

**ORDINANCE NO. 738****AN ORDINANCE FOR REGULATING THE USE OF PARKS, PRESCRIBING OFFENSES AND PENALTIES, DECLARING AN EMERGENCY, AND REPEALING ORDINANCE NO. 495.**

**WHEREAS**, Ordinance No. 495, following review by the Madras Police Department and City Attorneys, has been found to be in need of major revisions; and

**WHEREAS**, Ordinance No. 738, containing the changes determined to be necessary, was presented during a public meeting on July 26, 2005 to provide citizens with the opportunity to appear and present comments; and

**WHEREAS**, the City Council, after considering all verbal and/or written comments made the determination to approve the changes, as proposed.

**NOW, THEREFORE**, the City of Madras ordains as follows:

**SECTION 1: DEFINITION**

“Public parks” means and refers to any park owned and/or operated by the City of Madras for purposes of a public park, for the use of the public, including the Willow Creek Trail and all other trail systems within the City of Madras.

**SECTION 2: RULES AND REGULATIONS**

- A. No person, while in a public park, may operate a concession, either fixed or mobile, or engage in businesses soliciting, selling, or peddling any liquids or edibles for human consumption, distribute circulars, or hock, vend, or peddle any goods, wares, merchandise, or services without permission of the City Council.
- B. No bottles, cans, ashes, waste, paper, garbage, or other rubbish shall be left in a public park or upon public property except in the receptacles designated for that purpose.
- C. Automobiles, trailers, motorcycles, or other vehicles shall be parked only in designated parking areas, and horses shall be tethered only in areas designated for that purpose.

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- D. No person shall permit any dog to run at large upon or within any park. Dogs must be kept on a leash no longer than six feet (6') in length except when such dog(s) may be conducting obedience demonstrations during an authorized event.
- E. No person shall permit animal waste to be deposited upon a public park, and shall promptly remove any waste which may be deposited by any animal upon any park property.
- F. No person shall ride, drive, lead, or keep a horse or other animal used for transportation or shall ride, drive or operate an automobile, motorcycle, motorbike, motor scooter or trail bike in a public park except upon such roads, trails or areas designated for that purpose.
- G. No person shall occupy, be in, or park any vehicle in a public park from 10:00 p.m. any day to one hour before sunrise of the following day; and no person shall place any blanket, tarp, tent, vehicle, or other structure for the purpose of sleeping in a public park between 10:00 p.m. and one hour before sunrise of the following day. Except that overnight parking of self-contained recreational vehicles may be permitted at the designated parking area and for the Willow Creek Trail located at 1<sup>st</sup> and "B" Streets.
- H. No person shall use any city park to operate a yard sale of any kind.
- I. No person shall plant any tree, shrub, bush, grass, or other vegetation upon park property without authorization from the City Public Works Department.
- No person shall move, remove, damage, deface, or disturb any park plants, vegetation, structure, or facility without authorization from the City Public Works Department.
- J. It is unlawful for any person to sell, possess or consume any alcoholic beverage in any park, playground or trail, except by permit issued by the City of Madras or its authorized designee.

A permit granted under this subsection may contain such conditions as, in the discretionary judgment of the City of Madras or its designee, will promote the preservation of the parks for the peaceful enjoyment of the public at large.

- K. No person shall be visibly intoxicated in any park, playground or trail.
- L. Directions of the Madras City Police shall be obeyed. No person shall violate any rule or regulation established under the authority of Ordinance No. 738 nor refuse a request to obey any reasonable direction of officers of the Madras City Police Department.

**SECTION 3: PENALTIES**

Any person who shall violate or fail to comply with any provisions of this ordinance or who shall counsel, aid or abet a violation or failure to comply with this ordinance shall be punished upon conviction by a fine of not more than \$300. A failure from day to day to comply with this ordinance shall be a separate offense for each day.

In addition to other remedies provided for violation of this Code, or any of the laws of the State of Oregon, any police officer may exclude any person who violates any applicable provision of law in any park from all parks in accordance with the provisions of this Section. Nothing in this Section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the State or Federal Constitutions. However, the person engaged in such protected activities who commits acts that are not protected, or that violate applicable provisions of laws, shall be subject to exclusions as provided by this Section.

- A. For purposes of this Section, “applicable provisions of law” includes any applicable provision of this Code, of any city ordinance, or any rule or regulation promulgated by the Madras City Council under this title, any applicable criminal or traffic laws in the State of Oregon, any law regarding controlled substance use or alcoholic beverages, and any applicable county ordinance or regulation. For purposes of this Section, “applicable” means relating to the person’s conduct in the park.
- B. An exclusion issued under the provisions of this Section shall be for 180 days. If the person to be excluded has been excluded from any park at any time within two (2) years before the date of the present exclusion, the exclusion shall be for a period of one (1) year.

- C. Before issuing an exclusion under this Section, a police officer shall first give the person a warning and a reasonable opportunity to desist from the violation. An exclusion shall not be issued if the person promptly complies with the direction and desists from the violation. Notwithstanding the provisions of this Subsection, no warning shall be required if the person is to be excluded for engaging in conduct that:
1. Is classified as a felony or as a misdemeanor under the following chapters of the Oregon Revised Statutes, or is an attempt, solicitation or conspiracy to commit any such felony or misdemeanor defined in ORS:
    - a. Chapter 162 – Offenses Against a State and Public Justice;
    - b. Chapter 163 – Offenses Against Persons;
    - c. Chapter 164 – Offenses Against Property, except for ORS 164.085, Offensive Littering;
    - d. Chapter 165 – Offenses Involving Fraud or Deception;
    - e. Chapter 166 – Offenses Against Public Order; Firearms and Other Weapons; Racketeering;
    - f. Chapter 167 – Offenses Against Public Health, Decency and Animals;
    - g. Chapter 475 – Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors;
  2. Offenses otherwise involving a controlled substance or alcoholic beverage.
  3. Has resulted in injury to any person or damage to any property.
  4. Conduct for which the person previously has been warned or excluded for committing in any park.

- D. Written notice shall be given to any person excluded from any park under this Section. The notice shall specify the date, length and place of the exclusion, shall identify the provision of law the person has violated and shall contain a brief description of the offending conduct. It shall be signed by the issuing party. Warnings of consequences for failure to comply shall be prominently displayed on the notice.
- E. A person receiving such notice of exclusion may appeal to the Madras City Council or its designee.

The request for an appeal hearing shall be in writing and shall contain either a copy of, or a full and complete description of, the decision or determination appealed from and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized or otherwise improper, together with such other information as the Madras City Council or its designee may rule or require. The Madras City Council or its designee may specify and provide hearing request forms to be used by persons requesting hearings.

The request for an appeal hearing shall be filed with the Madras City Council or its designee within ten (10) days after the date of the decision or determination. Upon receipt of a request for a hearing, the Madras City Council or its designee shall schedule and hold an appeal hearing within thirty (30) days after the receipt of such request. Notice of the time, date, and place of hearing shall be given to the person requesting the hearing and to the City department whose decision or determination is being appealed.

Notice shall also be given to any person who reasonably appears to be adversely affected should the decision or determination not be sustained after the hearing. The Madras City Council or its designee may provide by rule for the manner of providing notice to such persons. The time for hearing may be extended by the Madras City Council or its designee for good cause shown, upon such terms and conditions as the Madras City Council or its designee shall deem just and appropriate.

With the consent of all parties, the Madras City Council or its designee may determine the matter without hearing. The Madras City Council or its designee may sustain, modify, reverse, or annul the decision or

determination appealed from or may remand the decision or determination back to the City department for such reconsideration, additional consideration, or further action as the Madras City Council or its designee may direct.

The decision or determination appealed from shall be reviewed de novo. The Madras City Council or its designee shall uphold the exclusion if, upon de novo review, the preponderance of evidence admissible convinces the Madras City Council or its designee that, more likely than not, the person in fact committed the violation, and if the exclusion is otherwise in accordance with law.

#### **SECTION 4: HEARINGS PROCEDURE**

- A. The parties may elect to be represented by counsel and to respond to and present evidence on all issues involved. An order adverse to a party may be issued upon default only on a prima facie case made on the record before the Madras City Council or its designee.

Testimony shall be taken upon oath or affirmation of the witness from whom received. The Madras City Council or its designee may administer oaths or affirmations to witnesses. The Madras City Council or its designee shall place on the record a statement of the substance of any written or oral exparte communications made to the Madras City Council or its designee on a fact or issue during the pendency of the proceedings. The Madras City Council or its designee shall notify the parties of the communication and of their right to rebut such communications. The record in a proceeding before the Madras City Council or its designee shall include:

1. All pleadings, motions and intermediate rulings.
2. Evidence received or considered.
3. Stipulations.
4. A statement of matters officially noticed.
5. Questions and offers of proof, objections, and rulings thereon.

6. Statement of any ex parte communications on a fact and issue made by the City Council or its designee during pendency of the proceedings.
  7. Proposed findings and exceptions.
  8. Any proposed, intermediate, or final order prepared by the Madras City Council or its designee.
- B. A verbatim written mechanical, electronic record shall be made on all motions, rulings, and testimony. The Madras City Council or its designee may, by rule, prescribe methods of discovery which may be used in the proceedings before the Madras City Council or its designee. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Madras City Council or its designee shall give effect to the rules of privilege recognized by law. Objections to evidence may be received in written form.
- C. All evidence shall be offered and made a part of the record in the case and except for matters stipulated to, no other factual information or evidence shall be considered in the determination of the case. Every party shall have the right to cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.
- The Madras City Council or its designee shall prepare and mail to all parties, a proposed order, including findings of fact and conclusions of law. The proposed order shall become final on the date specified in the order, which date shall not be less than fourteen (14) days after such mailing, unless the Madras City Council or its designee finds that an existing violation is imminently dangerous to the health, safety, or property of any person or the public in which case the order may specify an earlier date.
- D. Every order adverse to a party to the proceeding shall be in writing or stated for the record and may be accompanied by an opinion. Unless otherwise stipulated, a final order shall be accompanied by findings of fact and conclusions of law.

The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of facts and as to each ultimate fact required to support the order. The findings of fact and conclusions of law may be orally stated on the record by the Madras City Council or its designee and those findings and conclusions incorporated in the written order by reference.

The parties to a proceeding of a final order shall be notified in writing by delivering or mailing a copy of the order and any accompanied findings and conclusions to each party or, if applicable, the party's attorney of record. Every final order shall include a citation of the ordinance under which the order may be appealed or judicially reviewed.

#### **SECTION 5: JUDICIAL REVIEW**

Review of the final order of the Madras City Council or a hearings officer by an agreed party, shall be by writ of review to the Circuit Court of Jefferson County as provided in ORS 34.010 – 34.100.

If a person is issued a subsequent exclusion while a previous exclusion is being appealed or pending judicial review, the exclusion being appealed shall be counted in determining the appropriate length of the subsequent exclusion. If the predicate exclusion is set aside, the term of the subsequent exclusion shall be reduced, as if the predicate exclusion had not been issued.

No person shall enter or remain in any park, playground or city trail at any time during which there is in effect a notice of exclusion issued under this Section excluding that person from that park.

#### **SECTION 6: SEVERABILITY CLAUSE**

If any provision of this ordinance shall be held invalid, its invalidity shall not affect any other provisions of this ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this ordinance are hereby declared to be severable.

**SECTION 7: EMERGENCY CLAUSE**

In order to protect the health, welfare, and safety of the citizens of the City of Madras, an emergency is hereby declared to exist and this ordinance shall be in full force and effect after its passage by the Council and upon its approval by the Mayor.

**SECTION 8: REPEAL**

Ordinance No. 495 is hereby repealed.

This repeal shall not invalidate any prior action taken by the Council under Ordinance No. 495.

Adopted by the Council on July 26, 2005.