

ORDINANCE NO. 17-962

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 6.22 (“REGULATION OF SKATEBOARDING/SKATING”) AND CHAPTER 9.12 (“PUBLIC PARKS”) OF THE MONTCLAIR MUNICIPAL CODE RELATING TO THE EJECTION AND EXCLUSION FROM PUBLIC PARKS

WHEREAS, the City of Montclair, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the City is facing an increasing incidence of disruptive and unruly behavior at public parks, including those areas designated as a skateboard/skating area; and

WHEREAS, the City Council believes in order to discourage the occurrence of disruptive and unruly behavior at public parks, the persons responsible for such behavior should be ejected and excluded from the City’s public parks for a period of time; and

WHEREAS, giving law enforcement the ability to eject and exclude from the City’s public parks persons whose behavior is disruptive and unruly will improve public safety and promote the general welfare of its citizens.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR HEREBY ORDAINS AS FOLLOWS:

**SECTION I.** Section 6.22.070 (“Removal”) of Chapter 6.22 (“Regulation of Skateboarding/Skating”) of Title 6 (“Health and Safety”) is hereby repealed in its entirety and replaced to read as follows:

**6.22.070. Ejection and Exclusion from Designated Skateboard/Skating Area.**

A. Any person who causes or aids and abets in the commission of any of the following at any area designated by the City Council as a skateboard/skating area may be ejected from said area and public parks within the City of Montclair in accordance with the provisions of Section 9.12.250:

1. Interference with any City employee in the performance of the employee’s duties;
2. Interference with the use and enjoyment by any other person of the designated skateboard/skating area; or
3. Commission of any public offense within a designated skateboard/skating area.

**SECTION II.** Section 9.12.250 (“Ejection and Exclusion from Public Parks”) is hereby added to Chapter 9.12 (“Public Parks”) of Title 9 (“Public Services and Public Places”) of the Montclair Municipal Code to read as follows:

**9.12.250. Ejection and Exclusion from Public Parks.**

A. **Ejection and Exclusion.** Any person who causes or aids and abets in the commission of any of the following at any park (as defined in Chapter 9.02 of this Code) within the City, in addition to any other penalties provided by law, may be ejected and excluded from City parks in accordance with the provisions of this Section:

1. Interference with any City employee in the performance of the employee’s duties;
2. Interference with the use and enjoyment of a public park by any other person; or
3. Commission of any public offense at a public park.

Exclusions cover all parks regardless of the location of the incident resulting in the ejection and/or exclusion.

Nothing in this Section shall be construed to authorize the ejection and/or exclusion

of any person lawfully exercising any rights protected by the State or Federal Constitutions unless that person is also committing acts that violate a applicable provisions of law and which are not protected by the State or Federal Constitutions.

B. **Duration of Exclusion.** Exclusions from parks under the provisions of this Section shall be for the specified time periods subsequent to the occurrence of the following violations in a park:

Category	Duration of Exclusion	Reason(s) for Exclusion
1	24 Hours	Single violation of park rules or regulations; OR A violation of law classified as an infraction
2	30 Days	A second violation of park rules or regulations within a 12- month period; OR A violation of law constituting a non-violent misdemeanor
3	90 Days	A third violation of park rules or regulations within a 12- month period; OR A second violation of law constituting a non-violent misdemeanor within a 12-month period; OR A violation of law classified as a non-violent felony
4	1 Year	A fourth or more violation of park rules or regulations within a 12-month period; OR A third or more violation of law constituting a non-violent misdemeanor within a 12- month period; OR A second violation of law classified as a non-violent felony within a 12-month period; OR Any violation of law constituting a violent felony

All exclusions begin immediately upon the issuance of the exclusion notice and terminate at 12:00 p.m. (noon) on the day *following* the end of the exclusion.

C. **Notice of Exclusion.** Any person authorized to enforce the provisions of this Section (including, but not limited to, the Montclair Police Department, Code Enforcement Division, and Human Services Department) shall issue a written notice to any person excluded from any park under the provisions of this Section. The notice shall specify, at a minimum, the following:

1. The date the exclusion is effective;
2. The duration of the exclusion;
3. The conduct resulting in the exclusion;
4. The penalties for failure to comply with the exclusion; and,
5. The manner in which the excluded individual may challenge/ appeal the exclusion.

The notice shall be signed by the issuing officer, and shall either be personally served upon the excluded individual or served via US Mail to : the excluded individual at his or her last known address.”

D. **Appeal.** Any person who is issued a notice excluding him/her from a park may appeal the exclusion by filing a written request for appeal with the Director of Human Services within ten (10) calendar days from the date of the notice. The written request shall contain, at a minimum, the following information:

1. Name, mailing address, and telephone number of the person appealing the exclusion (hereinafter, “appellant”).
2. Date of the notice of exclusion.
3. Ground(s) for appeal in sufficient detail to enable the Director of Human Services (or designee thereof) to understand the nature of the controversy.

4. A request that the Director of Human Services (or designee thereof) either schedule a hearing or that the Director of Human Services (or designee thereof) considers the appeal request as the sole evidence to be submitted by the appellant. Any appeal that does not contain this request shall be deemed to be a request for a hearing.
5. The signature of the appellant.

If a hearing is requested, the Director of Human Services (or designee thereof) shall consider the testimony of the appellant, the issuing officer, and/or their witnesses, as well as any documentary evidence presented by these persons concerning the exclusion. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. Upon review of the evidence submitted, the Director of Human Services (or designee thereof) shall uphold the exclusion if a preponderance of the evidence demonstrates that the excluded person committed the violation(s) and the exclusion is otherwise in accordance with the law.

The period of exclusion is not stayed pending an appeal.

E. **Relief from Exclusion.** Any person who is subject to an exclusion from a park may seek relief from the exclusion for good cause by filing a written request for relief with the Director of Human Services (or designee thereof) at any point during the period of exclusion. The written request shall contain the same information as for an appeal (as set forth in Subsection (D)).

If a hearing is requested, the Director of Human Services (or designee thereof) shall consider the testimony of the appellant, the issuing officer, and/or their witnesses, as well as any documentary evidence presented by these persons concerning the exclusion. Hearings for relief are informal, and formal rules of evidence and discovery do not apply. The Director of Human Services (or designee thereof) shall have the authority to modify the period of exclusion for good cause—however, no period of exclusion may be decreased by more than 50%.

F. The Director of Human Services (or designee thereof) shall maintain an accurate database of those persons excluded from public parks.

G. The Director of Human Services (or designee thereof) may promulgate rules and regulations pertaining to the use and maintenance of park and recreational facilities consistent with the provisions of this Chapter, as well as for procedures for enforcing provisions of this Chapter; and the Director and any designee thereof are authorized and empowered to enforce such rules and regulations. Copies of such rules and regulations shall be made available at each recreational facility.

H. No person subject to exclusion from any public park shall enter or remain in any park at any time during the period of exclusion. Any person subject to exclusion from any public park that enters or remains in any park in violation of said exclusion is guilty of a misdemeanor violation punishable in accordance with Chapter 1.12 of Title 1 of this Code.

**SECTION III. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

**SECTION IV. Effective Date.** This Ordinance shall be in full force and effect thirty (30) days after passage.

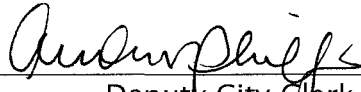
**SECTION V. Posting.** The Deputy City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this 6th day of February, 2017.



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Mayor Pro Tem

ATTEST:



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Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 17-962 of said City, which was introduced at a regular meeting of the City Council held on the 17th day of January, 2017, and finally passed not less than five (5) days thereafter on the 6th day of February, 2017, by the following vote, to-wit:

AYES: Martinez, Ruh, Dutrey, Raft  
NOES: None  
ABSTAIN: None  
ABSENT: Eaton



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Andrea M. Phillips  
Deputy City Clerk