



NOTICE OF PUBLIC MEETING

CITY OF ALBANY
CITY COUNCIL WORK SESSION
City Hall, Municipal Court Room
333 Broadalbin Street SW
Monday, July 25, 2011
4:00 p.m.
AGENDA

Rules of Conduct for Public Meetings

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

- 4:00 p.m. **CALL TO ORDER**
- 4:00 p.m. **ROLL CALL**
- 4:05 p.m. **PROPOSAL TO BAN ALCOHOL IN CITY PARKS AND ESTABLISH PARK HOURS** – Ed Hodney,
Casey Dorland
Action Requested: Information, discussion, direction.
- 4:45 p.m. **COUNCILOR COMMENTS**
- 4:55 p.m. **CITY MANAGER REPORT**
- 5:00 p.m. **ADJOURNMENT**

Community Goal 5 information meeting follows at 6:00 p.m. in Council Chambers.

City of Albany Web site: www.cityofalbany.net

The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, advance notice is requested by notifying the Human Resources Department at 917-7500.



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Ed Hodney, Parks & Recreation Director
Jeff Hinrichs, Police Captain

DATE: July 20, 2011, for the July 25, 2011, City Council Work Session

SUBJECT: Banning Alcohol in City Parks and Setting Uniform Park Hours

RELATES TO STRATEGIC PLAN THEME:

- Great Neighborhoods
- A Safe City
- Effective Government

Action Requested:

Discussion of staff recommendation to ban alcohol use and possession in all City parks except by permit and establish uniform hours for parks to be closed.

Discussion:

At the June 22, 2011, City Council meeting, staff presented the attached draft ordinance, which would ban possession and consumption of alcohol in all Albany city parks, except by permit, and would set uniform park hours. Council discussed the proposal and asked for additional information before making a decision. This memo attempts to answer the questions raised at the June 22 meeting. Staff will also be available at the work session to answer questions.

Alcohol ban: This ordinance proposes to ban the possession and use of alcoholic beverages of all kinds in all City parks, trails, and on multiuse paths except by special permit. The blanket ban is typical in Oregon. Staff conducted a survey last month through the Oregon Recreation and Parks Association asking for information about alcohol consumption in parks and park hours. We received 14 responses from Oregon parks organizations ranging from small to large. Twelve of the organizations allow alcohol consumption in parks by permit only. Albany has limited alcohol use in some parks as problems arose because of it, dating back to the 1960s. Currently, alcohol is prohibited, except by permit, in all of the riverfront parks, the skatepark, and each of the newest parks, which have been added to the list as they have opened, at the request of neighbors.

The net effect of this piecemeal approach has been to move problems to other parks where no such ban is in effect. The problems often involve individuals or groups who congregate, drink to excess, and develop behavior that upsets or frightens other park users. Police can take action against that behavior, but local laws that make it illegal to drink alcohol or be intoxicated in public have long since been prohibited by Oregon law:

ORS 430.325

Prohibitions on local governments as to certain crimes

(1) A political subdivision in this state shall not adopt or enforce any local law or regulation that makes any of the following an offense, a violation or the subject of criminal or civil penalties or sanctions of any kind:

(a) Public intoxication.

(b) Public drinking, except as to places where any consumption of alcoholic beverages is generally prohibited.

(c) Drunk and disorderly conduct.

(d) Vagrancy or other behavior that includes as one of its elements either drinking alcoholic beverages or using controlled substances in public, being an alcoholic or a drug-dependent person, or being found in specified places under the influence of alcohol or controlled substances.

(e) Using or being under the influence of controlled substances.

(2) Nothing in subsection (1) of this section shall affect any local law or regulation of any political subdivision in this state against driving while under the influence of intoxicants, as defined in ORS 813.010 (Driving under the influence of intoxicants), or other similar offenses that involve the operation of motor vehicles. [1971 c.622 §3; 1973 c.795 §6; 1975 c.715 §1; 1977 c.745 §39; 1983 c.338 §928]

The principal impact of this state law is to render unenforceable local ordinances against drunk-and-disorderly, public intoxication, and the like. Absent the proposed ban, law enforcement cannot prohibit people from getting drunk in parks and engaging in the resulting drunken behavior that often frightens or annoys responsible citizens who seek only to enjoy the parks with their families. While the police can still arrest intoxicated people for violent behavior or conduct reasonably intended to cause public alarm, these actions can only be taken when the unlawful conduct is done in the officer's presence or when offended citizens are willing to report the violations, stay in the park with the offender until the police arrive, and take time out of their regular lives to testify in Municipal Court. Staff fears that many citizens, especially those accompanied by vulnerable family members, will simply choose to surrender the parks to the offenders. This is what the ordinance intends to prevent.

Community events such as River Rhythms and Mondays@Monteith operate under a special alcohol permit allowing those who attend to bring alcoholic beverages to the park. Permits are also issued for weddings, family reunions, company picnics, and similar events. The City charges \$20 for an alcohol permit, plus a \$150 refundable deposit.

Park hours: This ordinance also calls for all City parks to be closed from 11:00 p.m. to 5:00 a.m., unless otherwise posted, to anyone except law enforcement personnel and others authorized by the City Manager, Parks & Recreation Director, or designee. It also allows the Director to close any park or section of a park at other times as needed.

Twelve of the 14 parks organizations that responded to our survey have uniform hours. Several are dusk to dawn or sunrise to sunset. More of the organizations have specific posted hours that are very similar to this staff recommendation. Staff believes that dawn and dusk can be difficult to delineate; specified times are clear and simpler to enforce. The hours proposed by staff also would keep the parks open longer in winter months.

Police and Parks staff report that most of the illegal activity that occurs in parks happens in the late evening or early morning. People who live near parks often complain about any activity in the parks after dark.

Skatepark users have asked for park hours to correspond with curfew (AMC 7.44.100-.110): 10:30 p.m. to 5:30 a.m., Sunday through Thursday, or midnight to 5:30 a.m., Friday and Saturday. Police suggest that these are separate issues. Curfew is set in state law and local ordinance to help ensure child safety, provide parental authority to govern their children, and provide law enforcement with the ability to take custody of children who are potentially at risk. Curfew laws require children to be home prior to designated curfew hours.

Designated park hours help to ensure the safety of those who frequent the parks and aid in minimizing damage to park grounds, structures, and features. The designation also makes parks less attractive for other illegal activities. Police report after-hour activities in Albany parks can range from the benign to the illicit, including drug and alcohol use, disorderly conduct, camping, vandalism, and noise, as well as juvenile status offenses, such as minors in possession of alcohol or tobacco, curfew, and as hangouts for runaways.

Specific hours, as opposed to dusk to dawn, are clear for park users and for the courts. Enforcement typically comes from an officer's observations or a citizen caller's concern; police response is prioritized based on all known circumstances, the immediate need to ensure public safety, or to address the expressed concerns of neighbors or other legitimate park users.

The uniform closure hours are not recommended for the Dave Clark Riverfront Path or the Periwinkle Path. Both of these off-street multiuse paths are managed by the Parks & Recreation Department but are essential pieces of the City's transportation network and need to remain open.

The proposed ordinance is certain to have an undesired effect on some responsible citizens who simply seek to drink an alcoholic beverage in the parks with a meal or as part of a social gathering. It is always unfortunate when the irresponsible behavior of a few restrict the rights of others. Ultimately, it is up to the Council to determine how to strike the balance between those who choose to drink responsibly in the parks and those whose drunken behavior would deny the citizens who own those parks the right to enjoy them in peace.

Budget Impact:

New signs will be installed as necessary. The cost of each sign is approximately \$200.

EH:JH:MMS:de

Attachment

c: Ed Boyd, Chief of Police
Casey Dorland, Police Lieutenant
Jim Delapoer, City Attorney

AN ORDINANCE AMENDING AMC CHAPTER 7.28.010, 7.28.100, AND 7.28.240 AND REPEALING AMC CHAPTER 7.28.102, **RELATING TO ALCOHOL IN PARKS AND PARK HOURS**

WHEREAS, the City has experienced frequent instances of litter, vandalism, and disruptive behavior in its parks which appear to stem from inappropriate consumption of alcohol; and

WHEREAS, over the years, the City has responded to this persistent problem by closing certain parks and public spaces to alcohol consumption; and

WHEREAS, the above-referenced problems have been reduced in those parks where alcohol consumption has been prohibited; and

WHEREAS, continuing to allow alcohol consumption in remaining parks and public recreational space has made enforcement more difficult.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO HEREBY ORDAIN AS FOLLOWS:

Section 1: Albany Municipal Code Section 7.28.010 is amended to read as follows: AMC 7.28.010 definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

(1) “Alcoholic beverage” means any beverage having an alcohol content of more than one half of one percent by volume.

~~(2)~~ “City” means the City of Albany.

~~(3)~~ “Director” means **the a person appointed by the City Manager as the Director of Parks & Recreation for the City of Albany or designee.** ~~immediately in charge of all park areas and their activities, and to whom all park attendants of such areas are responsible.~~

~~(4)~~ “Park” means a park, playground, beach, recreation center, **trail, and multiuse path** or any other area in the City, owned or used by the City, and devoted to active or passive “recreation.”

~~(5)~~ “Person” means any person, firm, partnership, association, corporation, company or organization of any kind.

~~(6)~~ “Skatepark” means the Albany Skatepark, a facility for the use of skateboards, roller skates, bicycles and inline roller skates located at 1375 Sixth Avenue SE, Albany, Oregon.

~~(7)~~ “Vehicle” means any wheeled conveyance, whether motor powered, animal-drawn, or self-propelled. The term includes any trailer in tow of any size, kind or description. Exception is made for baby carriages and vehicles in the service of the City parks. (Ord. 5724 § 1, 2009; Ord. 5464 § 1, 2000; Ord. 4585 § 1, 1983; Ord. 3169 § 1, 1964).

Section 2: Albany Municipal Code Section 7.28.100 is amended to read as follows: ~~Intoxicating~~ **Alcoholic** beverages – General.

No person shall:

(1) Parks. Bring, **possess**, or drink alcoholic beverages ~~with the exception of beer and wine at any time in the park~~ **in any park except pursuant to a special permit as provided below;**

(2) Buildings. Bring or drink alcoholic beverages in City-owned buildings except by a permit issued in accordance with AMC 7.28.104 through 7.28.106. (Ord. 4604 § 1, 1983; Ord. 4585 § 1, 1983; Ord. 3169 § 6(1), 1964).

Section 3: Albany Municipal Code Section 7.28.102 is hereby repealed:

~~7.28.102 Intoxicating beverages — Prohibition — Bryant Park, Bowman Park, Eleanor Park, Monteith Riverpark, Albany Skatepark, Burkhart Park, Swanson Park, the Dave Clark Riverfront Path, Eads Park, Kinder Park and the Oak Creek Greenbelt and Trail.~~

~~It is unlawful for any person to possess an alcoholic beverage in Bryant Park, Bowman Park, Eleanor Park, Monteith Riverpark, Albany Skatepark, Burkhart Park, Swanson Park, the Dave Clark Riverfront Path, Eads Park, Kinder Park and the Oak Creek Greenbelt and Trail without a special permit. For the purpose of this section through AMC 7.28.108, an “alcoholic beverage” is any beverage having alcohol content of more than one-half of one percent by volume. (Ord. 5723 § 1, 2009; Ord. 5680 § 1, 2007; Ord. 5524 § 1, 2002; Ord. 5464 § 3, 2000; Ord. 4925 § 1, 1990; Ord. 4721 § 1, 1986; Ord. 4604 § 1, 1983; Ord. 4585 § 1, 1983; Ord. 4512 § 1, 1982; Ord. 3860 § 1, 1975).~~

Section 4: Albany Municipal Code Section 7.28.240 is amended to read as follows: Park operating policy.

~~No person in a park shall:~~

(1) Hours. **Unless otherwise closed posted or permitted by order of the Director as provided in Section 2 below, parks shall be closed to the public between 11:00 p.m. and 5:00 a.m. daily. During hours when parks are closed, no person shall enter or remain in a park except law enforcement personnel and others duly authorized by the City Manager or designee.** ~~Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during designated hours. The opening and closing hours for each individual park shall be posted therein for public information.~~

(2) **Park closures.** ~~Closed Areas.~~ Any **park or portion thereof** ~~section or part of any park~~ may be declared closed to the public by the Director at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses, as the Director finds reasonably necessary.

(3) Lost and Found Articles. The finding of lost articles by park attendants shall be reported to the Department who shall make every reasonable effort to locate the owners. Articles will be considered abandoned and disposed of by ordinance if no claim has been made for the article within 30 days. (Ord. 4585 § 1, 1983; Ord. 3169 § 8(1 – 3), 1964).

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk