

**ORDINANCE NO. 712**

**AN ORDINANCE OF THE CITY OF TENINO, WASHINGTON, PROVIDING THE CITY AN ADDITIONAL METHOD OF ENFORCING THE PARKS CODE; AUTHORIZING ADMINISTRATIVE SUSPENSION OF PARK USE BY INDIVIDUALS WHO VIOLATE LAWS AND RULES IN THE PARKS; AUTHORIZING HEARINGS ON THOSE SUSPENSIONS; DEFINING THE CRIME OF TRESPASS IN PARKS; ESTABLISHING THE PUNISHMENT THEREFOR; ADDING SECTION 12.08.370 AND 12.08.380 TO TENINO MUNICIPAL CODE**

**WHEREAS**, unlawful and inappropriate behavior in the City's parks diminishes these precious assets and deprives citizens of the full use and enjoyment of the natural beauty, recreational opportunities and peaceful repose that parks are intended to preserve in an urban setting; and

**WHEREAS**, in addition to more serious criminal acts that threaten personal injury and property damage, a wide range of illegal disorderly behavior can transform a park into an unwelcoming, unattractive and ultimately unsafe public space requiring increased expenditures for public safety and maintenance; and

**WHEREAS**, the law intended to preserve and protect the parks for the benefit of all are effective only if those who use the parks obey the law. The current criminal and civil penalties for violating the law are frequently inadequate alone to deter illegal behavior, prevent its recurrence or provide for the removal of the offender from the park; and

**WHEREAS**, compliance with the law, including the Parks Code and regulations, will be enhanced by the immediate administrative sanction of excluding from a park those who violate the law, and for repeat offenders and for more serious offenses, exclusion for an extended period of time will provide a necessary additional remedy to protect the parks; and

**WHEREAS**, due to the geographic proximity of some parks, the similarity of some park functions and the potential displacement of illegal behavior from one park to another, it is necessary to provide for exclusion from groups of parks or all parks under certain circumstances,

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

**Section 1.** Title 12.08, Parks, is hereby amended to add section 12.08.370 as follows:

## **12.08.370 Park Exclusion**

A. The Public Works Director may, by delivering an exclusion notice in person to the offender, exclude from a city park zone or zones, anyone who within a city park:

1. Violates any provision within this chapter; or
2. Violates any park rule; or
3. Violates any provision of the Tenino 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 effective. The exclusion may be based upon observation by the Public Works Director or upon the sort of civilian reports that would ordinarily be relied upon by police officers in the determination of probable cause.

B. If the offender:

1. Has not been excluded from any city park zone by an exclusion notice issued within one (1) year prior to the violation and the current violation is not a felony violation or weapon violation, then the Public Works Director may exclude the offender from the city park zone in which the current violation occurred for a period not exceeding seven (7) days from the date of the exclusion notice;
2. 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 Public Works Director shall exclude the offender from the city park zone in which the current violation occurred for a period of ninety (90) days from the date of the exclusion notice;
3. 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 park zone in which the current violation occurred, or if the current violation is a felony violation or weapon violation, then the Public Works Director shall exclude the offender from the city park zone in which the current violation occurred for a period of one (1) year from the date of the exclusion notice;
4. 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 park zones, then the Public Works Director shall exclude the offender from all city park zones for a period of one (1) 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 individual. Warning of the consequences for failure to comply shall be prominently displayed on the notice.

D. Only the Mayor or Mayor's designee (Hearing Official), after a hearing, may rescind or shorten an exclusion notice.

E. An offender receiving an exclusion notice longer than seven (7) days may seek a hearing before the Hearing Official to have the exclusion notice rescinded or the period of exclusion shortened. The request for a hearing shall be delivered to the Office of the City Clerk or postmarked no later than seven (7) 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 hearing should occur within seven (7) days after the Hearing Official receives the request for hearing. The Hearing Official shall take reasonable steps to notify the offender of the date, time, and place of the hearing.

F. The Hearing Official may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The Hearing Official shall not issue a subpoena for the attendance of a witness at the request of the offender unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The offender shall be responsible for serving any subpoena issued at the offender's request.

G. 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 paid. The exclusion notice establishes a prima facie case that the offender committed the violation as described. The Hearing Official shall consider a sworn report or a declaration under penalty of perjury as authorized by RCW 9A.72.085, 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 Official may consider information that would not be admissible under the evidence rules in a court of law but which the Hearing Official considers relevant and trustworthy.

H. If the violation is proved, the exclusion notice shall be upheld; but upon good cause shown, the Hearing Official may shorten the duration of the exclusion. If the violation is not provided by a preponderance of the evidence, the Hearing Official shall rescind the exclusion. If the Hearing Official rescinds an exclusion, the exclusion shall not be considered a prior exclusion.

I. The decision of the Hearing Official is final. An offender seeking judicial review of the Hearing Official's decision must file an application for a writ of review in the Thurston County Superior Court within fourteen (14) days of the date of that decision.

J. The exclusion shall remain in effect during the pendency of any administrative judicial proceeding.

K. 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.

L. 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 B1 of this section can be corrected without resort to an exclusion notice.

**Section 2.** Title 12.08, Parks, is hereby amended to add section 12.08.380 as follows:

**12.08.380 Trespass in Parks – Definition – Punishment**

A. Any person 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 TMC 12.08.370; or
2. Enters, remains in, or is otherwise present within the premises of a park during hours which 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 Department or conducted pursuant to the terms of a permit issued by the City; shall be guilty of trespass in parks, a gross misdemeanor subject to the provisions of Chapter 12.08.320 of the Tenino Municipal Code.

B. 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.

C. Any person convicted of this crime may be punished by a fine in any sum not to exceed five thousand dollars (\$5,000) or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment.

**Section 3. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 4. Effective Date.** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force 5 days after date of publication as required by law.

**Section 5.** If any provision of this ordinance or its application to any person or circumstances is held invalid, the remainder of this ordinance, or application of the provision to other persons or circumstances, shall be unaffected.

**ADOPTED** by the City Council of the City of Tenino, Washington this 15<sup>th</sup> day of June 2005 at a regularly scheduled public meeting.

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Kenneth A. Jones, Mayor

**ATTEST:**

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Kathleen L. Clayton, City Clerk/Treasurer