

ORDINANCE NO. 2019-15

**AN ORDINANCE AMENDING
BREVARD CITY CODE, CHAPTER 77
PARKS AND RECREATION**

WHEREAS, the City Council of the City of Brevard finds that the proposed amendments to Chapter 77 of Brevard City Code are in the best interests of the Citizens of Brevard; and

WHEREAS, the North Carolina Legislature, recognizing (1) the exposure to liability from lawsuits for hazardous recreational activities such as skateboarding, (2) the prohibitive cost of insurance for such activities, and (3) that the risks and dangers inherent in such activities should be assumed by those participating in these activities, has enacted Article 3 of Chapter 99E of the North Carolina General Statutes to encourage governmental owners of property to make land available for skateboarding; and

WHEREAS, Article 3 of Chapter 99E of the North Carolina General Statutes limits liability for damages that might arise out of a person's participation in skateboarding on municipal property when the municipality adopts an ordinance requiring the use of certain protective equipment and posts appropriate signage; and

WHEREAS, the City of Brevard desires to make available certain land located within the Tannery Park to operate as a Skate Park and make rules regulating its use in accordance with Article 3 of Chapter 99E of the North Carolina General Statutes.


NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 1. Brevard City Code Chapter 77 is amended as described in EXHIBIT A.

SECTION 2. If any provision of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance.

SECTION 3. This Ordinance shall become effective upon its adoption and approval.

Adopted and approved upon first reading this the 17th day of June, 2019.




Jimmy Harris
Mayor

ATTEST:



Jill Murray, CMC
City Clerk

APPROVED AS TO FORM:



Michael K. Pratt
City Attorney

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CHAPTER 77 – PARKS AND RECREATION

ARTICLE II – SKATE PARK

Sec. 77-30. – Scope.

- a) This article coordinates the use of the City of Brevard Skate Park, within the Tannery Park, which is hereby established as a City of Brevard public park. This article is in keeping with the City of Brevard's efforts to make land available for skateboarding.
- b) Any person who participates in or assists in hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities.
- c) Any person who observes hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself that result from these activities.
- d) No public entity that sponsors, allows, or permits skateboarding on its property is required to eliminate, alter, or control the inherent risks in these activities.

Sec. 77-31. – Definitions of Terms.

As used in this rule the following terms have the following meanings:

Bike trail means any road or trail maintained for bicycles.

Group means a number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.

Hazardous recreational activity means skateboarding, inline skating, or freestyle bicycling, and, or, any other type(s) not listed.

Hiking trail means any road or trail maintained for pedestrians.

Hunting means the lawful hunting of game animals as defined by the N.C. Wildlife Resources Commission.

Inherent risk means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding.

Motorized vehicle means any vehicle which is self-propelled or which is pulled by a self-propelled vehicle (such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper). A self-propelled vehicle shall include, but is not limited to passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, mini-bikes, all-terrain vehicles, Segways, and go-carts. This does not include motorized wheel chairs or other similar vehicles designed for and used by persons with disabilities.

Multi-use trail means any trail maintained for use by any of the following: bicycle or pedestrian.

Park manager means an employee or employees of the City of Brevard, designated by the city manager, who coordinates management of the Skate Park.

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Permit means any written license issued by or under the authority of the City of Brevard permitting the performance of a specified act or acts.

Permittee means any person, corporation, company or association in possession of a valid permit.

Person means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.

Skate park means any City-owned facility specifically designed, constructed, and designated by on-site signage as an area in which a person may engage in skateboarding.

Sec. 77-32. – Duties of Users

- a) While engaged in hazardous recreational activities, irrespective of where such activities occur, a participant is responsible for doing all of the following:
 - (1) Acting within the limits of his or her ability and the purpose and design of the equipment used.
 - (2) Maintaining control of his or her person and the equipment used.
 - (3) Refraining from acting in any manner that may cause or contribute to death or injury of himself or herself or other persons.
- b) Any person using or riding a skateboard in a Skate Park or in any Parks and Recreation facility in which a Skate Park is located shall wear a protective helmet with the chin strap securely fastened under the chin, and protective elbow pads and knee pads.
- c) Failure to comply with the requirement of subsection (a) of this section constitutes negligence.
- d) It shall be unlawful for the parent or guardian of any minor child to knowingly permit such minor child to use the Skate Park in violation of this section.
- e) No person shall have any dog, cat or other pet on or near the Skate Park unless the animal is on a leash and under the control of the owner or some other person.

Sec. 77-33. – Regulations

- a) It shall be unlawful to use any other conveyance of any type within the Skate Park including, but not limited to, bicycles, inline skates, scooters, or roller skates.
- b) Public nudity is prohibited within the Skate Park.
- c) No games or athletic contests shall be allowed except in places as may be designated by or under permit of the Park Manager, and at such places and for such periods as may be designated by the Park Manager.
- d) No person shall carry or possess any explosives or explosive substance including fireworks within the Skate Park. This does not apply to employees or contractors of the City of Brevard when they engage in construction or maintenance activities.
- e) No person shall use, or be under the influences of intoxicants, marijuana, or non-prescribed narcotic drugs while within the Skate Park. The public display or use of alcoholic beverages, marijuana or non-prescribed narcotic drugs is prohibited.

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- f) No person shall injure, deface, disturb, destroy or disfigure any building, structure, sign, fence, vehicle, machine or any equipment within on the Skate Park.
- g) No person shall, while in the Skate Park, sell or offer for sale, hire or lease, any object or merchandise, property, privilege, service or any other thing, or engage in any business except under permit and at such places and for such periods as may be designated.
- h) A person, except for City of Brevard employees in performance of official duties, shall not hold any meetings or exhibitions, perform any ceremony, or make any speech, within the Skate Park without a permit.
- i) A person shall not solicit contributions for any purpose within the Skate Park, unless approved by the Park Manager and such contributions are used to benefit the Skate Park.
- j) A person shall not voluntarily bring, land or cause to descend or alight, ascend or take off within or upon the Skate Park, any drone, airplane, flying machine, balloon, parachute, glider, hang glider, dirigible structure, or other apparatus for aviation. "Voluntarily" in this connection shall mean anything other than a forced landing.
- k) A person shall not drive a motorized vehicle on or within the Skate Park. This does not apply to City of Brevard employees or contractors of the City of Brevard when engaged in construction or maintenance activities.
- l) A person shall not deposit paper products, bottles, cans or any other rubbish, refuse, trash or debris within the Skate Park, except in receptacles designated for such materials. Where trash receptacles are not provided persons shall pack their trash out of the park and dispose of it in a lawful manner.

Sec. 77-34. – Fees and Charges

- a) Any applicable fees shall be applied per the most recent version of the City of Brevard Schedule of Taxes and Fees.

Sec. 77-35. – Hours of Operation

- a) Hours of operation for the Skate Park shall be dawn to dusk.
- b) No person except City of Brevard employees and authorized persons shall be allowed within the Skate Park between closing and opening hours except under permit.

Sec. 77-36. – Enforcement and Administration

- a) The City Manager may appoint park managers, who may enact such administrative rules and procedures, and issue such orders as are necessary to effectuate the purpose of this article and to protect the general health, safety and welfare of the public.
- b) Park managers and sworn law enforcement may enforce this article.
- c) For violation of any rule in this Article, a person shall be subject to criminal and civil penalties as set forth in Brevard City Code, Chapter 1, General Provisions, Section 1-8, General penalty; other remedies; and may be subject to other criminal and civil penalties as set forth in the North Carolina General Statutes.

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- d) For violation of any rule in this Article, the City of Brevard may withdraw the right of a person or persons to remain on or within the Skate Park.