

**CITY OF SNOHOMISH  
Snohomish, Washington**

**ORDINANCE 2168**

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, AMENDING THE PARK CODE, CHAPTER 13.04 OF THE SNOHOMISH MUNICIPAL CODE, TO REVISE THE DEFINITION OF “PARK,” ESTABLISH A PROCESS FOR EXCLUDING OFFENDERS FROM THE PARKS, ESTABLISH THE PENALTY FOR POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN THE PARKS, AND ESTABLISH THE OFFENSE OF TRESPASS IN PARKS AND A PENALTY THEREFOR**

**WHEREAS**, the City has adopted Park Code regulations, which are set forth in Chapter 13.04 of Snohomish Municipal Code; and

**WHEREAS**, the City Police Department has proposed revisions to the Park Code and the Parks and Recreation Board has reviewed and recommended that the City Council adopt the proposed revisions; and

**WHEREAS**, the City Council finds that protection of the public health, safety, and welfare supports the adoption of the proposed revisions to the Park Code;

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

**Section 1.** Chapter 13.04 of the Snohomish Municipal Code is hereby amended by amending SMC 13.04.030 to read as follows:

**13.04.030 Definitions.** The terms used in this chapter, unless clearly contrary to or inconsistent with the context in which used, shall be considered to mean as follows:

“Boat” is any floating vessel whether propelled or not.

“Community event” means an event or activity which is open to all members of the public, regardless of race, religion, sex, or national origin. (Ord. 1132, 1971; Ord. 1166, 1972; Ord. 1387, 1978)

“Community nonprofit” means any group with the Internal Revenue Service tax designation 501(c) that provides some measure of service to the community as a whole.

“Leashed” means a physical restraint of not more than ten (10) feet, firmly attached to the collar of an animal and held in hand by a human being.

“Held under control” means the ability of a human being, through either leashing or verbal commands, to control a dog’s behavior to ensure it does not bother, molest, or attack other park users.

“Manager” is the person immediately in charge of all park areas and their activities, and to whom all park attendants of any area are responsible.

“Park” means and includes all City parks, public squares, public drives, parkways, boulevards, museums, zoos, bathing beaches, public gazebos, public restrooms, and play and recreation grounds devoted to active or passive recreation under the jurisdictions of the City Council. A current map of said City parks shall be kept on file and available for public inspection in the office of the City Clerk.

“Person” is any person, firm, partnership, association, corporation, company, or organization of any kind.

“Organized youth sports team” means any group that organizes youth teams and schedules competitive sports events between other organized teams, in which the majority of members are under the age of eighteen (18).

“Vehicle” is any wheeled conveyance, whether motor powered, animal-drawn, or self-propelled. The term includes any trailer in tow of any size, kind, or description. Exception is made for baby carriages and vehicles in the service of City parks.

**Section 2.** Chapter 13.04 of the Snohomish Municipal Code is hereby amended by adopting SMC 13.04.222 to read as follows:

**13.04.222 Park Exclusion.**

A. Any City Police Officer may, by delivering an exclusion notice in person to the offender, or by First Class Mail and Certified Mail to the offender at the offender’s last known address, exclude from a City park, anyone who within a City park:

1. Violates any provision of this chapter; or
2. Violates any park rule; or
3. Violates any provision of the Snohomish Municipal Code or Revised Code of Washington.

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 Police Officer or upon civilian reports that would ordinarily be relied upon by police officers in the determination of probable cause. The exclusion shall not take effect until seven days after delivery of the exclusion notice to the offender; provided that, if the offender files a request for a hearing as provided in Subsection E, the exclusion shall not take effect until directed by the hearing examiner.

- B. If the offender:
1. Has not been excluded from any City park by an exclusion notice issued within one year prior to the violation and the current violation is not a weapon violation, then the exclusion notice may exclude the offender from the City park in which the current violation occurred for a period not exceeding seven days from the date of the exclusion notice.
  2. Has been the subject of only one prior exclusion notice issued within one year prior to the current violation and neither the current nor the past violation was a weapon violation, then the exclusion notice may exclude the offender from any or all City parks for a period of ninety days from the date of the exclusion notice.
  3. Has been the subject of two or more prior exclusion notices issued within one year prior to the current violation, or if the current violation is a weapon violation, then the exclusion notice may exclude the offender from any or all City parks for a period of one year from the date of the exclusion notice.
- 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 Police Officer. Warning of the consequences for failure to comply shall be prominently displayed on the notice.
- D. Only the hearing examiner after a hearing may rescind, shorten, or modify an exclusion notice.
- E. An offender receiving an exclusion notice may seek a hearing to have the exclusion notice rescinded, the period of exclusion shortened, or the areas of exclusion reduced. The request for a hearing shall be delivered to the Police Department or postmarked no later than seven days after the issuance date of the exclusion notice. The request for hearing shall be in writing and shall be accompanied by a copy of the exclusion notice on which the hearing is sought. The Police Department shall take reasonable steps to notify the offender of the date, time, and place of the hearing.
- F. 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 offender need not be charged, tried, or convicted for the exclusion notice to be upheld. The exclusion notice establishes a prima facie case that the offender committed the violation as described. The hearing examiner shall consider a sworn report or a declaration made under penalty of perjury, written by the individual 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.

- G. 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 or reduce the areas covered by the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing examiner shall rescind the exclusion. If the hearing examiner rescinds an exclusion, the exclusion shall not be considered a prior exclusion for the purposes of subsection B of this section.
- H. The decision of the hearing examiner is final. An offender seeking judicial review of hearing examiner's decision must file an application for a writ of review in the Snohomish County superior court within fifteen days of the date of that decision.
- I. The exclusion shall remain in effect during the pendency of any administrative or judicial proceeding.
- J. 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.
- K. This section shall be enforced so as to emphasize voluntary compliance with laws and park rules, and so that inadvertent minor violations that would fall under subsection B.1 can be corrected without resort to an exclusion notice.

**Section 3.** Chapter 13.04 of the Snohomish Municipal Code is hereby amended by adopting SMC 13.04.225 to read as follows:

**13.04.225 Trespass in Parks.**

- A. Any person shall be guilty of trespass in parks who knowingly:
  - 1. Enters or remains in a park from which he or she has been excluded during the period covered by an exclusion notice pursuant to Section 13.04.222 of this chapter;
  - 2. Enters, remains in, or is otherwise present within the premises of a park during hours which the park or portion of the park is not open to the public, unless the person is present within the park to participate in an activity either conducted by the City or conducted pursuant to the terms of a permit issued by the City; or
  - 3. Enters or remains in any area of a park which has been designated and posted by the Public Works Director as a closed area, using such postings as "no admittance" or "closed to use" or "no trespassing."
- B. The provisions of this section do not apply to any duly authorized City employee in the performance of his or her duties, or other person authorized by law.
- C. It is not a defense to the crime of trespass in parks:
  - 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 park pursuant to a permit that was issued in the name of another person either before or after the date of the exclusion notice.

**Section 4.** Chapter 13.04 of the Snohomish Municipal Code is hereby amended by amending SMC 13.04.250 to read as follows:

**13.04.250 Violation – Penalty.** Violation of this chapter of the Snohomish Municipal Code shall be a civil infraction pursuant to SMC 1.01.080, and Chapter 1.14 SMC, except as otherwise provided therein, and except that violation of SMC 13.04.200 and violation of SMC 13.04.225 shall be a misdemeanor and punishable by a fine of not more than one thousand dollars or by imprisonment not to exceed ninety days or by both such fine and imprisonment. (Ord. 1132, 1971; Ord. 1387, 1978; Ord. 1927, 1999)

**Section 5.** Effective Date. This Ordinance shall be effective five days after publication by summary.

**Section 6.** Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

**ADOPTED** by the City Council and **APPROVED** by the Mayor this 3rd day of March, 2009.

CITY OF SNOHOMISH

By \_\_\_\_\_  
E. Lynn Schilaty, Mayor Pro-tem

ATTEST:

By \_\_\_\_\_  
Torchie Corey, City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
Grant Weed, City Attorney

Date of Publication: \_\_\_\_\_, 2009

Effective Date (5 days after publication): \_\_\_\_\_, 2009