Terry Dunning/ns
DPR Encroachment Code ORD
January 7, 2013
Version #9a

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117694

AN ORDINANCE related to the Seattle Department of Parks and Recreation; amending Chapters 18.12, and 18.30 of the Seattle Municipal Code, to clarify the enforcement authority and procedures of the Seattle Department of Parks and Recreation.

WHEREAS, the Department of Parks and Recreation ("DPR") has jurisdiction over property and facilities acquired or held in trust for park, recreation, boulevard, and open space purposes; and

WHEREAS, those park lands and facilities are intended to be available for public use and enjoyment; and

WHEREAS, the Superintendent of Parks and Recreation ("Superintendent") is responsible for the management and control of park land; and

WHEREAS, the City's parks share boundaries with thousands of adjacent property owners, some of whom have built structures, installed landscaping, made other unauthorized use of or dumped refuse or other material on City park lands; and

WHEREAS, in 1996 the City Council adopted, and the Mayor approved, Resolution 29475 supporting the following Policy statement: "The Department of Parks and Recreation, as stewards of public park lands is responsible for preserving and protecting Seattle's park system. In order to preserve the public character of park lands and assure their availability for public use and enjoyment, it is the policy of the Department of Parks and Recreation to eliminate and prevent unauthorized non-park uses. Further it is the policy of the Department of Parks and Recreation to limit authorized non-park uses to the fullest extent practicable;" and

WHEREAS, Seattle Municipal Code Chapter 18.30 provides enforcement authority to the Superintendent and authorizes him or his designees to take certain actions to eliminate unauthorized, non-park uses and dumping on park lands, and

WHEREAS, the Superintendent has determined that the current enforcement system can be changed to be more effective in preventing and eliminating unauthorized uses of and dumping on park land, and

WHEREAS, it is appropriate that Title 18 should discourage continuing violations by imposing cumulative penalties that exceed the amount of fees that would have been paid if a revocable use permit had been obtained; and

WHEREAS, enforcement against violators is necessary to protect the City's park land and the effective implementation of Parks' permit system requires consistent ongoing enforcement against violators; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 18.12.070 of the Seattle Municipal Code, last amended by Ordinance 113436, is amended as follows:

18.12.070 - No-trespassing areas—Removal or destruction of property((—~~Structures or obstructions.~~))

A. It is unlawful for any person except a duly authorized Department of Parks and Recreation or other City employee in the performance of his or her duties, or other person duly authorized pursuant to law, to enter or go upon any area which has been designated and posted by the Superintendent as a "no admittance" or "no trespassing" area for the purpose of protecting the environment or for the purpose of protecting the public from conditions which constitute a potential hazard to life or physical well-being.

B. It is unlawful for any person except a duly authorized Department of Parks and Recreation or other City employee in the performance of his or her duties, or other person duly authorized ((~~pursuant to law~~)), to remove, destroy, mutilate or deface any structure, lawn, monument, statue, planter, vase, fountain, wall, fence, railing, vehicle, bench, shrub, tree, geological formation, plant, flower, lighting system, sprinkling system, gate, barricade or lock or other property lawfully in any park, or to remove sand, soil, ((~~or~~)) sod, or water from ((~~in~~)) any park.

((~~C. It is unlawful for any person other than a duly authorized employee or agent of the Seattle Department of Parks and Recreation to place or erect in any park a structure or obstruction of any kind without a permit from the Superintendent.~~

~~D.~~))C. Every offense defined by this section or conduct made unlawful hereby shall constitute a crime subject to the provisions of Chapters 12A.02 and 12A.04 of this Code (Seattle Criminal Code) and any person convicted of such crime may be punished by a fine ((~~in any sum~~)) not to exceed ((~~Five Thousand Dollars (~~))$5,000((~~)~~)) or by imprisonment ((~~in the City Jail~~)) for a term not to exceed one (((~~(1)~~))year, or by both such fine and imprisonment.

Section 2. Section 18.12.290 of the Seattle Municipal Code, last amended by Ordinance 106615, is amended as follows:

18.12.290 - Designated((~~.~~))

Except as otherwise specifically provided in this chapter or subject to enforcement under Chapter 18.30, any violation of or failure to comply with any provision of this chapter shall constitute a violation subject to the provisions of Chapters 12A.02 and 12A.04 of this Code (Seattle Criminal Code)((~~and any person convicted thereof may be punished by a civil fine or forfeiture in any sum not exceeding Five Hundred Dollars ($500)~~)).

Section 3. The title of Chapter 18.30 and Section 18.30.010 of the Seattle Municipal Code, last amended by Ordinance 118339, are amended as follows:

Chapter 18.30 ((**~~ABATEMENT OF UNAUTHORIZED USES OF PARK PROPERTY~~**)) **ENFORCEMENT AGAINST UNAUTHORIZED USE OF PARK PROPERTY**

18.30.010 - Definitions((~~.~~))

A. The following definitions apply within Chapter 18.30:

1. "Abatement" means removal or elimination of an unauthorized use of park property, whether by physical removal or by legal action. ((~~"Abatement" does not include voluntary removal promptly carried out pursuant to the direction of the Department.~~))

2. ((~~"City" means The City of Seattle.~~

~~3.~~)) "Construction site" means any property on which a structure is being constructed, reconstructed, repaired, or removed, and any property on which significant landscaping, including pruning, trimming, mowing, earth moving or removal of yard waste is being conducted or on which staging, storage, or temporary access associated with such activity is occurring.

((~~4. "Department" means the Department of Parks and Recreation of The City of Seattle.~~

~~5.~~))3. "Dumping" means placing, releasing, dropping or depositing yard waste, litter, trash, debris, obstructions, ((~~or~~)) hazards, water, or other material or objects, on park property without permission from the Department. For purposes of the ordinance codified in this chapter, "dumping" is treated as a separate category of "unauthorized use." ((~~to clarify that it is subject to summary enforcement action.~~))

((~~6. "Park" or "park property" mean 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.~~))4. "Permit" means any temporary written permission by the Superintendent to use or occupy park property.

((~~8.~~))5. "Responsible party" or "party responsible" means 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;

c. Owns or has a possessory interest in a business benefited by an unauthorized use; and/or

d. Establishes, continues, or maintains an unauthorized use or dumping.

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

((~~9. "Stop Order" means 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.~~))

((~~10.~~))6. "Structure" means 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 or overhanging the ground, including, but not limited to, fences, walls, ((~~and~~)) signs, and awnings.

((~~11. "Superintendent" means Superintendent of Parks and Recreation of the City and authorized agents of the Superintendent.~~))

((~~12.~~))7. "Use" means 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((~~,~~)) or 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, temporary vehicle access, 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, maintenance or painting of any structure;

c. Landscaping, including hedges or other plant materials that create a barrier to prevent or discourage public use of park property or a portion thereof, 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;

f. Storing or placing any((~~inanimate~~)) object or materials, provided that "use" shall not include placing an ((~~inanimate~~)) object or materials 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 or altering 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, sign, boundary marker, sewer((~~s~~)) line, water ((~~mains~~)) line, 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.~~))8. "Use, customary" or "customary use" mean a use that is associated with normal recreational activity in a park and that does not violate any federal, state or local law.

((~~14.~~))9. "Use, unauthorized" or "unauthorized use" means 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. Unauthorized use includes, but is not limited to,

"encroachment" and other "non-park use" that limits or diminishes the ability of the public to use or enjoy park property or a use that is not associated with a customary public use of park property, without a permit.

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

Section 4. Section 18.30.020 of the Seattle Municipal Code, last amended by Ordinance 118339, is amended as follows:

18.30.020 - Violation of chapter((.))

It is a violation of ((~~this chapter~~)) Title 18, subject to enforcement under Chapter 18.30, for any person to:

A. ((~~to e~~)) Engage in any unauthorized use of park property or dumping on park property((~~.Any party responsible for an unauthorized use or dumping on park property is in violation of this chapter and is subject to its remedies. All unauthorized uses and dumping are in violation of this chapter and may be abated as provided in this chapter or under other laws.~~));

B. Remove or deface any sign, notice, complaint or order required by or posted in accordance with Title 18;

C. Misrepresent any material fact in any application, plans or other information submitted to obtain any permit or authorization to use or dump on park property;

D. Fail to comply with the requirements of Title 18.

Section 5. A new Section 18.30.024 is added to the Seattle Municipal Code, as follows:

18.30.024 - Authority to enforce

A. The Superintendent is authorized to enforce Title 18. The Superintendent may call upon the police, fire, health or other appropriate City departments or government agencies to assist in enforcement.

B. The Superintendent may enter any park property at any time to perform the duties imposed by Title 18. If necessary, the Superintendent will obtain the consent of the owner or occupier of a building or premises or obtain a lawfully issued inspection warrant to enter buildings or premises that are owned by the Department of Parks and Recreation, but leased to or being used by a private entity.

C. Title 18 shall be enforced for the benefit of the health, safety and welfare of the general public and the parks system, and not for the benefit of any particular person or class of persons.

D. It is the intent of Title 18 to place the obligation of complying with its requirements upon the adjacent property owner, occupant or other person responsible for the unauthorized use of park property. The abatement of an unauthorized use and restoration of park property is still the responsibility of the responsible party currently benefitting from the encroachment or unauthorized use, even if the unauthorized use may have been installed or created by a previous owner or other responsible party.

E. No provision of or term used in Title 18 is intended to impose any duty upon the City or any of its officers or employees that would subject them to damages in a civil action.

Section 6. A new Section 18.30.028 of the Seattle Municipal Code is added, as follows:

18.30.028 - Investigation and notice of violation

A. The Superintendent is authorized to investigate any use of a park property that the Superintendent reasonably believes does not comply with the requirements of Title 18.

B. If after investigation the Superintendent determines that Title 18 has been violated, the Superintendent may issue a notice of violation to the adjacent property owner,

occupant or other responsible party. The notice of violation shall briefly describe each violation; state what corrective action, if any, is necessary to comply with Title 18; and set a reasonable time for compliance, not to exceed 90 days. Compliance may be achieved by abating an unauthorized use and restoring the park property, or by applying for and obtaining a permit for the use.

C. The notice shall be served upon the adjacent property owner, occupant or other responsible party, by personal service as provided by RCW 4.28.080 for service of a summons, or sent by first class mail, addressed to the last known address of such person(s) and posted at a conspicuous place on the site. Service shall be complete at the time of personal service; or if mailed, three days following the date of mailing.

D. Nothing in this section shall limit or preclude any action or proceeding pursuant to Section 18.30.032, Stop Work Orders, and nothing in this section shall obligate or require the Superintendent to issue a notice of violation prior to the imposition of civil penalties.

E. A notice of violation may be amended at any time to:

1. Correct clerical and other errors, or

2. Cite additional authority for a stated violation.

F. Unless a request for review is made according to Section 18.30.044, the notice of violation shall become the final order of the Superintendent. After the notice of violation becomes the final order of the Superintendent, a copy of the notice of violation may be recorded with the King County Department of Records and Elections.

Section 7. Section 18.30.030 of the Seattle Municipal Code, last amended by Ordinance 118339 and that currently reads as follows, is repealed:

~~((18.30.030 **Joint and several liability**((.))~~

~~All responsible parties are jointly and severally liable for unauthorized use of, or dumping on, park property. The Department may pursue remedies against one or more~~

~~responsible parties. The Department's failure to pursue any legal remedy against a responsible party does not constitute a defense to liability under this chapter.~~))

Section 8. A new Section 18.30.036 of the Seattle Municipal Code is added, as follows:

18.30.036 - Time to comply

When calculating a reasonable time for compliance, the Superintendent shall consider the following:

A. The type and degree of violation cited in the notice;

B. The stated intent, if any, of an adjacent property owner, occupant or other responsible party to take steps to comply;

C. The procedural requirements for obtaining a permit;

D. The complexity of the corrective action; and

E. Any circumstances beyond the control of the adjacent property owner, occupant or other party responsible for the violation.

Section 9. Section 18.30.040 of the Seattle Municipal Code, last amended by Ordinance ____ and that currently reads as follows, is repealed:

((~~**18.30.040 - Rebuttable presumption.**~~

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

Section 10. A new Section 18.30.040 of the Seattle Municipal Code is added, as follows:

18.30.040 – Extension of compliance date

The Superintendent may grant an extension of time for compliance with any notice or Order, not to exceed 90 days, whether pending or final, upon the Superintendent's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

The Superintendent may rescind an extension of time if it is shown that the conditions at the time the extension was granted have changed, the Superintendent determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. Notice rescinding the extension date shall be mailed to all responsible parties via first class mail and the compliance date shall then be three days after mailing the notice.

Section 11. A new Section 18.30.044 of the Seattle Municipal Code is added, as follows:

18.30.044 – Review by the Superintendent

A. Any person aggrieved by a notice of violation issued by the Superintendent pursuant to SMC 18.30.028 may obtain a review of the notice by requesting such review in writing within 10 days of the date of the notice. When the last day of the period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next business day. Within 30 days of the request for review, the aggrieved person shall submit any additional information to be considered for the review. Before the deadline for submitting information, any person aggrieved by or interested in the notice of violation may submit any additional information in the form of written material to the Superintendent for consideration as part of the review.

B. The review will be made by a representative of the Superintendent who is familiar with the case and the applicable ordinances. The Superintendent's representative will review all additional information received by the deadline for submitting information. The reviewer may also request clarification of information received and a site visit. After review of the additional information, the Superintendent may:

1. Sustain the notice of violation;

2. Withdraw the notice of violation;

3. Continue the review to a date certain, not to exceed 90 days, for receipt of additional information; or

4. Modify the notice of violation, including extending the compliance date, not to exceed 90 days.

C. The Superintendent shall issue an Order of the Superintendent containing the decision and shall mail the Order by first-class mail to the person or persons named on the notice of violation. The Superintendent may record the Order with the King County Recorder's Office.

Section 12. Section 18.30.050 of the Seattle Municipal Code, last amended by Ordinance 118339, is amended as follows:

18.30.050 - ((~~Department abatement of unauthorized uses—Failure to respond to thirty-day notice.~~)) Civil Penalty, Abatement, and Additional Relief

A. If ((~~the~~)) a responsible party ((~~or parties~~)) does not abate ((~~the~~)) an unauthorized use ((~~within thirty (30) days after the Department has mailed a notice via first class mail to the responsible party or parties requesting abatement of the encroachment,~~)) or dumping and restore the park property or apply for and obtain a permit to authorize the use by the date set for compliance by the Superintendent in a notice of violation, order of the Superintendent, or Stop Work Order, the Superintendent may:

((~~A~~))1. Impose a civil penalty of ((~~One Hundred Dollars ($100.00)~~)) $500 for each day the unauthorized use continues beyond the ((~~thirty (30) day abatement period~~)) compliance date, plus the pro-rata fee for a Revocable Use Permit for the use, as set forth in the Seattle Department of Parks and Recreation Fee Schedule established by Section 18.28.010, starting the date the violation began and continuing until a Revocable Use Permit is issued or the unpermitted use is abated;

((~~B~~))2. Impose a civil penalty of $500 for each day dumping occurs or remains unabated, starting the date the violation began or occurred and continuing until the date the dumping is abated.

3. Abate the unauthorized use or dumping and restore the affected park property, at the responsible party's expense;

((~~C~~))4. Refer the matter to the City Attorney, who may bring an action for ((~~trespass, ejectment, declaratory or injunctive relief~~)) civil penalties, equitable relief, or any other appropriate civil or criminal remedy, including the recovery of its enforcement costs. Enforcement costs include, but are not limited to: administrative expenses and fees; the cost of any land surveys related to enforcement; the costs of any abatement and restoration of park property after abatement; recording fees; and litigation costs and statutory attorneys' fees; or

((~~D~~))5. Use any combination of the above remedies.

B. A subaccount shall be established in the Parks Fund to receive revenue from penalties under this Section 18.30.050, which shall be allocated to fund the enforcement of this Chapter 18.30.

Section 13. Section 18.30.055 of the Seattle Municipal Code, last amended by Ordinance 118339, is amended as follows:

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 A2 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 thirty (30) days' notice:~~

~~A. Impose a civil penalty of One Hundred Dollars ($100.00).~~

~~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~~)), 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, ejectment, declaratory or injunctive relief, and any other appropriate civil or criminal remedy; or~~

~~D. Use any combination of the above remedies.~~)) If the responsible party is identified after abatement occurs the violation will be deemed to begin on the date the Department became aware of the violation and the Superintendent may pursue the remedies provided by Section 18.30.050.

Section 14. Section 18.30.060 of the Seattle Municipal Code, last amended by Ordinance 118339 and that currently reads as follows, is repealed:

((~~**18.30.060 - Department abatement of dumping.**~~

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

~~A. Impose a civil penalty of Two Hundred Dollars ($200.00) for each day that the dumping remains unabated after the Superintendent orders the responsible party to abate it;~~

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

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

~~D. Use any combination of the above remedies.~~))

Section 15. Section 18.30.070 of the Seattle Municipal Code, last amended by Ordinance 118339 and that currently reads as follows, is repealed:

((~~**18.30.070 - Responsibility for abatement costs.**~~

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

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

~~2. The Department used all reasonable means to locate the responsible party before carrying out the abatement and restoration, but was unable to do so. The Department shall be held to have used all reasonable means to locate the responsible party once it has researched the official property records of the county and reviewed all other information brought to the Department's attention.~~

~~B. The Superintendent is authorized to promulgate rules specifying the recoverable costs of abatement. These may include, but are not limited to, staff time, cost of outside contractors, dump fees, rental cost of equipment, machine or vehicle used in the abatement, cost of providing notices, a fifteen percent (15%) surcharge for administrative expenses, and any reasonable attorneys' fees incurred for abatement and restoration and for collection of authorized penalties and other charges.~~

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

Section 16. Section 18.30.080 of the Seattle Municipal Code, last amended by Ordinance 118339, is recodified and amended as follows:

((~~**18.30.080**~~))**18.30.032 - Stop Work Orders**((~~.~~))

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

1. An ongoing unauthorized use of park property that creates a substantial risk of injury to persons, ((~~to~~)) park property, ((~~to~~))utilities serving the park property and/or ((~~to~~)) park improvements, or impairs the Superintendent's ability to obtain compliance with Title 18; or

2. ((~~Ongoing d~~))Dumping on park property.

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

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

D. A person aggrieved by a Stop Work Order of the Superintendent has five (((~~5~~))) working days after the Stop Work Order is posted to request reconsideration from the Superintendent. The request for reconsideration must be in writing, and ((~~may~~)) shall include any objections and evidence supporting the request for reconsideration. Within five (((~~5~~))working days after receiving a request, the Superintendent shall make a decision, in writing, as to whether the Stop Work Order shall remain in force and mail a copy of the decision to the requestor by first-class mail. The decision of the Superintendent upon reconsidering the matter is final. No decision to impose or continue a Stop Work Order may give rise to a claim for damages. The Stop Work Order shall remain in effect pending reconsideration. The Superintendent may record the Stop Work Order with the King County Recorder's Office.

E. A responsible party who fails to comply with a Stop Work Order is subject to penalties as provided by Section 18.30.050.((~~immediately after receiving notice of the Stop Order is subject to a penalty of Five Hundred Dollars ($500.00) for every day the responsible~~

~~party fails to comply after receiving notice. In addition, the responsible party is subject to any combination of the remedies listed in SMC Sections 18.30.050, 18.30.055, 18.30.060 and 18.30.070, except that the total penalty imposed cannot be greater than Five Hundred Dollars ($500.00) per day, plus any abatement costs.~~))

Section 17. Section 18.30.090 of the Seattle Municipal Code, last amended by Ordinance 118339 and that currently reads as follows, is repealed:

((~~**18.30.090 Enforceability.**~~

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

Section 18. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

Section 19. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Terry Dunning/684-4860	Jeff Muhm/ 684-0485

Legislation Title:
AN ORDINANCE related to the Seattle Department of Parks and Recreation; amending Chapters 18.12 and 18.30 of the Seattle Municipal Code (SMC), to clarify the enforcement authority and procedures of the Seattle Department of Parks and Recreation.

Summary of the Legislation:
This proposed legislation amends Chapters 18.12 and 18.30 of the Seattle Municipal Code. The changes are aimed at clarifying the authority of the Superintendent; creating a formal review process for those who disagree with actions taken to resolve incidents of unauthorized uses or dumping upon park lands; making these two chapters more consistent with similar chapters in Title 15 (SDOT) and Title 23 (DPD); and generally providing mechanisms by which enforcement against encroachments and dumping can proceed in a more efficient and predictable manner.

Background:
City parks have several thousand neighbors, including a substantial number who have encroached upon park boundaries, establishing unauthorized uses such as landscaping, structures, drainage and other utility features. Most of these unauthorized uses interfere with public enjoyment and use of park property. In 1996, the City Council adopted Resolution 29475, supporting DPR policies aimed largely at eliminating unauthorized uses. Since that time, department staff, with assistance from the Law Department, have worked diligently to reduce unauthorized uses. As the staff have worked through many of these transactions it became clear that the provisions of Title 18 related to enforcing removal of encroachments should be clarified.

Shortcomings and ambiguity in the existing code make it difficult to respond efficiently and in many cases allow encroachment enforcement cases to extend for years without resolution. For example, the absence of a formal review process, where aggrieved parties can express their concerns to a higher authority, has resulted in cases where it is necessary to resort to litigation. With the proposed changes, it is anticipated that many more encroachment cases will be resolved short of going to court. If cases do end up in the legal arena, judges and attorneys are accustomed to dealing with clear processes such as those used by DPD and SDOT. In these departments there is a formal process for issuing notices of violation and clear steps to be taken to resolve the underlying issues that generated those notices. The proposed code changes provide DPR with formal processes for the notice of violation, appeal and resolution, as they are not addressed in the current version of Title 18.

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

Other Implications: This legislation addresses penalties and clarifies fees that might be charged to those who fail to gain authorization for an unapproved use; therefore, it is likely there will be increased revenue as actions are undertaken pursuant to the revised code. These increases are not quantifiable since the improvements to the code may also have the effect of motivating people to more rapid removal of unauthorized uses in order to avoid penalties or fees. It is also hoped that this legislation might limit some forms of unauthorized uses, particularly dumping, which cause damage and removal and repair expenses for the City.

a) **Does the legislation have indirect financial implications, or long-term implications?** The legislation may well serve to discourage unauthorized activities as neighbors become more attuned to the consequences of encroaching or dumping on park land. This, in turn, could result in significant returns of property to public use that has been appropriated for unauthorized personal use.

b) **What is the financial cost of not implementing the legislation?** The costs are not quantifiable. Property lost to encroachments and other unauthorized uses will continue to be difficult to recover and an unknown amount of fee revenue may be lost.

c) **Does this legislation affect any departments besides the originating department?** No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are none.

e) **Is a public hearing required for this legislation?** No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.

g) **Does this legislation affect a piece of property?** No.

h) **Other Issues:** There are none.

List attachments to the fiscal note below: There are none.

City of Seattle
Office of the Mayor

December 26, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that amends Chapters 18.12 and 18.30 of the Municipal Code. The proposed amendments clarify the authority and process for Seattle Parks and Recreation (DPR) to enforce removal of unauthorized uses of park land. Specifically, the amendments:

- Create a process allowing persons who disagree with proposed enforcement actions to have a formal review of their concerns;
- Make the code more consistent with enforcement provisions of other City departments; and
- Provide clarity for the staff and others affected by enforcement activities.

Seattle Parks and Recreation oversees over 6,200 acres of park land consisting of more than 400 parks and public places, sharing boundaries with thousands of homes and businesses. Significant numbers of people have encroached upon park property with unauthorized uses. Although many of these encroachments are resolved without resorting to legal actions, some do require more than simple persuasion. DPR has worked diligently towards resolving some of the more intransigent encroachments and unauthorized uses, but existing Code provisions have delayed or in some case prevented the department from successfully resolving these cases.

These proposed changes will provide for a clearer path to resolution of encroachment and other unauthorized uses of park lands though more consistency with other related codes, creation of a review process, and reduction of ambiguities in the code. Thank you for your consideration of this legislation. Should you have questions, please contact Donald Harris at 684-8018.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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