

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: September 14, 2020

AGENDA ITEM:	
Ordinance adjusting closing times for parks and amending other provisions related to the use of parks.	
PREPARED BY:	DIRECTOR APPROVAL:
Jon Walker	
DEPARTMENT:	
Legal	
ATTACHMENTS:	
BUDGET CODE:	AMOUNT:
SUMMARY:	

The municipal code currently provides that parks close at “dusk.” Dusk, however, may be subject to various interpretations and does not provide a specific closing time. By amending the code to provide that parks close thirty minutes after sunset, there will be a specific closing time for parks which permits citizens to enjoy parks during daylight hours regardless of the season. If a person remains in a park when it is closed and thereby commits criminal trespass, the certain closing time will avoid any argument about whether the park was actually closed.

Being present in a park when it is closed is trespass, but the municipal code currently has a specific crime for trespass in parks while all other trespasses are treated under the general state law definitions that are adopted by the municipal code. Using the state law definitions provides uniformity in definitions and defenses to criminal trespass and state law also has two degrees of criminal trespass depending on whether the trespassers enters a building. If he does, then it is a more serious crime (a gross misdemeanor instead of a misdemeanor). This change would not only make trespass in a park consistent with criminal trespass in other locations under the municipal code, but would authorize the city to charge a more serious crime if that trespass is in a building.

The park code currently makes camping in a park a civil infraction. This is inconsistent with chapter 7.05 of the municipal code which defines unlawful camping and makes it a crime and creates a potential defense for a person who is “camping” in a park during closed hours that he should only receive a civil infraction as the code provision on camping in a park regards more specific conduct than being in a park during closed hours. It is generally a best practice to avoid inconsistencies in the municipal code that can create different punishments for the same conduct.

<p>RECOMMENDED ACTION: Staff recommends the Council consider adopting the changes to park closing times and criminal trespass</p> <p>RECOMMENDED MOTION: I move to adopt Ordinance No. _____</p>
--

CITY OF MARYSVILLE

Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, RELATING TO THE USE OF CITY PARKS, ADJUSTING CLOSING TIMES FOR PARKS, AMENDING A PROVISION REGARDING CRIMINAL TRESPASS AND REPEALING A CAMPING PROVISION THAT ARE INCONSISTENT WITH OTHER SECTIONS OF THE MUNICIPAL CODE.

WHEREAS, the municipal code currently sets the closing time of parks at “dusk”; and

WHEREAS, the meaning of dusk may not provide for a specific and clearly understandable closing time; and

WHEREAS, setting the closing times at thirty minutes after sunset provides a specific time for closure while permitting citizens to enjoy parks during the hours of daylight regardless of the season; and

WHEREAS, sections 6.82.175 and 6.82.190 of the municipal code create a crime of trespass in a park that is specific to parks and not consistent with section 6.48.010 of the municipal code which adopts the state law definitions, degrees, and defenses for criminal trespass; and

WHEREAS, sections 6.82.085 and 6.82.190 make camping in a park a civil infraction and this is inconsistent with chapter 7.05 of the municipal code which defines and sets penalties for illegal camping; and

WHEREAS, consistency between different sections of the municipal code is important to inform citizens of their duties and rights under the code; and

WHEREAS, public health and safety is enhanced by consistency throughout the municipal code.

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

SECTION 1. Chapter 6.82 of the municipal code is amended as set forth in Exhibit A.

SECTION 2. 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.

SECTION 3. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 4. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 20____.

CITY OF MARYSVILLE

By _____

JON NEHRING, MAYOR

Attest:

By _____

_____, DEPUTY CITY CLERK

Approved as to form:

By _____

JON WALKER, CITY ATTORNEY

Date of publication: _____

Effective Date (5 days after publication): _____

EXHIBIT A

6.82.040 Park hours.

Except as otherwise posted or permitted by the Director, city parks ~~shall be~~ open to the public from 6:30 a.m. ~~to dusk~~until thirty (30) minutes after sunset, and ~~shall be~~ closed to the public at all other times.

6.82.085 ~~Overnight camping prohibited.~~

~~Except as otherwise permitted by the director, overnight camping is prohibited within city parks.~~

6.82.175 Trespass in parks – Punishment.

(1) It ~~shall constitute a trespass in a city park if any~~ is criminal trespass if a person knowingly: (a) enters or remains in a park from which he or she has been excluded during the period covered by an exclusion notice pursuant to MMC [6.82.185](#); (b) 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 parks and recreation department or conducted pursuant to the terms of a permit issued by the parks and recreation department~~ with the permission of the director; or (c) enters or remains in any area of a park which has been designated and posted by the director as a closed area, using such postings as “no admittance” or “closed to use” or “no trespassing.”

(2) ~~Unless otherwise posted, city parks are open to the public from 6:30 a.m. to dusk. The parks are closed to the public outside of posted times. The director shall have the authority to modify the time a city park is open and closed to the public where the director determines it appropriate.~~

~~(3)~~ The provisions of this section do not apply to any duly authorized department of parks and recreation or other city employee in the performance of his or her duties, or other person authorized by law.

6.82.190 Penalty for violations.

(1) A violation of any of the provisions of MMC [6.82.030](#), [6.82.045](#), [6.82.055](#), [6.82.065](#), [6.82.075](#), [6.82.080](#), ~~6.82.085~~, [6.82.090](#), [6.82.095](#), [6.82.105](#), [6.82.110](#), [6.82.120](#), [6.82.125](#), [6.82.130](#), [6.82.135](#), [6.82.145](#), [6.82.155](#), [6.82.160](#), [6.82.165](#), and [6.82.173](#) constitutes a civil infraction and shall be enforced in accordance with MMC [4.02.040](#). The amount of civil infraction fine shall be assessed in accordance with the schedule provided in MMC [4.02.040](#)(3)(g)(ii) and shall not exceed \$500.00 per violation.

(2) A violation of any of the provisions of MMC [6.82.050](#), [6.82.060](#), [6.82.070](#), [6.82.150](#), [and 6.82.170](#), ~~and 6.82.175~~ is a misdemeanor, and may be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days or by both such fine and imprisonment.

(3) The penalty for a violation of other sections of this chapter is as provided in those respective sections.