

ORDINANCE NO. 5051

An Ordinance relating to Special Use Permits for City parks; revising the fine schedule for violation of park rules; and, amending McMinnville Municipal Code (MMC) Chapter 12.36.

RECITALS:

Ordinance 4698, adopted in 1999, prohibited alcohol in all city parks.

The City of McMinnville has been approached by community organizations to allow, under certain conditions, alcohol in City Park.

The City of McMinnville regularly rents other city properties and venues that do allow alcohol to be consumed or served on site under certain conditions.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. The provisions set forth in the attached Exhibit 1, which are incorporated by this reference, are hereby adopted.
2. This ordinance will take effect 30 days after its passage by the Council.

Passed by the Council on April 24, 2018, by the following votes:

Ayes: Drabkin, Garvin, Peralta, Stassens

Nays: \_\_\_\_\_

Approved on April 24, 2018.

  
\_\_\_\_\_  
MAYOR

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY

Attest:

  
\_\_\_\_\_  
CITY RECORDER

ORD 5051

Exhibit 1

**Section 1. Amend MMC Section 12.36.040 as follows:**

12.36.040 Establishment of Rules for Use of Park Areas.

A. Upon recommendation of the City Manager or upon its own motion, the City Council may **adopt fees or** promulgate rules and regulations pertaining to the administration and enforcement of this ordinance and to carry out its purposes. Any rules existing at the time of adoption of this ordinance shall remain in effect until specifically repealed.

B. Any section or part of any park may be declared closed to the public by the Director at any time and for any interval of time, either temporarily or at regular intervals (daily or otherwise) and either entirely or merely to certain uses and/or users, as the Director finds reasonably necessary to ensure the health, safety, and enjoyment of all park users. (Ord. 4698 §5, 1999).

**C. Upon recommendation of the Director, the City Manager may promulgate rules and regulations pertaining to the issuance of permits for activities in designated parks, pursuant to Sections 12.36.200 to 12.36.230 of this Chapter.**

**Section 2. Amend MMC Section 12.36.050 as follows:**

12.36.050 Prohibitions.

G. General prohibitions.

1. Unless otherwise approved by the Director, no person within a park area shall use or operate any noise producing machine, device, or instrument in a manner that, in the judgment of an authorized City employee, can be heard beyond 50 feet and/or substantially diminishes the ability of other park area visitors to enjoy the park or subjects persons occupying residences adjacent to or near the park in inconvenience, annoyance, or alarm. (Class C Park Violation).

2. No person within a park area shall possess, discharge, or cause to be discharge any firecrackers, explosives, torpedoes, rockets, fireworks, or other substances within a park area without the written permission of the Director. (Class D Park Violation).

3. Except as authorized by the Director no person within a park areas shall use a public address system or other device to mechanically or electronically amplify sound. (Class D Park Violation).

4. No person within a park shall commit an act of disorderly conduct. Disorderly conduct is defined as follows:

A person commits disorderly conduct when, with the intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

a. Engages in fighting or threatening, or in violent behavior.  
b. Uses language, an utterance, or gesture, or engages in a display or act which is physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

c. Makes noise that is unreasonable or unnecessary, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

- d. Creates or maintains a hazardous or physically offensive condition.
- 5. No person within a park area shall enter an area posted as "Closed to the Public," violate animal control, skateboard, or smoking prohibitions within a park or park area specifically designated as limiting or prohibiting such activity, or abet the use of any area in violation of posted notices. (Class D Park Violation).
- 6. No person within a park area shall block, obstruct, or interfere with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway, or common area. (Class D Park Violation).
- 7. **Except as authorized by the Director, no** person within a park areas shall occupy or interfere with access to any structure, office, lavatory, or other facility in a manner which impairs the intended use of the structure or facility by park users. (Class D Park Violation).
- 8. **Except as authorized by the Director for City Park, no** person shall use alcohol or possess an open container of alcohol in any city park. (Class D Park Violation).
- 9. Except as authorized by the Director, no person shall display, sell, offer for sale, peddle, hawk, or vend any goods, wares, merchandise, food, liquids, or services within any park area. (Class D Park Violation).
- 10. Except as authorized by the Director, no person shall operate a concession either fixed or mobile within any park. (Class D Park Violation).
- 11. No person shall erect any permanent signs or temporary signs of any type within a park, except by special permit from the Director. (Class D Park Violation).
- 12. No person within a city park shall hit golf balls in areas not designated for such use. (Class D Park Violation).
- 13. The use of tobacco products, including the use of e-cigarettes, is prohibited throughout all City Park property, all Library property, and all Aquatic Center property, all entries, plazas, and parking areas associated with City Park property, Library property, and Aquatic Center property, and Park Drive (all City properties west of Adams Street, north of Second Street, and adjacent to Star Mill and Wallace Streets).
- 14. The use of skateboards, scooters, and bicycles is prohibited in the Library plaza, the Library parking lots, the Third Street park entry and Soper Fountain plaza, the Aquatic Center plaza, along Aquatic Center covered walkways and adjacent to other buildings and structure which are located west of Adams Street, north of Second Street, and adjacent to Star Mill and Wallace Streets. This restriction does not include bicycles or other non-motorized vehicles that are operating within established vehicle lanes and in compliance with established state statutes and municipal ordinances for those vehicles. (Ord. 4982, §1 and §2, 2014; Ord. 4698 §6, 1999).

**Section 3. Amend MMC Section 12.36.090 as follows:**

12.36.090 Penalties, Bail Schedule; Distribution of Proceeds.

A. Penalties. Violation of this ordinance shall be punishable, upon conviction by a **maximum fine** ~~penalty~~ in accordance with the following schedule:

- |                            |                                       |
|----------------------------|---------------------------------------|
| 1. Class A Park Violation: | \$ <del>500</del> <b><u>2,000</u></b> |
| 2. Class B Park Violation: | \$ <del>250</del> <b><u>1,000</u></b> |
| 3. Class C Park Violation: | \$ <del>150</del> <b><u>500</u></b>   |
| 4. Class D Park Violation: | \$ <del>100</del> <b><u>250</u></b>   |

B. Bail Schedule. Bail on each offense listed in this ordinance shall be not less than fifty percent of the maximum possible fine. (Ord. 4698 §10, 1999).

*Section 4. Add MMC Section 12.36.200 as follows:*

**12.36.200 – Permits Required for Park Uses.**

**A. It is unlawful for any person to conduct or participate in any activity in a Park, for which a permit is required, unless the Director or Authorized City Staff has issued a permit for the activity. (Class A Park Violation).**

**B. A permit is required for any activity in a Park under any one or more of the following circumstances:**

**1. The activity is intended to involve, is reasonably likely to involve, or actually involves, as participants and/or spectators, at any one time, 75 or more persons;**

**2. The activity includes the placement of any temporary or permanent structure, including but not limited to any table, bench, stage, fence, tent or other facility in a Park. No permit is required under this Subsection for the placement of any temporary facility in an area of a Park which the Director has designated for such use without a permit;**

**3. The activity requires, or is reasonably likely to require, City services additional to those already provided to the public as a matter of course in the Park, including but not limited to: increased police or fire protection; the turning on or off of water; provision of utilities, such as gas, electricity or sewer; placing, removing, opening or closing bollards, gates or fences; or the special preparation of fields or other facilities;**

**4. The person or persons engaged in the activity seek to exclude, or to have the right to exclude, any member of the public from the activity or from any Park or from any area of any Park;**

**5. The activity includes using the Park or Park area in a manner inconsistent with uses designated by the Director for that Park or Park area, or includes conduct that otherwise is prohibited in a Park, including, but not limited to, conducting business, charging admission or otherwise receiving payment for goods or services related to the activity, or possessing, serving or consuming alcoholic beverages.**

**C. An activity requiring a permit may only occur in the following parks:**

**1. City Park**

**2. Discovery Meadows Park**

**3. Joe Dancer Park**

**4. Wortman Park**

**D. Nothing in this section shall be construed as prohibiting the City Manager from authorizing the lawful use of any City park by the McMinnville School District, or the District's duly authorized officers, agents and employees for the purpose of conducting educational activities or organized sporting events pursuant to the terms of an Intergovernmental Agreement.**

*Section 5. Add MMC Section 12.36.210 as follows:*

**12.36.210 – Applications; Director to Promulgate Rules and Procedures.**

**A. Any person desiring a permit under Section 12.36.200 shall apply with the Director or Authorized City Staff. The Director, subject to the City Manager's approval, shall establish written policies and procedures, including but not limited to fees and standard conditions, for applications and for permits. The written policies and procedures shall be available for public inspection. Every application shall state the purpose for which the Park would be used, the date and time of the**

proposed use, the name of the Park, and the area thereof that would be used, the anticipated number of persons who would be present and such other information relating to the contemplated use as the Parks and Recreation Department may require.

B. The Director or Authorized City Staff shall issue the requested permit if a complete application complying with all adopted policies and procedures is filed and all of the following conditions are met:

1. The proposed activity is consistent with the size of the Park and any specialized purpose for which it is normally used, or for which specialized facilities have been provided;

2. The proposed activity will not have an unreasonably adverse impact, from noise, litter or traffic, on the Park or on the surrounding neighborhood;

3. The proposed activity does not pose an unreasonable risk to public health or safety or to the physical integrity of the Park;

4. The applicant pays all required fees and agrees to comply with all conditions of the permit;

5. The proposed use is otherwise lawful, but nothing in this Chapter shall require the issuance of a permit for an activity otherwise prohibited by this Title;

6. The proposed activity does not conflict with an activity already scheduled for the Park or for which a different permit already has been applied for or issued for the Park;

7. The applicant, including any person, firm or corporation affiliated with the applicant and with the activity, has not failed to comply with conditions of any permit previously issued by the Parks and Recreation Department;

8. The proposed activity does not require city services beyond what the city can reasonably provide.

C. If the requested use otherwise meets the criteria of Subsection B of this Section, the Director or Authorized person may issue a permit:

1. To use a Park during hours when the Park is closed;

2. To broadcast programs of music, news, speeches or general entertainment between the hours of 9 a.m. to 11 p.m., notwithstanding the provisions of Sections 8.16.150 or 9.32.040 of this Code; or

3. To engage in otherwise prohibited activities within the authority set forth in Sections 12.36.050 or 12.36.060 of this Chapter.

D. If the requested use does not meet the criteria of Subsection B of this Section, the Director or Authorized City Staff may deny the application or may impose restrictions or conditions upon the permit or issue a permit for a different date, time, Park, or Park area so as to meet such criteria.

E. Any person whose application is denied or who is issued a permit other than as applied for or who objects to restrictions or conditions included in the permit may appeal the matter to the City Manager by filing within five days after denial or inclusion of restrictions a written notice of appeal with the City Recorder. Upon receiving such a notice the City Recorder shall within 14 days schedule the appeal on the City Manager's Calendar for hearing. At the hearing, the City Manager may affirm or modify the decision of Director or Authorized City Staff, as the City Manager may deem necessary, to meet the criteria of Subsection B of this Section.

F. In determining whether the criteria of Subsection B of this Section are met, no consideration shall be given to the content of any constitutionally-protected expression connected with the planned activity. No permit shall be required under this Chapter, nor any condition imposed on any permit, if requiring a permit or imposing the condition would violate rights protected by the Constitution of the United States or by the Constitution of the State of Oregon. No permit shall be

required under this Chapter in order for any person to participate in any activity programmed by or sponsored by the City of McMinnville.

G. If any portion or provision of this Section is held by a court of competent jurisdiction to be invalid, such portion or provision shall, so far as possible, be held severable, and shall not affect the remainder, which shall continue in full force and effect.

*Section 6. Add MMC Section 12.36.220 as follows:*

**12.36.220 – Special Provisions for all Permits**

A. Any person claiming to have a permit issued under this Chapter shall produce and exhibit such permit upon the request of any authorized person who may desire to inspect the same. (Class D Park Violation).

B. All permits issued under this Chapter shall be subject to the City ordinances and the rules and regulations of the Parks. The persons to whom such permits are issued shall be bound by said rules, regulations, and ordinances as fully as though the same were inserted in such permits. Any person or persons to whom such permits shall be issued shall be liable for any loss, damage, or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall be issued, as well as for any breach of such rules, regulations, and ordinances, to the person or persons so suffering damages or injury, and shall indemnify, defend and hold harmless the City and its officers, employees and agents from any and all claims, demands, actions and suits (including all attorney fees and costs, through trial and on appeal) arising from the permittee's use of the Park under the permit.

C. Any permit issued under this Title shall be personal to the permittee, and shall be void if transferred or assigned in any manner, except with the written consent of the Director or Authorized City Staff.

*Section 7. Add MMC Section 12.36.230 as follows:*

**12.36.230 – Prohibited Conduct at Permitted Events**

A. In addition to any other applicable provision of law, it is unlawful for any person to engage in any of the following conduct at any event for which a permit has been issued in any Park:

1. Any conduct that substantially prevents any other person from viewing, hearing or meaningfully participating in the event. (Class B Park Violation).

2. Any conduct that substantially interferes with the free passage of event participants or attendees by creating an insurmountable obstacle at any entrance, aisle, walkway, stairwell, ramp, esplanade, vendor booth, ride or other area commonly used for public access, egress or ingress. (Class B Park Violation).

3. Using any facility, structure, fixture, improvement or other thing within the area covered by the permit in a manner contrary to or inconsistent with its intended, designated or safe use. This Subsection does not apply to any person engaged in any constitutionally protected expression, unless, and then only to the extent that, in connection with the expression, the person engages in conduct that amounts to misuses of things as proscribed by this Subsection. (Class C Park Violation).

4. Except as expressly provided for under the terms of the permit, lighting any fire. This prohibition does not apply to smoking devices designed for and used for smoking tobacco, in areas where such smoking is permitted. (Class A Park Violation).

5. Any sexual conduct, as defined under ORS 167.060, including but not limited to any physical manipulation or touching of a person's sexual organs through, over or under a person's clothing in an act of apparent sexual stimulation or gratification, regardless of the person's subjective intent. (Class A Park Violation).

6. Operating any bicycle, in-line skates, roller blades or other human-powered form of accelerated propulsion, except in such places as the permittee may provide or allow for such activities. (Class C Park Violation).

7. Entry into the area subject to the permit without consenting to an inspection of personal belongings for the purpose of preventing the introduction of prohibited items into the event. For purposes of this Subsection, "personal belongings" includes backpacks, duffel bags, sleeping bags, purses, coolers, bulky apparel items and other personal items large enough to conceal or contain prohibited items. (Class B Park Violation).

8. Bringing into or possessing within the area covered by the permit any prohibited item. For purposes of this Section, "prohibited item" includes any fireworks, laser light, laser pointer, animals of any kind (except for service animals while performing their qualifying services), sound producing or reproducing or audio or video recording equipment (except as authorized by the permittee), glass bottles or containers, alcoholic beverages (except as provided by the permittee in accordance with the permit), furniture or fixtures (except as authorized by the permittee), any thing specifically designed for and presently capable of causing, or carried with the intent to threaten or cause, bodily harm to another (except for concealed handguns lawfully carried by persons in accordance with valid concealed handgun permits), and any item whose possession violates any other applicable provision of law. (Class B Park Violation).

9. Entry into or remaining in any area covered by any permit for any event that is not open to the public without the consent of the permittee, or entry into or remaining in any area covered by any permit for any event that is open to the public only upon the payment of an entry fee or charge, without first paying the applicable entry fee or charge. (Class A Park Violation).

B. The prohibitions contained in this Section do not apply to conduct by any City Employee in the performance of duty, or by any person authorized to engage in that conduct in connection with the event in accordance with the permit.

