current appeal fee. The request for a hearing shall be postmarked and delivered to the City Clerk with a copy to the Chief of Police and Hearing Examiner not later than seven (7) days after the

issuance date of the Exclusion Notice. The hearing should be scheduled and occur within seven (7) days after the Hearing Examiner receives the request for hearing if possible. The Hearing Examiner shall take reasonable steps to notify the appellant and the Chief of Police of the date, time, and place of the hearing.

C. Witnesses. At the request of the appellant or the Chief of Police, the Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses at the hearing. The Hearing Examiner shall not issue a subpoena for the attendance of a witness at the request of the appellant unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The appellant shall be responsible for serving any subpoena issued at the appellant's request.

D. Proof Standards and Procedure. At the hearing, the violation must be proved by a preponderance of the evidence in order to uphold the Exclusion Notice. If the Exclusion Notice was issued because of the alleged violation of any criminal law, the appellant need not be charged, tried, or convicted on such violation for the Exclusion Notice to be upheld. The Exclusion Notice establishes a prima facie case that the appellant committed the violation as described. The Hearing Examiner shall consider a sworn report or a declaration under penalty of perjury as authorized by RCW Chapter 5.50 (Uniform Unsworn Declarations Act) written by the officer who issued the Exclusion Notice, without further evidentiary foundation. The certifications authorized in Rule 6.13 of the Criminal Rules for Courts of Limited Jurisdiction shall be considered without further evidentiary foundation. The Hearing Examiner may consider information that would not be admissible under the evidence rules in a court of law but which the Hearing Examiner considers relevant and trustworthy.

E. Decision. If the violation is proved, the Exclusion Notice shall be upheld; but upon good cause shown the Hearing Examiner may shorten the duration of the exclusion. If the violation is not proven by a preponderance of the evidence, the Hearing Examiner shall rescind the Exclusion Notice. If the Hearing Examiner rescinds an Exclusion Notice, the exclusion shall not be considered a prior exclusion for purposes of MMC Section 12.26.030(D).

F. Judicial Review. The decision of the Hearing Examiner is final. A recipient seeking judicial review of the Hearing Examiner's decision must file an application for a writ of review in the King County Superior Court within fourteen (14) days of the date of the Hearing Examiner's decision.

G. Pendency of Exclusion During Proceedings. The exclusion shall remain in effect during the pendency of the administrative appeal, and if the Exclusion Notice is upheld in whole or in part shall remain in effect during the pendency of any judicial proceeding.

H. Subsequent Civil or Criminal Proceedings. No determination of facts made by the Hearing Examiner in conducting a hearing under this section shall have collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

I. Enforcement Goal. This section shall be enforced to emphasize voluntary compliance with laws and park rules, and so that inadvertent minor violations that would fall under subsection D1 of MMC section 12.26.030 can be corrected without resort to an Exclusion Notice.

**12.26.050 – Trespass on City Property—Definition—Punishment.**

A. A person commits the crime of trespass on City property when he/she knowingly:

1. Enters, remains in, or is otherwise present within the premises of a City Property from which he or she has been excluded during the period covered by an Exclusion Notice pursuant to MMC 12.26.030; or

2. Enters, remains in, or is otherwise present within the premises of a City Property during hours which the property is not open to the public, unless the person is present on or within the property to participate in an activity either conducted by the City or conducted pursuant to the terms of a permit issued by the City.

B. Trespass on City Property is a gross misdemeanor subject to the provisions of MMC Chapter 9.04 (Public Peace, Morals and Welfare; General Provisions).

C. It is not a defense to the crime of trespass on City Property:

1. That the underlying exclusion issued pursuant to this chapter is on appeal when the excluded person is apprehended, charged, or tried under this section; nor

2. That the excluded person entered or remained in the City Property pursuant to a permit that was issued in the name of another person either before or after the date of the Exclusion Notice.

**12.26.060 – Discrimination Prohibited.**

A. It is the policy of the City, in the exercise of its police powers for the protection of the public health, safety and general welfare, and for the maintenance of peace and good government, to assure equal opportunity for full enjoyment and use of City Park facilities to all persons, free from restrictions because of race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin or the presence of any sensory, mental or physical handicap.

B. It is unlawful for any person occupying or using any City Park for any event, activity or exhibition open to the public, whether or not under a permit and whether or not an admission or entrance fee is charged, to deny to any other person the full use and enjoyment of such City Park because of race, creed, color, sex, marital status, sexual orientation, gender identity, political ideology, age, religion, ancestry, national origin or the presence of any sensory, mental or physical handicap. In addition to other sanctions, the permit allowing access to or use of such City Park held by any person who is convicted of a violation of this section may be canceled by the City, which administrative action shall be appealable by said person only in accordance with the requirements of MMC 12.26.040. After hearing of any such appeal, the Hearing Examiner may at the City's request order that such person shall not be eligible for any similar permit for access to, or use of, a City Park for a period up to three (3) years.

C. Where applicable, the term "deny" shall have the meaning in RCW 9.91.010, as now or hereafter amended; the terms "full enjoyment of" and "person" shall have the meaning in RCW 49.60.040, as now or amended.

D. Nothing in this section shall prohibit the exercise of constitutional liberties or the use of a bona fide qualification or restriction that does not infringe upon civil rights or civil liberties recognized by state law or City ordinance.

Ordinance No. 1006

MEDINA CITY COUNCIL

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, ADOPTING MEDINA MUNICIPAL CODE CHAPTER 12.26 CONCERNING TRESPASS ON AND TEMPORARY EXCLUSION FROM CITY PROPERTIES; SETTING STANDARDS AND CRITERIA APPLICABLE TO SUCH ACTIONS; AUTHORIZING ADMINISTRATIVE AND OTHER PROCEDURES TO ENSURE DUE PROCESS IN THE APPLICATION OF THESE REGULATIONS AND PROTECTION OF THE PUBLIC HEALTH, SAFETY AND WELFARE; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, Medina owns, manages, and maintains a number of City parks and properties that include appurtenant structures, facilities, docks, playgrounds, recreation equipment, dog facilities, open spaces, tennis courts and fixtures, identified as follows: Fairweather Park and Nature Preserve, Lake Lane Public Dock, Medina Beach Park, Medina Park (the foregoing with their pertinent facilities collectively referenced as City Parks), Medina City Hall and Medina Post Office. The City Parks together with Medina City Hall and Medina Post Office are collectively referenced as City Property and as City Parks and Property; and

**WHEREAS**, the City Council previously adopted and updated rules and regulations for City Parks in MMC Chapter 12.24 (Public Parks) to foster appropriate use of City Parks in a manner that allows all Medina residents and visitors to enjoy the City Parks; and

**WHEREAS**, Medina Police officers have received reports and complaints of, and have encountered situations and events when, inappropriate or unpermitted activity is occurring in or on City Properties and the individual(s) involved are unwilling to stop their inappropriate, unpermitted and/or disruptive conduct and conform with City Park rules and requirements, including instances when other persons in or on City Property are or feel threatened by such conduct, and when the issuance of an infraction or other citation by the officer has only limited or no effect on ending or correcting the disruptive conduct; and

**WHEREAS**, many municipalities have encountered the same or similar conditions, problems and issues within their public parks and properties, and have found that implementation of exclusion and trespass regulations provides a low-key mechanism to immediately address and stop unpermitted and disruptive behavior in City Parks and Property by requiring offenders to immediately leave the specific park or public property affected, and to stay away from and refrain from reentering such place(s) for short periods of time; and

**WHEREAS** the Medina Police Department (Department) believes that adopting exclusion and trespass regulations in Medina would enable the Department to take immediate action to address and resolve situations like those described above, with the positive benefit enabling more and better public use and enjoyment of City Parks and Property, and encouraging those receiving exclusion notices to alter their conduct to conform with Medina's park rules; the Department therefore recommends adoption of exclusion and trespass regulations for the City of Medina; and

**WHEREAS**, the Department and the City Attorney's Office have reviewed exclusion and trespass regulations from various jurisdictions and have prepared new MMC Chapter 12.26, entitled "Exclusion From City Property; Trespass on City Property", attached hereto as **Exhibit A**, for inclusion in the Medina Municipal Code; and

**WHEREAS**, the City Council has considered and evaluated the foregoing information, the Department's recommendation, and the proposed exclusion and trespass regulations attached as **Exhibit A**, and finds that the proposed chapter would enhance the Department's code enforcement capabilities, provide alternative and more efficient mechanisms that will better address disruptive conduct in City Parks and Property, and provide faster and less expensive administrative review of City actions, all having immediate and positive benefits for Medina's residents, visitors, park users and City Properties and enhancing the public health, safety and welfare.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1. Findings Adopted.** The foregoing recitals are adopted as findings of the City Council in its consideration and adoption of new Medina Municipal Code Chapter 12.26 (Exclusion From City Property; Trespass on City Property).

**Section 2. MMC Chapter 12.26 Adopted.** For the reasons hereinbefore stated, MMC Chapter 12.26, entitled Exclusion From City Property; Trespass on City Property, attached as **Exhibit A** and incorporated in full by this reference, is hereby adopted into the Medina Municipal Code.

**Section 3. Departmental Reports.** The Department shall periodically provide reports to the City Council on the implementation and results of new Chapter 12.26, which reports may be consolidated with the Department's other reports and updates to Council.

**Section 4. Corrections.** The City Clerk and codifiers of City ordinances are authorized to make necessary corrections to this Ordinance including but not limited to the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 5. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

**Section 6. Effective Date.** This Ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after such publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF MEDINA ON THE 13TH DAY OF DECEMBER, 2021, BY A VOTE OF \_\_\_ FOR, \_\_\_ AGAINST, AND \_\_\_ ABSTAINING, AND IS SIGNED IN AUTHENTICATION OF ITS PASSAGE THE 13TH DAY OF DECEMBER, 2021.

\_\_\_\_\_  
Jessica Rossman, Mayor

Approved as to form:  
Ogden Murphy Wallace, PLLC

Attest:

\_\_\_\_\_  
Scott M. Missall, City Attorney

\_\_\_\_\_  
Aimee Kellerman, City Clerk

PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.: / AB

**Exhibit A**

To City of Medina Ordinance No. 1006

**MMC Chapter 12.26  
Exclusion From City Property; Trespass on City Property**

*[See attached]*