

City of Madison Parks Behavioral Policy

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Purpose

Over the last 15 years, several City Parks have had recurring problems with a small number of Park users whose behavior in recreational open areas, restroom facilities, shelters and other places have infringed upon the intended use of the Parks by other users. This behavior has included, among other things, loitering in restroom facilities and shelters, directing abusive or threatening behavior toward other parks users, and engaging in unlawful activity. As a result of this behavior, some City Parks, or portions thereof, are no longer safe environments for all potential Parks users. Efforts have been made by the City of Madison Parks Division and the Police Department to address this sort of activity, but oftentimes the problem is merely pushed from one Park to the next, with the underlying behavior remaining unaddressed. While the Board recognizes that everyone is free to use the City's Parks for their intended purposes, and the intended purposes of a Park are numerous, the Board finds that if a Park user's behavior is such that it impacts the use and enjoyment of the Park by others that this person should not be allowed to use the City's Park, or Parks, for a period of time. This is especially the case with repeat offenders. Indeed, from 1996 to 2010, of the 2365 citations issued to people in Madison Parks, 1227, or 52%, of those were issued to repeat offenders.

Wisconsin Statutes Sec. 27.08(1) gives cities the authority to create a board of parks commissioners empowered and directed to carry out certain specified acts, duties and responsibilities. The City of Madison has created a board of parks commissioners pursuant to this Section through the enactment of Madison General Ordinances Section 33.05. Wis. Stat. Sec. 27.08(2)(a) expressly states that the City of Madison Board of Parks Commissioners is empowered and directed to:

[G]overn, manage, control, improve and care for all public parks, parkways, boulevards and pleasure drives located within, or partly within and partly without, the corporate limits of the city, and secure the quiet, orderly and suitable use and enjoyment thereof by the people; also to adopt rules and regulations to promote those purposes.

Pursuant to this express authority, the City of Madison Board of Parks Commissioners has established this Behavioral Policy to ensure that City of Madison Parks are safe, welcoming and available to all potential Park users to enjoy for their intended use. This Policy sets forth the types of behavior that the Board finds infringes upon the use and enjoyment of Parks, the consequences for such violations of the Behavior Policy, and the creation of due process protections for those sought to be restricted from using the City's Parks.

Overview and Definitions

No individual may engage in Inappropriate Behavior contrary to this Behavioral Policy in the Parks. When possible, Park Staff will first educate individuals about the applicable policies before taking stronger measures to enforce those policies.

For the purposes of this behavioral policy, "Park", or "Parks", includes all City of Madison property subject to the authority of the Board of Parks Commissioners, and includes the City parks and park facilities, and all

portions thereof, including any shelters, restrooms, buildings, or other enclosures. This definition includes the City's dog parks as specified in Madison General Ordinances Sec. 23.32(2).

"Inappropriate Behavior" includes any individual or group activity which unreasonably interferes with or unreasonably disturbs another individual's lawful use and enjoyment of the Parks, or any activity which is otherwise inconsistent with the activities, programs, and services normally associated with a public park.

"Park Staff" shall include all employees of the Madison Parks Division who have been authorized by the Superintendent of Parks to enforce this Behavioral Policy, as well as Madison Police Department officers.

Inappropriate Behavior

For the purposes of this Behavioral Policy, Inappropriate Behavior shall include, without limitation by enumeration, the following conduct or behaviors which the Board finds compromises the use and enjoyment of the Parks, and the safety, security and maintenance thereof:

- Committing or attempting to commit any activity that would constitute a crime or a violation of City or County ordinances.
- Selling, distributing or using any dangerous weapon as that term is defined in Wis. Stats. sec. 939.22(10) or using or threatening the use of any other object in such a manner that it may be considered a weapon.
- Fighting, engaging in any physically intimidating or assaultive behavior, or making any threats of violence or other unlawful activities. The Board of Parks Commissioners has a policy of zero tolerance for threats and acts of violence in Parks. Any person engaging in such behaviors will be immediately ejected from the Park.
- Possessing, selling, distributing, or consuming a controlled substance without a prescription.
- Engaging in behavior that is disruptive, harassing, or threatening in nature to Park users or staff, including stalking, unwanted physical contact, or verbal abuse.
- Engaging in explicit sexual activities or conduct.
- Bringing a dog into a park, unless allowed under Madison General Ordinances Sections 8.19 or 23.32.
- Interfering with the safe and free passage of Park users or staff in Parks, including, but not limited to, lying, sitting, or placing objects (bags, personal items, strollers) in hallways, aisles, floors, doorways, vestibules, bathrooms, or elsewhere in a manner that unreasonably impedes the free passage of persons about the Park or within Park facilities.
- Trespassing by entering or remaining on or in a Park premises after having been notified by an authorized individual not to do so, and entering or remaining on or in a Park premises during the period in which an individual has been banned from the premises.
- Entering non-public areas of the Park without permission.
- Theft or intentional damaging of Park materials, furniture, equipment or facilities.
- Improperly using or loitering within park restrooms or facilities in a manner which unreasonably prevents access to and use of the restrooms by other users or Parks Division staff; damaging restrooms or leaving them in a condition such that they are unusable by others.
- Vending in Parks without, or contrary to, a valid parks vending permit issued under MGO Sec. 8.17.
- Engaging in behavior which unreasonably interferes with, or has the strong likelihood of interfering with, the use and enjoyment of the Park by another, including interfering with another's use and enjoyment of a Park facility which that person has rented.
- Engaging in behavior that otherwise unreasonably interferes with or disrupts, or has the strong

likelihood of interfering with or disrupting, the intended use of the Park, or the services, amenities, or other activities normally associated with the use of public parks (including participation in programs, activities, and services), including making ongoing noise or using personal electronic equipment at such a volume that it interferes with park services and activities.

- Engaging in repeated violations of this Behavioral Policy, City or County Ordinances, or State Statutes.

Staff Response to Infractions

Violation of these behavioral policies can result in expulsion from the Park(s), or portions thereof, as set forth in this Behavioral Policy. Minor violations of these rules will first result in Park Staff attempting to educate or warn individuals about the policies before enforcing such policies. If an individual continues to violate these policies, staff will provide notice and may order the individual to leave for the day. However, any conduct that threatens the life or safety of any person or unreasonably interferes with the intended use of the Park or that is damaging to Park property, equipment or facilities may result in immediate expulsion from the Park premises. Parks Division staff is authorized, and encouraged, to contact the Madison Police Department to respond to such situations.

Violations of this Behavioral Policy (even if a single isolated event) may result in individuals being banned from the Park(s) from one (1) day to one (1) year. In imposing this ban, staff will follow the established procedures below. Parks Division staff will call the Madison Police Department for severe or illegal behavior or when an individual refuses to leave when told by staff to do so.

The Board of Parks Commissioners understands that it may not be safe, practicable or efficient to empower only Parks Division staff with the authority to enforce this Behavioral Policy. Therefore, the Madison Police Department is hereby authorized to enforce this Policy, subject to the same rules and restrictions as set forth herein that apply to Parks Division staff.

Notice Procedure

Notice required to be provided under this Behavioral Policy shall be made by Park Staff to the person in question. Notice should be provided in writing, and reasonable efforts shall be made to accommodate any language or communication barrier between staff and the person. If a person will not accept the written notice, it may be left by Park Staff near the person. If a person leaves the Park before notice can be given, notice may be sent to the person's last known address, or served upon them at a later date. Park Staff shall record the method of providing the person notice. The notice shall identify the person, inform the person of the behavior observed that was in violation of the Behavioral Policy, inform the person of the specifics of the ban, and describe the person's appeal rights. When possible, Park Staff should also inform the person verbally of the specifics of the ban.

Banning Procedure

Violations of this Behavioral Policy that are either observed by Parks Division staff, other City of Madison employees (including Police Officers), Parks users or other persons are subject to this banning procedure. All such violations shall be documented and kept on file at the Parks Division. If a violation is not seen by Park Staff, the veracity of the report shall be determined and all evidence considered, and Park Staff may proceed with these banning procedures if there is a reasonable probability to believe that a person committed a violation

of the Behavioral Policy.

If a person who violated this Behavioral Policy fails to or refuses to properly identify themselves to Park Staff, the required notice shall still be served upon the person and efforts shall be made to identify the person based upon their appearance or other characteristics, with a photograph taken if possible. If a person is later found to have intentionally provided false identifying information to Park Staff, the person shall be banned for not less than thirty (30) days, in addition to any other bans that might be imposed.

A person banned from a Park pursuant to this Behavioral Policy shall be informed that as a result of the ban that, on behalf of the City of Madison and the Board of Parks Commissioners, during the period of the ban he or she does not have permission to enter or remain at the Park and that if the person returns to the Park during the period of the ban, or remains at the Park after notified of the ban, that he or she will be trespassing and subject to an ordinance or statutory enforcement action.

After Park Staff determines that a person has violated the Behavioral Policy, and Park Staff has determined that the individual involved should be banned from the Park, or portion thereof, the following procedures and rules shall apply:

1. Park Staff shall issue notice to the person expelling the person from the Park for twenty-four (24) hours. A ban of 24 hours or less is not reviewable, but the Person may, within seven (7) days of receiving notice, appeal the determination that they violated the Behavioral Policy to the Superintendent of Parks, who, after considering the evidence, shall determine whether there was a basis to support the Park Staff's determination that there existed a reasonable probability to believe that the person committed a violation of the Behavioral Policy.

If the banned person refuses to leave, or returns to that same Park during the 24 hour ban period, and the Police Department is required to remove the person from the Park, Park Staff will issue a thirty (30) day ban regardless of whether the Police Department cites or arrests the person for trespassing.

If a person complies with the 24 hour ban, but then receives a second written notice for an additional Behavioral Policy violation within thirty (30) days, the person will be subject to a thirty (30) day ban, in addition to any other bans that might be imposed.

2. If a person receives a second ban at the same Park during a one (1) year period, the person shall be subject to a ban of not less than thirty (30) days and no more than one (1) year from the Park.
3. In the event that a person subject to a ban from one Park receives a ban for a second Park during a one (1) year period, then that person shall be banned from the entire Park system for a period of not less than thirty (30) days and no more than ninety (90) days.
4. In the event that a person receives three (3) or more bans within one year, at any Park, the person shall be subject to a ban of not less than thirty (30) days and no more than one (1) year from any or all Parks.
5. Park Staff will promptly forward a copy of the notice and incident report to the Parks Superintendent. After consultation with Park Staff and a review of the evidence, if the Parks Superintendent agrees with Park Staff's finding that there existed a reasonable probability to believe that the person committed a

violation of the Behavioral Policy, as well as the scope and length of the ban imposed, then the Parks Superintendent shall take no further action. However, if the Parks Superintendent deems it appropriate to rescind or modify the terms of the ban, the Parks Superintendent shall have the authority to do so and shall thereupon notify the banned individual in writing about the decision to rescind or modify the ban and specify the reasons for the rescission or modification and the terms of any modified ban. The Parks Superintendent shall also notify the banned individual of the process for appealing any modified ban, as set forth below.

6. In determining the length and scope of any ban under Sections 2-5, Park Staff and the Superintendent shall consider the person's underlying behavior, the person's history of behavioral violations at the Parks, and the impact of the person's behavior upon others' use and enjoyment of the Parks.

Appeals Process

Upon a written request filed by the banned person with the Parks Superintendent prior to the expiration of the ban period, the Parks Superintendent will review the decision to ban an individual and the terms thereof, and may uphold, rescind or modify the length and scope of the ban based upon the information presented by staff and submitted by the individual. A person may only file one appeal of a ban. The Parks Superintendent must respond to the request within thirty (30) days of the filing of the request. The Parks Superintendent shall notify the banned individual in writing about the decision to uphold, rescind or modify the ban and specify the reasons for this decision. The Parks Superintendent shall also notify the banned individual that they may appeal the determination of the Parks Superintendent to the Board of Parks Commissioners by filing a written request with the City Clerk within ten (10) days of the issuance of the Superintendent's decision. Any appeal so requested shall be heard by the Board at the next scheduled meeting, unless the appeal is filed within five (5) business days of the next meeting in which case it shall be heard at the following meeting. At the hearing, the banned person and City staff may be represented by counsel, may present evidence, and may call and examine witnesses and cross-examine witnesses of the other party. The Chair of the Board of Park Commissioners shall conduct the hearing and administer oaths to witnesses. The rules of evidence provided in Wis. Stat. Sec. 227.08 for administrative proceedings shall be followed. Parks Division staff shall receive and mark all exhibits, and the staff shall record all of the proceedings on tape. If either of the parties requests a stenographic recording, the staff shall make the necessary arrangements but the expense shall be borne by the requesting party. After considering the evidence presented, the Board of Parks Commissioners shall either uphold, rescind or modify the terms and conditions of the ban. A person's failure to appear at the Board of Parks Commissioners hearing shall constitute a withdrawal of the appeal. The decision of the Board of Parks Commissioners shall be reviewable in Dane County Circuit Court by certiorari within thirty (30) days of receipt of the final determination from the Board. Until such time as a ban has been rescinded or modified by the Parks Superintendent, or rescinded or modified on appeal by the Board of Park Commissioners, the person is subject to the terms and conditions of the ban.

Behavioral Policy Approved by the Board of Park Commissioners: _____

Behavioral Policy Reviewed by the City of Madison Attorney's Office: _____

