

ORDINANCE No. 118339

COUNCIL BILL No. 111501

AN ORDINANCE relating to protection of the public interest in and use of the Seattle Parks system by establishing mechanisms to abate unauthorized uses of park property, to place the responsibility for abatement costs on persons responsible for the unauthorized use; and adding a new chapter to Title 18 of the Seattle Municipal Code.

INDEXED

The City of Seattle--



REPORT OF

Honorable President:

Your Committee on

to which was referred the within Council Bill No. report that we have considered the same and respectfully

10/9/96 Parks, Public Group

RUSH

Full Council Vote

COMPTROLLER FILE No.

Introduced: <i>10-7-96</i>	By: <i>Donaldson</i>
Referred: <i>10-7-96</i>	To: <i>Parks</i>
Referred:	To:
Referred:	To:
Reported: <i>OCT 14 1996</i>	Second Reading: <i>OCT 14 1996</i>
Third Reading: <i>OCT 14 1996</i>	Signed: <i>OCT 14 1996</i>
Presented to Mayor: <i>OCT 15 1996</i>	Approved: <i>OCT 21 1996</i>
Returned to City Clerk: <i>OCT 23 1996</i>	Published: <i>Full 10/9/96</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

US5047

Committee

INDEXED

The City of Seattle--Legislative Department



Date Reported
and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

_____ which was referred to within Council C. No. _____

report that we have considered the same and respectfully recommend that the same:

10/9/96 Parks, Public Grounds and Recreation 1-0 Do Pas

FUSH

Full Council Vote 9-0

Committee Chair

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ORDINANCE 118339

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3 AN ORDINANCE relating to protection of the public interest in and use of the Seattle Parks system by
4 establishing mechanisms to abate unauthorized uses of park property, to place the responsibility
5 for abatement costs on persons responsible for the unauthorized use; and adding a new chapter to
6 Title 18 of the Seattle Municipal Code.

7 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

8 **Section 1.** Chapter 18.30 is hereby added to Title 18, the Parks and Recreation Code, as follows:

9 **18.30.010 Definitions.**

10 A. The following definitions apply:

11 1. "Abatement" - removal or elimination of an unauthorized use of park property,
12 whether by physical removal or by legal action. "Abatement" does not include voluntary removal
13 promptly carried out pursuant to the direction of the Department.

14 2. "City" - The City of Seattle.

15 3. "Construction site" - any property on which a structure is being constructed,
16 reconstructed, repaired, or removed, and any property on which significant landscaping, including
17 pruning, trimming, mowing, earth moving or removal of yard waste is being conducted.

18 4. "Department" - the Department of Parks and Recreation of the City of Seattle.

19 5. "Dumping" - placing, releasing, dropping or depositing yard waste, litter, trash,
20 debris, obstructions, or hazards on park property without permission from the Department. For
21 purposes of this ordinance, "dumping" is treated as a separate category of "unauthorized use" to
22 clarify that it is subject to summary enforcement action.
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6. "Park" or "park property" - all parks and bodies of water contained therein, squares, drives, parkways, boulevards, trails, golf courses, museums, aquarium, zoos, beaches, playgrounds, play fields, botanical gardens, greenbelts, open spaces, and all other buildings and facilities comprising the parks and recreation system of the City under the management and control of the Superintendent.

7. "Permit" - temporary written permission by the Superintendent to use or occupy park property.

8. "Responsible party" or "party responsible" - any person, business or legal entity that:

a) owns or has a possessory interest in property benefited by an unauthorized use;

b) owns or has a possessory interest in property from which dumping occurred; and/or

b) establishes, continues, or maintains an unauthorized use or dumping.

In the case of dumping or any unauthorized use subject to a Stop Order, "responsible party" may include but is not limited to a contractor who causes, carries out or contributes to the dumping or the unauthorized use subject to a Stop Order.

9. "Stop Order" - an order requiring immediate cessation of any activity on park property that constitutes an unauthorized use. A Stop Order may require the party responsible to perform all cleanup or restoration necessary to abate the unauthorized use.

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10. "Structure"- anything constructed or erected on or under the ground, or any improvement built up or composed of parts joined together in some definite manner and affixed to the ground, including fences, walls and signs.

11. "Superintendent" - Superintendent of Parks and Recreation of the City and authorized agents of the Superintendent.

12. "Use" - the exercise of dominion or control over, or occupation of, all or part of any park property. "Use" includes constructing, storing, erecting, placing upon, or maintaining, operating any inanimate object in, upon, over or under any park property, other than that associated with customary public use of park property, provided, that "customary public use" does not include any use prohibited by City ordinance or state or federal law. The term "use" includes but is not limited to any of the following in, upon, over or under park property:

a. any driveway, parking pad, stairway, walkway, building, patio, deck, sign, or other structure;

b. fencing, staging, scaffolding, or other structure, material, machinery or tools used or to be used in connection with the erection, alteration, demolition, repair or painting of any structure;

c. landscaping, gardens and rockeries;

d. drainage facilities, including but not limited to pipes, catch basins, sumps, swales, detention ponds and ancillary structures;

e. utility installations and ancillary structures;

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f. storing or placing any inanimate object, provided that "use" shall not include placing an inanimate object in such a location and for such a limited time that, under the circumstances, a reasonable person would consider the use to be a customary use;

g. disturbing any park property by digging, cutting, excavating, filling, chipping, puncturing or breaking;

h. planting, removing, injuring, destroying, cutting, topping or pruning any tree, shrub, plant or flower on park property, provided that "use" does not include routine maintenance specifically allowed under the terms of a volunteer program approved by the Department;

i. constructing, reconstructing, repairing or removing any driveway, curb, or curb setback, sidewalk, or crosswalk, pavement, sewers, water mains, grading, lighting, utilities, or appurtenances thereto, except when permitted by ordinance, or doing any work in, or erecting any structure in, upon, over or under any park; and

j. vending of any kind, whether of a product or a service.

13. "Use, customary" or "customary use" - a use that is associated with normal recreational activity in a park and that does not violate any federal, state or local law.

14. "Use, unauthorized" or "unauthorized use" - a use that is not conducted either 1) pursuant to a legal right recognized by the City or established by court order; 2) with the consent, direction or approval of the Superintendent; or 3) in accord with the terms of a permit issued by the Superintendent.

B. 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, words in the singular number shall

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1 be construed to include the plural, and words in the masculine gender shall apply to the feminine
2 and neuter genders.

3 **18.30.020 Violation of Chapter.**

4 It is a violation of this chapter to engage in any unauthorized use of park property or
5 dumping on park property. Any party responsible for an unauthorized use or dumping on park
6 property is in violation of this chapter and is subject to its remedies. All unauthorized uses and
7 dumping are in violation of this chapter and may be abated as provided in this chapter or under
8 other laws.

9
10 **18.30.030 Joint and Several Liability.**

11 All responsible parties are jointly and severally liable for unauthorized use of, or dumping
12 on, park property. The Department may pursue remedies against one or more responsible parties.
13 The Department's failure to pursue any legal remedy against a responsible party does not constitute
14 a defense to liability under this ordinance.

15 **18.30.040 Rebuttable Presumption.**

16 For the purposes of this chapter, there is a rebuttable presumption that soil, debris or other
17 spillage on park property linked by tire trackage or other trails to a construction site results from
18 transportation to or from the construction site.

19
20 **18.30.050 Department Abatement of Unauthorized Uses - Failure to Respond To 30-Day
21 Notice.**

22 If the responsible party or parties does not abate the unauthorized use within thirty (30) days
23 after the Department has mailed a notice via first class mail to the responsible party or parties
24 requesting abatement of the encroachment, the Superintendent may:

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A. Impose a civil penalty of one hundred dollars (\$100) for each day the unauthorized use continues beyond the 30-day abatement period;

B. Abate the unauthorized use and restore the affected park property;

C. Refer the matter to the City Attorney, who may bring an action for trespass, ejection, declaratory or injunctive relief, or any other appropriate civil or criminal remedy; or

D. Use any combination of the above remedies.

18.30.055 Department Abatement of Unauthorized Uses - Unidentified Responsible Parties and Emergency Situations.

If the Department cannot identify a party responsible for the unauthorized use despite using all reasonable means, as defined in section 18.30.070(A)(2) below, or if the Department determines that the unauthorized use creates substantial risk of injury to persons, to park property, to utilities serving the park property and/or to park improvements, the Superintendent may, without notice or on less than 30 days' notice:

A. Impose a civil penalty of one hundred dollars (\$100)

1. for each day the unauthorized use continues beyond the abatement period specified in a notice from the Department; or,

2. if no notice is given, for each day the unauthorized use continues from the date the Department documents in its records the unauthorized use;

B. Abate the unauthorized use and restore the affected park property;

C. Refer the matter to the City Attorney, who may bring an action for trespass, ejection, declaratory or injunctive relief, and any other appropriate civil or criminal remedy; or

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1 D. Use any combination of the above remedies.

2 **18.30.060 Department Abatement of Dumping.**

3 If a responsible party does not immediately abate all dumping on park property and restore
4 the affected park property to its condition prior to any dumping, or if the Department cannot
5 immediately locate or identify the party responsible for such dumping, the Superintendent may:

6 A. Impose a civil penalty of two hundred dollars (\$200) for each day that the
7 dumping remains unabated after the Superintendent orders the responsible party to abate it;

8 B. Abate the dumping and restore the affected park property;

9 C. Refer the matter to the City Attorney, who may bring an action for trespass,
10 ejection, declaratory or injunctive relief, or any other appropriate civil or criminal remedy; or

11 D. Use any combination of the above remedies.

12 **18.40.070 Responsibility for Abatement Costs.**

13 A. All parties responsible for an unauthorized use or dumping on park property are jointly
14 and severally liable to the City for the costs the City incurs in abating the unauthorized use or
15 dumping and restoring the affected park property. However, where section 18.30.030 applies, no
16 person may be held responsible for abatement costs unless:

17 (1) the Department sent that person thirty (30) days' notice to abate and that person failed to
18 abate the unauthorized use within that time; or

19 (2) the Department used all reasonable means to locate the responsible party before carrying
20 out the abatement and restoration, but was unable to do so. The Department shall be held to have
21 used all reasonable means to locate the responsible party once it has researched the official property
22 records of the county and reviewed all other information brought to the Department's attention.
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1 B. The Superintendent is authorized to promulgate rules specifying the recoverable costs of
2 abatement. These may include, but are not limited to, staff time, cost of outside contractors, dump
3 fees, rental cost of equipment, machine or vehicle used in the abatement, cost of providing notices, a
4 fifteen percent (15%) surcharge for administrative expenses, and any reasonable attorneys' fees
5 incurred for abatement and restoration and for collection of authorized penalties and other charges.

6 C. A written statement by the Superintendent of the costs and expenses incurred by the City
7 in abating an unauthorized use or dumping and restoring the affected park property is a true and
8 accurate record of the work done by the City and of the expenses incurred.

9
10 **18.30.080 Stop Orders.**

11 A. The Superintendent may issue a Stop Order to halt:

- 12 1. An ongoing unauthorized use of park property that creates a substantial risk of
13 injury to persons, to park property, to utilities serving the park property and/or to park
14 improvements; or
15 2. Ongoing dumping on park property.

16 B. The Superintendent shall post the Stop Order at the site and, if possible, serve a copy
17 upon a person doing or responsible for the activity. Once the Superintendent posts the Stop Order,
18 all unauthorized use and dumping in the park shall cease immediately.

19 C. The Stop Order shall state the activity being stopped and the basis of the Stop Order.
20 The Stop Order may require the responsible party to correct the violation or hazard that prompted
21 the Stop Order and restore the affected park property.

22 D. A person aggrieved by a Stop Order of the Superintendent has five (5) working days
23 after the Stop Order is posted to request reconsideration from the Superintendent. The request for
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1 reconsideration must be in writing, and may include any objections and evidence. Within five (5)
2 working days after receiving a request, the Superintendent shall make a decision as to whether the
3 Stop Order shall remain in force. The decision of the Superintendent upon reconsidering the matter
4 is final. No decision to impose or continue a Stop Order may give rise to a claim for damages. The
5 Stop Order shall remain in effect pending reconsideration.

6 E. A responsible party who fails to comply with a Stop Order immediately after receiving
7 notice of the Stop Order is subject to a penalty of five hundred dollars (\$500) for every day the
8 responsible party fails to comply after receiving notice. In addition, the responsible party is subject
9 to any combination of the remedies listed in SMC 18.30.050, .055, .060 and .070, except that the
10 total penalty imposed cannot be greater than five hundred dollars (\$500) per day, plus any
11 abatement costs.

12
13 **18.30.090 Enforceability.**

14 The remedies in this chapter are in addition to all remedies available under common law,
15 statute, ordinance or regulation. Notwithstanding any other provisions of the Seattle Municipal
16 Code, actions to enforce this Chapter may be brought in King County Superior Court or King
17 County District Court.

18
19 **18.30.100 Severability.**

20 All sections and subsections of this ordinance are severable, and if any section or subsection
21 is held invalid, such invalidity shall not affect the validity and effectiveness of any other section or
22 subsection.

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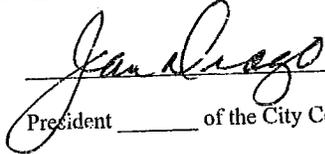
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Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Section 3. All actions taken prior to the effective date of this ordinance, and consistent with it, are hereby ratified and confirmed.

Passed by the City Council the 14 day of October, 1996, and signed by me in open session in authentication of its passage this 14 day of October, 1996.



President _____ of the City Council

Approved by me this 21 day of October, 1996.



Mayor

Filed by me this 23 day of October, 1996.



City Clerk

(Seal)

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Seattle Department of Parks and Recreation

Memorandum



DATE: September 9, 1996

TO: The Honorable Jan Drago
President, Seattle City Council

VIA: Tom Tierney, Director
Office of Management and Planning

FROM: Kenneth R. Bounds, Acting Superintendent

RE: An Ordinance relating to protection of the public interest in and use of the Seattle Parks system by establishing mechanisms to abate unauthorized uses of park property, to place the responsibility for abatement costs on persons responsible for the unauthorized use; and adding a new chapter to Title 18 of the Seattle Municipal Code.

The Department of Parks and Recreation requests City Council approval of the attached ordinance, which would improve the City's ability to eliminate unauthorized uses of park property.

The ordinance establishes civil penalties for certain violations of the Parks Code, notably unauthorized uses of park property including dumping. Currently there are only criminal penalties cited for such infractions. This ordinance does not eliminate the provision for criminal penalty, but provides better and simpler means to address some problems. The ordinance assures protection for both individuals and the parks system, specifying notice to parties responsible for unauthorized use, requiring restoration of property or improvements damaged by unauthorized use, and providing means to recover costs of abatement. The ordinance authorizes the Superintendent of Parks and Recreation to issue a Stop Order on certain unauthorized activities that require immediate action in order to protect public safety or public property; it also allows the Superintendent to take action to abate unauthorized uses where there has not been compliance as required by notice.

This legislation requires no fiscal appropriation. It provides a simpler, more direct, and more efficient means to address problems of unauthorized use and thus may result in staff

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September 9, 1996
Page 2

hour savings for both Parks and Recreation and the Law Department.

If you have questions, you may contact Miriam Reed, Assistant City Attorney, at 684-8610 or Terrance Dunning, Parks Real Estate Manager, at 684-4860.

attachment

c: Norman B. Rice, Mayor
Anne Levinson, Deputy Mayor
Mark Sidran, City Attorney
Miriam Reed, Assistant City Attorney
Terrance Dunning, Parks Real Estate Manager
Board of Parks Commissioners

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STATE OF WASHINGTON - KING COUNTY

73738
City of Seattle, City Clerk

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No. ORDINANCE IN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT: ORD 118339

was published on
11/04/96

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

Subscribed and sworn to before me on
11/06/96

Notary Public for the State of Washington,
residing in Seattle

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Affidavit of Publication

If the Department is unable to locate the responsible party once it has searched the office records of the county and reviewed all other information brought to the Department's attention, the Superintendent is authorized to withdraw the application and restore the records of the county and reviewed all other information brought to the Department's attention. The Department shall be held harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, that may be incurred by the Department or the responsible party as a result of the withdrawal of the application and restoration of the records of the county and reviewed all other information brought to the Department's attention.