

**TOWN OF MOUNTAIN LAKE PARK
ORDINANCE NO. 2019-01
BASKETBALL HOOPS ON PUBLIC RIGHTS-OF-WAY**

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF MOUNTAIN LAKE PARK REGULATING THE DUTIES AND RESPONSIBILITIES ASSOCIATED WITH PLACING AND USING A BASKETBALL HOOP AND/OR SUPPORTING APPARATUS IN THE PUBLIC RIGHT-OF-WAY BY SETTING STANDARDS WHICH ARE DESIGNED TO REDUCE THE RISK OF INJURY AND DAMAGE TO PEDESTRIANS, MOTORISTS AND OTHER PERSONS IN THEIR SHARED USE OF PUBLIC ROADWAYS AND STREETS. THIS ORDINANCE IS NOT INTENDED TO REGULATE THE PLACEMENT OR USE OF BASKETBALL HOOPS ON PRIVATE PROPERTY. THIS ORDINANCE IS INTENDED TO APPLY TO ALL BASKETBALL HOOPS, BOTH PORTABLE AND PERMANENT, IN THE RIGHT-OF-WAY REGARDLESS OF WHEN THEY WERE ERECTED.

WHEREAS, the Mayor and Town Council of Mountain Lake Park is authorized by the Maryland Annotated Code, Local Government Article, Title 5, Subtitle 2, or its successor, and by the Mountain Lake Park Town Charter to enact ordinances to protect the health, safety and welfare of residents of and visitors to Mountain Lake Park; and

WHEREAS, the Mayor and Town Council of Mountain Lake Park has experienced ongoing complaints with basketball hoops and supporting apparatus on Town property and rights-of-way within the Town of Mountain Lake Park and finds that said basketball hoops and supporting apparatus present a potential hazard to the health, safety and welfare of the residents of the Town of Mountain Lake Park;

NOW, THEREFORE, THE MAYOR AND TOWN COUNCIL OF MOUNTAIN LAKE PARK DOES ORDAIN AND RESOLVE THE FOLLOWING:

ARTICLE ONE

REPEAL OF PRIOR ORDINANCES AND RESOLUTIONS

Any and all other ordinances or resolutions previously enacted or in effect regulating basketball hoops (including supporting apparatus) on Town property are hereby repealed.

ARTICLE TWO

DEFINITIONS

Section 1. “Basketball hoop” or “hoop” shall mean any part of a backboard, hoop, net or supporting apparatus designed or intended to be used for play with a ball of any kind.

Section 2. "Pedestrian" shall mean a person afoot or in a wheelchair.

Section 3. "Public roadway" or "roadway" or "street" shall mean the improved portion of the public right-of-way designed for vehicular travel.

Section 4. "Sidewalk" shall mean the improved portion of the public right-of-way designed for preferential or exclusive use by pedestrians.

Section 5. "Supporting Apparatus" shall mean the post, pole or similar object that is either:

- (a) Affixed into the ground and supports a basketball hoop; or
- (b) Attached to a movable support base, and that supports a basketball hoop.

Section 6. "Town" shall mean the Town of Mountain Lake Park.

ARTICLE THREE

PROHIBITIONS and PERMISSIBLE LOCATIONS

Section 1. A basketball hoop shall not be erected in the right-of-way, if the driveway of the adjacent private property is of suitable size and slope for playing basketball. A driveway having a slope of $\frac{3}{4}$ inch to one foot or less and an area of at least 400 square feet is considered suitable for playing basketball.

Section 2. If a hoop cannot be installed along the driveway under Section 1 of this Article, basketball hoops located within the public right-of-way shall comply with the following standards:

- (a) In a Residential District;
- (b) Not attached to any light or utility pole, street sign or traffic control device or street tree;
- (c) Outside of a sidewalk, pedestrian or bike path or public roadway, but abutting the owner's property.
- (d) Not adjacent to roadways with striped, on-street bike-ways, but may be placed adjacent to shared roadways;
- (e) At least five feet from manholes, catch basins, traffic signs, fire hydrants, and above ground electrical transformers, telephone boxes, and cable boxes. The pole for the hoop must be a minimum of three feet from street trees, light pole and mailboxes;
- (f) A hoop backboard shall not extend more than one foot beyond the face of the roadway curb;
- (g) A hoop ring shall be at least ten (10) feet above the surface of the street, measured vertically from the public roadway;

- (h) At least fifty (50) feet from the nearest lateral street curb line which intersects at ninety (90) degrees, except if located on a cul-de-sac, the hoop shall be at least fifty (50) feet from the nearest lateral street curb line of the intersection;
- (i) At least one-hundred (100) feet unobstructed view as measured ten (10) feet out from the face of the curb and five (5) feet high along the public roadway in both directions. There shall be no obstructions resulting from curves in such roadway, elevation changes, landscaping or other fixtures located alongside such roadway, except if on a cul-de-sac, the hoop shall leave an unobstructed view of at least fifty (50) feet;
- (j) At least seventy-five (75) feet from the nearest other hoop in the right-of-way as measured along the curb line. This sub-section applies only to basketball hoops placed after the adoption of this ordinance.
- (k) Prior to the erection of the basketball hoop, the installer shall inquire about and receive information from the utility locator service and avoid interfering with or damaging utilities.

Section 3. A basketball hoop that fails to comply with Section 2 of this Article shall be deemed a violation of this ordinance and subject to removal and any other available remedies. The requirements of Section 2 are intended to be complied with continuously.

ARTICLE FOUR

ABUTTING LANDOWNER'S DUTIES AND LIABILITIES

Section 1. Any person owning, possessing, occupying or having control of property that abuts the public right-of-way where a basketball hoop is placed or located shall properly, safely and reasonably construct, maintain, inspect, repair, use and supervise its use and shall be responsible for compliance with the requirements set forth in this ordinance. A basketball hoop located within the public right-of-way shall be presumed to have been placed with the knowledge and consent of the owner of the abutting private property. Damage to the basketball hoop which occurs during the lawful, non-negligent use of the public right-of-way shall be the responsibility of the basketball hoop owner.

Section 2. Placement of a permanent basketball hoop and supporting apparatus on the public right-of-way requires the owner of the property that abuts the public right-of-way, to obtain a Zoning Permit, per the Town's Zoning Ordinance, and to sign a Hold Harmless Agreement.

Section 3. A person who is injured or whose property is damaged by reason of any act or omission constituting a violation of Section 1 of this Article shall have a cause of action for any and all damages sustained, including punitive damages, against a person or persons referred to in Section 1 of this Article, whose acts or omissions result in a violation of Section 1 of this Article. The person or persons who actually cause such injury or damage by reason of their negligence, wrongful or intentional misconduct shall also be liable.

ARTICLE FIVE

TOWN IMMUNITY AND LIABILITY

Section 1. No recourse whatsoever shall be had or available against the Town of Mountain Lake Park, its officers, employees or agents for damage, injury or loss to any person or property arising directly or indirectly out of the negligent or otherwise wrongful construction, maintenance, inspection, repair, use or supervision of use of any basketball hoop placed in the public right-of-way or for any act or omission in violation of this ordinance.

Section 2. In consideration for the Town allowing a person owning, possessing, occupying or having control of property that abuts the public right-of-way to construct, maintain, inspect, repair, use or supervise the use of a basketball hoop placed in or alongside the public right-of-way, such person shall indemnify, defend and hold the Town, its officers, employees and agents harmless against any claim, suit or action made against the Town, its officers, employees and agents as a result of any person's failure to satisfy any obligation imposed by this ordinance.

Section 3. Nothing contained herein shall be construed as a conveyance, grant or transfer of a property interest or permanent private right in any public right-of-way. The Town retains the right to revoke the privilege allowed under this ordinance.

ARTICLE SIX

UNLAWFUL USE OF BASKETBALL HOOPS

Section 1. No person shall use a basketball hoop located within the public right-of-way other than in accordance with the requirements of this ordinance.

ARTICLE SEVEN

REMOVAL OF FIXTURES

Section 1. Any person owning, possessing, occupying or having control of property that abuts the public right-of-way where a basketball hoop is placed in violation of this ordinance shall remove the basketball hoop and any supporting apparatus. Except as otherwise specifically provided in Article Three, basketball hoops located alongside or within the right-of-way, upon adoption of this ordinance, shall comply with the requirements of this ordinance.

Section 2. The Town may require the owner of abutting property to remove a basketball hoop in the right-of-way which due to its location or use is a nuisance. For purposes of this section a basketball hoop in the right-of-way is considered a nuisance when it is in violation of any portion of this ordinance.

Section 3. If a basketball hoop is or becomes a nuisance as defined in Section 2. of this section, the Town may order the basketball hoop to be removed. An order to remove a basketball hoop shall be delivered to the property owner in person or via certified mail return receipt requested. A person to

whom an Order of removal of a basketball hoop is sent shall remove the basketball hoop together with any support apparatus within ten (10) days of delivery of the order, unless within said ten (10) days such persons delivers to the Town a written request for a hearing, which shall stay the time frame for removal of the basketball hoop. If a person submits a timely request for a hearing on whether the basketball hoop should be removed as provided in the Order, the matter shall be submitted to the Mayor and Town Council for determination. A decision on the matter shall be rendered within sixty (60) days and the decision rendered by the Mayor and Town Council shall be final.

Section 4. A person who fails to remove a basketball hoop as provided in this section shall be liable to the Town for its costs, including but not limited to labor and materials, for removal of the basketball hoop and any supporting apparatus, as well as costs, disbursements and attorney fees incurred for such actions. The Town shall not be liable for any damage to the basketball hoop or other property resulting from the non-negligent removal of the basketball hoop. When a basketball hoop has been removed due to a nuisance condition, it shall be unlawful for the owner of the abutting property to erect or allow the placement of a basketball hoop within the right-of-way along any portion of said property for two years after removal of the basketball hoop.

ARTICLE EIGHT

ENFORCEMENT

Section 1. Violation of any provision(s) of this ordinance is a municipal infraction and is subject to the Enforcement Ordinance and the fines or penalties provided in the Resolution of Fines for Municipal Infractions. The Mayor and Town Council may change the amount of the fines and penalties in the Resolution of Fines for Municipal Infractions after the changes have been duly posted in accordance with the policy of the Mayor and Town Council of Mountain Lake Park for advertising for the adoption of resolutions.

Section 2. Each day that a violation exist shall constitute a separate infraction.

Section 3. Nothing contained in this ordinance shall prohibit or prevent the Town from seeking other legal remedies, such as injunction, criminal prosecution, or damages in a civil action pursuant to the Maryland Annotated Code, Local Government Article, Title 6, or its successor.

ARTICLE NINE

SEPARABILITY

Section 1. It is the intention of the Mayor and Town Council of Mountain Lake Park that each separate provision of this Ordinance shall be deemed independent of all other provisions herein.

Section 2. It is further the intention of the Mayor and Town Council of Mountain Lake Park that if any provision of this Ordinance be declared invalid or unconstitutional, all other provisions hereof shall remain valid and enforceable.

ARTICLE TEN

ENACTMENT

IT IS HEREBY ORDAINED AND RESOLVED, this ordinance shall be in full force and effect after introduction, advertising, public hearing, and approval as provided by law.

BE IT FURTHER RESOLVED, this ordinance shall be duly advertised in accordance with the Policy for the Adoption of Ordinances by the Mayor and Town Council of Mountain Lake Park, and a public hearing on this Ordinance shall be held on the 4th day of April 2019, at 6:00 p.m., at the Town Hall located at 1007 Allegany Drive, Mountain Lake Park, Maryland 21550.

INTRODUCED this 7th day of March 2019.

SECOND READING AND ADOPTION this 4th day of April 2019.

AND BE IT FURTHER RESOLVED, this Ordinance shall be effective April 4, 2019.

ATTEST:

APPROVED:

Clerk Treasurer

Mayor

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember