

ORDINANCE NO. 2025-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON, CREATING A NEW CHAPTER 2.82 OF THE TOPPENISH MUNICIPAL CODE RELATING TO NOTICE OF CIVIL TRESPASS FOR PUBLIC PROPERTY, PROVIDING FOR A SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Toppenish invests significant resources in parks, public spaces and other public properties in the City; and

WHEREAS, the City has worked hard to address issues related to people misusing public property, damaging public property and acting in a way that prevents use of public properties for their intended purposes; and

WHEREAS, despite those efforts, there are instances when, due to repeat problematic behavior, criminal behavior or behavior that threatens public health, safety and welfare, it becomes incumbent upon the City to inform individuals that they are barred from being on certain public property for certain periods of time; and

WHEREAS, the City of Toppenish has the authority to adopt laws to protect public safety to the extent such laws are not in conflict with State or Federal law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. New Chapter to Municipal Code. A new Chapter 2.82 of the Toppenish Municipal Code entitled “Notice of Civil Trespass for Property” shall be and hereby is created to read as follows:

Chapter 2.82 NOTICE OF CIVIL TRESPASS FOR PUBLIC PROPERTY

Sections:

- 2.82.010 Purpose.
- 2.82.020 Authorization to issue notice of civil trespass – City employees.
- 2.82.030 Authorization to issue notice of civil trespass – Law enforcement.
- 2.82.040 Right-of-way defined.
- 2.82.050 Limitations on trespass duration.
- 2.82.060 Service of notice – Content.
- 2.82.070 Violations – Penalty.
- 2.82.080 Protected First Amendment activity.
- 2.82.090 City property closed to the public.
- 2.82.100 Appeal of notice of civil trespass.
- 2.82.110 Additional enforcement procedures.

2.82.010 Purpose.

The purpose of this chapter is to adopt a legally sound process for excluding from city property any individual whose behavior is dangerous, illegal, or unreasonably disruptive to other users while recognizing the rights of individuals to engage in legitimate activities that may occur on city-owned property. This chapter is enacted as an exercise of the city's authority to protect and preserve the public health, safety and welfare.

2.82.020 Authorization to issue notice of civil trespass – City employees.

The city employees or officials, or their designees, having control over a city facility, building, or outdoor area, including municipal parks, are authorized to issue a notice of civil trespass to any individual who engages in any behavior that threatens public health, safety and welfare, or prevents use of such property by the public, or who violates any city ordinance, rule or regulation, or state law or lawful directive of a city employee or official which violation was committed while on or within a city facility, building, or outdoor area, including municipal parks (but excluding rights-of-way), for the specific property where the violation occurred. Provided, however, that if the person engages in the same type of problematic behavior at more than one public property, the authorized official is authorized to trespass the offending individual from any other similar public properties within the city for the same trespass duration.

2.82.030 Authorization to issue notice of civil trespass – Law enforcement.

When no other city employee or official having control over a city facility, building, or outdoor area, including municipal parks, is present, a police officer is authorized to issue a notice of civil trespass to any individual who engages in any behavior that threatens public health, safety and welfare, or prevents use of such property by the public, or who violates any city ordinance or state law which was committed while on or within a city facility, building, or outdoor area, including municipal parks (but excluding rights-of-way), for the specific property where the violation occurred. Provided, however, that if the person engages in the same type of problematic behavior at more than one public property, the authorized law enforcement official is authorized to trespass the offending individual from any other similar public properties within the city for the same trespass duration.

2.82.040 Right-of-way defined.

For the purpose of this chapter, right-of-way shall include those sidewalks which are closest to a paved street; provided, that the street-side edge of the sidewalk is within 20 feet of the curb-line closest to the property.

2.82.050 Limitations on trespass duration.

Notices of civil trespass shall be issued as follows:

A. For the first violation, the individual may be issued a notice of civil trespass for a period not to exceed one year.

B. For a second or subsequent violation, the individual may be issued a notice of civil trespass for a period not to exceed two years.

2.82.060 Service of notice – Content.

A copy of the civil trespass notice shall be provided by mail or hand delivery to the individual and to the city employee or official having control over the city park, facility, building or outdoor area. The written trespass notice shall advise of the right to appeal and the location and telephone number for filing the appeal.

2.82.070 Violations – Penalty.

Any person found on or within any city facility, building, or outdoor area, including municipal parks, in violation of a notice of civil trespass may be arrested for trespassing, except as otherwise provided in this chapter.

2.82.080 Protected First Amendment activity.

The city employee or official having control over a city facility, building, or outdoor area, including municipal parks, may authorize an individual who has received a notice of civil trespass to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

2.82.090 City property closed to the public.

This chapter shall not be construed to limit the authority of any city employee or official to issue a notice of civil trespass to any person for any lawful reason for any city property, including rights-of-way, when closed to general vehicular or pedestrian use, when to do so is necessary or appropriate in the sole discretion of the city employee or official.

2.82.100 Appeal of notice of civil trespass.

A person to whom a notice of civil trespass is issued under this chapter shall have the right to appeal as follows:

A. An appeal of the notice of civil trespass must be filed, in writing, within 10 calendar days of the issuance of the notice of civil trespass, and shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.

B. The appeal shall be filed with the city clerk's office.

C. Appeals shall be heard by the city manager or designee.

D. Upon receipt of the appeal, the city clerk shall prepare a notice of appeal hearing, setting the appeal hearing before the city manager or designee to be heard within 30 days of the receipt of the appeal. Notice of the appeal hearing shall be provided to the appellant by U.S. first-class mail to the address listed in the written appeal. If no address is provided, notice shall be sufficient when left at the front desk of the Toppenish police department no less than 10 calendar days prior to the scheduled hearing.

E. Copies of documents in the city's control which are intended to be used at the hearing, and which directly relate to the issuance of the notice of civil trespass to the appellant, shall be made available to the appellant at no cost upon request.

G. The appellant and the city shall have the right to attend the appeal hearing with an attorney, the right to testify, to call witnesses, to cross-examine witnesses and to present evidence. All appeal hearings shall be audio recorded. The appellant shall have the right to bring a court reporter at his or her own expense, and/or to commission a transcription of the audio recording of the hearing at his or her own expense.

H. The city manager or designee hearing the appeal shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

I. The city shall bear the burden of proof by a preponderance of the evidence that the notice of civil trespass was properly issued pursuant to the criteria of this chapter.

J. If the appellant fails to attend a scheduled hearing, the appeal shall be dismissed and the notice of civil trespass issued by the city shall be affirmed.

K. At the conclusion of the hearing, the city manager or designee hearing the appeal shall deliberate on the evidence and render a decision. All decisions of the city manager or designee hearing the appeal shall be made within five business days of the hearing, and shall be reduced to writing, a copy of which shall be mailed U.S. first-class mail to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the front desk of the Toppenish police department.

L. The decision of the city manager or designee hearing the appeal shall be final and the appellant shall be deemed to have exhausted all administrative remedies. An appeal of the city manager's or designee's decision must be filed with the Yakima County superior court no later than 5:00 p.m. on the fourteenth day following the date the written decision is provided to the appellant either by mail or by posting as described herein.

M. The notice of civil trespass shall remain in effect during the appeal and review process, including any judicial review.

2.82.110 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by the Toppenish Municipal Code, and/or state law, except as precluded by law.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this chapter.

Section 3. Effective date. This Ordinance shall be effective five (5) days after publication as required by law.

PASSED by the Toppenish City Council at its regular meeting held on the 23rd day of June, 2025.

LOREN BELTON, Mayor Pro Tem

ATTEST:

HEIDI RIOJAS, CMC, City Clerk

APPROVED AS TO FORM:

DANIEL B. HEID, City Attorney