

CITY OF YAKIMA

LEGAL

DEPARTMENT

200 South Third Street, 2nd Fl. | Yakima, WA 98901

P: 509.575.6030 | F: 509.575.6160

MEMORANDUM

October 4, 2016

TO: Honorable Mayor and Members of the City Council
Cliff Moore, City Manager

FROM: Sara Watkins, Senior Assistant City Attorney

SUBJECT: Current Ordinances Regarding Activities in Parks

The Public Safety Committee and the City Council inquired as to regulations of activities at parks in the City. This memorandum addresses the current regulations on the books that are relevant to the discussion and can be enforced in City parks.

The following is a list of ordinances currently in place that are relevant to the issues and activities previously discussed by councilmembers as going on in public parks:

1. Disorderly conduct.

The Disorderly Conduct rules are adopted by reference and include only the state statute, which states, in part:

- (1) A person is guilty of disorderly conduct if the person:
 - (a) Uses abusive language and thereby intentionally creates a risk of assault;
 - (b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;
 - (c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority...

2. Fighting in Public.

Yakima Municipal Code 6.04.070 regulates fighting in any public place, including parks:

It is unlawful for any person to fight or quarrel or to encourage others to fight in any public place in the city of Yakima.

3. Drug and Alcohol regulations.

The Yakima Municipal Code adopts by reference the state's controlled substances regulations. Further, the Code adopts many of the alcohol regulations, including the following:

RCW 66.44.100

Opening or consuming liquor in public place—Penalty.

Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a class 3 civil infraction under chapter 7.80 RCW.

RCW 66.44.250

Drinking in public conveyance—Penalty against individual—Restricted application.

Every person who drinks any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. With respect to a public conveyance that is commercially chartered for group use and with respect to a for hire vehicle licensed under city, county, or state law, this section applies only to the driver of the vehicle.

Further, alcohol is not allowed in any park in Yakima without a permit under Title 13 of the Yakima Municipal Code.

4. Urinating in Public.

Yakima's code makes urinating and/or defecating in public a crime. This is a hard one for officers to arrest on because there generally has to be an eye witness to the crime to make the charge.

6.55.040 Urinating or defecating in a public place.

A. It is unlawful for any person to urinate or defecate in any public place or place open or available to the public, other than in a facility designed or provided for that purpose.

B. A violation of this section is a misdemeanor.

5. Approaching people and asking for money.

In general, soliciting money from others, or begging, is not able to be regulated due to constitutional matters and a person's freedom of speech. However, when people aggressively beg or interfere with another's ability to use the sidewalk or street, those actions can be regulated. Yakima has the following ordinance regarding pedestrian and vehicular interference:

6.75.020 Pedestrian or vehicular interference.

A. A person is guilty of pedestrian or vehicular interference if, in a public place in the city of Yakima, he or she intentionally:

1. Obstructs pedestrian or vehicular traffic; or
2. Aggressively begs; or

3. Participates in begging within the perimeter of any city public parking lot or within the area of parking stalls located within the city's public right-of-way.
- B. Among the circumstances to be considered in determining whether a person intends to aggressively beg are whether that person:
 1. Touches the person solicited;
 2. Follows the person solicited;
 3. Directs profane or abusive language toward the person solicited;
 4. Uses violent or threatening gestures toward the person solicited; or
 5. Persists in begging after the person solicited has given a negative response.
- C. The following definitions apply to subsection A of this section:
 1. "Obstructs pedestrian or vehicular traffic" means to walk, stand, sit, lie or place an object in such a manner as to block passage by another person or vehicle to such an extent that evasive action is necessary to avoid physical contact. Innocent acts which unintentionally and inadvertently block traffic or cause others to take evasive action; acts authorized as an exercise of one's constitutional right to picket or to legally protest; and acts authorized by permit issued pursuant to this code shall not constitute an obstruction or interference with pedestrian or vehicular traffic.
 2. "Aggressively beg" means to beg with the intent to intimidate another person into giving money or goods.
 3. "Intimidate" means to engage in conduct which would make a reasonable person fearful or feel compelled.
 4. "Beg" means to ask for money or goods as a charity, whether by words, bodily gestures, signs, or other means.
 5. "Public place" means an area generally visible to public view and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, and doorways and entrances to buildings or dwellings accessible to the public and the grounds enclosing them. (Ord. 2010-19 § 1, 2010: Ord. 98-3 § 59 (part), 1998).

6. Littering

Littering under the Yakima Municipal Code is not a crime. It is punishable as an infraction, much like a traffic ticket for speeding.

6.86.030 Scattering of litter prohibited.

No person shall throw, drop, deposit, discard or otherwise dispose of litter on any street, alley, sidewalk or other public place or upon a private residence or other private property not controlled or owned by such person within the city of Yakima, or in any body of water or waterway within the jurisdiction of the city, except:

1. When such property is designated by the state, its authorized agencies or by the city of Yakima for the disposal of litter and solid waste; or
2. Into a litter receptacle or other container in such a manner so that the litter will not be strewn or blown about or otherwise carried away and deposited by the elements upon any public place or private property of another; or
3. When the person disposing of the litter has prior consent of the owner or person in possession of such property and when the litter is deposited in such a manner so as not to cause a public nuisance or to be in violation of any other applicable law or regulation.

6.86.110 Penalty for violation.

Any person convicted of violating any provision of this chapter shall be deemed to have committed an infraction. A person who litters shall be ordered to pay a fine of ninety-five dollars.

7. Park rules.

Under Title 13, there are park rules that have been established. These ordinances deal specifically with park property, whereas the previous ordinances are enforceable city-wide. A sample of the park rules relevant to the issues at hand are as follows:

13.16.015 Pedestrian right-of-way.

- (1) At all times and at all locations within any park, pedestrians shall enjoy the right-of-way over any motorized or unmotorized vehicle, bicycle, tricycle, animal, skates, or skateboard.
- (2) A violation of this section shall constitute a civil infraction for which a monetary penalty may be assessed in the amount of two hundred fifty dollars. Each separate day, or portion thereof, during which any violation occurs shall constitute a separate violation.

13.16.080 Trash to be placed in receptacles-Toilets not be defaced.

No papers, boxes, food, litter, trash or material of any kind shall be thrown on the grass, walks or driveways, but the same must be placed in the receptacles provided for that purpose. The comfort stations and toilets shall not be defaced nor improperly used, nor the plumbing thereof obstructed or injured.

13.16.110 Animals prohibited from running at large.

Except as provided in YMC 13.16.115, no cattle, horses, dogs or other animals shall be turned into, or allowed to run at large in, any park, playground or parkway, nor shall any dog or other animal be permitted to enter any pool or water of any park. All dogs brought into any park or playground must be held on leash.

13.16.150 Penalty for violations.

It is unlawful for any person to violate or fail to comply with any rule or regulation provided for in this chapter. Unless otherwise specified, any person convicted of violating or of failing to comply with any rule or regulation provided for in this chapter shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment in the city jail facility for a term not to exceed ninety days or by both such fine and imprisonment

13.20.020 Using park with unlawful intent or purpose.

It shall be unlawful for any person to enter upon or remain in any public park owned by the city of Yakima with the intent or for the purpose of committing any unlawful act.

13.20.030 Park curfew imposed-Exceptions-Park posting and warning as conditions precedent to conviction.

A. It is unlawful for any person to enter upon or remain in any public park owned by the city of Yakima between the hours of ten p.m. and six a.m. of the following day, unless the presence of such person in such park during prohibited hours is authorized by a park use permit issued pursuant to YMC 13.16.100 or otherwise is incidental to an activity or function conducted by or under the auspices of the department of parks and recreation of the city of Yakima.

B. No person shall be convicted for violating the curfew imposed by this section unless such violation occurred in a park conspicuously posted with signs warning against entry into or remaining in the park during prohibited hours.

C. No person shall be convicted for violating the curfew imposed by this section unless, prior to being arrested, such person had been warned by a police officer of the conditions established by this section.

D. The provisions of this chapter do not apply to any duly authorized city employee in the performance of his or her duties.

13.20.040 Penalty for violation.

A violation of this chapter is a misdemeanor and is punishable by a fine not to exceed one thousand dollars and by imprisonment for a period not to exceed ninety days.

Other jurisdictions' park regulations or ordinances.

There are many park regulations and ordinances across the country. Below are a few representative ordinances that dictate use of parks and facilities that the Council may consider and have the Legal Department and Parks & Recreation Commission further discuss and study, and my thoughts regarding whether they would work in the City of Yakima.

1. Everett

9.06.220 Reward for assistance in enforcing chapter.

The parks and recreation director may offer, post and pay a suitable reward not exceeding twenty-five dollars for information leading to the arrest and conviction of anyone violating the provisions of this chapter.

9.06.203 Opening or consuming marijuana in a city park-Failure to respond-Failure to comply.

A. It is unlawful to open a package containing marijuana, usable marijuana, or a marijuana-infused product, or consume marijuana, usable marijuana, or a marijuana-infused product, in a city park. A person who violates this section is guilty of a civil infraction and shall be penalized in accordance with the penalty schedule for class 3 civil infractions under Chapter 7.80 RCW.

B. Any person who, after receiving a statement of the options provided in Chapter 7.80 RCW for responding to the notice of civil infraction and the procedures necessary to exercise these options, fails to exercise one of the options in a timely manner is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A notice of civil infraction may be complied with by an appearance by counsel.

C. A person who willfully fails to pay a monetary penalty or to perform community restitution as required by a court under this section may be found in contempt of court as provided in Chapter 7.21 RCW.

D. The terms "marijuana," "usable marijuana," and "marijuana-infused product" shall be defined as set forth in Chapter 10.02.

Encouraging reporting of crimes in parks by offering a minor amount of money may increase the calls from neighbors regarding illegal activity. However, \$25.00 is not a lot of money and the reward money would have to come out of the parks budget. An incentive program may be useful, however, if voluntary programs for reporting do not work. It could be a tool in the tool box to help fight crime at parks.

Marijuana use is currently not allowed in public, but to stress the point that people may not use parks to smoke marijuana or use marijuana in any way (including marijuana-infused products) the City Council could add an ordinance provision similar to that found in Everett's code to make it clear.

2. New York City, NY

Exclusive Areas

Areas within the parks designated by the Commissioner for exclusive use shall include:

1. Exclusive Children's Playgrounds: Adults allowed in playground areas only when accompanied by a child under the age of twelve (12).

2. Exclusive Senior Citizens Areas: Certain areas of any park may be set aside for citizens aged sixty-five (65) and older, for their quiet enjoyment and safety.
3. Dog Runs: Certain fenced park areas may be designated by the Commissioner as dog runs, and persons owning or possessing dogs that are wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York are permitted to allow such animals to remain unleashed in these areas. Users of dog runs shall obey posted rules. Users of such dog runs shall provide proof of current vaccination against rabies and proof of current licensing upon the request of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which shall constitute a violation of § 1-03(c), § 1-04(i) and of this paragraph. All exclusive areas will be specifically designated as such and signs will be posted informing the public of this designation.

New York City, and some other major cities, have exclusive children's playgrounds located within some of their parks. These playgrounds do not allow adults present within the fenced boundaries unless the adult is accompanied with a child under the age of 12. Although this type of ordinance is found in New York, California and Florida, I do not believe that an ordinance will withstand a review by the Washington State Supreme Court. People have a constitutional liberty interest in using public property, including parks. To narrow that use there must be a legitimate public interest to do so. Here, there currently are no facts or evidence that there are problems with adults using children's play structures or otherwise interfering with children playing in the parks. In my opinion, such an ordinance, if challenged, would be struck down by the courts in the state of Washington.

3. Brookfield, IL

Sec. 38-65. - Misuse of playground equipment prohibited.

No person shall in any manner use any of the playground apparatus or devices for other than their intended purpose or misuse any playground apparatus, which by its size and shape is meant exclusively for the use of children.

Sec. 38-72. - Interfering with department personnel prohibited.

No person shall interfere with or in any manner hinder any employee of the playground and recreation department while engaged in constructing, repairing or caring for any park property.

Brookfield's Section 38-65 might be a good ordinance to add to the park rules. It does not specify that adults can't use areas, or equipment, but only states that people cannot use any equipment for a purpose "other than its intended purpose." Further, it does not allow adults to use playground equipment that is clearly meant for children based on the equipment's size and shape. Although this does restrict use of some equipment at parks, it only addresses equipment, and only limits use to that for which the equipment is intended (including the intention for smaller sized equipment to be used by children).

Further, something similar to Section 38-72 could be added to the ordinances to make clear that interfering with parks department employees in the course of their duties to clean, maintain and monitor the parks is not allowed and will be punished. According to Ken Wilkinson, there have been issues with park patrons refusing to move off of the grounds to allow the staff to mow or do other maintenance. If an ordinance were passed that specifically stated that such interference was a crime, park employees could call law enforcement and have them forcefully removed from the park (and possibly trespassed for breaking a park rule) if they refused to comply.

4. Prince George County, MD

Section 11. Erecting Structures. Enclosure of any area or erection of any structures on Commission property is prohibited unless authorized by permit.

I provide you this example of an ordinance as it would prohibit creating any structure that enclosed an area of the park off from other users. Thus, any temporary fence, shack, or other structure would not be allowed. I don't know if this is a problem at the parks, and would defer to Mr. Wilkinson as to whether such an ordinance would be beneficial.

5. Snoqualmie, WA

12.12.045 Adopt-A-Park Program.

A. There is hereby authorized and established an Adopt-A-Park Program in the city of Snoqualmie. The purpose of the program shall be to provide the opportunity for organizations to assist in the maintenance, beautification and improvement of the city's parks, trails and open spaces and to assist in planning and carrying out events through a city-administered volunteer program.

B. The director of parks and recreation is hereby authorized to establish and administer reasonable rules and regulations for the administration of the Adopt-A-Park Program, subject to approval of the parks board, which shall at a minimum include the following:

1. Qualifications for participating organizations;
2. Requirements for individual volunteers, including a background check;
3. Safety rules to be observed by all volunteers;
4. Provisions for the release of liability of the city by participating organizations and individual volunteers;
5. Standards for signage recognizing organizations adopting a park; and
6. Standard forms of agreements, releases and other documents required to implement the program, with the approval of the city attorney.

This program in Snoqualmie may help with parks here in Yakima. Many parks have non-profit organizations who have either invested time or money in improvements, or are located nearby, that may be interested in "adopting" the park and helping the City keep it clean and friendly. In many neighborhoods experiencing problems with their parks, residents have gotten together at

Memorandum to Honorable Mayor and Members of the City Council
Cliff Moore, City Manager
October 4, 2016
Page 9

meetings and discussed how they can combat bad park behavior as a community, with the support of the parks department and law enforcement.

If this is an avenue the Council wishes to explore, staff can find additional examples for the Council to evaluate.