

PROPOSED REVISIONS TO TACOMA MUNICIPAL CODE 8.27- PARK CODE

*(Updated as of 8.22.19- **yellow highlights** reflect changes from 8.7.19 draft noted in **red**.)*

8.27.010 Chapter constitutes park code.

This chapter shall constitute the park code of the City of Tacoma and may be cited as such. Conduct in all public parks shall be subject to all the applicable provisions of the Tacoma Municipal Code, the general police regulations of the City of Tacoma and rules adopted by the Metropolitan Park District of Tacoma and not exclusively to the provisions of this chapter.

8.27.020 Exercise of police power.

This chapter is hereby declared to be an exercise of the police power of the State of Washington, the City of Tacoma and the City Metropolitan Park District of Tacoma for the public peace, health, safety, and welfare, and its provisions shall be liberally construed.

8.27.030 Definitions.

The terms herein used, unless clearly contrary to or inconsistent with the context in which used, shall be construed as follows:

“Civil infraction” has the meaning given that term by chapter 7.80 RCW, the Infraction Rules for Courts of Limited Jurisdiction and any local rule adopted thereto by the Tacoma Municipal Court.

“Director” means the Executive Director of Parks and Recreation of the Metropolitan Park District of Tacoma or his or her designee.

“Drones” or “Unmanned Aircraft Systems” (UAS) or “Unmanned Aerial Vehicle” (UAV) means a powered, aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, and can fly autonomously or be piloted remotely. The vehicle may be expendable or recoverable.

“Hearing Board” means the panel consisting of the persons designated by the City Manager or his or her designee or by the Director to adjudicate matters relating to the use of parks. The Hearing Board shall consist of three members. At least one member shall be appointed by the City Manager and at least one member shall be appointed by the Director.

“Hearing Officer” means a person designated by the City Manager or by the Director to adjudicate matters relating to the use of parks.

“Micromobility device” means a personal transportation device such as bicycles, scooters, skateboards, **roller skates, roller blades**, unicycles, mono wheel devices, surreys, electric personal assistive mobility devices (EPAMD) as defined in TMC 11.06.010 and electric motorized foot scooters as defined in TMC 11.06.020. A micromobility device includes all human powered devices, including devices powered by

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more than one person, and devices that are powered by an electric motor that is capable of propelling the device with or without the assistance of human propulsion.

“Park” means and includes all parks, squares, drives, parkways, docks, piers, moorage buoys and floats, boathouses, boulevards, golf courses, zoos, beaches, playgrounds, ~~and~~ recreation areas, community centers and any other facilities either developed or undeveloped, that are owned by the Metropolitan Park District of Tacoma or the City of Tacoma, or under the management and control of the Metropolitan Park District of Tacoma or the City of Tacoma, or otherwise publicly owned or open to the public, that are used for public or recreational purposes.

“Rafting” is the berthing of multiple boats, one outside the other, beside a pontoon, in between piles, or around a mooring buoy.

“Vape” or “Vaping” means the use of any consuming, inhaling or tasting of any kind of vapor product.

“Vapor product” means any noncombustible product containing solution or other consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from the solution or other substance, including an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. combustible product that may or may not contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or substance. This includes but is not limited to any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may or may not contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

“Vehicle” shall have the meaning set forth in RCW 46.04.670 as currently enacted or hereafter amended and shall also include (1) trailers, including trailers designed to be towed behind any vehicle, and (2) ~~motorized scooters and electric personal assistive mobility devices, as defined in Chapter 11.06 of this code.~~ any personal transportation device such as bicycles, scooters, skateboards, unicycles, surreys or mono wheel devices that are powered by an internal combustion engine that is capable of propelling the device with or without human propulsion. A micromobility device is not a vehicle.

Wherever consistent with the context of this chapter, words in the present, past, or future tenses shall be construed to be interchangeable with each other, and words in the singular number shall be construed to include the plural.

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8.27.040 Permits – Assemblies, entertainment, etc.

It is necessary for any person who conducts or participates in any organized entertainment, demonstration, or public gathering in any park to obtain the prior written permission of the Director. The procedure for application and consideration of permits for this purpose is as follows:

A. Any person desiring a permit under the above provisions shall file a written application with the Director no later than one month prior to the date of the proposed use. The application shall state the purpose for which the park would be used, the date and time of the proposed use, the name of the park and the area thereof that would be used, the anticipated number of persons who would be present, and such other information reasonably relating to the contemplated use as the Director may require; provided, however, that ~~said the~~ Director may, for good cause shown, waive the one-month requirement for filing said application.

B. In reviewing an application under this section, the Director shall consider the following conditions and standards:

1. The size of the park and any specialized purpose for which it is normally used or for which specialized facilities have been provided;
2. The location of the park, its aesthetic character and physical characteristics, and the character of the area surrounding it;
3. The anticipated size of the ~~proposed~~ intended use and assemblage;
4. Policing problems that may arise from the intended use;
5. The effect of the intended use, including consideration of the noise to be expected, upon the adjacent area and its occupants; and
6. Other activities scheduled for the parks at the anticipated time and place.

C. If, under the conditions set forth in subsection B of this section, the Director finds after an investigation that the safety, comfort, and convenience of the public in the use of the parks, or in the usage of the area adjacent to the park, would be unduly disturbed, he or she may deny the application, may impose restrictions upon the permit, or may issue a permit for a different date, time, park, or park area so as to alleviate such burden. The Director may issue a permit for use of the park during hours when the park is closed if he or she approves the application.

8.27.050 Permits – Generally.

Permits, when required by this chapter, shall be applied for through the Director unless otherwise ~~specified~~ provided. The granting or denying of permits shall be based upon

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the policies and standards set forth in this chapter and the ~~regulations~~rules of the Board of Park Commissioners or the Director, as now or hereafter amended, which are incorporated herein as though fully set forth. Where fees are required by the Board of Park Commissioners or the Director for the issuance of permits, payment of such fees will be required before permits are issued.

All permits issued ~~by the Board of Park Commissioners~~hereunder shall be subject to other applicable ~~city~~Tacoma Municipal Code provisions, City ordinances and ~~Metropolitan~~Park Board regulations~~District of Tacoma rules~~. The persons to whom such permits are issued ("permittees") shall be bound by said ~~rules, regulations, and code~~, ordinances and rules as fully as though the same were contained in such permits. A permittee shall be liable for any loss, damage, or injury sustained by any person by reason of the negligence, unlawful or wrongful conduct of the permittee, as well as for any breach of such ~~rules, regulations, or codes~~, ordinances or rules, to the person or persons so suffering ~~damages~~a loss, damage or injury.

Permits issued for musical acts or bands shall specify that the noise/sound level emitting from such act or band shall be no greater than 90 decibels at or beyond 50 feet from the act or band and in no event greater than 90 decibels at the boundary of the park.

Any person claiming to have a permit ~~from the Board of Park Commissioners~~issued hereunder must produce and exhibit such permit upon the request of any authorized person who may desire to inspect the same.

8.27.060 Public disturbance noises.

A. Noise in parks and penalties for violations is regulated by TMC 8.12.060 and TMC 8.12.065, as now enacted or as subsequently amended, except that permitted events must comply with the standard set forth in TMC 8.27.050.

B. The use of public address systems or other sound-amplifying devices must be approved by specific permit.

1. A "sound-amplifying device" is any machine or device for the amplification of the human voice, music, or any other sound. "Sound-amplifying device," as used in this chapter, shall not be construed as including standard radios or similar equipment, when used in compliance with TMC 8.12.060, nor warning devices on authorized emergency vehicles nor horns or other warning devices on other vehicles and used only for traffic safety purposes.

C. It is a violation to use a public address or sound-amplifying device in a park without a permit.

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8.27.070 Destruction of park property.

It is unlawful for any person to damage or destroy any real or personal property within a park or to physically interfere with any Metropolitan ~~Parks~~**Park** District of Tacoma employee in the discharge of his or her duties within a park.

8.27.080 Intoxicating liquors **and marijuana.**

The display, possession, or consumption of intoxicating liquors in any park is prohibited, except in particular areas or facilities which may be expressly designated from time to time by the Director. ~~Every~~ **A** person who violates ~~any provision of this section shall be guilty of a~~ **class 2** civil infraction ~~and shall be fined, not more than \$100, which includes~~ **including** statutory assessments.

The opening of a package containing marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, or consuming marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, in any park is prohibited. "Marijuana" means marijuana as defined by RCW 69.50.101 as now or hereafter amended. A person who violates this section shall be guilty of a class 3 civil infraction, not including statutory assessments.

Whenever any person is stopped for a violation of this section, the officer may detain that person for a reasonable period of time necessary to identify the person and check for outstanding warrants.

8.27.085 Smoking **and vaping in parks prohibited.**

It is unlawful for any person to smoke **or vape or use any product derived from or containing nicotine or light cigars, cigarettes, tobacco, or other smoking material within a park.** ~~The Director or City Manager shall post signs in appropriate locations, prohibiting smoking in parks. This includes but is not limited to the use of e-cigarettes and/or other vapor products, including but not limited to any product made, derived from, or containing nicotine whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means.~~

For the purposes of this section, "smoke" or "smoking" means the carrying, holding, or smoking of any kind of lighted pipe, cigar, cigarette, **vapor product** or any other **object that is** lighted **and used for** smoking ~~equipment~~.

A violation of this section is a class 4 civil infraction ~~\$25~~, not including statutory assessments. Such penalty is in addition to any other remedies or penalties provided by law.

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8.27.090 Selling, advertising, soliciting.

No person, except duly authorized concessionaires, and those having a specific permit, shall sell or offer for sale in any park any goods, refreshments, photographs, or other articles.

Advertising by the distribution, carrying, erection, attachment, or use of a handbill, sign, or device of any kind in any park is prohibited. ~~It is unlawful to place or erect a structure of any kind in any park.~~ It shall be unlawful to carry on any activity whatsoever for compensation or remuneration except upon express authorization of ~~said Board of Commissioners~~ the Director, including, but not limited to, the sale of goods, wares, merchandise, and services.

8.27.100 Damage or removal of plants prohibited.

Unauthorized cutting, removal, or destruction of any turf, tree, plant, shrub, flower, or seaweed on park property is prohibited. While inside any park, having in one's possession any newly-plucked branch, tree, flower, plant, fungus (mushrooms, shelf fungus, etc.), algae (seaweed, etc.), or shrub without specific permission shall be presumptive evidence of such unauthorized cutting, removal, or destruction.

8.27.110 Disposal of trash.

No person shall throw or leave litter, garbage, trash, or yard waste in or at a park except in a receptacle provided for that purpose. No person shall deposit on any park property any household or commercial garbage, refuse, or rubbish which is brought as such from any private property. The penalty for violation of this section shall be as provided in TMC 8.12.150.

8.27.120 Animal control.

A. Unless in a designated off-leash area, dogs and cats must be on a leash no longer than eight feet or secured inside a vehicle and are not allowed to enter wading pools, ponds, lakes, fountains, spraygrounds, or any play area designed to utilize water in any park. Animals of any other type are not permitted in any park unless first approved by the Director, except for service animals, as defined in RCW 9.91.170.

B. Any person with an animal in his or her possession shall be responsible for the conduct of the animal.

C. The provisions of this section do not apply to animals owned or maintained by the Metropolitan Park District of Tacoma.

D. The Director may prohibit animals, except for service animals as defined in RCW 9.91.170, from events and/or facilities within a park.

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E. All provisions of Title 17 of this code remain in full force and effect in all parks and may be enforced by any police officer or animal control officer.

F. Any violation of this section is a class 1 civil infraction unless a different penalty is provided in Title 17 of this code.

8.27.130 Molesting or feeding animals.

No person shall molest or ~~attempt to touch~~harass any ~~bird~~wildlife or ~~non-domesticated~~ animal in a park~~-except to the extent permitted at the Point Defiance Zoo & Aquarium.~~ It shall be unlawful for any person to give, offer, or attempt to give to any ~~wildlife or non-domesticated~~ animal within ~~the parks~~a park any tobacco, drink, or other ~~article~~substance known to be dangerous or noxious to ~~wildlife or non-domesticated~~ animals. It is also unlawful to feed any ~~bird or~~wildlife or ~~non-domesticated~~ animal in a park, except as authorized by the Director.

8.27.140 Damage by animals.

Owners of dogs or other animals damaging or destroying park property will be held liable for the full value of the property damaged or destroyed, in addition to impounding fees and the penalty imposed for violation of these provisions.

8.27.150 Prohibitions as to boating, fishing, and swimming.

It is unlawful for any person to boat, fish, wade, swim, scuba dive, snorkel, or bathe in any park except in the places and at times designated by the Director.

8.27.160 Boats and beaches.

No dock or any other structure shall be built upon any beach unless expressly authorized. No boat shall be kept for hire or private use upon any waters under the jurisdiction of the Metropolitan Park District of Tacoma, except as expressly authorized by the Director. Launching of waterborne craft from any shoreline is prohibited, except for specifically designated areas or with specific permit issued by the Director. The launching of waterborne craft, as provided in this section, shall be unlawful if the required fee, as determined by the Director, has not been paid.

8.27.165 Moorage buoy and float regulations.

Use of the park moorage buoys and floats shall be regulated as follows:

A. ~~Continuous moorage at a park by one vessel shall be limited to three consecutive nights (72 hours maximum).~~A boat shall not be moored at a park in excess of three overnight periods, whether continuous or not, within any 10-day period, unless authorized by the Director and then only upon payment of the applicable moorage fees.

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B. Rafting shall be allowed only as follows: three vessels, when each is less than 21 feet in length; two vessels, when each is less than 30 feet in length; no rafting shall be allowed for vessels of 30 feet or more in length.

C. No trash shall be dumped from any moored vessel and all moored vessels must keep a litter bag on board.

D. Open display **and/or consumption** of alcoholic beverages while vessels are moored is prohibited.

E. No sewage shall be dumped from a vessel while moored.

F. Moored vessels must be currently registered and properly numbered.

G. Moorage fees, **including parking and launching fees**, shall be paid according to a fee schedule adopted by the Director. **Any person who fails to pay the fees when due shall be guilty of a class 1 civil infraction, not including statutory assessments.**

8.27.170 Fires.

Fires are prohibited except in picnic stoves installed under the authority of the Director or in portable barbeques. Fires in any other facility or area are allowed only by special permit. Fires in picnic stoves or portable barbeques may only utilize propane or charcoal briquettes as fuel; all other fuel sources, including wood, are specifically prohibited. Portable barbeques may be utilized only for cooking food. Briquettes must be completely extinguished and properly disposed of or removed from the park. The Director may further restrict the use of barbeques within any park, provided that signs are installed to notify patrons of the restrictions.

8.27.180 Use of certain equipment.

It is unlawful for any person to use a slingshot, beanshooter, **skylantern**, paintball gun or **similar implement or** equipment, or **any hot air balloon, sky lantern or other device that uses a flame for lift or propulsion or** other similar implement, or golf or archery equipment in or upon any park; except that golf and archery equipment may be used in areas **especiallyspecifically** designated **or provided** for that use, or **as otherwise authorized by the Director by specific permit**.

It is unlawful to practice or play golf, baseball, tennis, soccer, or other games of like character, or to hurl or propel any **projectile or** missile into or over any park, except **in areas specifically designated for that useat places set apart for such purposes**. It is unlawful to **useoperate** motorized model aircraft~~),~~, **drones, unmanned aircraft systems (UAS), unmanned aerial vehicle (UAV), motorized models such as cars, cycles, trucks or watercraft,** in any park, except as specifically designated **for that use**. ~~Any use of~~

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~~such models with engines or motors with a greater than twenty-five one hundredths cubic-inch displacement is prohibited or as otherwise authorized by the Director.~~

8.27.190 Fireworks.

It is unlawful to carry, shoot, fire, or explode any fireworks or explosives of any kind in any park.

8.27.200 ~~Vehicular~~Vehicle and Micromobility Device standards.

A. It is unlawful:

1. to enter or leave a park by other than established entrances and exits.

2. ~~Vehicular traffic, including bicycles, is~~Vehicles are prohibited in any park, except on roads intended for the movement of public vehicular traffic, or on roads ~~and trails specifically designated for special use.~~specifically designated for such use. Micromobility devices are prohibited in any park, except on roads intended for the movement of public vehicular traffic, or on roads, sidewalks, paths or trails specifically designated for use of a particular device. The provisions of this section limiting the use of micromobility devices does not apply to wheelchairs or a micromobility device when that device is operated by a person with a mobility impairment caused by a physical disability who uses that device to enhance that person's mobility.

3. Roller skating and skateboarding is prohibited in parks except in designated areas.

34. The parking of vehicles in any park is prohibited except in established parking areas. It is unlawful to park along roadways if the normal flow of traffic is impeded or if parking causes conditions that are hazardous to public safety. Any vehicle that is impeding traffic or is illegally parked may be impounded.

45. No person shall service, wash, wax, or change the oil of any vehicle within a park.

56. It is unlawful to engage in, conduct, or hold any trials or competitions for speed, endurance, or hillclimbing involving any vehicle, boat, aircraft, **micromobility device** or animal in any park without specific permit.

67. All vehicles, ~~including bicycles, and micromobility devices~~ shall obey the posted speed limits and all other regulatory signs.

~~8. Between the hours of 10:00 p.m. and 4:00 a.m., only persons engaged in fishing activities shall be allowed to park vehicles in the parking lot immediately adjacent to the Les Davis Fishing Pier.~~

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8.27.205 Entrance fees.

Where fees are required by the Director for entering any park, it is unlawful to enter without paying the prescribed fee. Any person who fails to pay the fee when due shall be guilty of a class 1 civil infraction, not including statutory assessments.

8.27.210 ~~Overnight use~~No Structures in parks; exceptions.

A. It is unlawful to ~~camp~~erect, install or ~~set tents or other shelters overnight in place~~ any structure within a park, ~~unless~~except as provided herein.

B. "Structure" means any structure or shelter, including but not limited to any temporary makeshift dwelling units, lean-tos, shacks and/or trailers, comprised of tree branches, wood, plastic, metal, nylon, tarp, or any other materials.

C. This section shall not apply to:

1. Any structure erected, installed or placed within a park by the owner or operator of the park or as expressly authorized by the Director.

2. A temporary structure that has only a roof and no walls.

8.27.215 Parking fees required.

Where parking fees are required by the Board of Park Commissioners or the Director for parking within any park, it is unlawful to park without paying the prescribed parking fee. Any person violating this section shall be deemed to have committed a parking class 1 civil infraction, ~~the penalty for which shall not exceed the sum of \$250.00.~~

8.27.220 Opening and closing hours, no use of parks when closed, exceptions.

A. Parks ~~shall~~are considered open one-half hour before sunrise and ~~close~~closed one-half hour after sunset, unless otherwise expressly determined by the Director or otherwise posted at the park. Any person entering or remaining in a park when it is closed is subject to arrest and prosecution for criminal trespass. Any vehicle remaining in a park when the park is closed may be impounded and any personal property or structure remaining in a park when the park is closed may be removed.

B. The Director may extend open hours for sanctioned events or uses, but only that portion of a park ~~being used for~~specified by the ~~event~~Director will be open beyond normal hours; other areas of such a park shall remain closed.

C. This section shall not apply to:

1. the police substation at Wapato Park or to any other City facility constructed and operated in a park.

2. police officers or park employees while on-duty.

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3. sidewalks that are within the right-of-way of a public street, when the street is not within the boundaries of a park.

8.27.230 Emergency conditions.

A. In case of an emergency, or in case where life and property are endangered, all persons, if requested to do so by the Director or other Metropolitan Park District of Tacoma employee or a police officer, shall depart from the portion of the grounds specified by such employee or officer-~~or employee~~, and shall remain off the same until permission is given to return.

B. Any person who remains on park property after being required to leave by a Metropolitan Park District of Tacoma employee or by a police officer, or who returns to the park without permission, is guilty of criminal trespass and may be arrested and prosecuted under the Tacoma Municipal Code. Any juvenile violating this section may be arrested and prosecuted under chapter 9.52 RCW, as currently enacted or hereafter amended.

8.27.240 Aiding and abetting violations.

Anyone concerned in the violation of this chapter, whether directly committing the act or omitting to do the thing constituting the offense, or who aids or abets the same, and whether present or absent, and anyone who directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit such offense, is and shall be a principal under the terms of this chapter and shall be proceeded against and prosecuted as such.

8.27.250 Penalty for violations.

Unless specifically designated ~~in this chapter as a gross misdemeanor or misdemeanor, or if specified~~ to be enforced pursuant to other law, including, but not limited to, another section, chapter, or title of the Tacoma Municipal Code, any violation of this chapter shall constitute a Class 1 civil infraction, not ~~to exceed \$250, not~~ including statutory assessments. Such penalty is in addition to any other remedies or penalties provided by law- including, but not limited to, another section, chapter, or title of the Tacoma Municipal Code or the Revised Code of Washington. For each act herein prohibited of a continuing nature, each day shall be considered a separate offense.

8.27.251 Authority to adopt a code of conduct.

The use and enjoyment of parks are enhanced when patrons abide by a code of conduct that promotes health and safety, that requires respect for the rights and needs of others, and that requires respect for park property. The Director may adopt a code of conduct that regulates any activity or behavior in parks to protect the public's health and safety, to promote respect for the rights and needs of others, and to preserve park

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property. The Director may also include within the code of conduct criteria to determine the length of any exclusion notice issued pursuant to TMC 8.27.255.

8.27.255 Violators may be required to leave park.

A. When any Metropolitan Park District of Tacoma employee or any police officer has probable cause to believe that a person has violated any rule of the Metropolitan Park District of Tacoma, including but not limited to any code of conduct adopted by the Director pursuant to TMC 8.27.251, any provision of the Tacoma Municipal Code, or any provision of the Revised Code of Washington while in a park or other applicable law, he or she may require that person to leave the park immediately. Any person who remains on park property after being required to leave by a Metropolitan Park District of Tacoma employee or by a police officer, or who returns to any park on the same calendar day, is guilty of criminal trespass and may be arrested and prosecuted under the Tacoma Municipal Code. Any juvenile violating this section may be arrested and prosecuted under the Tacoma Municipal Code or under chapter 9.52 RCW as currently enacted or hereafter amended.

B. When any Metropolitan Park District of Tacoma employee or any police officer has probable cause to believe that a person has committed any of the following violations while in a park, he or she may require that person to leave the park immediately. Any person who remains on park property after being required to leave by a Metropolitan Park District of Tacoma employee or by a police officer, or who enters any park during the period of exclusion, is guilty of criminal trespass and may be arrested and prosecuted under the Tacoma Municipal Code. Any juvenile violating this section may be arrested and prosecuted under Tacoma Municipal Code or under chapter 9.52 RCW, as currently enacted or hereafter amended. The exclusion may be for 90 days and shall be in writing and delivered to the person being excluded.

A person committing any of the following violations may be excluded for 90 days:

1. a drug offense, including a violation of TMC 8.29.060 (drug paraphernalia); TMC 8.72, Drug-related Loitering; and TMC 8.28 Narcotics; or
2. a violation of TMC 8.46 (prostitution); or
3. an alcohol-related offense, including a violation of TMC 8.27.080 (drinking in a park), a violation of TMC 8.20 (intoxicating liquor), a violation of chapter 66 RCW (alcoholic beverage control); or
4. TMC 8.12.013, assault; or
5. TMC 8.106.010, harassment; or
6. TMC 8.12.111, indecent exposure; or

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7. TMC 8.32.020, indecent conduct; or
8. TMC 8.12.120, destruction of property; or
9. TMC 17.04, relating to a dangerous or potentially dangerous dog; or
10. TMC 17.02.100, TMC 17.02.110, directing a dog to attack; or
11. TMC 17.01.160, TMC 17.01.161, a crime relating to animals or cruelty to animals; or
12. TMC 8.12.026, vehicle prowling; or
13. TMC 8.12.170, stalking; or
14. TMC 8.13A.040, solicitation by coercion; or
15. TMC 8.12.010(8), theft; or
16. TMC 8.12.010(6), discharging a firearm; or
17. TMC 8.12.014, reckless endangerment; or
18. TMC 8.12.090, sexual assault; or
19. TMC 8.12.113, communication with minor for immoral purposes; or
20. TMC 8.12.115, sexual misconduct with a minor in the second degree; or
21. TMC 8.12.025, criminal trespass, but only when the trespass is based on the person violating a previously issued exclusion order; or
22. RCW 46.61.500 or 46.61.530, Reckless driving/racing; or
23. RCW 46.61.502 or 46.61.504, DUI; or
24. RCW 79A.60.040, boating - DUI or reckless; or
25. TMC 8.66 (weapons); or
26. violation of a court order issued pursuant to chapter 8.105 TMC, chapter 7.90 RCW, chapter 10.99 RCW, chapter 26.09 RCW, chapter 26.10 RCW, chapter 26.26 RCW, chapter 26.50 RCW, chapter 74.34 RCW, RCW 26.52.010, or a foreign protection order, as defined by RCW 26.52.010; or
27. TMC 8.120.030, graffiti; or
28. TMC 8.12.150, littering, but only when the amount of garbage, rubbish, refuse, or material amounts to five gallons or more; or
29. TMC 8.27.210, ~~Overnight use~~ no structures in parks; or

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30. TMC 8.27.220, no use of parks when closed; or

31. TMC 8.27.251, code of conduct adopted by the Director; or

32. a violation of any **other** rule of the Metropolitan Park District of Tacoma, any provision of the Tacoma Municipal Code, or any provision of the Revised Code of Washington ~~when~~ **other applicable law when it is a repeat violation or** the person has been the subject of one (1) prior exclusion notice issued under this section within one (1) year prior to the current violation.

C. When any Metropolitan Park District of Tacoma employee or any police officer has probable cause to believe that a person has committed any of the following violations while in a park, he or she may require that person to leave the park immediately. Any person who remains on park property after being required to leave by a Metropolitan Park District of Tacoma employee or by a police officer, or who enters any park during the period of exclusion, is guilty of criminal trespass and may be arrested and prosecuted under the Tacoma Municipal Code. Any juvenile violating this section may be arrested and prosecuted under the Tacoma Municipal Code or under chapter 9.52 RCW, as currently enacted or hereafter amended. The exclusion shall be for one (1) year and shall be in writing and delivered to the person being excluded.

A person committing any of the following violations may be excluded for one (1) year:

1. Any felony, as defined by state or federal law; or

2. a violation of TMC 8.67 (firearms); or

3. a violation of any rule of the Metropolitan Park District of Tacoma, any provision of the Tacoma Municipal Code, or any provision of the Revised Code of Washington when the person has been the subject of two (2) or more prior exclusion notices issued under ~~this section~~ **subsection B above** within one (1) year prior to the current violation.

D. The person being excluded need not be charged, tried, or convicted of any crime or be issued an infraction or have an infraction found committed in order for an exclusion notice to be issued or effective. The exclusion may be based upon observation by a Metropolitan Park District of Tacoma employee or observation by a police officer or upon the sort of civilian reports that would ordinarily be relied upon by police officers in the determination of probable cause.

E. The exclusion notice shall be in writing and shall contain the date of issuance; the violation which the person is alleged to have committed; and a citation of the code, statute, or park rule violated. The exclusion notice shall specify the length and places of exclusion and the method for appealing the notice. It shall be signed by the issuing individual. Warning of the consequences for failure to comply shall be prominently displayed on the notice.

PROPOSED REVISIONS TO TACOMA MUNICIPAL CODE 8.27- PARK CODE

(Updated as of 8.22.19- yellow highlights reflect changes from 8.7.19 draft noted in red.)

F.1. A person receiving an exclusion notice longer than one (1) day may file a written appeal before the Hearing Officer to have the exclusion notice rescinded or the duration of the exclusion shortened. The written appeal must be under oath and set forth all facts relied upon by the person for his or her contention that the notice should be rescinded or shortened. The written appeal shall be accompanied by a copy of the exclusion notice which is being appealed. The written appeal must be delivered to the Hearing Officer or postmarked no later than seven (7) calendar days after the issuance of the exclusion notice. The Hearing Officer shall issue a ruling upholding, rescinding, or shortening the duration of the exclusion no later than five (5) business days after receipt of the written appeal.

2. The Hearing Officer shall consider the exclusion notice and any other materials submitted that the Hearing Officer considers relevant and trustworthy.

3. If the violation is proved by a preponderance of the evidence, the exclusion notice shall be upheld; but upon good cause shown, the Hearing Officer may shorten the duration of the exclusion. If the violation is not proved by a preponderance of the evidence, the Hearing Officer shall rescind the exclusion. If the Hearing Officer rescinds an exclusion, the exclusion shall not be considered a prior exclusion for purposes of this section.

G.1. A person receiving an exclusion notice longer than one (1) day may request a hearing before the Hearing Board to have the exclusion notice rescinded or the duration of the exclusion shortened. A person requesting a hearing must comply with the requirements of subsection F above and contain a written request for a hearing. The hearing should occur within ten (10) business days after the Hearing Board receives the request for hearing. The Hearing Board shall take reasonable steps to notify the offender of the date, time, and place of the hearing.

2. At the hearing, the violation must be proved by a preponderance of the evidence in order to uphold the exclusion notice. The exclusion notice establishes a prima facie case that the offender committed the violation as described. The Hearing Board 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 rules and procedures for the Hearing Examiner set forth in TMC 1.23 and the Rules of Procedure for Hearings adopted by the Hearing Examiner shall govern hearing procedures.

3. If the violation is proved, the exclusion notice shall be upheld; but upon good cause shown, the Hearing Board may shorten the duration of the exclusion. If the violation is not proved by a preponderance of the evidence, the Hearing Officer shall rescind the

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exclusion. If the Hearing Board rescinds an exclusion, the exclusion shall not be considered a prior exclusion for purposes of this section.

H. The decision of the Hearing Officer or Hearing Board is final. An offender seeking judicial review of the Hearing Officer's or Hearing Board's decision must comply with TMC 1.23 and the Rules of Procedure for Hearings adopted by the Hearing Examiner.

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. Any person who remains on park property after being required to leave by a Metropolitan Park District of Tacoma employee or by a police officer, or who enters any park during a 90-day or one-year exclusion, is guilty of criminal trespass and may be arrested and prosecuted under the Tacoma Municipal Code. Any juvenile violating this section may be arrested and prosecuted under the Tacoma Municipal Code or under chapter 9.52 RCW as currently enacted or hereafter amended.

8.27.260 Severability.

If any part, provision, or section of this chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.