

ORDINANCE 2021.5.2

AN ORDINANCE OF THE CITY OF FLATONIA, TEXAS, AMENDING CHAPTER 1.13, PARKS AND RECREATION, BY REPEALING SECTION 1.13 IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 1.13, ESTABLISHING RULES AND REGULATIONS FOR PARK FACILITIES AND RECREATION AREAS, INCLUDING CITY SWIMMING POOL, AND AMENDING SECTION A2.000, MISCELLANEOUS FEES, OF THE CITY OF FLATONIA FEE SCHEDULE, APPENDIX A, CITY OF FLATONIA CODE OF ORDINANCES, AS AMENDED, BY ADDING A NEW SECTION. SECTION A2.007, PARK FEES AND RENTALS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Manager and the Parks Committee have determined that it is necessary to develop rules and regulation to govern the use of the City of Flatonia's Park Facilities and Recreation Areas, including the City Swimming Pool; and

WHEREAS, the City Council has been advised and has determined that the rules and regulations proposed by the City Manager and the Parks Committee will benefit the City of Flatonia and its citizens and promote the public good and health.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLATONIA, Texas;

Section 1. That the existing Chapter 1.13, Parks and Recreation, be and it is hereby repealed and replaced in its entirety to hereafter read as follows:

Chapter 1.13 – PARKS AND RECREATION

Sec. 1.13.001 Real property—Use; appropriation or encumbrance.

Drilling and mining prohibited in parks

(1) It shall be unlawful for any person, firm, or corporation, including the City, to engage in, permit, or cause any surface drilling or mining in or on any City park. This provision applies to any park owned by the City regardless of within or outside the city limits. (2001 Code, art. 8.600)

(2) No person shall:

A. Deposit any earth, sand, rock, stone, mineral, oil, or other substance within any park facility, dig or remove any such material from within any park facility. Nor shall he erect or attempt to erect any building or structure of any kind by driving or setting up posts or piles, or in any

manner appropriate or encumber any portion of the real property owned, operated, controlled, or managed by the City, without a permit from the City Manager or designee;

B. Dig up, pick, remove, mutilate, injure, cut, or destroy any turf, tree, plant, shrub, bloom, flower, artifact, or archeological site, or any portion thereof;

C. Cut, break, injure, deface, or disturb any building, sign, fence, bench, structure, apparatus, equipment, or property, or any portion thereof; or

D. Without a permit from the City Manager or designee, make or place on any tree, plant, shrub, bloom, flower, building, sign, fence, bench, structure, apparatus, equipment, or property, or on any portion thereof, any rope, wire, mark, writing, printing, sign, card, display, or similar inscription or device.

(3) Glass containers prohibited.

No person shall possess any cup, tumbler, bottle, jar, or other container made of glass and used for carrying or containing any liquid for drinking purposes within any park or park facility, except in locations where such containers are permitted under the terms of a lease, operating agreement, or permit.

(4) Fireworks.

No person shall possess or ignite in any manner any firecracker or fireworks, including any article for the making of a pyrotechnic display. Nothing contained in this section, however, shall prohibit any discharge or display of fireworks at any public gathering or patriotic celebration provided a permit for such discharge or display has been obtained from the City Manager or designee. Firework displays may be subject to additional insurance requirements.

(5) Firearms, air guns, and other weapons.

A. Except as provided in subsection B, no person or persons shall use, maintain, possess, fire, or discharge any firearm, air gun, spring gun, paintball gun, bow and arrow, slingshot, or any other weapon potentially dangerous to wildlife or human safety, in any park facility. A violation of the provisions of this section is a misdemeanor.

B. Subsection A shall not apply to:

1. A duly appointed or elected Peace Officer as defined in (Article 2.12, Texas Code of Criminal Procedure, or other applicable law)
2. A retired Police Officer with authorization to carry concealed weapons (A Retired or Qualified Retired Texas Peace Officer, Retired Out of State Peace Officer or Retired Federal Agent who meets the definitions and requirements of Section 1701.357 Texas Occupations Code, 18 U.S.C. Section 926C, and any other applicable law or Rule of the Commission)
3. A full-time paid Peace Officer of another state or the federal government who is carrying out official duties while in Texas; or

4. A person holding a valid license to carry the firearm pursuant to (Chapter 411 Texas Government Code, or who holds a valid permit issued by any other state or territory with which the State of Texas has reciprocity or otherwise recognizes that states permit as valid in the State of Texas); or

5. A person who has permission to possess that weapon granted in writing by the City Manager or the Chief of Police specifying the area, times and conditions designated for such use.

(6) Locks and keys.

No person other than one acting under the direction of the City Manager or designee shall duplicate or cause to be duplicated a key used by the department for a padlock or door lock of any type or description, nor shall any person divulge the combination of any lock so equipped to any unauthorized person.

(7) Consumption of alcoholic beverages.

A. No person shall possess any can, bottle or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which has been partially removed, within any park or park facility which has been posted with signs prohibiting such possession. The City may, by resolution, designate, or authorize the Director to designate, the park or park facilities to be posted.

B. It shall be unlawful for any person under twenty-one (21) years of age to be in possession of an alcoholic beverage while such person is in or upon any park facility unless in the presence of a parent or guardian, including spouse. Notwithstanding any other provision of this code to the contrary, violation of the provisions of this section shall constitute an infraction and shall be punishable pursuant to the provisions of (Sections 106.04 and 106.05, Texas Alcoholic Beverage Code).

Section 1.13.002 Rules for City swimming pool

(a) The following rules are adopted for the City swimming pool:

(1) Children under the age of 10 must be accompanied by a responsible person. Responsible person is defined as a person sixteen (16) years of age or older who is capable of caring for a child. A parent may appoint a person younger than sixteen (16) as the responsible person if a signed permission slip is presented to the pool staff. Parent or guardian must be present at signing. A form will be available at the pool.

(2) Children under the age of five (5) must have a parent or guardian, age seventeen (17) or older, in the pool and attending to the child's safety at all times.

(3) All swimmers must shower before entering the pool.

(4) All swimmers must wear appropriate swimwear. No t-shirts, tank tops, thongs, undergarments (i.e., bras/underwear), "cut-offs" or other frayed clothing is allowed in the pool.

(5) Children who are not potty-trained must wear a swim diaper. Swim diapers are available for purchase in the pool office. Swim diapers may not be changed within six feet (6') of the pool area.

- (6) *No glass containers are allowed inside the pool area.*
- (7) *No food or drinks are allowed in the pool.*
- (8) *No diving.*
- (9) *No running on the pool deck.*
- (10) *No “chicken fights” or dangerous horseplay. Users may not sit on or play near (or with) the pool’s drains or suction fittings. Extended breath holding activities are dangerous and prohibited.*
- (11) *No profanity.*
- (12) *No smoking in the pool area.*
- (13) *Only properly fitting, Coast Guard approved personal floatation devices with a positive lock are allowed in the pool for children who cannot swim.*
- (14) *The maximum user load limit is 80. Once the limit has been reached, no additional users may enter until enough have left the facility to be within the guidelines.*
- (15) *Pets of any type are prohibited in the pool.*
- (16) *For public health reasons, users should not swim if:*
 - a. They have experienced diarrhea within the previous two (2) week period*
 - b. They have infected or open wounds*
- (b) The Pool Manager and the on-duty lifeguards are required and empowered to enforce the rules as stated in this division. Additionally, they may, if any users in their judgment, words, actions, or apparel interfere with the safe use of the swimming pool, tell persons involved to leave the pool area. Not complying with the instructions of the lifeguards may result in temporary or permanent suspension of use of the swimming pool or City facilities. (PC602)*

(Ordinance 417 adopted 4/10/07)

Section 1.13.003 Rules and Regulations for Park Facilities and Recreation Areas

(1) Purpose and findings.

A. This chapter sets forth standards for park utilization and maintenance to maintain and protect the City's parks and recreation facilities and to ensure their availability as a shared resource to all members of the public.

B. A City may charge for use or services provided in City parks so long as the charges do not exceed the cost of service. By resolution duly adopted, the City may charge fees for park use and use of various facilities or services at one or more of the City parks or recreation facilities, and add to, subtract from, increase, or decrease such charges in amounts reasonably necessary to recover the cost of operating the parks and providing the various services and facilities therein.

(2) Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

"Alcoholic beverages" means alcohol, spirits, liquor, beer, wine, or other liquid which contains one-half of one percent or more of alcohol by volume.

"Authorized official" means A person employed or appointed as a peace officer as defined by Texas law, or an employee or other official of the City of Flatonia with authority to enforce Park rules or other City Ordinances.

"Commercial activity" means selling, offering for sale, or vending any goods, wares, merchandise, service, performance, or other thing of value, for immediate or future delivery, or requesting monetary donations, pledges, or other things of value for a charitable, religious, cultural, or any other cause.

"Department" means the City department directed by the City Manager to oversee parks and recreation facilities in the City.

"Designated area" means an area specially equipped or posted with appropriate signs for camping, picnicking, parking of motor vehicles or other authorized activity.

"Director" means the Utility Director or his or her authorized representative of the department which oversees parks and recreation facilities in the city.

"Facility" or "park facility" means any body of water, land, campsite, recreation area, building, structure, system, equipment, machinery, or other appurtenance owned, managed, controlled, or operated by the City of Flatonia.

"Overnight" means the one hour after sunset and sunrise of the following day.

"Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

"Permit" means written authorization to make use of any park, recreation area or portion thereof, and includes any conditions set forth herein.

"Picnicking" means the consumption of food or beverages.

"Recreation area" means all parks, places, greenbelts, gardens, and any other property owned by the City, including structures thereon, used, operated, or maintained for recreational purposes, whether active or passive. The term "owned" shall mean any property interest under which the City operates, maintains, or controls such property. The term shall also include any property owned and maintained as open space.

"Trash" means garbage, solid waste, refuse, litter, paper, animal and vegetable matter, and rubbish.

"Vehicle" means a device by which any person or property may be propelled, moved, or drawn, including bicycles.

(3) Permit required; application contents.

Whenever a permit is required by provisions in this chapter, an application shall be filed with the city manager or designee stating:

- A. The name and address, telephone number, and email of the applicant;
- B. The name and address, telephone number and email of the person, group, organization, or corporation sponsoring the activity, if any;
- C. The nature of the proposed activity;
- D. The dates, hours, and City facility for which the permit is desired;
- E. An estimate of attendance; and
- F. Any other information which the manager or designee, regarding public health, safety, and welfare, finds reasonably necessary to a fair determination as to whether a permit should be issued.
- G. Map or diagram of the event location including proposed set up, ingress and egress, utilities needed, and/or parking.
- H. Before final permit approval, a copy of liability insurance naming City as additional insured may be required.

(4) Insurance.

- (A) The individual or entity involved in a commercial use of the park or other City property may be required, at the City Manager's discretion, to provide proof of insurance to the City in the amount of \$1,000,000 which names the City, and its officers, employees, volunteers, and officials as additionally insured. If required, proof of insurance must be received by the City of Flatonia prior to the issuance of a special use permit.
- (B) To avoid the potential removal of an item from the park during an event, it is advisable to notify the City of any specialty item a patron wishes to have at an event to confirm if insurance will be necessary. The City will not be held liable for items left in the City parks or for damage or unauthorized use by others.

(5) Permit—Standards for issuance.

The Manager or designee may issue a permit hereunder when he or she finds:

- A. That the proposed activity or use of City property will not unreasonably interfere with or detract from public enjoyment;
- B. That the proposed activity or use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety, and recreation;
- C. That all conditions including, where applicable, any further approvals by regulatory agencies or the City Council, the payment of fees, and insurance coverage are met;

D. That the proposed activity or use is not reasonably anticipated to incite violence, crime, or disorderly conduct;

E. That the proposed activity or use will not entail unusual, extraordinary, or burdensome expense, resources, or security operation by the City; and

F. That the facilities desired have not been reserved for other use.

(6) Failure to obtain required permit.

No person shall use, occupy, or otherwise remain in any City facility or portion thereof for which a permit is required without first having obtained such permit.

Park space is available on a first come, first served basis. Users shall first obtain a permit for a reservation to ensure availability.

(7) Areas that may be reserved by permit.

A. City pavilion (and basketball court) with tables

B. Gazebo on Main Street adjacent to City Hall, gazebo in Memorial Park, and gazebo in McWhirter Park

(8) Areas that may not be reserved.

A. Playscapes and other equipment

B. Splashpad

C. Tables, benches, and barbeque equipment.

(9) Special Use Permits.

Certain items of a potentially dangerous, damaging, or disruptive use *may* be allowed with a Special Use Permit approved by the City Manager or designee. The permit authorizing such items to be brought into the park must be obtained prior to doing so. Some of these items include:

A. "Bouncy Houses", "Moonwalks" and other inflatables

B. Inflatable water slides and pools

C. Climbing walls

D. Other items that require the use of City electricity or water to operate

E. Any sound device that will exceed the City's noise ordinance

The City Manager or designee may refuse a permit if there are any concerns about safety or potential damage to park property. Delivery and pickup of these items within the park must not damage park property (ruts, plant, and tree damage etc.). If there is any question that damage may occur it is advisable to cancel the use. No refunds will be issued for events that the City is notified have been canceled after the date of the planned event. Any damage will result in forfeit of the deposit. If the damage exceeds the deposit, the City may request reimbursement for damage.

(10) Priority of use.

Any person using a park or City facility or portion thereof which may be reserved by obtaining a permit, but who has not obtained such a permit, shall vacate said area when holders of a valid permit present themselves.

(11) Exhibiting permit.

No person shall fail to produce and exhibit a permit he claims to have upon request of any City employee or any peace officer who desires to inspect said permit for the purpose of enforcing compliance with any regulations in this chapter.

(12) Recreation programs.

The fees charged for recreation classes, special events, and sports leagues shall be set by the Utility Director subject to the approval of the City Manager and City Council, by ordinance.

(13) Refundable deposits.

A refundable deposit shall be charged for the use of facilities and equipment in addition to user fees. All deposits shall be returned if the users do not damage land and property, equipment, or facilities, leave the facility in a litter-free condition, and return equipment.

(14) Permit Fees.

Fees for permits and related charges are described in the City's fee schedule.

(15) Waiving of fees.

The City Manager or designee may waive all or a portion of a fee when appropriate.

(16) Park improvement and acquisition account.

- A. Establishment of account. A Parks Improvement and Acquisition Account is hereby established.
- B. Funds to be deposited. Contributions and donations from any source which are earmarked by the donor for use by the Parks Department shall be deposited in the Parks Improvement and Acquisition Account.
- C. Payments from developers and subdividers. Payments of cash in lieu of land from developers and subdividers shall be deposited in the Parks Improvement and Acquisition account.
- D. Use of funds. Expenditures from the Parks Improvement and Acquisition Account shall be used exclusively for improvement of existing and future parks, the acquisition of land for future parks, and maintenance and repair of existing park areas and amenities at the discretion of the City Manager.

(17) Restrictions in all recreation areas.

It shall be unlawful and a violation of this chapter for any person, entity, or organization to (without prior authorization and permit):

- A. Enter or remain on the premises after the established closing hours.
- B. Operate or park a vehicle in other than designated areas or over established roads.

- C. Operate a vehicle more than fifteen (15) miles per hour on roads within the park.
- D. Park or allow any vehicle to remain more than eight (8) consecutive hours.
- E. Start or maintain fire(s) in parks, except for barbecuing food, using established barbecue facilities or personal portable barbecues within designated picnic areas. No person shall fail to fully extinguish live coals, embers, or fires before leaving the barbecue facilities or picnic area. No live coals, embers, or fires shall be disposed of in the park trash can receptacles. Fires of any kind may be prohibited during County mandated burn bans or for other reasons as determined by the City Manager.
- F. Allow or permit any person under the age of six (6) under their custody, jurisdiction or control, to enter or remain without providing adequate supervision.
- G. Leave, drop, place, or deposit any trash in any other location except receptacles provided for trash (this includes confetti and glitter). Pet waste should be picked up and placed in a bag, closed, and disposed of in the pet waste receptacle.
- H. Conduct or carry on an assembly of more than twenty-five people in a park, which assembly is intended or can reasonably be expected to last more than one (1) hour, or which does in fact last more than one (1) hour, without first obtaining a permit from the City Manager or designee. Youth sports groups and other similar groups with a valid Agreement on file are exempt from this restriction unless the purpose of the assembly is outside the scope of the current Agreement.

(18) Prohibited activities.

Horses and farm animals are strictly prohibited in city parks, unless permitted pursuant to a special event permit or approved by the parks department and the city council, as applicable, in advance of the use.

(19) Prohibited hours.

A. Except as provided in subsection B, and subsection C of this section regarding neighborhood parks, no person or persons shall remain in any City park from one hour after sunset to sunrise of the following day without having received a permit to do so from the City Manager or his/her authorized representative.

B. The permit requirement established in subsection A above shall not apply to:

1. Any person or persons going to, attending, or participating in any activity or event which is regularly scheduled and coordinated by the City of Flatonia or any activity or event conducted under an Agreement, Lease or Permit from the City; or
2. Any person or persons exiting the park immediately after the conclusion of such an activity or event; or
3. Any Police Officer or employee of the City while engaged in the performance of his or her duties.

C. No person or persons shall remain in any City playground, neighborhood, community, City, or regional park between one hour after sunset and sunrise of the following day. For purposes of this subsection C, parks shall be as defined in the recreation and open space element of the Flatonia Comprehensive plan.

D. For all park facilities, the City Manager or designee shall determine the established and emergency hours, when needed, of operation of Flatonia park and recreation facilities based on the following criteria:

1. Weather conditions;
2. Seasonal recreation activities scheduled or expected to occur at the park facilities;
3. Nature or extent of public use of the park facilities;
4. Cost effectiveness of operation of the park facilities.

If a permit has been issued for use, and the City must close or cancel Park operations due to an emergency situation, the permit holder will be notified at the contact information provided and a refund of the fee and deposit will be provided.

(20) Regulations authorized.

The City Manager or designee may establish and post regulations governing the use of park facilities which are not inconsistent with regulations contained in this chapter and which promote public health and safety and the preservation of property. A violation of the posted rules or regulations may be charged as an infraction.

(21) Regulation of commercial activity.

A. No person shall engage in any commercial activity in any City park unless the commercial activity has been authorized under the terms of a lease, operating agreement, or permit issued by the City Manager or designee.

B. The City Manager or designee may authorize commercial activities within any City park in connection with special programs or events sponsored or co-sponsored by the City if he or she determines that the commercial activity complements and enhances the special program or event and does not detract from the use of the City park for ordinary park purposes.

C. In determining the type and extent of commercial activities to be authorized, the City Manager or designee shall consider their potential impact on the City park and surrounding neighborhood. The City Manager or designee shall establish guidelines for selection of authorized commercial activities. The selection decisions made by the City Manager or his/her designee shall be final.

D. The provisions of this section shall not be deemed to apply to the sale or distribution of newspapers, books, pamphlets, or other activity constituting protected speech under the First Amendment of the United States Constitution or comparable protections.

(22) Enforcement.

The City's Police Department is charged with the responsibility of supervising and maintaining law and order in City parks. To carry out this provision, officers of the Police Department shall have the authority to make any arrests or issue citations for violation of any State law or City ordinance. In addition, thereto, it is declared that a person commits an offense if he/she enters or remains in a City park, recreation area, or other designated park area, during hours other than those set out hereinabove, without written approval of the City Manager or the City Council, and the person:

- (A) Had notice that the entry was forbidden; or
- (B) Received notice to depart but failed to do so.

For purposes of this article, streets and parking in City parks shall be treated the same as any other City streets and shall be supervised and regulated by the Police Department in the same manner as all City streets. An individual sitting inside his/her vehicle shall be treated the same as any other individual in the park regardless of whether the vehicle is parked or is being driven.

(23) Appeals.

The denial or revocation of a permit by the Director (or City Manager) may be appealed by the applicant or permit holder to the City Council.

Section 2. Section A2.000, Miscellaneous Fees, of the City of Flatonia Fee Schedule, Appendix A, City of Flatonia Code of Ordinances, as amended, be and it is hereby amended by adding a new section., Section A2.007, Park Fees and Rentals, to hereafter read as follows

Section A2.007 Pak Fees and Rentals of Amenities

- (a) The park amenities below can be rented in 4-hour intervals from 8am-12pm, 12pm-4pm, or 4pm-8pm.
- (b) Pavilion/Basketball Court: \$50 rental/reservation fee for 4-hour block/\$100 deposit (refundable if left undamaged and clean after use)
- (c) Gazebos: \$25 rental/reservation fee for 4-hour block/\$50 deposit (refundable if left undamaged and clean after use)
- (d) **Special Uses:** Inflatables and Special Portable Permit: approval required at least 3 business days in advance. No fee for permit.
- (e) **Additional Inflatable and Special Portable Fees:** \$25 electrical charge and/or \$25 water charge

Section 3. This ordinance shall be cumulative of all other ordinances of the City of Flatonia, and this ordinance shall not operate to repeal or affect any other ordinances of the City of Flatonia except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, are hereby repealed.

Section 4. The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 5. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

Section 6. This Ordinance shall be effective immediately from and after its final passage and any publication in accordance with the requirements of the City of Flatonia and the laws of the State of Texas.

PASSED AND APPROVED on this the ___ day of _____, 20___, with ___ Councilpersons voting in favor hereof and ___ Councilpersons voting in opposition hereof.

Bryan Milson
Mayor

ATTEST:

Heather Ambrose
City Secretary

APPROVED AS TO FORM:

Maria Angela Flores Beck
City Attorney