

**THE CITY OF FREDERICK  
MAYOR AND BOARD OF ALDERMEN**

**ORDINANCE NO: G-19-07**

**AN ORDINANCE** concerning City parks

**FOR** the purpose of providing for the exclusion of individuals from City parks under certain circumstances

**BY** adding

Chapter 6

Article VII

The Code of the City of Frederick, 1966 (as amended)

**SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that Chapter 6, Article VII of The Code of the City of Frederick, 1966 (as amended) is hereby added to read as follows:

**ARTICLE VII. SAFETY IN PARKS**

**Sec. 6-28. Generally.**

- (a) **Purpose.** The purpose of this article is to protect law-abiding citizens in their use of City parks, and to authorize the City to exclude persons violating applicable laws from specific City parks where such conduct is violent or disruptive of other City residents, visitors, and employees, or the conduct of City operations.
- (b) **Scope.**
  - (1) In addition to other remedies provided for violation of this Code or any of the laws of the State, the City may exclude an individual from a park through the issuance of an exclusion order in accordance with this section.
  - (2) Nothing in this article shall be construed to authorize the exclusion of any individual lawfully exercising free speech rights or other rights protected by the federal or state constitutions. However, an individual engaged in protected activity who commits acts that are not protected but that violate applicable provisions of law is subject to exclusion as provided by this article.
- (c) **Definition of officer.** In this article, "officer" means a sworn officer of the Frederick Police Department.
- (d) **Relationship to certain court orders.** Nothing in this article shall be interpreted to supersede or preclude a no-contact condition of pretrial release or a probation condition which operates to exclude an individual from specified public properties.

**Sec. 6-29. Grounds for exclusion.**

- (a) **Definition of crime of violence.** In this section, "crime of violence" means any of the crimes listed in MD Code, Public Safety, § 5-101(c)(3).
- (b) **Generally.** An officer may issue an exclusion order to an individual who, within a rolling 12-month period, commits within a single park:
- (1) three or more violations of a law listed in Table I of this subsection;
  - (2) one violation of a law listed in Table II of this subsection; or
  - (3) one crime of violence.

<b>Table I</b>	
<b>Code Reference</b>	<b>Subject (for Reference Purposes Only)</b>
Frederick City Code, Sec. 6-19	Alcoholic beverages in a park
Frederick City Code, Sec. 6-16	Being present in park when it is closed
Frederick City Code, Sec. 6-21	Camping on public property
Frederick City Code, Sec. 12-2	Distribution, use, etc. of a synthetic cannabinoid
Frederick City Code, Sec. 15-20	Urinating on parks, public ways, etc.
Frederick City Code, Sec. 15-26.2	Same—Possession of alcoholic beverages in certain places
Frederick City Code, Sec. 15-27.2	Panhandling
MD Code, Criminal Law, § 10-110(c)	Litter/Dump: Under 100 lbs
MD Code, Criminal Law, § 10-201(c)(2)	Disorderly Conduct
MD Code, Criminal Law, § 5-601	Criminal possession, etc. of a controlled dangerous substance (CDS) (Does not include violation involving use or possession of less than 10 grams of marijuana)
MD Code, Criminal Law, § 5-618	Possession or purchase of noncontrolled CDS
MD Code, Criminal Law, § 5-619	Drug paraphernalia (use, possession, etc.)
MD Code, Criminal Law, § 5-620	Controlled paraphernalia (possession, distribution, etc.)

<b>Table II</b>	
<b>Code Reference</b>	<b>Subject (for Reference Purposes Only)</b>
Frederick City Code, Sec. 15-17	Discharge of firearms or other dangerous weapon
Frederick City Code, Sec. 15-18	Fornication in public places
Frederick City Code, Sec. 15-43	Graffiti
MD Code, Criminal Law, § 5-602	Distributing/dispensing or possessing with intent to distribute/dispense CDS
MD Code, Criminal Law, § 5-603	Possession, etc. of equipment to produce CDS
MD Code, Criminal Law, § 5-604	Distribution, etc. of counterfeit substance
MD Code, Criminal Law, § 5-605	Keeping a common nuisance
MD Code, Criminal Law, § 5-606	Possession, etc. of false prescription
MD Code, Criminal Law, § 5-617	Distribution, etc. of faked CDS
MD Code, Criminal Law, § 5-624	Administration of CDS and commission of other crime
MD Code, Criminal Law, § 5-627	Distribution, etc. of CDS near school
MD Code, Criminal Law, § 5-628	Use of minor to distribute CDS
MD Code, Criminal Law, § 6-301	Malicious destruction of property

- (c) **Commission of violation.** For purposes of this article, "commits" means that an individual is arrested or receives a criminal or civil citation, as applicable, for a violation as specified in subsection (b) of this section. The individual need not be tried or convicted of the crime or found guilty of the civil offense in order to constitute commission of the offense for purposes of this article.

**Sec. 6-30. Effect and duration of exclusion order.**

- (a) **Effect.** An exclusion order prohibits an individual from being present in the park where the violation(s) occurred, as specified in the order, as long as the order is in effect. An exclusion order does not affect the individual's ability to use other parks throughout the City.
- (b) **Duration.** An exclusion order is in effect for:
  - (1) 90 days for the first exclusion order for an individual in a rolling 12-month period; or
  - (2) 180 days for a second or subsequent exclusion order for an individual in a rolling 12-month period.

**Sec. 6-31. Contents and issuance of order.**

- (a) **Contents.** An exclusion order must:
  - (1) identify the provision of law the individual has violated;
  - (2) contain a brief description of the offending conduct, the place of exclusion, and the start date and end date of the exclusion period;
  - (3) be signed by the issuing officer;
  - (4) prominently display a warning of the consequences for failure to comply; and
  - (5) inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal.
- (b) **Issuance.** The officer issuing an exclusion order shall cause it to be served upon the individual by hand delivery or by any other means that results in the individual personally receiving the order.

**Sec. 6-32. Rescission.** If an individual is found not guilty of one of the violations constituting grounds for an exclusion order, the officer will rescind the exclusion order and will issue a notice of rescission in the same manner as provided in Section 6-31 of this article for service of an order.

**Sec. 6-33. Appeals.**

- (a) **Definition of director.** In this section, "Director" means the Director of Public Works or the Director's designee.
- (b) **Generally.** An individual to whom an exclusion order is issued under this article may appeal to the Director in accordance with this section.
- (c) **Form of appeal.** A notice of appeal must be filed with the Director, in writing, within 5 days of the issuance of the exclusion order, and must include the appellant's name, address and phone number, if any.

- (d) **Notice of hearing.** Within 7 days following the filing of a notice of appeal, the Director shall schedule a hearing and notify the appellant by mailing the notice via first class mail to the address provided by the appellant.
- (e) **Hearing.** The hearing will be held between 10 days and 20 days after the filing of the notice of appeal. The appellant and the officer or other representative of the Frederick Police Department shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross examine witnesses and to present evidence. The Frederick Police Department shall bear the burden of proof by clear and convincing evidence that the exclusion order was properly issued pursuant to the criteria of this article.
- (f) **Decision.** Within 3 days after the hearing, the Director shall issue a written decision on the appeal.
- (g) **Judicial Review.** The appellant may appeal the decision of the Director to the Circuit Court for Frederick County in accordance with Title 7, Chapter 200 of the Maryland Rules.
- (h) **No stay.** The exclusion order will remain in effect during the appeal and review process, including any judicial review.

#### **Sec. 6-34. Waivers.**

- (a) **Definition of Chief.** In this section, "Chief" means the Chief of Police or the Chief's designee.
- (b) **In general.** The Chief may grant or deny, in whole or in part, a waiver of some or all of the effects of an exclusion order for good cause in accordance with this section.
- (c) **Request.** A person may submit a waiver request, in writing and including the reasons for the request, at any time during the period of exclusion. If seeking a waiver to attend a particular event, the person shall make every reasonable effort to submit the request at least 10 days before the event.
- (d) **Criteria.** In deciding whether or not to grant a waiver under this section, the Chief shall consider:
  - (1) the seriousness of the violation for which the person has been excluded;
  - (2) the particular need of the person to be in or on the City park during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event); and
  - (3) any other criterion the Chief determines to be relevant for purposes of deciding whether or not to grant a waiver.
- (e) **Decision.** The decision of the Chief under this subsection is final and is not subject to appeal or review.

**Sec. 6-35. Violations.** An individual who is present in a City park while under an exclusion order issued under this article is guilty of a misdemeanor punishable by a fine not to exceed \$500 or by imprisonment for not more than 90 days, or by both a fine and incarceration in the discretion of the court.

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

**SECTION III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that this ordinance shall take effect on July 1, 2019 and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

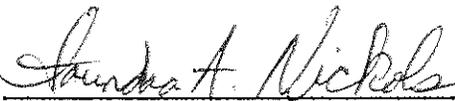
**APPROVED: March 21, 2019**

**PASSED: March 21, 2019**

  
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Michael C. O'Connor, Mayor

  
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Michael C. O'Connor, President,  
Board of Aldermen

**Approved for Legal Sufficiency:**

  
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City Attorney