

SULTAN COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: C-3

DATE: January 22, 2009

SUBJECT: Second Reading Ordinance No. 1010-09
Enacting Park Regulations and Establishing Chapter 9.09
SMC

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the Council is to have Second Reading of Ordinance No. 1010-09 enacting park use regulations and establishing a new Chapter 9.09 of the Sultan Municipal Code (SMC).

Skate park regulations (Attachment B) are established by the Mayor under 9.09.085 of the proposed park regulations.

STAFF RECOMMENDATION:

Have Second Reading of Ordinance No 1010-09 enacting park use regulations and establishing Chapter 9.09 of the Sultan Municipal Code; providing for severability; and establishing an effective date.

SUMMARY:

The City Council had First Reading of Ordinance No. 1010-09 on January 8, 2009. During the meeting, Council made several amendments to the proposed park regulations.

The Council supported the Police Chief's recommendation to increase the penalties for camping and trespassing from a civil infraction to a misdemeanor:

09.09.090 Camping prohibited. It is unlawful to camp in any park except at places so designated and posted. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250.00.

09.09.150 Trespassing. No person except an authorized city employee or other person duly authorized pursuant to law shall enter or go upon any park area which has been posted as a "No Admittance" or "No Trespassing" area, or at a time a park is closed to the public. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250.00.

The City Council discussed and supported the staff recommendation to prohibit possessing a container of any alcoholic beverage or illegal drug(s) while in any park:

9.09.130 Intoxicating liquor and illegal drugs prohibited. Under the proposed regulations, it is unlawful to possess a container of any alcoholic beverage or illegal drug(s) while in any park. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250.00. For purposes of this section, "possession" means having a container within one's immediate reach or control.

The City Council discussed and rejected the City Attorney's recommendation to delete the second half of sentence starting with "including but not limited to a state of intoxication. The Council supported adding the Revised Code of Washington definition of disorderly conduct (Attachment C).

09.09.160 Disorderly conduct and profanity prohibited. Under the proposed regulations, it is unlawful to use profane or abusive language or to conduct oneself in a disorderly manner [as defined by RCW 9A.84.030](#), including but not limited to a state of intoxication or being noticeably under the influence of drugs, in any park. "Profane or abusive language" means obscenity or fighting words constituting unprotected speech.

DISCUSSION:

The City of Sultan owns several park properties including Osprey Park, Reese Park and the recently opened skate park. The Sultan Municipal Code is silent on park regulations. The Sultan Police Department is limited in its ability to regulate behavior in Sultan's parks without clear regulations and penalties. The focus of this effort is to provide the Sultan Police Department with the tools necessary to manage use and behavior in City parks.

The proposed park regulations address a number of policy issues including:

- prohibited activities
- park hours of operation
- use by groups and potential fees
- penalties for violations

Park regulations can be as simple as a declaration of park hours with clear penalties for violations. City staff used Mill Creek park regulations as a template for developing the regulations in Ordinance No. 1010-09.

BACKGROUND:

The City Council discussed establishing regulations for park hours of operation at its June 25, 2008 meeting. The Council Subcommittee briefly reviewed the regulations at its July 17, 2008 meeting. The Council Subcommittee directed staff to return with draft regulations for Council consideration.

On August 28, 2008, City staff provided an overview of park regulations from the cities of Kirkland, Mill Creek, and Sammamish as a starting point for discussion and direction. The Council directed staff to prepare draft park regulations for the Council's consideration. The draft park regulations are modeled after the Mill Creek regulations which were adopted in 2003.

Due to time constraints at the October 23 meeting, discussion of park regulations was rescheduled for the November 13, 2008 meeting. At the meeting the City Council discussed the draft park regulations and skate park rules and directed staff to proceed with preparing an adopting ordinance.

The Council had First Reading of Ordinance No. 1010-09 on January 8, 2009. There were no public comments in opposition to the proposed regulations or amendments as made during First Reading.

FISCAL IMPACT:

Discussing and establishing park rules can be accomplished using in-house staff with review and oversight of the City Attorney. There may be costs associated with enforcing the regulations and prosecuting violators.

RECOMMENDED ACTION:

Have Second Reading of Ordinance No 1010-09 enacting park use regulations and establishing Chapter 9.09 of the Sultan Municipal Code; providing for severability; and establishing an effective date.

ATTACHMENTS:

- A – Ordinance No. 1010-09
- B – Skate Park Rules
- C – RCW 9A.84.030

COUNCIL ACTION:

DATE:

**CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1010-09**

**AN ORDINANCE OF THE CITY OF SULTAN,
WASHINGTON, ENACTING PARK USE REGULATIONS
AND ESTABLISHING CHAPTER 9.09 OF THE SULTAN
MUNICIPAL CODE; PROVIDING FOR SEVERABILITY;
AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, pursuant to Article 11, Section 11 of the Washington State Constitution and the City of Sultan’s inherent police powers, the Sultan City Council finds it to be reasonable and necessary to adopt park regulations necessary for the public health, safety and welfare;

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

Section 1. A new Chapter 9.09 Sultan Municipal Code, entitled “Park Regulations” is hereby enacted to read as follows:

**Chapter 09.09
PARK REGULATIONS**

Sections:

- 09.09.010 Police power.
- 09.09.020 Definitions.
- 09.09.025 Use Permit Authorized.
- 09.09.026 Terms and conditions for supplemental park permits.
- 09.09.027 Deposits and fees for supplemental park permits.
- 09.09.030 Sign posting and structures prohibited.
- 09.09.033 Distribution of handbills.
- 09.09.035 Facility use.
- 09.09.037 Storage of equipment.
- 09.09.040 Removal or destruction of park property prohibited.
- 09.09.050 Molesting wild animals prohibited.
- 09.09.055 Pets in parks.
- 09.09.057 Horses prohibited.
- 09.09.060 Selling refreshments or merchandise prohibited.

- 09.09.065 Soliciting prohibited.
- 09.09.070 Use by groups or assemblies.
- 09.09.080 Vehicles restricted.
- 09.09.085 Skateboard park areas.
- 09.09.090 Camping prohibited.
- 09.09.095 Golf prohibited.
- 09.09.100 Endangering persons or property prohibited.
- 09.09.110 Firearms.
- 09.09.115 Weapons prohibited.
- 09.09.120 Fires prohibited.
- 09.09.125 Fireworks prohibited.
- 09.09.127 Sound-amplifying devices.
- 09.09.130 Intoxicating liquor and illegal drugs prohibited.
- 09.09.135 Littering – Trash deposit.
- 09.09.140 Park hours.
- 09.09.150 Trespassing.
- 09.09.160 Disorderly conduct and profanity prohibited.
- 09.09.165 Smoking and tobacco use prohibited.
- 09.09.170 Violation – Penalty.

09.09.010 Police power.

The provisions of this chapter constitute the park use regulations of the City of Sultan. They are adopted pursuant to the City’s police powers granted under Article 11, Section 11 of the Washington Constitution, and are necessary for the public health, safety and welfare.

09.09.020 Definitions.

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

- A. "City" means the City of Sultan.
- B. "Mayor" means the Mayor of the City of Sultan or his/her designee.
- C. "Park" means and includes all parks, trails, squares, greenways, parkways, grounds or other areas maintained by the City of Sultan and devoted to purposes of play, recreation and pleasure of the general public.

D. "Smoking and tobacco use" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment and any other use of tobacco products.

E. "Structure" means any piece of work artificially built up or composed of parts jointed together in some definite manner.

F. "Use Permit" means a permit issued under Section 9.09.025 of this Chapter for those uses of City parks specified therein.

09.09.025 Use Permit Required.

Any person intending to conduct any activity in any City park shall first obtain from the Mayor a Use Permit issued pursuant to subsections 9.09.025 – 9.09.027 of this chapter, as they now exist or hereafter may be amended. For purposes of this section, activities subject to the requirement to obtain a Use Permit include but shall not be limited to the following:

- A. Reserving any room or part of any community center, athletic field, picnic facility, stage, or other defined area of a park for a certain time or series of times; and/or granting the exclusive use thereof during the time reserved.
- B. Posting any signs, posters or notices; placing or erecting any structure or obstruction of any kind, whether temporary or permanent; cutting or removing any tree or plant material.
- C. Making any improvement to or constructing a public work in a park.
- D. Conducting a commercial activity; using any outdoor electrical power outlet; laying cables or extending wires in, under or over a park land; using any park or facility during the hours it is closed to the public.
- E. Making any use of any park for an event or activity that differs in kind from the use and enjoyment of the park for recreational facilities purposes by the general public.

No permit is required under this section for city activities, including those by employees or authorized city contractors acting in the scope and course of their duties or for other governmental officials acting under authority of law as determined by the Mayor in his/her discretion.

All permits issued under this section shall be wholly of a temporary nature, shall vest no permanent right, and may be immediately revoked for any violation of the terms of the permit or this chapter, as determined in the discretion of the Mayor .

Any permit issued under this section shall not preempt or modify any conditional use or other permit issued or required by the city. The Mayor may issue Use Permits directly under the authority of this chapter or may adopt administrative rules for doing so.

09.09.026 Terms and conditions for park use permits.

The Mayor may impose such terms and conditions upon any Use Permit as the Mayor determines appropriate in the exercise of his or her discretion to protect the health, safety and welfare of the public and/or the park to; (i) avoid or limit unnecessary interference with other uses or users of the park; (ii) minimize disturbance of the surrounding neighborhood; (iii) ensure that the park will be returned to the same condition after the activity or event as it was beforehand.

Such terms and conditions include but shall not be limited to conditions requiring the user to:

- A. Furnish and pay for public liability and property damage insurance naming the city as an additional insured and in such amounts as reasonably necessary to provide full coverage for personal injury, death, and property damage arising from or as a result of the event or activity;
- B. Execute an indemnity and/or hold harmless agreement; and/or
- C. Make a reasonable security deposit or provide a bond.

The provisions of sections 9.09.025 – 9.09.027 of this Chapter, including the terms and conditions of any Use Permit issued hereunder, shall not be construed to authorize infringement upon the rights of petition, assembly, or free expression protected by the First Amendment of the United States Constitution and/or Article I, Sections 3, 4, and 5 of the Washington Constitution.

If an applicant asserts that a term or condition proposed by the Mayor infringes upon a constitutional right, the Mayor shall have the burden of showing that the proposed term or condition is a reasonable restriction on the time, place and manner of exercising the right, or its otherwise lawful.

09.09.027 Deposits and fees for park use permits.

Any person seeking issuance of a Use Permit shall first pay such fees or charges as required by resolution of the city council, or as authorized by the Mayor under this section.

Such fees and charges may include a deposit against expected costs of city services necessary to support the event or activity, including but not limited to costs for parks maintenance, solid waste removal, and police overtime and such other costs incurred by the City as a result of the event or activity authorized by the Use Permit.

No refund of fees, charges or expenses shall be made except upon timely cancellation of an event or activity authorized by a supplemental park permit.

The Mayor is authorized to make refunds of fees and to return all or any portion of any security deposit when no longer needed and after all costs that may be charged against the Use Permit have been paid.

If costs exceed the amount of any deposit or financial security, the Mayor is authorized to bill the Use Permit holder, who shall remit such charges within 30 days.

Delinquent accounts may be sent to collection. No Use Permit shall be issued to any entity having a delinquent account.

09.09.030 Sign posting and structures prohibited.

It is unlawful to place or erect any sign, board, billboard or similar device of any kind in any park, or create, place or erect any structure, unless authorized by the terms of a Use Permit issued by the Mayor.

09.09.033 Distribution of handbills.

It is unlawful to exhibit or distribute any handbills, circulars, or signs in any park in any manner that interferes with or obstructs the normal use of the park or the normal passage of people or vehicles within or through the park.

09.09.035 Facility Use.

The misuse of a park facility or the failure to conform with any of the regulations of this chapter, the instructions of city employees, the terms and conditions of a park Use Permit, or other permit shall be sufficient reason for revoking said permit and/or denying any future permits.

09.09.037 Storage of equipment.

Persons using parks should not expect storage space for equipment necessary for their activity. If temporary storage is provided, the city shall not be responsible for loss or damage to the equipment or property stored.

09.09.040 Removal or destruction of park property prohibited.

It is unlawful to remove, destroy, mutilate or deface any structure, monument, statue, fountain, wall, fence, railing, vehicle, bench, shrub, tree, lawn, grass, plant, flower, lighting system or sprinkling system or any other property or thing lawfully in any park, except as authorized by the terms and conditions of any duly issued Use Permit. No foreign matter of any sort (including without limitation sawdust or sand) may be added to any field for any reason unless authorized by the terms of a Use Permit issued by the Mayor.

09.09.050 Molesting wild animals prohibited.

It is unlawful to tease, feed, annoy, disturb, molest, catch, injure, threaten, kill, throw any stone or missile of any kind at, strike with any stick or weapon, or to fetter any animal, bird, fowl or fish in any park.

09.09.055 Pets in parks.

Dogs, pets or domestic animals are not permitted on any artificial turf, picnic area, tennis courts or play area in any park or in any park structure unless specifically permitted by posting. This section shall not apply to animal guides or service dogs.

Dogs and other pets or domestic animals shall be kept on a leash no greater than 15 feet in length, and under control at all times.

Any person whose dog or other pet is in any park shall be responsible for the conduct of the animal and shall promptly remove and dispose of properly all animal waste deposited by such animal.

No person shall allow his or her dog or other pet to bite, disturb, or harass any park user, wildlife, or other pets. No person shall allow his or her dog or other pet to bark or make noise continuously or otherwise disturb the peace and tranquility of the park. No person shall permit his or her dog or other pet to damage, destroy or remove park vegetation.

This section is in addition to the provisions of Chapter 6.04 SMC, Animal Control, and shall be supplemental to such chapter.

09.09.057 Horses prohibited.

Horses are not permitted in any park at any time.

09.09.060 Selling refreshments or merchandise prohibited.

It is unlawful to sell refreshments, merchandise or any other thing in any park without first obtaining a park Use Permit.

09.09.065 Soliciting prohibited.

Except as may be specifically provided by law, no person shall solicit contributions for himself or others in any park.

09.09.070 Use by groups or assemblies.

Parks and/or picnic shelters shall be available for any person, group or assembly on a first-come, first-served basis, subject to priority use as determined by the Mayor for classes, special events, public forums, or athletic programs. Any person, group or assembly seeking to use a park or picnic shelter shall first obtain a Use Permit pursuant to sections 9.09.025 – 9.09.027 above.

09.09.080 Vehicles restricted.

It is unlawful to operate, ride or drive any wheeled device, sled, or vehicle over, across or through any park, except along designated paths, drives or streets; provided, however, motorized devices are restricted solely to streets and drives.

It is unlawful to operate, ride or drive any wheeled device, vehicle at a speed in excess of 10 miles per hour in any park.

It is unlawful to stand or park any vehicle except where so designated and posted. It is unlawful to operate, ride or drive any vehicle for the purpose of testing or ascertaining its fitness or service. It is unlawful to use or operate vehicles in any portion of a park devoted to skateboards.

09.09.085 Skateboard park areas.

Any area of a park devoted to skateboards shall be governed by rules promulgated by the Mayor, and as may be posted at the entrance to the skateboard area. A violation of any such rules, whether or not posted, shall be a violation of this chapter.

09.09.090 Camping prohibited.

It is unlawful to camp in any park except at places so designated and posted. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250.00.

09.09.095 Golf prohibited.

Golf activities shall not be permitted in any park except as authorized by a Use Permit duly issued prior to commencement of the activity.

09.09.100 Endangering persons or property prohibited.

It is unlawful to knowingly hurl or propel any object or to take any physical action in any park which endangers or is likely to endanger any persons or property or interfere with park purposes.

09.09.110 Firearms.

It is unlawful to discharge a firearm in any park. This section shall not apply to police officers or to city employees acting pursuant to and in accordance with their authority and applicable law. This section shall not apply in designated and posted shooting, trap-shooting and skeet-shooting ranges in any park.

09.09.115 Weapons prohibited.

It is unlawful in any park to carry, discharge or use any airgun, bow and arrow, crossbow, slingshot, or other device the purpose of which is to propel an object from the person using it. It

is unlawful in any park to use or brandish any knife or any other device in a manner which threatens or endangers any person or property.

09.09.120 Fires prohibited.

It is unlawful to build or have any fire in any park except where so designated and posted. Portable grills, barbecues or hibachis are permitted so long as they do not otherwise violate this chapter or the Sultan Municipal Code.

09.09.125 Fireworks prohibited.

It is unlawful in any park to use, exhibit, display or possess any fireworks or consumer fireworks as those terms are defined in RCW 70.77.126 and .136.

09.09.127 Sound-amplifying devices.

Except as authorized by a park Use Permit, or a conditional use permit, or except as necessary for the preservation of public peace or safety, it is unlawful to use any public address system, loudspeaker, "boombox radio," or other sound amplifying device in any park. No person shall use, operate or play in any park a radio, tape player, disc player, television, musical instrument, record player or any other machine or device capable of producing sound without the use of headphones or a similar personal listening device or at a volume level where discernible noise can be heard more than 10 feet from the device.

09.09.130 Intoxicating liquor and illegal drugs prohibited.

It is unlawful to possess a container of any alcoholic beverage or illegal drug(s) while in any park. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250.00. For purposes of this section, "possession" means having a container within one's immediate reach or control.

09.09.135 Littering – Trash deposit.

It is unlawful to throw or deposit any refuse or other material in any park, including but not limited to any artificial surfaces, play fields or picnic areas, except in designated receptacles; or to take garbage or refuse to a park for disposal; or to deposit garbage or refuse generated outside a park in a receptacle within the park designated for deposit of trash by the public.

09.09.140 Park hours.

Parks are open to the public daily from dawn until dusk. It is unlawful for any person to enter a closed park except as authorized by a Use permit, or a conditional use permit.

Additionally, the Mayor may make and enforce special park closure hours for specific parks or areas within parks if the Mayor determines that such special park closure hours are necessary or

appropriate to protect public property or public safety, to prevent nuisances, or to prevent breaches of the peace.

The Mayor may immediately close any park or area within a park at any time for emergencies, temporary cleaning and repair, public safety, or any other similar reason.

09.09.150 Trespassing.

No person except an authorized city employee or other person duly authorized pursuant to law shall enter or go upon any park area which has been posted as a "No Admittance" or "No Trespassing" area, or at a time a park is closed to the public. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250.00.

09.09.160 Disorderly conduct and profanity prohibited.

Under the proposed regulations, it is unlawful to use profane or abusive language or to conduct oneself in a disorderly manner as defined by RCW 9A.84.030, including but not limited to a state of intoxication or being noticeably under the influence of drugs, in any park. "Profane or abusive language" means obscenity or fighting words constituting unprotected speech.

09.09.165 Smoking and tobacco use prohibited.

Smoking and tobacco use are prohibited in the Sultan parks.

09.09.170 Violation – Penalty.

Any violation of or any failure to comply with any of the provisions of this chapter in which no penalty is otherwise specified shall constitute a civil infraction as contemplated by RCW 7.80.120 and any person convicted thereof may be punished by a civil fine or forfeiture in the sum of \$250.00.

Payment of the civil fine within 24 hours of the issuance of the notice of infraction issued under this chapter shall reduce the amount of the fine owing by 50 percent.

Section 2. 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 pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
____ DAY OF _____, 2009.

CITY OF SULTAN

Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

Laura Koenig, City Clerk

Approved as to form:

Margaret J. King, City Attorney

Passed by the City Council:

Date of Publication:

Effective Date:

Proposed Skate Park Rules and Regulations

1. Skate or bike at your own risk. The City of Sultan does not assume any responsibility for loss or injury. This is a non-supervised facility. Please skate wisely at all times.
2. Protective equipment including helmets, elbow pads, kneepads, and wrist pads are strongly recommended and encouraged.
3. Children 8 years and younger must have adult supervision to use the park.
4. No food, beverage or gum on skate pad.
5. No alcohol, tobacco or illegal drug use.
6. Observers are to stay off the skate pad.
7. The skate park is self-policing. Recklessness will not be tolerated.
8. Obstacles, ramps, other equipment or materials are not permitted to be used or added to the facility.
9. This facility will be open from dawn to dusk. Park hours are enforced.
10. The City of Sultan, at its discretion, reserves the right to restrict entry to the facility and ask persons to leave the facility as a result of disorderly conduct, disturbance of the peace, violations or unsafe behavior. Any person not complying with these rules will not be permitted to use the facility.
11. Competitive or demonstration events require special approval. Contact the City of Sultan at 360-793-2231.
12. Please report any damage, hazardous conditions, concerns, comments or suggestions to the City of Sultan, 319 Main Street, Sultan WA, or call 360-793-2231.
13. For emergencies call 911. For non-emergencies call the City of Sultan at 360-793-2231

Attachment C

RCW 9A.84.030 Disorderly conduct.

(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; or
- (d)(i) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:
 - (A) The location where a funeral or burial is being performed;
 - (B) A funeral home during the viewing of a deceased person;
 - (C) A funeral procession, if the person described in this subsection (1)(d) knows that the funeral procession is taking place; or
 - (D) A building in which a funeral or memorial service is being conducted; and
- (ii) Knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

(2) Disorderly conduct is a misdemeanor.

[2007 c 2 § 1; 1975 1st ex.s. c 260 § [9A.84.030](#).]

Notes:

Effective date -- 2007 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 2, 2007]." [2007 c 2 § 2.]