

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: September 27, 2010

SUBJECT: Ordinance 10-0277: Updating BMC 12.32 regarding firearms in city parks

DEPARTMENT: Public Safety

PREPARED BY: Michael Haslip, Public Safety Director
(Digital Signature)

AGENDA LOCATION: ☐ Consent Agenda

X Council Action

☐ Unfinished Business

ATTACHMENTS:

1. Draft ordinance 10-02773
2. Copy of Current BMC 12.32 in its entirety
3. Copies of RCW 9.41.290 / 9.41.300, and relevant Washington Attorney General opinion

BACKGROUND/SUMMARY:

Blaine's municipal code 12.32.060 contains a blanket prohibition against the possession of firearms in city parks. Washington State law RCW 9.41.290 supercedes all municipal codes regarding firearm possession anywhere in the State, and does not allow local government to adopt more restrictive measures. RCW 9.41.290 does not restrict firearm possession in city parks. This proposed city ordinance 10-02773 is a housecleaning measure which brings code section 12.32.060 in to compliance with RCW.

This ordinance does not make any changes to Blaine's current law prohibiting the discharging of firearms within limits.

BUDGET IMPLICATIONS:

This ordinance change is cost neutral. Police officers are already trained to and enforcing the new standard.

RECOMMENDATION: ☐ Waive the second reading

The Public Safety Director recommends that Council adopt Ordinance 10-02773.

REVIEWED BY:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

COUNCIL ACTION:

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to: _____

ADDITIONAL INFORMATION: _____

ORDINANCE NO. 10-2773
AN ORDINANCE OF THE CITY OF BLAINE, WASHINGTON,
AMENDING THE BLAINE MUNICIPAL CODE AT TITLE 12, SECTION 12.32.060

WHEREAS, Blaine Municipal Code Section 12.32 prohibits the carrying of any firearm within any park in the City of Blaine; and

WHEREAS, Washington State's Revised Code of Washington (RCW) 9.41.290 does not restrict possession of firearms in city parks, and preempts and repeals local laws and ordinances regarding firearms possession which are more restrictive than state law; and

WHEREAS, The City of Blaine wishes its Municipal Code to be accurately maintained;

NOW, THEREFORE, Section 12.32.060 of the Blaine Municipal Code is hereby amended as follows:

SECTION 1: BMC Section 12.32.060 is amended to read as follows:

12.32.060 Firearms and explosives.

A. It is unlawful to shoot, fire or explode any firearm, torpedo or explosive of any kind ~~or to carry any firearm~~ or to shoot or fire any air gun, bows and arrows, BB gun or use any slingshot in any park.

B. Approved fireworks per Chapter 5.16 BMC on the 4th of July are allowed in designated areas, except for Lincoln, Monfort, Skallman and Marine Parks.

C. City-sponsored or approved firework events may be allowed in Marine Park. (Ord. 2421 § 1, 1999)

SECTION 2: Severability: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance, and each section, subsection, sentence, clause or phrase thereof, separately and independently and, in the event that any one or more sections, subsections, sentences, clauses or phrases may later be declared invalid or unconstitutional, then any ordinance or ordinances, or parts thereof, amended or repealed by such portion of this Ordinance shall remain in full force and effect.

SECTION 3: Effective Date: This Ordinance shall take effect and be in force upon its passage by the City Council and approval by the Mayor, if approved; otherwise, as provided by law and five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON on the 27th day of September, 2010, and signed by the Mayor on the same day.

Bonnie Onyon, Mayor

ATTEST/AUTHENTICATE:

Sheri Sanchez, City Clerk

Chapter 12.32
CITY PARKS*

Sections:

<u>12.32.010</u>	Park closures – City park hours of operation.
<u>12.32.020</u>	Definitions.
<u>12.32.030</u>	Prohibited activities.
<u>12.32.040</u>	Enforcement of codes.
<u>12.32.050</u>	Posting signs, posters and notices.
<u>12.32.060</u>	Firearms and explosives.
<u>12.32.070</u>	Animal at large prohibited.
<u>12.32.080</u>	Teasing, annoying or injuring animal prohibited.
<u>12.32.090</u>	Camping.
<u>12.32.100</u>	Depositing refuse and litter.
<u>12.32.110</u>	Fires.
<u>12.32.120</u>	Regulations of organized activities.
<u>12.32.130</u>	Permits for special events.
<u>12.32.140</u>	Consumption of alcohol in city parks.
<u>12.32.150</u>	Closed areas.
<u>12.32.160</u>	<i>Repealed.</i>

* Prior legislation: Ord. 2389.

12.32.010 Park closures – City park hours of operation.

A. All municipal parks shall be closed to the general public between one hour after sunset and one hour before sunrise unless the city manager or his/her designee grants an exemption for an authorized special event.

B. Any person found in a city park when the park is closed shall be guilty of a misdemeanor.

This section shall not apply to city employees when performing official duties or to any local, county, state or federal law enforcement officer or firefighter engaged in official duties. (Ord. 2421 § 1, 1999)

12.32.020 Definitions.

The terms herein used, unless clearly contrary to or inconsistent with the context in which used, shall be construed as follows:

A. "City," unless specified otherwise, means the city of Blaine.

B. "Park" includes all city parks, public squares, park drives, designated street ends, parklets, beaches and play and recreation grounds under the jurisdiction of the parks and cemetery board.

C. "Cemetery," unless otherwise specified, means the city of Blaine cemetery located at 4155 H Street Road.

D. "Park and cemetery board" means the members of the park and cemetery board of the city.

E. "City manager" means the city manager or his/her designee.

F. "BMC" means Blaine Municipal Code. (Ord. 2421 § 1, 1999)

12.32.030 Prohibited activities.

Activities not permitted in a park or cemetery shall include, but not be limited to the following:

A. Possessing, consuming and/or being under the influence of intoxicating liquors, drugs or narcotics;

B. Exposing or offering for sale any article or thing or stationing or placing in a stand, cart or vehicle any article or object for transportation, sale or display. This provision does not apply to regularly or specially licensed concessionaires acting by and under the direction of the city manager or designee. The city manager may also give permission for such activities on a temporary basis providing there is no conflict with the regularly constituted concessionaire;

C. Distributing, leaving, throwing, tacking or pasting any signs, handbills, posters, advertisements or inscriptions for advertising any goods, materials, meetings, people or for other similar purposes;

D. Soliciting, interfering with, or accosting other people for selling, begging, immoral acts or other similar purposes;

E. To willfully remove, destroy, dig, burn, mutilate, or deface any structure, monument, statue, fountain, wall, fence, vehicle, bench, shrub, tree, lawn or grass, plant, flower, lighting system or sprinkling system or other property lawfully in any park or cemetery;

F. To willfully plant or place any structure, monument, statue, fountain, wall, fence, vehicle, bench, shrub, tree, lawn or grass, plant, flower, or lighting system is prohibited;

G. To use plastic flowers from April to October or glass containers in the cemetery;

H. Discarding of household garbage;
I. The use of all-terrain vehicles or motorized wheeled transportation devices as defined in Chapter 10.13 BMC;
J. Riding horses, except in designated areas, providing the horse is under control and never left unattended at any time. Owners or riders shall be held responsible for any mess created or caused by their animal. (Ord. 2595 § 2, 2004; Ord. 2421 § 1, 1999)

12.32.040 Enforcement of codes.

The following is designed to be an exercise of the police power of the state of Washington and the city of Blaine for the public peace, health, safety and welfare and its provisions shall be liberally construed.

A. It shall be the responsibility of the police department of the city to enforce all provisions of the city park code, including park and cemetery rules and regulations adopted by the park and cemetery board.

B. The public safety director and his/her designees shall be empowered to exercise the authority of peace officers to the extent necessary to enforce the city park code, which power shall include issuance of citations.

C. Persons designated by the public safety director to enforce the park code shall bear identification reflecting the authority under which they act, which identification shall be shown to any person requesting the same. (Ord. 2421 § 1, 1999)

12.32.050 Posting signs, posters and notices.

A. It is unlawful to use, place or erect any signboard, sign, billboard, bulletin board, post, pole or device of any kind of advertising in any park; or to attach any notice, bill, poster, sign, wire, rod or cord to any tree, shrub, railing, post or structure in any park; or without the written consent of the city manager or his/her designee, or parks and cemetery board, to place or erect in any park, a structure of any kind.

B. The following temporary signs may be erected in city parks; temporary, directional signs or decorations on occasions of public celebration and picnics, which must be removed following the event. (Ord. 2421 § 1, 1999)

12.32.060 Firearms and explosives.

A. It is unlawful to shoot, fire or explode any firearm, torpedo or explosive of any kind or to carry any firearm or to shoot or fire any air gun, bows and arrows, BB gun or use any slingshot in any park.

B. Approved fireworks per Chapter 5.16 BMC on the 4th of July are allowed in designated areas, except for Lincoln, Monfort, Skallman and Marine Parks.

C. City-sponsored or approved firework events may be allowed in Marine Park. (Ord. 2421 § 1, 1999)

12.32.070 Animal at large prohibited.

A. It is unlawful for any person to allow or permit any dog or animal to run at large in any park, except guide or service dogs or dogs used by a law enforcement officer or as permitted by Chapter 6.08 BMC. The owner or handler of any animal is responsible for the animal's behavior and shall promptly remove fecal matter deposited by the animal.

B. It is unlawful for any person to permit any dog or animal, whether on or off leash, to disturb or harass any park personnel or park users. (Ord. 2421 § 1, 1999)

12.32.080 Teasing, annoying or injuring animal prohibited.

A. It is unlawful for any person in any park, in any manner, to tease, annoy, disturb, molest, catch, injure or kill, feed or throw any stone or missile of any kind at or strike with any stick or weapon any animal, bird or fowl; or to catch any fish or feed any fowl except at those places as may be so designated for the catching of fish or the feeding of fowl by the city.

B. It is unlawful for any person to permit any dog or animal, whether on or off a leash, to disturb or harass farm animals, wildlife or other pets. (Ord. 2421 § 1, 1999)

12.32.090 Camping.

It is unlawful to camp in any park except at places, which may be set aside for such purposes by the city council as recommended by the parks and cemetery board and so designated by signs. (Ord. 2421 § 1, 1999)

12.32.100 Depositing refuse and litter.

It is unlawful to throw any refuse, litter, glass, crockery, nails, shrubbery, trimmings, junk or advertising matter in any park or cemetery or deposit any such material therein except in designated receptacles. Litter receptacles shall be limited to park users only. (Ord. 2421 § 1, 1999)

12.32.110 Fires.

It is unlawful to build any fire in any park except in areas clearly identified and designated by the city council as recommended by the parks and cemetery board. (Ord. 2421 § 1, 1999)

12.32.120 Regulations of organized activities.

The parks and cemetery board shall promulgate regulations for conduct of organized activities in city parks and attendant facilities in accordance with the provisions of applicable city ordinances, and such policies as may be established from time to time by the parks and cemetery board. The announcement of these regulations and subsequent revisions shall be for the purpose of achieving the following ideals:

- A. Ensuring the safety, comfort and convenience of the public;
- B. Securing maximum use of the facilities within the carrying capacity of the facilities;
- C. Ensuring that organized activities do not fully utilize all available space; that some area is reserved for family or individual activities.

In the event of a conflict of schedules, local in-city groups shall have preference over out-of-city groups. (Ord. 2421 § 1, 1999)

12.32.130 Permits for special events.

Permits for special events in a recreation and park facility or for the use of specific areas in such a facility by individuals or groups may be issued by the city manager upon written application. Any individual or group receiving the permit shall be subject to all applicable park regulations and city ordinances in the use of city facilities. The permit shall state that the city shall be held harmless for any loss, damage or injuries sustained by any person or property resulting from the exercise of the permission granted by the permit. The city manager shall revoke any permit where a city ordinance is being violated or use is not accordance with that for which the permit was granted. (Ord. 2421 § 1, 1999)

12.32.140 Consumption of alcohol in city parks.

Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages in any city park or city park area is prohibited. (Ord. 2421 § 1, 1999)

12.32.150 Closed areas.

Any section or portion of any park may be declared closed by the city manager at any time, either temporarily or at regularly stated intervals. If a section will remain closed for over a month, the city manager shall consult with the board. In the event that the use of the park is to be permanently changed, then the park and cemetery board shall forward a recommendation to the city council for concurrence. (Ord. 2421 § 1, 1999)

12.32.160 Violations – Penalties.

Repealed by Ord. 2719. (Ord. 2421 § 1, 1999)

RCW 9.41.290 The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

RCW 9.41.300 (2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

Washington State Attorney General Opinion 2008 No 8

(Entire Opinion is online: <http://www.atg.wa.gov/AGOOpinions/Opinion.aspx?section=archive&id=21188>)

Does a city in Washington have the authority to enact a local law that prohibits possession of firearms on city property or in city-owned facilities?

BRIEF ANSWER

The answer to your question is no. RCW 9.41.290 “fully occupies and preempts the entire field of firearms regulation” and preempts a city’s authority to adopt firearms laws or regulations of application to the general public, unless specifically authorized by state law. Accordingly, RCW 9.41.290 preempts a city’s authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities.