

ORDINANCE NO. O2023-014

AN ORDINANCE of the City Council of the City of Tumwater, Washington, amending Tumwater Municipal Code Section 12.32, Public Parks, to expand application and enforcement of rules and regulations to all City-owned properties as more particularly described herein.

WHEREAS, the City's parks, playgrounds, and other city-owned properties are intended for the healthy and safe enjoyment of all people; and

WHEREAS, it is important that City rules and regulations are applied and enforced equally at all City parks, playgrounds, and other City-owned properties throughout the City; and

WHEREAS, the City Council finds that the provisions of this Ordinance are in the best interests of and protect the health, safety, and welfare of the people of the City of Tumwater and the users of the City's parks, playgrounds, and other city-owned properties;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 12.32, Public Parks, of the Tumwater Municipal Code is hereby amended to read as follows:

Chapter 12.32**CITY PROPERTY AND PUBLIC PARKS**

Sections:

- 12.32.010 Definitions.
- 12.32.020 Rules and regulations.
- 12.32.030 Alcoholic beverages ~~in city public parks.~~
- 12.32.040 Permits.
- 12.32.050 Vendors.
- 12.32.055 Violation – Exclusion.
- 12.32.060 Violation – Penalty.
- 12.32.065 Enforcement suspended.**

12.32.010 Definitions.

- A. "Private events" means and includes any activity, celebration, wedding, sporting event, or similar event occurrence which is not open to the public and is conducted, at least in part, on city property or in public parks.
- B. "Public events" means and includes any festival, celebration, fair, rally, sporting event, or similar occurrence which is open to the public and is conducted, at least in part, on city property or in public parks.
- C. "Public parks," as used in this chapter, means and includes all the properties owned and controlled by the city and operated as parks ~~and/or~~ recreation facilities available for the use of the public.

(Ord. O2013-018, Amended, 09/17/2013; Ord. 1222, Amended, 03/20/1990; Ord. 616, Added, 04/18/1972)

12.32.020 Rules and regulations.

For the conduct of persons using or frequenting city property including public parks, the following rules and regulations to be observed and enforced within the public parks are established:

- A. All city ordinances shall apply to and be in full force and effect on city property and within the public parks of the city.
- B. No person shall cut, remove, or damage any flowers, turf, trees or shrubs without prior obtained permission from the parks and recreation director or designee. This provision applies to all aspects of the natural or landscaped environment and to any structures and prohibits activities such as metal detecting and geocaching where those activities require digging or disturbing the landscape.
- C. No person shall build any fire within a public park except in a stove or fireplace provided therefor.
- D. No person shall ride or drive any horse or animal or permit any horse or animal to go upon any portion of any city property or public park except on the roads, regularly provided parking areas, and horse trails where designated.
- E. No motor vehicle shall be operated, stopped, parked or left standing any place in a public park except on roads and parking areas provided therefor.
- F. Parking or loitering in public parks Loitering in the night time is prohibited and all persons shall be excluded from the parks and city property between sundown and sunrise, except as may be permitted for public or private events under the order of the parks and recreation director or designee.

G. No person shall mutilate, deface, injure, or damage any building, installation, personal property, or piece of equipment ~~in any public park.~~

H. No person shall dump or dispose of any household garbage ~~in any public park.~~

I. No person shall litter, scatter, or dispose of any bottles, broken glass, waste, discard paper, or any liquid material of any kind ~~in or around any part of any public park~~ except in receptacles which are provided therefor.

J. City property including parks are open for public use on a “first come, first served” basis and sports fields and designated shelters on a reservation basis, as coordinated by the parks and recreation director or designee.

K. Overnight parking is prohibited except as may be permitted by the parks and recreation director or designee. ~~Except as otherwise permitted in TMC Chapter 8.30, it is unlawful to use, exhibit, display or possess any fireworks in any city park or on any trail.~~

L. It is unlawful to operate any remote control and/or motorized model aircraft, rocket, watercraft or similar device ~~in any park,~~ or to launch or land any hang glider or hot air balloon, except as may be permitted for public or private events under the order of the parks and recreation director or designee.

M. No person shall practice or play golf, archery or other games of like character or hurl or propel any airborne or other missile except at places set apart for such purposes ~~within a park.~~

N. No person shall tease, feed, annoy, disturb, molest, catch, injure, threaten, kill, throw any stone or projectile at, strike with any stick or weapon, or fetter any animal, bird, fowl or fish ~~in any park.~~ Washington State Fish and Wildlife regulations apply to all sport fishing activities within city parks and on city property.

O. No person shall attach or post any sign, poster or notice or any other device of any kind for advertising ~~in any park or along any trail,~~ except as may be permitted for public or private events under the order of the parks and recreation director or designee.

P. No person shall erect any tents, bounce houses or any other temporary structures that require ground anchoring without first receiving authorization from the parks and recreation director or designee.

Q. No person shall park any vehicle or trailer ~~in any park~~ for the purposes of displaying of commercial or noncommercial signs or displaying such vehicles for sale. No person shall park any vehicle ~~in any park~~ for the principle purpose of

washing, greasing, or repairing such vehicle except when repairs are necessitated by an emergency.

R. Shelter Decorations. Rentals/party decorations must be removed at the conclusion of each event and disposed of in the appropriate trash receptacles.

S. No person shall use, operate, play or permit to be used, operated or played ~~in any park or on any trail~~ any radio, tape/CD/MP3 player, television, musical instrument or any other device producing or reproducing sound at a volume that is audible at a distance of over thirty feet therefrom, except as may be permitted for public or private events under the order of the parks and recreation director or designee.

T. Dogs must be leashed ~~within city parks~~ and pet owners are responsible for clean-up and proper disposal of pet waste.

U. The use of the city's golf course is for golf and golf related activities and no person shall use the facility for walking, jogging, or bicycle riding or permit dogs or other pets on the golf course except as may be permitted for public or private events under the order of the parks and recreation director or designee.

V. Persons operating a bicycle or other motorized or nonmotorized mobility device upon any trail shall operate the same in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of pedestrian and other traffic, grade and width of the trail and the trail surface conditions, and shall obey all traffic control devices. Every person operating a bicycle or other motorized or nonmotorized mobility device upon a trail shall yield the right-of-way to any pedestrian thereon.

W. City parks may be closed to the public under the order of the parks and recreation director for safety, maintenance or other park conditions.

X. No person shall smoke or light cigarettes, cigars, tobacco or other smoking material, including electronic nicotine delivery devices including, but not limited to, electronic cigarettes, vapor cigarettes or similar products, within city parks or on city trails. The city's golf course is excluded from this regulation.

(Ord. O2020-022-S1, Amended, 02/16/2021; Ord. O2013-018, Amended, 09/17/2013; Ord. O2011-002, Amended, 03/01/2011; Ord. O99-014, Amended, 07/06/1999; Ord. O96-038, Amended, 09/17/1996; Ord. O94-036, Amended, 11/01/1994; Ord. 1222, Amended, 03/20/1990; Ord. 616, Added, 04/18/1972)

12.32.030 Alcoholic beverages in city public parks.

The sale, possession or consumption of alcoholic beverages, including unopened beverage containers, is prohibited on city property and in city public parks except as

may be permitted by the parks and recreation director or designee at the city's golf course or for public or private events.

(Ord. O2007-009, Amended, 07/03/2007; Ord. 1301, Amended, 08/20/1991; Ord. 1222, Amended, 03/20/1990; Ord. 1055, Added, 02/04/1986)

12.32.040 Permits.

A. No person shall engage in sale of any merchandise or services or operate any concession ~~within~~ at any city property, including any public park without a permit previously obtained from the park and recreation department. Such permit shall include the posting of cash, cashier's check, or bond, in the amount as established by resolution of the city council to guarantee the cleanup of the area.

B. No person shall use city property, including any city park, for a public event without first obtaining the necessary permit from the Tumwater police department. The fee for such use shall be established by resolution of the city council.

C. No person shall use city property, including any city park, for a private event without first obtaining the necessary reservation and permit from the Tumwater parks and recreation department. The fee for the reservation shall be as established by resolution of the city council.

(Ord. O2000-002, Amended, 01/18/2000; Ord. O96-017, Amended, 07/16/1996; Ord. 1301, Amended, 08/20/1991; Ord. 1222, Added, 03/20/1990)

12.32.050 Vendors.

In addition to obtaining a permit from the park and recreation department, ~~Any~~ any person, firm, or corporation wishing to sell or distribute any product ~~in Tumwater~~ public parks must contact the finance department (business licenses) to ensure compliance with TMC Chapter 5.04, Business Licenses.

(Ord. 1222, Added, 03/20/1990)

12.32.055 Violation – Exclusion.

A. Individuals or user groups may be banned from using specific city property, parks~~, or~~ facilities for behavior or cause. The parks and recreation director or other code enforcement official or officer ~~designee~~ may, by delivering an exclusion notice in person or by certified mail, exclude ~~from a city park,~~ anyone who within a city park or property:

1. Violates any provision of this chapter; or
2. Violates any provision of the Tumwater Municipal Code or Revised Code of Washington.

B. The offender need not be charged, tried or convicted of any crime or infraction in order for an exclusion notice to be issued or be effective. The exclusion may be based upon observation by the parks and recreation director ~~or his/her designee,~~ any enforcement officer, or upon civilian reports that would ordinarily be relied upon by police officers in the determination of probable cause.

C. 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 individual.

1. If the offender has not been excluded from any city park or property by an exclusion notice issued within one year prior to the violation, then the parks and recreation director or ~~his/her designee~~ enforcement officer may exclude the offender from the city park or property in which the current violation occurred for a period not to exceed seven days from the date of the exclusion notice.

2. If the offender has been the subject of prior exclusion notices issued within one year of the current violation, then the parks and recreation director or ~~his/her designee~~ enforcement officer, may exclude the offender from any or all city parks or properties for a period of ninety days from the date of exclusion notice.

D. The offender receiving the exclusion notice may seek a hearing to have the exclusion notice rescinded, the period of exclusion shortened, or the areas of exclusion reduced. The hearing shall be conducted by the hearing examiner pursuant to TMC Chapter 2.58.

1. A person receiving an exclusion notice longer than one day may file a written appeal before the hearing examiner to have the expulsion order rescinded or the duration of the exclusion shortened. The written appeal must be under oath and set forth all facts relied upon by the person for his or her contention that the order should be rescinded or shortened. The written appeal shall be accompanied by a copy of the order which is being appealed. The written appeal must be delivered to the city clerk or postmarked no later than seven calendar days after the issuance of the expulsion order. The hearing should occur within 10 business days after the written appeal is received by the city. The city clerk shall take reasonable steps to notify the offender of the date, time, and place of the hearing.

2. At the hearing, the violation must be proved by a preponderance of the evidence in order to uphold the expulsion order. The expulsion order establishes a prima facie case that the offender committed the violation as described. The hearing examiner shall consider a sworn report or a declaration

under penalty of perjury written by the individual who issued the exclusion notice, without further evidentiary foundation.

3. If the violation is proved, the expulsion order shall be upheld; but upon good cause shown, the hearing examiner may shorten the duration of the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing examiner shall rescind the order. If the hearing examiner rescinds an expulsion order, the order shall not be considered a prior exclusion for purposes of this section.

4. The expulsion order shall be stayed during the pendency of any appeal proceeding.

5. No determination of facts made by a person conducting a hearing under this section shall have any 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.

(Ord. O2013-018, Added, 09/17/2013)

12.32.060 Violation – Penalty.

A. Except for violations designated as misdemeanors/gross misdemeanors by statute, Any person who violates any of the established rules and regulations set out in this chapter shall be guilty of a misdemeanor an infraction, subject to enforcement under TMC Chapter 1.10.

B. Notwithstanding subsection A of this section, criminal enforcement proceedings do not preclude or limit any other forms of enforcement available to the city including, but not limited to, enforcement under any provision of TMC Chapter 1.10.

(Ord. O2020-022-S1, Amended, 02/16/2021; Ord. O2011-007, Amended, 07/19/2011; Ord. 1222, Amended, 03/20/1990; Ord. 616, Added, 04/18/1972)

12.32.065 Enforcement suspended.

Enforcement of TMC 12.32.020(F) nighttime exclusion shall be suspended for persons who are indigent and homeless any time there is no space or beds available in reasonably accessible homeless shelters, to the extent such available space is required by law.

Section 2. Corrections. The City Clerk and codifiers of this ordinance 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 3. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.

ADOPTED this _____ day of _____, 2023.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____