

RESOLUTION NO. 2024-93

Adding Chapter 8.42, Unauthorized Use of County Property, to the Chelan County Code

WHEREAS, the Board of Chelan County Commissioners have the power pursuant to RCW 36.32.120 to make and enforce, by appropriate resolutions or ordinance, police regulations as are not in conflict with state law,

WHEREAS, Chelan County has determined that proposed Chapter 8.42 of the Chelan County Code, as set forth in Exhibit A, is a necessary police regulation in order to protect safety and welfare of citizens within the unincorporated areas of Chelan County,

Whereas, notice of a public hearing including a date, time and location of the public hearing was provided to the public on 10/17/24 , and the public hearing was held on 10/28/24 to receive public comments on the proposal

NOW THEREFORE, BE IT RESOLVED by the Board of Chelan County Commissioners that Chapter 8.42 of the Chelan County Code is hereby adopted as set forth in Exhibit A, effective this date, the numbering and text of which may be changed by the code reviser as needed without disturbing its intent and meaning.

Dated at Wenatchee, Washington this 29th day of September, 2024.

BOARD OF COUNTY COMMISSIONERS



Kevin Overbay, Chair

EXCUSED

Tiffany Gering, Commissioner

A handwritten signature in blue ink, appearing to read "Shon Smith", written over a horizontal line.

Shon Smith, Commissioner

ATTEST: Anabel Torres

A handwritten signature in blue ink, appearing to read "Anabel Torres", written over a horizontal line.

Clerk of the Board

Chapter 8.42 Unauthorized Use of County Property

8.42.010 Short title.

This chapter, and amendments thereto, shall be known and may be cited as the "Unauthorized Use of County Property resolution".

8.42.020 Application.

(1) This chapter shall be operative outside of the incorporated cities and towns in Chelan County.

(2) This chapter shall not apply to the following:

(A) Construction or maintenance by the county public works department, its contractor, or a franchise or permit holder in compliance with the terms of the franchise or permit.

(B) Mailboxes and attached newspaper boxes installed and located in conformity with the county code.

(C) Events and activities authorized by a county permit or exemption from permit requirements.

8.42.030 Definitions.

"Camp" means to remain overnight, or to erect a tent or other shelter, or to use sleeping equipment, a vehicle, boat, motor home, trailer camper or other conveyance for the purpose of, or in such a way as will permit, remaining overnight, or the establishing, setting up, and use of a site or location for cooking and preparation of meals and other related activities.

"County Property" as used in this Chapter means all improved and unimproved real property owned or leased by Chelan County, and all Chelan County easements, including but not limited to all portions of county parks, county buildings, rights-of-way, roadways, county parking lots, storm water management facilities and property, county utility property, and associated marine areas. "Person" means one or more natural persons, partnerships, firms, corporations, companies, associations, societies, or organizations.

"Right-of-way" means land, property, or property interest (e.g., an easement) acquired for or devoted to transportation purposes, including ditches and drainage facilities, and as a utility corridor.

"Unauthorized use of county property" means that, without lawful authority and within county property, a person deposits, places, stores, creates, constructs, installs, maintains, leaves, or abandons any structure, device, encroachment, or natural or artificial object, or places, dumps, spills, sprinkles, drains, diverts, collects and channels, deposits, or maintains any natural or artificial substance or material, including water, or

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conducts or engages in any such activity within county right-of-way or within the borders of county property.

“Within” means in or into, and includes inside, on, upon, above, over, under, beneath, through, across, along, touching, encroaching, or occupying.

8.42.040 Nuisances declared.

(1) The board of county commissioners deems unauthorized use of county property to be a public nuisance if the unauthorized use:

(A) Injures, endangers or tends to endanger vehicles or other conveyances or persons traveling on county property; or

(B) Obstructs, tends to obstruct, or impedes passage within, on, or through any portion of a county property; or

(C) Injures, erodes, or endangers county property or any portion of the county property; or

(D) Interferes with, hinders, or obstructs construction, alteration, repair, improvement, or maintenance of a county property.

(2) Camping within the boundaries of any county property, except at legally established camping or rest areas, is deemed to be a public nuisance.

8.42.050 Violations and penalties.

(1) A person who knowingly creates, causes or participates in maintaining a public nuisance or otherwise violates a provision of Section 8.42.040 is guilty of a misdemeanor.

(2) A person is guilty of a misdemeanor if he or she knowingly or negligently causes an innocent or irresponsible person to violate a provision of Section 8.42.040, or, if he or she, with knowledge that it will promote or facilitate commission of a violation of Section 8.42.040, solicits, commands, encourages, aids, agrees to aid, or requests another person to violate a provision of Section 8.42.040.

(3) *Written Order.*

(a) Issuance of Written Order by Law Enforcement Officer. Whenever a law enforcement officer has probable cause to believe that a person has committed any act set forth in subsection (5) of this section on any Chelan County property, the law enforcement officer has authority to issue the person a written order prohibiting that person from entering or remaining in the Chelan County property where the act was alleged to be committed. When a law enforcement officer issues a written order under this section, the order shall remain effective for five (5) years from the date of issuance unless an earlier expiration date is specified in the order.

(b) 24 hours to remove property, A person issued a written order under this section must remove all of their belongings within 24 hours of the time the notice was issued or risk forfeiting the property.

(c) Contents of Written Order. The written order issued under subsection (3)(a) shall contain:

- (i) The name of the person the written order is being issued to;
- (ii) The name of the person issuing the written order;
- (iii) The public facility that the person is being prohibited from entering or remaining in;
- (iv) The date the written order is issued;
- (v) Specification of the alleged misconduct;
- (vi) Specification that a violation of the written order is a misdemeanor; and
- (vii) Shall include a statement of the appeal rights in this section.

(d) Written orders issued under this section:

- (i) Are valid and effective whether or not the prohibited person is charged, tried or convicted of any crime;
- (ii) Are valid and effective even if the prohibited person refuses a copy of the order; provided, that the issuing law enforcement officer reasonably notifies the prohibited person verbally of the prohibited period and the place(s) of exclusion;
- (iii) Are valid and effective for the prohibited period unless and until shortened or rescinded by an official ruling after appeal in this section; and

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- (iv) May be issued on probable cause which is based upon observations by County officials and/or law enforcement officers, or upon civilian reports that an official or officer could reasonably rely on in determining probable cause.

(4) *Violation of Written Order.* A person who violates a written order issued pursuant to this section shall be guilty of a misdemeanor. Violations of a written order issued pursuant to this section is a separate offense from the offense associated with the probable cause determination of paragraph 3(a) above.

(5) *Misconduct to Support Written Order.* An act which may result in the issuance of a written order under this Chapter includes, but is not limited to, any of the following when committed associated with County property:

- (a) Any act, including a violation of Chelan County Code 8.42.040, that qualifies as a felony, gross misdemeanor or misdemeanor crime under federal, state, or local law.

(6) *Hearing.*

(a) Request for a Hearing. If the written order was issued by a law enforcement officer, the person who is the subject of the written order may request a hearing to have the issuance of the order reviewed. Such request shall be in writing and contain a return address that will enable Chelan County to provide such person written notice of hearing dates. The written request for a hearing must be filed with the sheriff's department within 14 calendar days of the issuance date of the written order. If a request for a hearing is not timely received by the sheriff's department, then the right to a hearing will be waived. If a request is timely received, a hearings officer will schedule a hearing.

(b) Hearing Date. The hearings officer shall set a hearing to be held within 14 calendar days of the date a timely request for hearing is received by the sheriff's department. For good cause, or upon request of the person requesting the hearing, the hearings officer may set the hearing to a date beyond the 14 calendar days.

(c) Burden. At the hearing, the county must establish by a preponderance of the evidence that probable cause existed to believe that the person committed the alleged misconduct set forth in the written order. Proof of probable cause may be established based upon the sworn declarations, including a law enforcement officer's report, without further evidentiary foundation. Any sworn declaration may be supplemented by the testimony of witnesses or the presentation of other evidence. The person against whom the order was issued shall have the opportunity to present evidence and testimony at the hearing, which may be done through sworn declarations, when challenging the written order.

(d) Regulation of Hearing.

- (i) The hearings officer shall regulate the course of the hearing.
- (ii) Either a recording or a verbatim record of the hearing shall be made. Upon request, a copy of the recording or verbatim record shall be provided to the person.
- (iii) The hearings officer shall issue a written decision setting forth findings of fact, conclusions of law, and an order affirming, vacating, or modifying the law enforcement officer's issuance of the written order.
- (iv) The written decision shall be provided to the person against whom the written order was issued, or his or her legal counsel, within 10 calendar days after the conclusion of the hearing.
- (v) The written decision shall be personally served, sent to a general delivery address provided by the requesting party, or provided by certified mail, return receipt requested. If service is done by mail, service shall be deemed complete upon the third business day after the date of mailing.

(7) *Appeal.* An appeal of the written decision issued by the hearings officer shall be filed with the Chelan County superior court within 20 calendar days from the date of service of the written decision, or is thereafter barred. Any appeal shall be based on the record from the hearing and shall be upheld unless it is determined that the written decision was arbitrary and capricious. Any appeal shall be conducted pursuant to judicial review under the Administrative Procedure Act as set forth in RCW 34.05.534 through 34.05.574, as now existing or hereafter amended. The appeal process in this section cannot be used to appeal any criminal penalties imposed by a court under this section or any other law.

(3) Every person convicted of a violation of Section 8.42.040 shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, exclusive of statutory PSEA assessments, or both such imprisonment and fine.

8.42.060 Public safety emergencies.

(1) In certain situations, violations of Section 8.42.040 may be deemed to be public safety emergencies by the county engineer, the county fire marshal or the county sheriff who are each independently empowered to determine the existence or imminence of the emergency and to take summary action, as either may determine reasonable, to prevent, remove or abate such nuisance. Summary abatement under this section shall not constitute a breach of the peace or a trespass.

(2) The county official implementing summary abatement of a public safety emergency shall promptly report the abatement action to the board of county commissioners.

8.42.070 Election of remedies.

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(1) The county may use any or all lawful means to prevent or abate a nuisance described in this chapter and may elect to address violations by concurrent or alternative application of other county code or of state law.

(2) Nothing in this chapter shall preclude or require prosecution of any criminal offense or a county action for abatement or damages.

(3) This chapter is supplementary to federal and state laws, appellate court decisions, rules, and regulations and to other provisions of the county code.

8.42.080 Costs and expenses to prevent or abate a nuisance.

(1) The person creating, causing, or committing the nuisance shall be solely responsible for the costs and expenses to prevent or abate the nuisance.

(2) The county may recover its expenditures to prevent or abate a nuisance described in this chapter.

8.42.090 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of the chapter.