

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 18-1419, FOR THE PURPOSE OF AMENDING METRO CODE TITLE 10 TO UPDATE THE PARKS, CEMETERIES AND NATURAL AREA RULES AND REGULATIONS

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Adoption of Ordinance No. 18-1419 will amend Metro Code Title 10 (Parks, Cemeteries and Natural Areas) to add, remove and revise certain provisions as described in this staff report. This ordinance will also make various non-substantive technical amendments to the title to streamline and improve clarity and consistency.

BACKGROUND

Title 10 of the Metro Code sets forth the regulations governing the use of Metro owned parks, cemeteries and natural areas in order to protect land, habitat, wildlife, water quality and improvements, and to provide for the safety and enjoyment of visitors and staff visiting these places. Title 10 applies to all of the parks, natural areas, trails, and cemeteries that Metro owns and/or manages (hereafter “Metro property”). It supports Metro’s delivery of its parks and nature mission: to protect water quality and fish and wildlife habitat, and create opportunities for people to enjoy nature close to home through a connected system of parks, trails and natural areas.

There is an inherent tension in the parks and nature mission. Providing people with access to nature has well-documented physical, psychological and spiritual health benefits. People who have contact with nature learn to care about the environment, which can translate to personal conservation practices, volunteerism, voter support, and funding to protect and restore nature. At the same time, recreational uses of natural spaces—whether by people on foot, bicycle or horse, and with or without pets—impacts the plants, fish and wildlife living in these areas. Unmanaged, these impacts can undo many of the benefits these areas provide. Metro Code Title 10 is a key mechanism for balancing the various public uses of Metro property and minimizing the impacts of those uses where possible.

Title 10 is due for a comprehensive update in several respects. Many provisions of Title 10 were taken from Multnomah County regulations with the initial transfer of county parks and cemeteries to Metro. Over the years, some of these rules have become duplicative and certain provisions and chapters are no longer necessary or relevant. It has been several years since Metro has significantly updated Title 10. In that time, Metro’s parks and natural areas system has grown significantly, with new natural areas acquired and new parks recently opening to the public, plus an additional six parks anticipated to open in the next few years. In 2016 the Parks and Nature System Plan was adopted that defines Metro’s role in the region as an open space provider, and provides a framework for revisions to Title 10. The Parks and Nature department has also

evolved, with department reorganization in 2016 and related changes to how Title 10 is enforced. Refining Title 10 to address current needs and be more clear and consistent helps provide the public with a thorough understanding of the rules that govern these public spaces, enhancing Metro's transparency.

Additional impetus for this project was significant interest by external stakeholders in including or expanding certain uses of Metro parks and natural areas, such as the presence of dogs, horses, hunting, and off-road cycling. These issues frequently arise during access planning for new parks and natural area sites. New circumstances have also emerged that have implications for how Metro manages the sites, such as the growing popularity of recreational drones and the legalization of marijuana.

TITLE 10 UPDATE PROCESS

Over the past year, an internal Parks and Nature team completed a thoughtful process to consider how these and other issues are, or should be, addressed by the parks and natural area rules, particularly in light of Metro's commitment to the region to protect water quality and wildlife habitat. The process to adopt Ordinance 18-1419 amending the Metro Code provides an opportunity for the public to comment on the proposed changes. In addition, detailed input on proposed changes to Title 10 was provided by the following key stakeholders:

- An external "Sounding Board." JLA Public Involvement, a public engagement firm with extensive experience working with public agency processes, was hired to design and facilitate an engagement process to help Metro consider diverse perspectives. Eight members of the public met three times as a "Sounding Board" to take a deep dive into Title 10 and provide input on whether and how individual rules should be updated. The results of the Sounding Board process are summarized below, and in more detail in JLA's final report, attached as Attachment 1.
- Connect With Nature community partners. Connect With Nature is a Parks and Nature program through which Metro and leaders representing diverse communities work together to help Metro develop and manage inclusive and welcoming parks and natural areas. Four Connect With Nature community leaders reviewed Title 10 and provided input and suggestions for improvements.
- Enforcement agency partners. Input was solicited from agencies that are responsible for enforcing Metro rules on parks that Metro does not manage, such as Mount Talbert Nature Park, and agencies that have Metro parks in their jurisdictions. These included enforcement teams of City of Portland, City of Happy Valley, North Clackamas Parks and Recreation Department, Tualatin Hills Parks and Recreation District, the three county sheriff offices, Gresham Police Department, and Multnomah County River Patrol. Additionally, Metro engaged with several staff at Oregon Department of Fish and Wildlife, and with Metro's Regional Illegal Dumping (RID) program.
- Natural Areas Oversight Committee. Staff presented the project to update Title 10 twice to the oversight committee for input.
- Parks and Nature staff. Staff across the department provided feedback on the current rules and potential updates. In particular, conservation (science and land management) staff provided technical information on the impacts of various options on fish, wildlife,

plants and water quality, and enforcement staff provided valuable insight into how the current rules are working on the ground from a visitor service, safety and overall effectiveness perspective. Parks and Nature’s Intertribal Cultural Resource Specialist was consulted, as well.

PROPOSED AMENDMENTS TO TITLE 10

The outcome of the engagement described above is a set of proposed amendments to Title 10 that clarify or update the regulations to more effectively manage uses of Metro properties while protecting habitat, water quality and park and cemetery improvements, and supporting the safety of both visitors and staff. These amendments are summarized below in the order they appear in the amended version of Title 10 in Ordinance 18-1419.

It is important to note that the Parks and Nature **“special use” permit** process provides an additional mechanism for approving certain uses of Metro properties. Metro allows almost any use of the parks, cemeteries, and natural areas it manages so long as the uses are consistent with the Parks and Nature mission, safety and site-specific considerations. Even for uses precluded or restricted by Title 10 or property-specific rules, the special use permit procedures allow members of the public to request a permit to engage in those uses. These permits are issued on a case-by-case basis, depending on the proposed use, site(s) involved, and other considerations such as sensitivity of habitat and visitor experience impacts.

1. Reorganization of Title 10 and non-substantive “housekeeping” updates:

This ordinance proposes to reorganize Title 10 into the following five chapters:

- 10.01 Definitions
- 10.02 Permits, Enforcement and Appeals
- 10.03 Rules and Regulations
- 10.04 Parks and Nature Fees
- 10.05 Historic Cemeteries

This reorganization eliminates several areas of duplication. For example, there are duplicative enforcement provisions in multiple chapters in Title 10; the amended version would consolidate these provisions in a single chapter (10.02). In addition, the amended version includes non-substantive “housekeeping” changes to remove excess or non-relevant words and add language where needed for clarity or specificity. An example is the proposed removal of the antiquated prohibition on “games of chance” (former section 10.01.250). An example of a rule change intended to increase Metro’s transparency is the proposed addition of detail about how Metro can post the rules so they are accessible to the public.

2. Metro can issue a formal exclusion from a park or natural area for up to one year.

This ordinance recommends that Metro’s right to exclude people from the park be reduced to no more than one year. Currently Metro Code 10.01.400 authorizes Metro to exclude from a park any person acting in violation of the rules or the laws of the State of Oregon for an undefined period of time, with exclusions of more than one year to be approved by the Parks and Nature Director.

3. Enable Parks and Nature Director to establish property-specific rules to allow hunting if Metro determines it is necessary for conservation efforts.

This ordinance proposes adding a provision to allow the Parks and Nature Director to establish property-specific rules to allow hunting if Metro, in its discretion, determines it is necessary for achieving conservation objectives. Metro Code 10.01.160 bans hunting, and to date no exceptions to this policy have been made. With the acquisition of large properties such as the 1,600-acre Chehalem Ridge Natural Area, some members of the public have expressed an interest in changing Metro's rules to allow hunting of deer and elk at some Metro properties. In addition, there is interest by some in allowing hunting of duck and other waterfowl at sites such as Killin Wetlands, Smith and Bybee Wetlands Natural Area and the Multnomah Channel Natural Area.

In many, if not most, cases hunting does not align with the conservation goals for Metro properties. Metro views its role in the region as supporting these lands and their water features to provide important habitat for wildlife species to rest, breed, and rear young, and then these species are available for hunting on lands where the activity is more appropriate. However, there may be some cases in which a limited hunt at certain sites would benefit conservation efforts. For example, a targeted hunt could help manage wildlife where the population grows to such a size that it negatively impacts the establishment of native vegetation that supports multiple species.

Allowing hunting would need to overcome significant management challenges and would require substantial resources to implement. Hunting impacts both vegetation and wildlife from people traveling off established trails. Impacts to wildlife include noise from firearms and pollution from lead bullets/shots, and limits Metro's ability to create and sustain areas where wildlife can rest, feed and reproduce. It also poses safety risks to other site users. Even a limited hunt would require careful coordination with wildlife management agencies and partners including Oregon Department of Fish and Wildlife and Oregon Hunters Association, and that Metro develop a new system to issue and monitor permits/tags. It would require Metro to prevent or restrict other uses (hiking, cycling, equestrian riding, etc.) while hunts take place to ensure safety. Additional monitoring would likely be needed to ensure that permitted hunting levels are appropriate to wildlife population levels. Metro does not currently have the resources to design, implement and monitor hunting on Metro properties.

Given these challenges and Metro's mission of conserving and protecting fish and wildlife species, this provision was crafted to emphasize that hunting would only be permitted on an extremely narrow basis solely for conservation purposes, to be determined at Metro's discretion. As conservation management is an evolving science, Metro will look at those opportunities individually as they arise and engage with the Metro Council for future adjustments to hunting-related rules and regulations in the Metro Code as needed.

4. Allow dogs and other pets on-leash on regional trails that pass through Metro property and certain motorized boat ramps; otherwise maintain current pet policy.

This ordinance proposes formalizing Metro's current practice of allowing dogs and other pets to be on Metro property when traversing via a regional trail and at most of Metro's boat ramps, and otherwise maintaining the ban on domestic animals on Metro property, except for assistance animals.

This recommendation to largely maintain the current pet policy is based on two main factors: the impacts of pets on wildlife and water quality, and the impacts of pets on people. The topic of Metro's pet policy often comes up when Metro is planning for public access at a new site. Some members of the public have expressed interest in changing Metro rules to allow dog walking at some or all Metro park and natural

areas, saying they'd like the opportunity to enjoy these sites with their pets. Other residents have expressed support for Metro's current rules, saying they feel more comfortable without pets present or appreciate having a place where protection of wildlife is the priority.

The evidence that dogs negatively impact wildlife is overwhelming. It is clear that people with dogs—on leash or off leash—are much more detrimental to wildlife than people without dogs. In April 2016, Parks and Nature's senior scientists conducted an extensive review of current and relevant scientific research on the impacts of dogs on wildlife and water quality (report attached as Attachment 2). Numerous studies demonstrate that dogs impact wildlife by causing physical and temporal displacement (i.e., wildlife move away from dogs, temporarily or permanently, thus reducing the habitat available for them to feed, breed and rest). The scent of dogs repels wildlife, and these effects remain after dogs are gone. Animals become alarmed and cease routine activities in the presence of dogs, and such repeated stress causes long-term impacts on wildlife including reduced reproduction and growth, suppressed immune system and increased vulnerability to disease and parasites. These impacts to wildlife are cumulative—they result from a steady stream of dogs, not from introducing an occasional dog into a site. Dogs also transmit diseases to wildlife, such as canine distemper and rabies, and dog waste pollutes water and can transmit harmful parasites and diseases to people.

The staff recommendation is also based on the negative impacts that dogs can and do have on the experience of some visitors to parks and natural areas. This is particularly true of some members of underserved and historically marginalized communities. Feedback received from several of the Sounding Board members and Connect With Nature community partners suggests that underrepresented groups may perceive dogs as a threat and not feel comfortable accessing parks with them present.

The Sounding Board did not reach consensus on the issue of dogs and other domestic animals at Metro properties, and reflected diverse views on whether and to what extent Metro should allow dogs in parks and natural areas. Most of the members do not support expanded access for dogs out of concern for impacts to wildlife and people, and feel the current policy is appropriate and appreciate the exceptions it already makes for regional trails and boat ramps. A couple of members felt that this disturbance is not severe enough to warrant a complete prohibition on dogs, and strongly advocate for allowing dogs on leash at most natural areas. The range of viewpoints on this topic is reflected in the Sounding Board final report attached as Attachment 1.

Metro views its park system as part of a larger regional network of parks, trails and natural areas, with different park different providers meeting different needs. People have many options when they want to spend time outdoors with their pets, but few places focused on protecting sensitive habitat and providing a unique experience in nature. Among the 100 largest cities in America, Portland leads the country with the most off-leash dog parks per capita — 5.4 such parks per 100,000 residents — according to the 2015 City Park Facts report from The Trust for Public Land. Additionally, there are larger, more natural areas available for exploration with pets, such as Forest Park, Sandy River Delta, Tryon Creek, Powell Butte, Stub Stewart State Park, and in large tracts of state and federal land framing the Portland region. Metro has contributed over \$40 million from two bond measures to parks and natural areas that allow dogs.

5. Add reference to existing geocaching/letterboxing guidelines; no substantive changes to rules addressing foraging.

Staff considered whether Title 10 adequately addresses two growing recreational uses of Metro parks and natural area properties that have the potential to impact built park and natural area features: geocaching/letterboxing and foraging.

This ordinance recommends more explicitly prohibiting geocaching and letterboxing except where it is allowed per existing guidelines that govern these activities on Metro properties. Geocaching is a popular recreational activity around the world of scouting for and finding a geocache, or container, by means of GPS coordinates posted on a website. Geocaches typically contain trinkets for finders to exchange. Letterboxing is a similar activity, but letterbox caches usually contain rubber stamps for seekers to stamp a “passport.” While geocaching and letterboxing benefit the people engaged in these activities by encouraging more time spent outside exploring nature, these activities can negatively impact both the built and natural features of parks and natural areas—particularly where the caches are made deliberately hard to find and located off trails and in sensitive habitat areas. In order to prevent these harms, Metro implemented geocaching and letterboxing guidelines in 2011 and updated them in 2017. The guidelines, available on Metro’s website, lists approved geocaching sites and requires caches to be registered on www.geocaching.com, among other requirements.

Foraging for materials such as berries, roots, bulbs or mushrooms is another growing activity in parks, and especially natural areas. While small-scale harvest for personal consumption is unlikely to cause significant damage to sensitive habitat and wildlife, negative impacts can be compounded where activities take place off trails, and involve more sizable harvests and/or by many people over time. The current rules prohibiting damage to vegetation and other natural features effectively prohibit foraging. In addition, this ordinance proposes adding an explicit requirement that people stay on designated trails, paths and roads (this additional will also help prevent establishment of “demand” trails). The Special Use Permit process is available for members of the public to request exceptions to these rules on a case-by-case basis. Metro has developed a streamlined process to issue Cultural Resource Use Permits, which would apply to culturally-relevant harvesting of natural materials, such as the harvest of camas bulbs by Native American communities at Quamash Prairie Natural Area.

6. Prohibit the use of drones on Metro properties.

This ordinance proposes adding unmanned aircraft (i.e., drones) to the “prohibited games” provision that prohibits power-projected model airplanes and boats at Metro properties. Since Title 10 was adopted there has been dramatic growth in the operation of drones. As drones have become more affordable and easier to operate, recreational drone users are looking for places to use them. Although drone use remains relatively infrequent at Metro properties at this point, field staff report continuing to see more of this use and it can be expected to continue to increase.

Drone operations have the potential to cause harm to visitors and pose safety risks. They can disturb the visitor experience by causing noise pollution, invading personal space (particularly since many drones have cameras), and impacting viewsheds. Drones can also negatively impact wildlife, particularly birds but also ground-dwelling species. The proposed prohibition on the use of drones at Metro Properties will reduce or eliminate these impacts on people and wildlife. It protects both conservation values and the visitor experience for all park and natural area users, consistent with the Parks and Nature mission.

Were this provision to be adopted, drone operators could apply for a special use permit to operate drones for specific purposes (for example, to conduct research or photography). These permit applications would be evaluated on a case-by-case basis pursuant to the Parks and Nature Special Use Permit Guidelines.

7. Prohibit smoking on Metro parks and natural area properties, with a one year delay in implementation.

This ordinance proposes adding a provision to Title 10 to prohibit smoking on Metro property, with a one year delay in implementation to develop a thoughtful implementation and communication strategy. While smoking is a source of enjoyment for some adults, particularly while participating in outdoor recreation

activities such as camping and fishing, tobacco use negatively affects other visitors and the environment. Secondhand smoke contains more than 7,000 chemicals, including hundreds that are toxic, and no level of exposure is safe.¹ Even brief exposure can be harmful to human health, and especially to children and pregnant women. The impacts are amplified in confined areas like picnic shelters, restrooms and doorways, as well as near children such as at playgrounds.

Further, smoking waste products are the most common items found in litter cleanups and contain numerous pollutants, posing a serious risk to children who might pick them up and fish and wildlife that may ingest them. Discarded cigarette butts pollutes the health of watersheds through chemical contamination. Cigarettes and other smoking materials present a serious fire risk to forests, parks and natural areas. Last year a carelessly tossed cigarette started a fire that burned 13 acres of Metro's North Logan Natural Area.

The proposed smoking provision would apply to all forms of smoking, including cigarettes, cigars, vaping devices, e-cigarettes, and marijuana. The proposed smoke-free policy is consistent with a 2011 Metro Council resolution that established the agency's tobacco-free grounds policy. The policy acknowledges that smoke-free parks and recreational facilities "will further Metro's mission of environmental stewardship and promoting livable, sustainable communities, as they help provide healthy, clean, attractive places for people to be physically active and enjoy the outdoors while upholding environmental values and protecting fish and wildlife." [Resolution No. 11-4262]. The proposed policy is also consistent with national trends, as municipalities across the country are increasingly prohibiting smoking in parks. In 2015, all city of Portland sites where Portland Parks and Recreation rules apply became smoke- and tobacco-free, including vaporizers and marijuana. Staff does not recommend a complete tobacco ban (i.e., banning smokeless tobacco) at this time, though that may be considered in the future.

Enforcement of the smoking ban would be challenging and limited, and would rely primarily on voluntary compliance elicited through educational and outreach efforts. Research on the experiences of other park providers in implementing smoking bans makes clear that a well-planned implementation and outreach strategy is key to the success of the policy. Therefore, staff propose a one year delay in implementation of the policy to allow for the development of an implementation plan that would include outreach and education methods, development of signage, and training for enforcement staff.

8. Add a new provision prohibiting improper exposure and sexual activities within the bounds of Metro properties.

This ordinance recommends adding a provision to Title 10 prohibiting people from exposing themselves while in a place visible to another person or engaging in sexual activity. Metro field staff report observing people engaged in this type of activity. This addition to the Metro Code would make it clear these types of activities will not be tolerated at Metro properties and assist in enforcement activities.

9. No substantive changes proposed to provisions regarding illegal camping.

Illegal camping in parks and natural areas has become a nationwide issue, which is reflected in the increase in illegal camping in Metro properties in recent years. This ordinance does not propose changes to the prohibition in Title 10 on camping outside of permitted areas. Metro Parks and Nature has an illegal campsite policy that outlines the procedures for addressing illegal campsites when discovered on Metro property. Title 10 will continue to provide the authority for staff to address these issues as they arise, and

¹Centers for Disease Control and Prevention secondhand smoke fact sheet, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm

the more detailed policy provides guidelines to ensure Metro does so in a lawful and compassionate manner.

10. Remove specific fee amounts from the Metro Code, and delegate authority to adjust fees to the Chief Operating Officer or designee.

This ordinance recommends simplifying the Title 10 fee provisions, and transferring the authority for setting and adjusting fees from the Metro Council to the Chief Operating Officer or designee. Chapter 10.04 currently includes specific dollar amounts for some fees, but not all Parks and Nature fees. Adjusting the fees currently listed in 10.04 would require an amendment to the Metro Code, which is unnecessarily burdensome and inconsistent with how other Metro departments set and adjust fees.

A comprehensive review of the Parks and Nature fees is currently underway, as well as development of a fee policy and comprehensive fee schedule. As an interim step prior to adjusting specific fees, this ordinance recommends removing the dollar amounts from the Metro Code and delegating authority for setting and adjusting fees to the Chief Operating Officer or designee. The new fee provisions include a 45-day notice procedure to the Metro Council prior to implementation of any fee changes. These technical changes to the Metro Code will facilitate future adjustments to Parks and Nature fees as necessary.

ANALYSIS/INFORMATION

1. Known Opposition

- Some members of the public are strongly opposed to the staff recommendation within this report pertaining to Metro's pet policy. The final report attached as Attachment 1 from the Sounding Board process include meeting notes and a summary that reflects arguments in opposition to the staff recommendation contained herein.

2. Legal Antecedents

- Metro Code Title 10
- Metro Council Resolution 11-4262: For the Purposes of Directing the COO to Implement a Tobacco-Free Policy

3. Anticipated Effects

With the exception of the proposed smoke-free policy, the proposed changes to the Metro Code would be implemented immediately. Most of these provisions reflect how Metro is currently managing the parks and natural areas, so neither staff nor members of the public would experience significant change. Staff recommend a one year delay before implementation of the tobacco-free policy to allow for the development of a thorough implementation plan, including signage, outreach, communication materials and training for enforcement staff.

While the proposed change to the fee provisions to allow the Chief Operating Officer or designee to set and adjust fees would be implemented immediately, a Parks and Nature fee policy is in development that will guide the establishment, review and adjustment of specific fees. That policy will be completed in 2018.

The proposed changes to Title 10 will result in the need for existing internal policies and procedures to be reviewed and updated. These include:

- Parks and Nature fees (*review underway*)
- Special use permit procedures and fees (*review underway*)

- Rule enforcement manual update, including forms (citations, warnings, exclusions, etc.)

4. Budget Impacts

No direct budget impacts are anticipated with the proposed changes to Title 10.

It is anticipated that staff time spent responding to issues that were previously ill-defined will be reduced.

RECOMMENDED ACTION

Staff recommends that Council adopt Ordinance No. 18-1419.

ATTACHMENTS

Attachment 1: Sounding Board Final Report (2017)

Attachment 2: *The impacts of dogs on wildlife and water quality: a literature review*, L. Hennings (2016)