

Council Packet

City of Halsey
Regular Council Meeting
City Hall
Remote Attendance via Zoom
100 W. Halsey Street

Tuesday, May 23rd, 2023
7:00 PM

D. NEW BUSINESS

Possible Camping Restrictions Ordinance		
Council Action:	NONE	May 23, 2023

Issue Statement: Council has asked for a Worksession to learn more about the new vehicle and tent camping laws in Oregon and how Halsey's Ordinances need to be updated to be brought into compliance.

Information will be exchanged and discussion will take place, but any resulting ordinance will be considered in a regular or special City Council meeting in June.

Attachments:

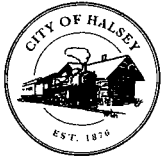
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Ordinances:

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CITY OF HALSEY

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STAFF REPORT

DATE: March 18, 2023
TO: Halsey City Council
FROM: Hilary Norton, City Administrator/Recorder
SUBJECT: HB 3115 Compliance, Homelessness, Camping on public property, Camping in a vehicle, Camping on private property

Background

House Bill (HB) 3115 and 3124 were enacted during the 2021 legislative session. The two new laws impact how local jurisdictions manage camping on public property. Cities have until July 1, 2023 to update their ordinances to be in compliance with the HBs. It is important to note that both HB 3115 and 3124 apply to public property and are not applicable to private property. This means that the rules and restrictions imposed by the HBs are not applicable city-wide, rather they are only applicable to property classified as public.

Two recent court cases also impact the options available to the city. Those cases are Martin v. The City of Boise, and Blake v. City of Grants Pass. Blake v. City of Grants Pass allows that cities may establish reasonable Time, Place, and Manner (TPM) restrictions. Both are included in the packet.

There is an ‘objectively reasonable’ legal test that goes into the Camping TPM regulations. In simple terms, this means camping cannot be banned in the entire City. HB 3115 establishes local laws regulating the acts of sitting, lying, sleeping, or keeping warm and dry in outdoor public spaces must be objectively reasonable as to the time, place, and manner with regards to persons experiencing homelessness. The measure also establishes an affirmative defense that the law is not objectively reasonable for persons who are charged with violating a local law and allows a person experiencing homelessness to bring forward a suit to challenge the objective reasonableness of a local law.

Timeline

The only ordinance that must be changed prior to July 1st, 2023 is the prohibition against camping in an RV on city property. Council has the option of revising only this ordinance at this time, and then taking more time after July 1st to revise other ordinances or create new ordinances related to other camping. If this is the choice, the simple solution would be to require RVs used for camping on public property to follow the same requirements that vehicles parked on the rights of way must comply with – they must be legally licensed, drive-able, and must move every 72 hours.

However, Halsey’s options are limited as the resources are limited. It may be possible to determine a course of action in this work session that could be drafted prior to the next Council meeting. A public hearing could be held in the June meeting.

If the Council is unanimous, that Ordinance could be adopted in the same meeting, allowing it to be in place prior to July 1st 2023. Alternatively, Council could schedule a second meeting in June, so that the Ordinance could be read in two separate meetings prior to adoption.

Discussion

I am including a summary of discussion from the April 11th Council meeting, as well as information acquired from other cities and from our own attorney for Council to consider before the Worksession. I have also attached several example ordinances from other cities. Be aware, some of them contain language that our own city attorney considers risky.

- Public Land – land owned by the city that this ordinance could apply to:
 - The Halsey Memorial Park
 - The Veteran’s Memorial Park
 - The Library
 - City Hall
 - Parking lots adjacent to City Hall and the Memorial Park
 - Streets and sidewalks
 - Undeveloped right of ways: East A between E 1st and E 2nd, West N between W 3rd and W 5th, W L between W 3rd and W 4th, W K between W 3rd and W 5th, W M Street between W 2nd and W 3rd, and W 5th between W J and W L. There are also several odd shaped green spaces along the main drainage ditches. All of these abut residential areas.
 - Land north of city hall that is planned to be a park. It is outside the city limits but it is owned by the city and it is contiguous with City Limits. As long as there is no conflict with Linn County regulations it might be a possible space as well.
- If we create positively phrased legislation – “camping is allowed in this place,” we may invite residency. We also may incur a duty to be sure that area is safe, and has certain basic services, such as water, garbage, and bathrooms. If we create a dedicated space for tent camping, we need to consider port-a-potties and garbage service.
- Brownsville is using land adjacent to their sewer lagoons for campers. Because Halsey’s sewer lagoons are 1 mile outside town, the attorney says this would not work as Halsey’s only solution. There has to be land inside the city that is legal to use.
- Negatively phrased legislation – “camping is prohibited here and here” that is silent on where it is allowed complies with the ORS as long as it does not result in camping being illegal in all of Halsey. This leaves it to the individual’s judgement where it is safe to camp. If there comes a time where this regulation is not sufficient, Council would need to reassess if additional solutions, restrictions, or support are needed for public safety.
- Tent camping and vehicle RV camping can be regulated differently. Definitions are important and there are several sets of good definitions in the example ordinances.
- Relaxing restrictions on RV camping may create resentment in homeowners required to store RVs on their own property and not on adjacent rights of way. Ordinances must be clear and fair to be enforceable.
- The law does not require Halsey to change rules prohibiting living in an RV on private property. However, living in an RV or camping on private property may be less obstructive of streets and less disruptive of the public peace than camping on public property. For this reason, the Council may want to consider changing that regulation as well.
- The more regulations are linked to public safety, for everyone including the homeless, the easier they are to defend.

Suggestions

Tents

Prohibit tent camping in the parks and in the undeveloped rights of way abutting residential property. This does not prohibit it in all of Halsey, and also does not establish a specific location as a camp. Someday, if there are more homeless people in Halsey, more structured arrangements may need to be made for everyone's safety, but this meet current legal requirements and the current "need" in the community.

Also include language prohibiting campers from obstructing the streets, sidewalks, or accesses to properties or buildings. Prohibit storage of property on the right of way. Campers must pack up tents and property and take it with them when they go. They cannot set up a campsite and leave it and return to it later.

Prohibit dumping waste or garbage where it does not go – including into storm drainage and ditches. There is good language for this in some of the model ordinances.

The time limitations in some ordinances are questionable according to our city attorney. However, some cities have adopted them. They may or may not be challenged for reasonability. Halsey could choose to set such restrictions, recognizing that they may be challenged in court later.

We likely need to adopt rules relating to timing of notices if a campsite needs to be cleaned up. There are examples in several of these ordinances. I don't yet know what our mechanism is for this. I have asked the Linn County Sheriff's Office if this is something they could do, if it would cost the City an additional fee, and what their process would be. I should have more information on this prior to the Worksession.

Vehicles

Prohibit RV or vehicle camping in residential zones or adjacent to any residence, as we have some residences in commercial zones. This would leave parking available in West 2nd and West 1st Streets. These roads are wider, and have finished edges with curbs and paved parking. They are structurally stronger and able to withstand the weight and wear of heavier vehicles, where the grassy/gravel verges on our narrower residential streets could be badly damaged by them.

Unless specifically prohibited, the above would potentially allow some vehicle camping at City Hall.

Prohibit vehicle camping in ditches, or obstructing access to properties, vision clearance at intersections, crosswalks, sidewalks, or narrowing streets more than two lane widths, or any obstruction that could block an emergency vehicle from access to adjacent properties

Require some of the same regulations that parked automobiles must comply with, such as being legally licensed and drive-able, and moving every 72 hours. Consider Including a required minimum distance.

Private Property

If the City is forced to allow RV camping on public property it does not make a lot of sense to retain the rule against living in RVs on private property. In general, it is less disruptive of the public peace, less obstruction on the roads, less impact on neighborhoods for someone to live on private property. It provides a solution for some housing insecure families in our community if they have friends or relatives and can live on their property in an RV.

Several of the example ordinances include useful clauses allowing a property owner such as a church or business to establish limited camping on their own property within certain regulations.

Consider removing the restriction on living in an RV on private property. Instead, create rules to regulate it and limit the impact on neighbors, such as requiring them to register at City Hall and sign an agreement, requiring them to obey setbacks, requiring them not to discharge waste into the city sewer or storm drainage systems, requiring them to obey other ordinances including not accumulating garbage or debris outside around the RV or vehicle. Restricting vehicle residence on private properties to vehicles designed to be lived in (Travel Trailer, Camper, 5th Wheel, or toy hauler with residency compartment.)

Are there other restrictions you would want to see?

Are there other solutions or ideas you would like to bring?

If there is anything you would like me to do additional research on or consult the attorney on before the Worksession, if you can send that to me in an email over the weekend I can work on that Monday morning and have additional information for you by Tuesday.

ORDINANCES

CITY OF NEWPORT

ORDINANCE NO. 2198

AN ORDINANCE REPEALING AND REPLACING CHAPTER 9.50, AND AMENDING SECTION 6.25.010, OF THE NEWPORT MUNICIPAL CODE RELATED TO CAMPING

WHEREAS, the Newport City Council has discussed the potential revision of the City's camping regulations on multiple occasions, including April 5, 2021, January 3, 2022, April 18, 2022, June 20, 2022, July 18, 2022, September 6, 2022, and September 19, 2022; and

WHEREAS, due to various state and federal regulations and court decisions, the City's existing ordinances related to enforcing camping on public property have been rendered inoperable, resulting in confusion and creating health and safety issues; and

WHEREAS, a revision to the current camping ordinance is necessary in order to protect the health and safety of residents, and align the City's regulations with the above referenced state and federal regulations and court decisions; and

WHEREAS, on October 3, 2022, the City Council held a public hearing on the revision to the current camping ordinance and determined that the continued health and safety of residents of the City of Newport is furthered by emergency adoption of this ordinance.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Chapter 9.50 of the Newport Municipal Code related to camping is repealed and replaced as follows:

9.50.005	Title and Purpose
9.50.010	Definitions
9.50.015	Permitted Camping
9.05.020	Camping Prohibited in Certain Places
9.50.030	Scheduling and Notice of Campsite Cleanup
9.50.040	Removal, Storage and Retrieval of Personal Property
9.50.050	Violation - Penalty
9.50.060	Nonexclusive Remedy
9.50.070	Interpretation

9.50.005 Title and Purpose

The title of this chapter shall be known as the "Newport Camping Regulations." The purpose of this chapter is to protect the health and safety of residents and regulate the use of public property by establishing time, place, and manner guidelines.

9.50.010 Definitions

The following definitions apply in this chapter:

- A. "Camp" or "camping" means to pitch, erect, create, use, or occupy camp facilities for the purpose of habitation, as evidenced by the use of camp paraphernalia.
- B. "Camp facilities" include, but are not limited to, tents, huts, temporary shelters, motor vehicles, or recreational vehicles.
- C. "Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or outdoor cooking devices or utensils and similar equipment.
- D. "City manager" means the Newport city manager, or the city manager's designee.
- E. "Dwelling" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- F. "Established campsite" or "to establish a campsite" mean any place where one or more persons have established temporary sleeping accommodations by use of camp facilities and/or camp paraphernalia for more than 24 consecutive hours.
- G. "Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion.
- H. "Parking lot" means a developed location that is designated for parking vehicles, whether developed with asphalt, concrete, gravel, or other material.
- I. "Personal property" means items that can reasonably be identified as belonging to an individual and that have apparent value or utility.
- J. "Public property" means any real property or structures owned, leased, or managed by the City, including public rights-of-way.
- K. "Public rights-of-way" means all property dedicated to the public for transportation purposes and administered by the City, including streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the City. "Right-of-way" also includes public utility easements to the extent that the easement allows use by the permittee planning to use or using the public utility easement. "Right-of-way" includes the subsurface under and airspace over these areas. "Right-of-way" does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.
- L. "Recreational vehicle or RV" means a vehicle with or without motive power that is designed for use as temporary living quarters and as further defined by the Oregon Department of Transportation in OAR Chapter 735, Division 022. Examples include motor homes, camping trailers, tent trailers, truck campers and camper vans.
- M. "Solid waste" means any garbage, trash, debris, yard waste, food waste, or other discarded materials.

N. "Store" or "storage" means to put aside or accumulate for use when needed, to put for safekeeping, or to place or leave in a location.

O. "Vehicle" means a motor vehicle or recreational vehicle.

9.50.015 Permitted Camping

A. The prohibitions in Section 9.50.020 shall not apply to the following circumstances:

1. The property involved is appropriately zoned and has all necessary approvals for the proposed camping use, in a vehicle or otherwise, as provided in Title XIV (Zoning) of the Newport Municipal Code; or
2. Camping is occurring in accordance with a duly executed emergency declaration made pursuant to NMC 1.70.030; or
3. A special event permit has been issued in accordance with NMC Chapter 9.80 authorizing camping.

B. Notwithstanding the prohibitions in Section 9.50.020, the owner of a commercial or industrial property, a public entity, or a religious institution/place of worship may allow vehicle or tent camping to persons, provided:

1. Such accommodations are made free of charge; and
2. Occupancy is limited to three or fewer vehicles or tents at the same time, in any combination; and
3. Vehicles or tents are located within an on-premise parking lot, and are spaced at least 10 feet apart; and
4. All items and materials are stored in vehicles or tents or in a separate storage area that is screened from view from adjacent properties and public rights-of-way; and
5. Campers are provided access to sanitary facilities, including a toilet, hand washing and trash disposal facilities, with such facilities being at least 20 feet from the property line of a residential use if not fully contained within a building; and an inspection is performed by the City to confirm that sanitary facilities are in place, required setbacks are met, and any storage areas are screened, before vehicle or tent camping is commenced.

C. A property owner who allows camping pursuant to subsection B of this section may revoke that permission at any time and for any reason.

D. Notwithstanding the provisions of this section, the city manager may:

1. Revoke the right of a property owner to allow camping on property described in

subsection B of this section upon finding that the property owner or a camper has violated any applicable law, ordinance, rule, guideline or agreement, or that any activity occurring on that property by a camper is incompatible with the use of the property.

2. Revoke permission for a person to camp on public property upon finding that the person has violated any applicable law, ordinance, rule, guideline or agreement, or that any activity occurring on public property by the person is incompatible with the use of the property.
 3. A permission revoked by the city manager under this subsection D is subject to notice in the manner provided in NMC 8.11.090 and a right to appeal and hearing procedure as provided in NMC 8.11.100.
- E. Any person whose permission to camp on property has been revoked pursuant to subsections C or D of this section must vacate and remove all belongings from the property within four hours of receiving such notice.
- F. All persons participating in a camping program described in subsection B of this section do so at their own risk, and nothing in this section or chapter creates or establishes any duty or liability for the City or its officers, employees or agents, with respect to any loss related to bodily injury (including death) or property damage.

9.50.020 Camping Prohibited in Certain Places

A. Except as expressly authorized by the Newport Municipal Code, at all times it is unlawful to establish, use, or occupy a campsite in the following locations:

1. City of Newport park sites developed with active use recreational facilities or that are designed as public gathering spaces including, but not limited to:
 - a. Agate Beach Neighborhood and Dog Park
 - b. Betty Wheeler Memorial Field
 - c. Big Creek Park (developed portions)
 - d. Coast Park
 - e. Don and Anne Davis Park
 - f. Founding Rock Park
 - g. Frank Wade Memorial Park
 - h. Literacy Park
 - i. Mombetsu Sister City Park
 - j. Sam Moore Skate Park and Parkway (developed portions)
 - k. Wilder Twin Park
2. Within visual line of sight from a constructed and signed recreational trail on public property;
3. The following city-owned facilities, and associated grounds, that are open to the public:

- a. City Hall
 - b. 60+ Activity Center
 - c. Recreation/Aquatic Center
 - d. Library
 - e. Performing Arts Center
 - f. Visual Arts Center
 - g. Main Fire Station
4. City owned or maintained parking lots unless identified as a vehicle camping lot;
 5. Public rights-of-way adjacent to, or within 200 feet of, a lot or parcel containing an elementary school, secondary school, day care facility, child care facility, or facility providing services to homeless persons;
 6. Public rights-of-way adjacent to a lot or parcel containing a dwelling;
 7. The following developed public rights-of-way that are more heavily trafficked, or that are in areas with industrial activities:
 - a. SW Bay Blvd. from SW Bay St. to S. Pine St.
 - b. SE Bay Blvd. from S. Pine St. to SE Niemi Ct. (including boardwalk/piers)
 - c. SW Elizabeth St. from SW Government St. to W. Olive St.
 - d. SW Coast St. from SW 2nd St. to W. Olive St.
 - e. NW Coast St. from W. Olive St. to NW 11th St.
 - f. NW Spring St. from NW 8th St. to NW 12th St.
 - g. NW Oceanview Dr. from NW 12th St. to N. Coast Hwy.
 - h. NW Rocky Way
 - i. NW Gilbert Way
 - j. Public rights-of-way within 100 feet of the edge of pavement of Hwy. 101 or Hwy. 20
- B. Except as expressly authorized by the Newport Municipal Code, it shall be unlawful for any person to store personal property within public rights-of-way.
 - C. Except as expressly authorized by the Newport Municipal Code or a special event permit, it shall be unlawful to carry out open burning or to have a recreational fire on public property. The meaning of the terms "open burning" and "recreational fire" shall be as defined in the most recently adopted version of the State of Oregon Fire Code.
 - D. Any person camping in a motor vehicle or recreational vehicle must adhere to the parking regulations outlined in NMC chapters 6.05 to 6.25.
 - E. Notwithstanding the provisions of this section, the City Manager may temporarily authorize camping or storage of personal property on public property by written order that specifies the period of time and location upon finding it to be in the public interest and consistent with City Council goals and policies.
 - F. The City Manager may adopt administrative rules to implement the provisions of

this section.

9.50.030 Scheduling and Notice of Campsite Cleanup

- A. Cleanup of illegal campsites will be scheduled by the chief of police or designee.
- B. Signs may be posted advising that camping is prohibited. Whether or not a sign is posted, a specific dated and timed notice will be posted and distributed in the area of a scheduled cleanup at least 72 hours before the cleanup.
- C. Notwithstanding subsections A and B of this section, cleanup of campsites may occur immediately and without notice if the chief of police or designee determine that either of the following conditions exist:
 - 1. An emergency such as possible site contamination by hazardous materials or where there is an immediate danger to human life or safety;
 - 2. Illegal activity other than camping.
- D. At the time of the cleanup, written notice will be posted and distributed announcing the telephone number where information on picking up the stored property can be obtained during normal business hours.
- E. Written notices will be in both English and Spanish.
- F. Copies of all notices shall be provided to the Oregon Department of Human Services and/or the Lincoln County Human Services Department.

9.50.040 Removal, Storage and Retrieval of Personal Property

- A. Personal property will be separated from solid waste during cleanups. Solid waste will be immediately discarded. Items of personal property will be turned over to the police department and stored. The personal property shall be stored for no less than 30 days, during which time it will be reasonably available to persons claiming ownership of the personal property.
- B. When conducting a campsite removal, the City shall arrange in advance for a location for personal property to be stored.
- C. Any personal property that remains unclaimed for 30 days after the cleanup may be disposed of, sold, donated, used, or transferred as abandoned personal property, but no waiting period beyond the 30 days is required prior to the disposal, sale, donation, use, or transfer.
- D. Weapons, drug paraphernalia, and items which reasonably appear to be either stolen or evidence of a crime may be retained and/or disposed of by the police department in accordance with the department's written policies and procedures.

9.50.050 Violation - Penalty

Violation of this chapter is a civil infraction subject to a civil penalty as provided in NMC 1.50.010.

9.50.060 Nonexclusive Remedy

The remedies described in this chapter shall not be the exclusive remedies of the City for violations of this chapter.

9.50.070 Interpretation

This chapter is to be interpreted consistent with applicable state statutes and providing the protections required by state statutes.

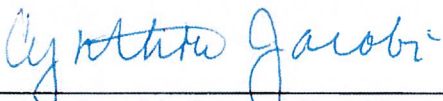
Section 2. Section 6.25.010 of the Newport Municipal Code is amended as set forth below (deleted language shown in ~~strikethrough~~ and language to be added is depicted with underline):

A. Recreational vehicles may not be parked and occupied in the right-of-way or on any public or private parking lot between the hours of 11:00 P.M. and 5:00 A.M., except in areas where camping is permitted as identified in ~~Section 9.50.050~~ NMC 9.50.015.

Section 3 - Effective Date. This ordinance shall take effect on the date of adoption by the City Council to ensure the continued health and safety of residents of the City of Newport.

Adopted by the Newport City Council on October 3, 2022.

Signed by the Council President on October 4, 2022.



Cynthia Jacobi, Council President

ATTEST:



Erik Glover, City Recorder

ORDINANCE #__

**AN ORDINANCE CREATING A NEW CHAPTER 5.16 OF THE JEFFERSON
MUNICIPAL CODE CONCERNING CAMPING WITHIN THE CITY**

WHEREAS, this Ordinance relates to camping on city property and establishes objectively reasonable regulations on sleeping and keeping warm and dry, in compliance with ORS 195.530; and

WHEREAS, the City of Jefferson, like many other cities in Oregon, is experiencing an increase of unsanctioned camping in public spaces and rights-of-way. The entire state of Oregon, at all levels of government, is struggling to address issues related to affordable housing and those without adequate housing; and

WHEREAS, The City's parks were designed and intended for recreational uses and outdoor activities. Public rights-of-way, city parks, and other city properties were not designed or intended for overnight use in the same way as a recreational camp site. People living in makeshift camps in the right-of-way, local parks, or other public spaces often lack access to safe and sanitary restrooms and trash receptacles, resulting in unsanitary conditions from improper disposal of human waste and trash; and

WHEREAS, this Ordinance is intended to address health and safety concerns of the travelling public, city residents, and individuals residing or camping within the City. This ordinance will promote a safe environment, limit unsanitary conditions, allocate public resources effectively, and meet legal and humanitarian standards for all people within the City; and

WHEREAS, the City recognizes the varied nature of the problem of people experiencing homelessness that has contributed to individuals locating themselves in the right-of-way and on publicly-owned property. This Ordinance is intended to provide for the humane treatment of individuals experiencing homelessness; and

WHEREAS, the City finds that limitations on the locations of campsites on City property supports the safety of people in the campsites as well as the traveling public and community; and

WHEREAS, this Ordinance does not criminalize or otherwise subject an individual to citation for the acts of sitting, lying, sleeping, or keeping warm and dry on all public property. Instead, this ordinance establishes reasonable time, place, and manner regulations that balance the rights of people without shelter to use some public places to meet basic needs with the City's obligation to manage public spaces to meet their intended uses and to maintain health and safety for everyone in the City,

NOW, THEREFORE, THE CITY OF JEFFERSON ORDAINS AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby adopted as support for the amendments herein.

Section 2. Amendment. A new Chapter 5.16 of the Jefferson Municipal Code is hereby adopted as follows:

Chapter 5.16 CAMPING WITHIN THE CITY

5.16.010 Definitions.

As used in this chapter:

“Camp” or “camping” means to pitch, erect, create, use, or occupy camp facilities for the purpose of habitation, as evidenced by the use of camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, temporary shelters, motor vehicles, or recreational vehicles.

“Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or outdoor cooking devices or utensils and similar equipment.

“City Manager” means the Jefferson City Manager, or their designee.

“Dwelling” means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

“Established campsite” or “to establish a campsite” means any place where one or more persons have established temporary sleeping accommodations by use of camp facilities or camp paraphernalia for more than 24 consecutive hours.

“Motor vehicle” means a vehicle that is self-propelled or designed for self-propulsion.

“Parking lot” means a developed location that is designated for parking vehicles, whether developed with asphalt, concrete, gravel, or other material.

“Personal property” means items that can reasonably be identified as belonging to an individual and that have apparent value or utility.

“Public property” means any real property or structures owned, leased, or managed by the City, including public rights-of-way.

“Public rights-of-way” means all property dedicated to the public for transportation purposes and administered by the City, including streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the City.

“Recreational vehicle or RV” means a vehicle with or without motive power that is designed for use as temporary living quarters and as further defined by the Oregon Department of Transportation in OAR Chapter 735, Division 022. Examples include motor homes, camping trailers, tent trailers, truck campers and camper vans.

“Solid waste” means any garbage, trash, debris, yard waste, food waste, or other discarded materials.

“Store” or “storage” means to put aside or accumulate for use when needed, to put for safekeeping, or to place or leave in a location.

“Vehicle” means a motor vehicle or recreational vehicle.

5.16.015 Permitted Camping on Private Property.

A. Notwithstanding the prohibitions in Section 5.16.020, the owner of a commercial or industrial property, a public entity, a religious institution, or a place of worship may allow vehicle or tent camping to persons, provided that:

1. Such accommodations are made free of charge; and
2. Occupancy is limited to no more than **two vehicles or tents** at the same time, in any combination; and
3. Vehicles or tents are located within an on-premise parking lot, and are spaced at least 10 feet apart; and
4. All items and materials are stored in vehicles or tents or in a separate storage area that is screened from view from adjacent properties and public rights-of-way; and
5. Campers are provided access to sanitary facilities, including a toilet, hand washing and trash disposal facilities, with such facilities being at least 20 feet from the property line of a residential use if not fully contained within a building; and an inspection is performed by the City to confirm that sanitary facilities are in place, required setbacks are met, and any storage areas are screened, before vehicle or tent camping is commenced.

B. A property owner who allows camping pursuant to subsection A of this section may revoke that permission at any time and for any reason.

C. Notwithstanding the provisions of this section, the City Manager may:

1. Revoke the right of a property owner to allow camping on property described in subsection A of this section upon finding that the property owner or a camper has violated any applicable law, ordinance, rule, guideline, or agreement, or that any activity occurring on that property by a camper is incompatible with the use of the property.
2. Revoke permission for a person to camp on public property upon finding that the person has violated any applicable law, ordinance, rule, guideline, or agreement, or that any activity occurring on public property by the person is incompatible with the use of the property.

D. Any person whose permission to camp on property has been revoked pursuant to subsections B or C of this section must vacate and remove all belongings from the property within twenty-four hours of receiving such notice.

E. Except as otherwise allowed in this section, camping on residential property is not permitted.

5.16.020 Camping Prohibited in Certain Places.

A. Except as expressly authorized by the Jefferson Municipal Code, it is unlawful to establish, use, or occupy a campsite in the following locations:

1. City parks, including properties identified for development of future parks.
2. Within visual line of sight from a constructed and signed recreational trail on public property.
3. The following City-Owned facilities, and associated grounds, that are open to the public:
 - a. City Hall;
 - b. Public Works yard and water treatment facility;
 - c. Conser House Museum;
 - d. Library;
 - e. Cemetery;
4. City owned or maintained parking lots unless identified as a vehicle camping lot.
5. Public rights-of-way adjacent to, or within 500 feet of, a lot or parcel containing an elementary school, secondary school, day care facility, child care facility, or facility providing services to homeless persons.
6. Public rights-of-way adjacent to a lot or parcel containing a dwelling.

B. Except as expressly authorized by the Code, it shall be unlawful for any person to store personal property on public property.

C. Notwithstanding the provisions of this section, the City Manager may temporarily authorize camping or storage of personal property on public property by written order that specifies the period of time and location, upon finding it to be in the public interest and consistent with City Council goals and policies.

5.16.030 Scheduling and Notice of Campsite Cleanup.

A. Cleanup of illegal campsites will be scheduled by the City Manager or law enforcement.

B. Signs may be posted advising that camping is prohibited. Whether or not a sign is posted, a specific dated and timed notice will be posted and distributed in the area of a scheduled cleanup at least 72 hours before the cleanup.

C. Notwithstanding subsections A and B of this section, cleanup of campsites may occur immediately and without notice if a law enforcement officer determines that either of the following conditions exist:

1. An emergency such as possible site contamination by hazardous materials or where there is an immediate danger to human life or safety; or

2. Illegal activity other than camping.

D. At the time of the cleanup, and as provided in the written notice posted and distributed under subsection B of this section, the telephone number will be provided where information on picking up the stored property can be obtained during normal business hours.

E. Written notices will be in both English and Spanish.

F. Copies of all notices shall be provided to a local agency that delivers social services to homeless individuals in Marion County.

5.16.040 Removal, Storage and Retrieval of Personal Property.

A. Personal property will be separated from solid waste during cleanups. Solid waste will be immediately discarded. Items of personal property will be turned over to law enforcement [or public works] and stored. The personal property shall be stored for no less than 30 days, during which time it will be reasonably available to persons claiming ownership of the personal property.

B. When conducting a campsite removal, the City shall arrange in advance for a location for personal property to be stored.

C. Any personal property that remains unclaimed for 30 days after the cleanup may be disposed of, sold, donated, used, or transferred as abandoned personal property, but no waiting period beyond the 30 days is required prior to the disposal, sale, donation, use, or transfer.

D. Weapons, drug paraphernalia, and items which reasonably appear to be either stolen or evidence of a crime may be retained or disposed of by law enforcement in accordance with applicable policies and procedures.

5.16.050 Violation – Penalty.

A. The City Manager and law enforcement officers charged with enforcement of the Code, are hereby designated to administer and enforce the provisions of this chapter.

B. All violations of this chapter shall be enforced under the procedures of Chapter 1.12, of this Code.

C. Violations of this chapter shall carry the penalty of fifty dollars (\$50.00) for the first violation and one hundred dollars (\$100.00) for each subsequent violation.

5.16.060 Nonexclusive Remedy.

The remedies described in this chapter shall not be the exclusive remedies of the City for violations of this chapter.

5.16.070 Interpretation.

This chapter is to be interpreted consistent with applicable state statutes and providing the protections required by state statutes.

Section 3. Savings. Notwithstanding these amendments, the City Code provisions in existence at the time any criminal or civil enforcement actions were commenced shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said provision(s) or portions thereof were operative.

Section 4. Severability. The sections, subsections, paragraphs, and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs, and clauses.

Section 5. Codification. Provisions of this Ordinance shall be incorporated into the City Code, and the words “ordinance” or “section” may be changed to “code,” “title,” “chapter,” or another word, and the sections of this Ordinance may be renumbered or re-lettered, and the City Recorder is authorized to correct any cross-references and any typographical errors.

Section 6. Effective Date. This ordinance will go into full force and effect on the 30th day after City Council enactment as provided in the Jefferson Charter.

Adopted by the Jefferson City Council this _____ day of _____, 2023.

Michael D. Myers, Mayor

ATTEST:

Sarah Cook, City Manager/Recorder

ORDINANCE NO. 3586

AN ORDINANCE REPEALING AND REPLACING SECTION 7.02.100 OF THE ROSEBURG MUNICIPAL CODE

WHEREAS, Oregon Revised Statute 195.530 requires, "Any city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness; and

WHEREAS, ORS 195.530 becomes effective on July 1, 2023; and

WHEREAS, the City of Roseburg desires to update the Roseburg Municipal Code Section 7.02.100 to meet the statutory requirements outlined in ORS 195.530 by balancing the basic human need to sit, sleep and lie with the public's expectation to be able to utilize public property for its intended use.

NOW, THEREFORE, THE CITY OF ROSEBURG ORDAINS AS FOLLOWS:

SECTION 1. Roseburg Municipal Code Section 7.02.100, titled "Prohibited Camping" is hereby repealed and replaced to read as follows:

7.02.100 Prohibited camping.

A. As used in this Section:

1. "Camp" or "Camping" means to pitch, erect, create, use, or occupy campsites for the purpose of habitation, as evidenced by the use of camp materials.
2. "Campsite" means a location upon City Property where Camping Materials are placed.
3. "Camp Materials" include, but are not limited to, personal property, tarpaulins, cots, sleeping bags, blankets, mattresses, hammocks, or outdoor cooking devices and/or similar items that are, or reasonably appear to be, used as living accommodations.
4. "City Property" means any real property or structures owned, leased, or managed by the City, including Public Ways.
5. "Involuntarily Homeless" means a person who lacks access to adequate temporary shelter.
6. "Public Way" means any street, road, alley, right-of-way, pedestrian or bicycle easement, or utility easement for public use which is controlled by the City.
7. "Personal Property" means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

B. Camping on public or private property is prohibited. Involuntarily Homeless individuals are not prohibited from sleeping and resting on city property, provided camping is occurring in compliance with the following time, place and manner regulations. Camping on private property within the City limits is prohibited unless a permit is obtained through the Community Development department.

1. Time.

- a. Unless otherwise specified, any camping or camp, where not prohibited, may only occur between the following hours:
 - i. Between November 1 and February 28 – 5 PM to 8 AM
 - ii. During the months of March and October - 6 PM to 8 AM
 - iii. Between April 1 and September 30 – 8 PM to 8 AM
- b. Enforcement of time restrictions may be suspended by City Manager, Police Chief, or designee, for severe weather events or when an individual is engaged in case management or behavioral health services, or when necessary or appropriate to respond to an individual's disability or unique circumstances.

2. Place.

- a. Camping is prohibited at all times in the following locations:
 - i. In or adjacent to any Residentially zoned area or any properties legally residentially used regardless of zoning, and anywhere within 100 feet of a school or day care facility.
 - ii. Anywhere between the Umpqua River Path and the South Umpqua River in that portion of the path east of Interstate 5 to Flint Street and any location within 10 feet of either edge of any multi-use path.
 - iii. Anywhere between the edge of the water and 100 feet beyond the top of the stream bank of waterway excluding those portions of the South Umpqua River discussed above.
 - iv. Any place where camping, a camp, or camp materials create a physical impediment to emergency or nonemergency ingress, egress or access to property, whether private or public, or on public sidewalks or other public rights-of-way, including but not limited to driveways providing access to vehicles, and entrances or exits from buildings and/or other real property.
 - v. Any vehicle lane, bicycle lane, or roundabout within any public right-of-way.
 - vi. Immediately adjacent to any city owned buildings, anywhere on Airport Property, or anywhere on or adjacent to water reservoir sites.

vii. The Stewart Park natural area, encompassing that area of Stewart Park south of Garden Valley Boulevard south to the south end of the storm drainage detention ponds and wetland mitigation areas.

viii. Sport complexes and adjacent structures associated with those sports, including parking lots, within 20 feet of any play structure or playground equipment located on public property, or any park area being used with a park permit.

ix. Any City owned properties leased to others, unless camping is the intended purpose of the lease, including but not limited to the Roseburg Area Chamber of Commerce building, Umpqua Valley Arts Center, Betty Long Unruh Theater, Umpqua United building, Stewart Park Golf Course and the adjacent grounds including parking lots.

x. The Downtown Parking Structure, the area between the parking structure and the adjacent buildings to the east and the walkway area between the parking structure and Jackson Street

xi. Any location that has been determined by the Fire Chief, Fire Marshal, or designee to constitute an elevated threat of fire at a particular time of the year.

3. Manner.

a. Camping, when and where not prohibited, is subject to all of the following:

i. Individuals, camp materials, camps, or personal property may not obstruct sidewalk accessibility or passage, clear vision areas, fire hydrants, City or other public utility infrastructure, or otherwise interfere with the use of the right-of-way for vehicular, pedestrian, bicycle, or other passage.

ii. A camp or camping must be limited within a spatial footprint of 10 feet by 10 feet, or 100 square feet. The intent of this section is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing the use of public spaces as designed and intended.

iii. Individuals may not build or erect structures, whether by using plywood, wood materials, pallets, or other materials. Items such as free standing tents and similar items used for shelter that are readily portable are not structures for purposes of this section.

iv. Obstruction or attachment of camp materials or personal property to fire hydrants, utility poles or other utility or public infrastructure, fences, trees, vegetation, vehicles, buildings, or pavilions is prohibited.

v. All camp materials and personal property must be contained within the tent or tent like structure except for one mobility device (bike, wheelchair, and etc.) per person may be stored outside. For the purpose of this section, a bike with an attached bike trailer is considered one mobility device.

vi. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility in public rights-of-way, on City property, or on any adjacent public or private property.

vii. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or heating deemed unsafe by the Roseburg Fire Department are prohibited.

viii. Dumping of gray water (i.e., wastewater from baths, sinks, and the like) or black water (i.e., sewage) into any facilities or places not intended for gray water or black water disposal is prohibited. This includes but is not limited to storm drains, directly into waterways or onto the ground, which are not intended for disposal of gray water or black water.

ix. Unauthorized connections or taps to electrical or other utilities, or violations of building, fire, or other relevant codes or standards, are prohibited.

x. Digging, excavation, terracing of soil, alteration of ground or infrastructure, or damage to vegetation or trees is prohibited.

xi. All animals must be leashed or crated at all times.

xii. All noise ordinances must be abided by at all times.

C. No recreational vehicle (RV) or vehicle shall be used or occupied on any tract of ground within the corporate limits of the City except as provided in this Section.

D. No person shall use or occupy any RV or campsite for more than forty-eight hours on the premises of any occupied dwelling or on any lot which is not part of the premises of any occupied dwelling, unless a permit therefor shall have been first obtained as prescribed in the Land Use and Development Regulations, nor shall any person permit such use or occupancy unless the occupant of the RV or camp has obtained a permit therefor.

E. Exception. Overnight use of a camping vehicle or RV as defined in ORS 446.310 (2) shall be allowed outside of a permitted or authorized campground, without a permit, provided the following conditions exist and are complied with:

1. The subject location is within a General Commercial (C-3) zoning district and contains a developed permitted use pursuant to Roseburg Municipal Code Subsection 12.04 010.

2. The property owner or lessee registers the subject location with the community development department and no fee is charged to the users;
3. The subject location is not within 500 feet of a residential structure;
4. The length of stay is limited to 48 hours;
5. The camping vehicle or RV unit is self-contained;
6. Generators shall not be used between the hours of 10:00 p.m. and 6:00 a.m.;
7. The area designated for overnight use is paved with an asphalt or concrete surface;
8. The owner of the property where the overnight parking occurs has obtained the necessary permits or licenses, if any are required, from other governmental agencies.

F. Violation of this chapter shall be classified as a violation subject to a civil penalty. The remedies described in this section shall not be the exclusive remedies of the City for violations of this chapter. This chapter is to be interpreted consistent with the applicable state statutes and providing the protections required by state statutes.

(Ord. 2936 §1 (part), 1996; Ord. 3093 § 1, 2001; Ord. No. 3513, § 1, 10-8-2018; Ord. No. 3547, § 1, 125-2021)

SECTION 2. All other sections and subsections of Chapter 7.02 of the Roseburg Municipal Code shall remain in full force and effect as written.

ADOPTED BY THE ROSEBURG CITY COUNCIL THIS ____ DAY OF _____, 20__.

APPROVED BY THE MAYOR THIS ____ DAY OF _____, 20__.

LARRY RICH, MAYOR

ATTEST:

PATTY HITT, CITY RECORDER

ORDINANCE NO. 2021-23

AN ORDINANCE amending Sections 5.257 and 5.990 of the Medford Municipal Code relating to prohibited camping, lying and sleeping on publicly-owned and publicly-controlled property.

WHEREAS, the City Council is acutely aware that homelessness is a complex, challenging issue and the City has prioritized addressing homelessness by actively working with community partners to reduce hardships that lead to the homelessness of our residents and families with children and to increase access to affordable housing for those at-risk of becoming homeless;

WHEREAS, City Council in April of 2019 approved a Homeless System Action Plan which contains five recommended goals and 32 actions to address homelessness in Medford. The City revised the Homeless System Action Plan in June of 2020 and has been working diligently to implement the Plan, which specifically addresses a variety of focus areas, including the support of new affordable housing options, a variety of shelter and transitional housing options, coordination of efforts with local non-profits and social service providers, as well as identification and implementation of prevention programs;

WHEREAS, despite these efforts to address homelessness in the community, there are many people in the community who still face homelessness;

WHEREAS, the City's greenways have become a *de facto* location for camping and sleeping outside. The greenway areas are not well-suited to this sort of human habitation for a number of reasons, just one of which is the extreme fire danger during summer months. Medford Fire Department reports that approximately 220 fire-related incidents (from all causes) occurred along the greenway and related areas during 2020. In addition, human habitation along the greenways results in tons of garbage and detritus being deposited, which causes inestimable environmental and ecological degradation to the City's Greenways, including protected riparian areas, and this human habitation deters public use of the greenways and undermines the public's ability to use that public property for its intended recreational purposes;

WHEREAS, other circumstances also exist beyond the greenways where time, place, and manner restrictions are warranted to further public safety and the usability of public property for its intended use, including but not limited to prohibitions on sleeping or camping on playgrounds and ballfields, and prohibitions on sleeping or camping adjacent to railroad tracks;

WHEREAS, Medford Municipal Code (MMC) Section 5.257, in its current form, allows officers to cite individuals sleeping or camping in a prohibited area, but even if an individual declines social services and refuses to relocate to a safer area, the current ordinance does not allow officers to physically remove the individual from that situation unless there is an independent basis to make an arrest (such as an outstanding warrant or ongoing criminal activity);

WHEREAS, evolving federal case law has held 1) that criminalizing sitting, lying, or sleeping on public property could constitute an Eighth Amendment violation (prohibiting

Ordinance No. 2021-23

imposing excessive fines or cruel and unusual punishments) if the prohibition was jurisdiction-wide and adequate shelter beds for all individuals experiencing homelessness did not exist in the jurisdiction (*Martin v. Boise*); and 2, that non-criminal violations for sitting, lying, sleeping, or keeping warm and dry could constitute Eighth Amendment violations under certain circumstances, regardless of whether or not criminal penalties attached (*Blake v. Grants Pass*). However, the Court in *Blake* also noted that municipalities may implement reasonable time, place and manner restrictions, stating:

“[T]his holding in no way dictates to a local government that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the street at any time and at any place...The City may implement time and place restrictions for when homeless individuals may use their belongings to keep warm and dry and when they must have their belongings packed up [and] ... the City may ban the use of tents in public parks without going so far as to ban people from using any bedding type materials to keep warm and dry while they sleep.”

WHEREAS, to align the provisions of MMC 5.257 with federal case law and to address numerous other public health and safety concerns and other important public interests, City staff drafted proposed revisions to MMC 5.257 and presented the revisions to the City Council at a study session on February 11, 2021. Consistent with direction from City Council at the study session, City staff sought public input and feedback through various channels, including direct contacts with several local advocates and activists, presentation to the City’s Housing Advisory Commission and the City’s Community Development and Services Commission, and presentation at a meeting of the Homeless Task Force. Substantial feedback has been received, both in favor of the proposal and in opposition to it, and both from individuals within and outside of the City of Medford; and

WHEREAS, the City Council finds and declares as follows:

- (a) From time to time persons establish campsites on properties that are publicly-owned or publicly-controlled, such as sidewalks, parks, public rights-of-way, under bridges, along various Greenways in the City and similar areas;
- (b) These persons, by their actions create unsafe and unsanitary living conditions which pose a threat to the peace, health, and safety of themselves and the community; and cause inestimable environmental and ecological damage to areas along the City Greenways;
- (c) During high and extreme fire conditions, the Greenways and Prescott Park pose a unique fire danger due to dry brush and abundant fuel sources;
- (d) Enforcing existing arson laws and burning prohibitions on an incident-by-incident basis alone on the Greenways and in Prescott Park during high and extreme fire conditions does not provide sufficient protection to public peace, health, and safety under such conditions, because of increased fire ignition potential and the rapid rate at which fire spreads under such circumstances;

(e) It is difficult for emergency personnel to evacuate individuals camping on the Greenways or Prescott Park during a fire event;

(f) Wildfires on the Greenways and in Prescott Park pose a severe threat to persons and property, including residents and property owners near those areas and persons experiencing homelessness within those areas;

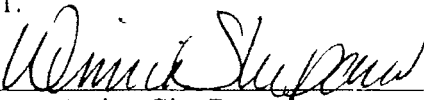
(g) Camping, lying, or sleeping on a playground or sports field fundamentally undermines the public's ability to use that public property for its intended purpose; and


(h) Camping, lying, or sleeping on or near railroad tracks, or in a manner that obstructs sidewalks prevents the public's ability to use that public property for its intended purpose and can in some situations result in imminent threats to life; now, therefore,

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. Sections 5.257 and 5.990(4) of the Medford Municipal Code are hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein by reference [language in **bold font** is new; language in ~~strikethrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity].

PASSED by the Council and signed by me in authentication of its passage this 2nd day of April, 2021.

ATTEST: 
Acting City Recorder


Mayor

APPROVED: April 2nd, 2021



Mayor

EXHIBIT A

[NOTE: language in **bold** font is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity.]

5.257 Prohibited Camping, Lying, and Sleeping

(1) As used in this section:

(a) "To camp" means to set up or to remain in or at a campsite.

(b) "Campsite" means any place ~~where any bedding, sleeping bag, or other material used for bedding purposes, or where~~ any stove or fire is placed, established or maintained for the purpose of maintaining a temporary place to live, ~~whether or not such place incorporates~~ **or where** the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof **is placed, established or maintained for the purpose of maintaining a temporary place to live.**

(c) **"Bedding materials" means a sleeping bag, bedroll, or other material used for bedding purposes, including materials used to keep warm and dry while sleeping.**

(d) **"The Greenways" refers to the Bear Creek Greenway, the Larson Creek Greenway, the Lazy Creek Greenway, and the Navigator's Landing Greenway.**

(e) **"Vehicle camping in a lawful parking space" refers to a person experiencing homelessness parking utilizing a motor vehicle in a lawful parking space as a temporary place to live. The vehicle must be operational and must be moved at least every 24 hours. To fall within this definition, the parking space at issue cannot be adjacent to residences.**

(2) It is found and declared that:

(a) From time to time persons establish campsites on sidewalks, public rights-of-way, under bridges, and so forth;

(b) Such persons, by such actions create unsafe and unsanitary living conditions which pose a threat to the peace, health, and safety of themselves and the community; ~~and;~~

(c) **During high and extreme fire conditions, the Greenways and Prescott Park pose a unique fire danger due to dry brush and abundant fuel sources;**

(d) **Enforcing existing arson laws and burning prohibitions on an incident-by-incident basis alone on the Greenways and Prescott Park during high and extreme fire conditions does not provide sufficient protection to public peace, health, and safety under such conditions, because of increased fire ignition potential and the rapid rate at which fire spreads under such circumstances;**

(e) It is difficult for emergency personnel to evacuate individuals camping on the Greenways or Prescott Park during a fire event;

(f) Wildfires on the Greenways and Prescott Park pose a severe threat to persons and property, including residents and property owners near those areas and persons experiencing homelessness within those areas;

(g) Camping, lying, or sleeping on a playground or sports field fundamentally undermines the public's ability to use that public property for its intended purpose;

(h) Camping, lying, or sleeping on or near railroad tracks, or in a manner that obstructs sidewalks prevents the public's ability to use that public property for its intended purpose and can in some situations result in imminent threats to life;

(i) This section's regulations are meant strictly to regulate the use of publicly-owned property, and are not intended to regulate activities on private property; and

(ej) The enactment of this provision is necessary to protect the peace, health, and safety of the city and its inhabitants.

(3) No person shall place or utilize bedding materials upon any sidewalk, street, alley, lane, public right-of-way, park, greenway, or any other publicly-owned property or under any bridge or viaduct for more than 24 hours consecutively in a particular location, unless otherwise specifically authorized by this code, or by declaration of the Mayor in emergency circumstances, or by executive order of the City Manager pursuant to such declaration, or by declaration of the City Manager in the case of a severe event.

(34)(a) Except as set forth in subsection (b), No-no person shall camp in or upon any sidewalk, street, alley, lane, public right-of-way, park, greenway, or any other publicly-owned property or under any bridge or viaduct,.

(b) The prohibition in subsection (a) does not apply to tent camping or vehicle camping in the following circumstances:

(i) ~~unless if~~ otherwise specifically authorized by any provision of the Medford Municipal Code; ~~this code or~~

(ii) by declaration of the Mayor in emergency circumstances, if so authorized by the declaration;

(iii) by executive order of the City Manager pursuant to such declaration, if so authorized by the executive order;

(iv) by declaration of the City Manager in the case of a severe event, if so authorized by the declaration; or

(v) if the City publishes on its website a written policy authorizing tent camping or vehicle camping on specific publicly-owned properties, then tent camping or vehicle camping on such properties is lawful and permissible consistent with the time, place, and manner constraints contained within any such written-and-published City policy.

(5) No person shall camp, lie, sleep, or use bedding materials in any of the following circumstances, unless otherwise specifically authorized by this code, by declaration of the Mayor in emergency circumstances, by executive order of the City Manager pursuant to such emergency declaration, or by executive order of the City Manager pursuant to such declaration, or by declaration of the City Manager in the case of a severe event:

(a) On the Greenways or Prescott Park, during the period May 1 to September 30 in any calendar year, or at any other time if the Fire Chief or the Fire Chief's designee determines that a fire hazard exists;

(b) On a playground or sports field during hours of closure. Notwithstanding Section 5.255, lying or sleeping in a City-owned park during hours of closure is not prohibited so long as the individual is experiencing homelessness, is not on a playground or sports field, is not on a "school park" associated with a school, and is not violating any other subsection of this section;

(c) On areas underneath roadways or bridges that are not open to the public;

(d) On railroad tracks or within fifteen feet of railroad tracks;

(e) On publicly-owned property not open to the public, including but not limited to the Public Works Service Center and park areas temporarily closed for construction, repairs, maintenance, cleaning and similar activities;

(f) On streets, including planter strips, medians and parking spaces;

(g) On sidewalks, if by doing so, the person obstructs pedestrian traffic along the sidewalk or into private property and businesses adjacent to the sidewalk. For purposes of this provision, an individual obstructs pedestrian traffic if that individual, by camping, lying, sleeping, or using bedding materials, reduces the path of travel to less than 36 inches.

(46) Prior to removing homeless individuals from an established camping site, law enforcement officials shall post a notice, written in English and Spanish, 24 hours in advance.

(a) At the time the notice is posted, law enforcement officials shall inform local agencies that deliver social services to homeless individuals that the notice has been posted. Any local agency, providing service within the City limits of Medford, desiring to be on this notification list must provide its name, address, telephone number, and name of contact person to the Medford Police Department, in writing, requesting notification.

(b) The local agencies may arrange for outreach workers to visit the camping site where a notice has been posted to assess the need for social service assistance in arranging shelter and other assistance.

(57) All unclaimed personal property shall be given to law enforcement officials whether 24-hour notice is required or not. The property shall be stored for 30 days during which it will be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed for 30 days may be disposed of. For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an unsanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site. Weapons, drug paraphernalia, and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials.

(68) The 24-hour notice required under subsection (46) of this section shall not apply:

(a) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring;

(b) In the event of an exceptional emergency such as possible site contamination by hazardous materials or when there is immediate danger to human life or safety; or;

(c) When the campsite is located in the areas specified in subsection 5(a) above, and the notice is placed during the time frame described in subsection 5(a) above, or when in the discretion of the Fire Chief or the Fire Chief's designee, the Greenways or Prescott Park should be immediately closed for fire danger as described in subsection 5(a) above or per Administrative Regulation 907.

(79) A person authorized to issue a citation for unlawful camping may not issue the citation if the citation would be issued within 200 feet of the notice described in this section and within two hours before or after the notice was posted.

(810) Violation of this section-subsection (3) constitutes a violation. Violation of subsection (4) consisting of vehicle camping in a lawful parking space constitutes a violation. Every day in which prohibited camping as defined in this section such violations occurs constitutes a separate violation. A violation of subsection (4) or subsection (5) constitutes a crime, except for vehicle camping in a lawful parking space.

[Added Sec. 1, Ord. No. 6226, Nov. 3, 1988; Amd. Sec. 3, Ord. No. 2000-46, March 16, 2000; Amd. Sec. 1, Ord. No. 2018-115, Sept. 20, 2018.]

5.990 Penalties.

* * *

(4) A violation of sections 5.185, 5.247, 5.250, **5.257(4) (except vehicle camping in a lawful parking space), 5.257(5), 5.292, 5.296(4)(a) and 5.603(1)(c)** is a crime and is punishable by a fine not exceeding \$500 and imprisonment not exceeding 30 days.

* * *

ORDINANCE NO. 2023-51

AN ORDINANCE approving the adoption of a local definition of "established camping site" for purposes of Medford Municipal Code 5.257.

WHEREAS, on April 2, 2021, Council Bill 2021-23 was approved, adopting time-place-manner regulations for prohibited camping instead of the prior city-wide prohibition;

WHEREAS, state law provides a particular procedure for clearing an "established camping site," including that notices must be posted for 72 hours before a clean-up operation occurs (ORS 195.505);

WHEREAS, the Oregon Legislature specifically allowed cities add specificity to the procedural requirements of ORS 195.505, including adopting local definitions of "established camping site." This proposed definition is not a rewrite of Council's 2021 time-place-manner regulations, and in fact does not modify the substantive regulations that Council adopted; and

WHEREAS, this proposed code change does not change the time-place-manner regulations that City Council adopted in 2021, but defines a currently-undefined term in an attempt to make the original intent of the 2021 regulations more enforceable and uses authority delegated by the Legislature to adopt local definitions to ensure that a locally-adopted time-place-manner regulation which was based on express language from federal case law can be enforced as originally intended; now, therefore,

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. Council hereby approves the adoption of a local definition of "established camping site" for purposes of Medford Municipal Code 5.257.

Section 1. Sections 5.257 (Prohibited Camping, Lying, and Sleeping) of the Medford Municipal Code is hereby amended to read as set forth below: [language in **bold font** is new; language in ~~strike through~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity].

5.257 Prohibited Camping, Lying, and Sleeping

(e) "Vehicle camping in a lawful parking space" refers to a person experiencing homelessness utilizing a motor vehicle in a lawful parking space as a temporary place to live. The vehicle must be operational and must be moved at least every 24 hours. To fall within this definition, the parking space at issue cannot be adjacent to residences.

(f) "Personal property" means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.


(g) "Established camping site" means a campsite that has been in its current location for at least five days. If law enforcement officials do not have evidence about the age of a campsite, law enforcement officials should presume it is an established camping site.

* * *

PASSED by the Council and signed by me in authentication of its passage this 4th day of May, 2023.

ATTEST:


City Recorder


Mayor Randy Sparacino

APPROVED: May 4, 2023


Mayor Randy Sparacino

ORDINANCE NO. 2021-75

AN ORDINANCE amending Section 5.257 of the Medford Municipal Code revising and updating the notice and property-handling provisions related to unlawful, established campsites to comply with changes recently adopted by the Oregon Legislature through HB 3124.

WHEREAS, on April 2, 2021, Council adopted Ord. No. 2021-23, adopting time-place-manner regulations for the Prohibited Camping ordinance;

WHEREAS, state law, ORS 203.079, previously required that, except in emergencies, unlawful campsites be provided at least 24 hours posted notice before removal. 2021 House Bill 3124, which recently passed both houses of the Oregon legislature, updated ORS 203.079 and changed the 24-hour notice requirement to 72 hours, revised the property-handling requirements, and made wording changes and clarifications to the statute;

WHEREAS, amendments to the notice and property-handling components of MMC 5.257 could not have been included as part of City Council's vote on April 2, 2021, because HB 3124 was still evolving at that point, with Oregon Senate amendments occurring on June 3, 2021; and

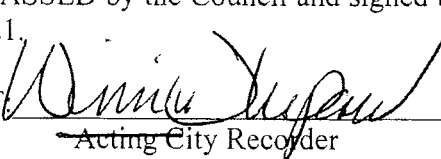
WHEREAS, as a practical matter, the City has been using 72-hour notices and property-handling procedures that are compliant with the requirements of HB 3124 and, as such, this code change will not impact the dismantling of unlawful, established campsites; now, therefore,

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. Section 5.257 of the Medford Municipal Code is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein by reference [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance, but was omitted for the sake of brevity].

PASSED by the Council and signed by me in authentication of its passage this 15th day of July, 2021.

ATTEST


Acting City Recorder


Mayor

APPROVED July 15, 2021


Mayor

EXHIBIT A

5.257 Prohibited Camping, Lying, and Sleeping

(1) As used in this section:

* * *

(f) “Personal property” means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

* * *

(6) ~~Prior to~~ Except as provided in subsection (10) of this section, at least 72 hours before removing homeless individuals from an established camping site, law enforcement officials shall post a written notice, written in English and Spanish, 24 hours in advance at all entrances to the camping site to the extent that the entrances can reasonably be identified.

(a) ~~At the time the~~ When a 72-hour notice is posted, law enforcement officials shall inform local agencies that deliver social services to homeless individuals that as to where the notice has been posted. Any local agency, providing service within the City limits of Medford, desiring to be on this notification list must provide its name, address, telephone number, and name of contact person to the Medford Police Department, in writing, requesting notification.

(b) The local agencies may arrange for outreach workers to visit the camping site ~~where a notice has been posted~~ that is subject to the notice to assess the need for social service assistance in arranging shelter and other assistance.

(7)(a) All ~~unclaimed~~ personal property at the camping site that remains unclaimed after removal shall be given to law enforcement officials ~~whether 24-hour notice is required~~ a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (10) of this section, whether notice is required or not.

(b) The unclaimed personal property must be stored in a facility located in the same community as the camping site from which it was removed. For purposes of this section, the City of Medford is considered a single community.

(c) Items that have no apparent value or utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.

(d) Weapons, controlled substances other than prescription medication and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.

EXHIBIT A

(8) The written notice required under subsection (6) of this section must state, at a minimum:

(a) Where unclaimed personal property will be stored;

(b) A phone number that individuals may call to find out where the property will be stored; or

(c) If a permanent storage location has not yet been determined, the address and phone number of an agency that will have the information when available.

(9)(a) The unclaimed personal property shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.

(b) The property shall be stored for 30 days during which it ~~will~~ **shall** be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed ~~for after~~ 30 days may be disposed of ~~or donated to a corporation described in section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2020. For purposes of this subsection, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an unsanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site. Weapons, drug paraphernalia, and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials.~~

(10)(a) The ~~24-hour~~ **72-hour** notice ~~required~~ **requirement** under subsection (6) of this section ~~shall~~ **does** not apply:

(ai) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring **at an established camping site**;

(bii) In the event of an exceptional emergency ~~such as at an established camping site, including, but not limited to, possible site contamination by hazardous materials or when there is a public health emergency or other~~ immediate danger to human life or safety; or

(eiii) When the campsite is located in the areas specified in subsection (5)(a) of this section, and the notice is placed during the time frame described in subsection (5)(a) of this section, or when in the discretion of the Fire Chief or the Fire Chief's designee, the Greenways or Prescott Park should be immediately closed for fire danger as described in subsection (5)(a) of this section or per Administrative Regulation 907.

(b) If a funeral service is scheduled with less than 72 hours' notice at a cemetery at which there is a camping site, or a camping site is established at the cemetery less than 72 hours

EXHIBIT A

before the scheduled service, the written notice required under subsection (6) of this section may be posted at least 24 hours before removing homeless individuals from the camping site.

(911) A person authorized to issue a citation for unlawful camping may not issue the citation if the citation would be issued within 200 feet of ~~the a notice described in~~ **required under subsection (6) of this section** and within two hours before or after the notice was posted.

(4012) Violation of subsection (3) of this section constitutes a violation. Violation of subsection (4) of this section consisting of vehicle camping in a lawful parking space constitutes a violation. Every day in which such violations occur constitutes a separate violation. A violation of subsection (4) or (5) of this section constitutes a crime, except for vehicle camping in a lawful parking space.

ORDINANCE NO. 2021-125

AN ORDINANCE amending Section 5.257 of the Medford Municipal Code revising the time-place-manner restrictions for prohibited camping by adding a buffer area adjacent to residential properties and prohibiting camping and sleeping in cemeteries.

WHEREAS, on April 2, 2021, Council adopted Ord. No. 2021-23, adopting time-place-manner regulations for the Prohibited Camping ordinance, and on July 15, 2021, Council Bill 2021-75 was approved, amending the notice and property-handling provisions of the prohibited camping ordinance consistent with recent state legislation; and

WHEREAS, on September 16, 2021, Council directed staff to bring forward an amendment to the time-place-manner restrictions of Medford Municipal Code 5.257 to include a 20-foot buffer between residential parcels or structures and permissible lying and sleeping. In addition to the buffer requested by Council, staff is recommending that camping and sleeping be prohibited in cemeteries; now, therefore,

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 5.257(5) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance, but was omitted for the sake of brevity]:

5.257 Prohibited Camping, Lying, and Sleeping.

* * *

(5) No person shall camp, lie, sleep, or use bedding materials in any of the following circumstances, unless otherwise specifically authorized by this code, by declaration of the Mayor in emergency circumstances, by executive order of the City Manager pursuant to such emergency declaration, or by executive order of the City Manager pursuant to such declaration, or by declaration of the City Manager in the case of a severe event:

* * *

(h) Within 20 feet of a privately-owned parcel zoned for residential uses, or within 20 feet of a residential structure regardless of zoning; or

(i) Within the I.O.O.F Eastwood Cemetery, or any other cemetery, mortuary, memorial park, or similar property.

* * *

PASSED by the Council and signed by me in authentication of its passage this 4th day of November, 2021.

ATTEST


City Recorder


Mayor

APPROVED November 4, 2021


Mayor

**CITY OF REDMOND
ORDINANCE NO. 2023-02**

AN ORDINANCE AMENDING THE REDMOND CITY CODE CHAPTERS 4, 5, 6 and 7 REGULATING CAMPING ON PUBLIC PROPERTY, ENFORCEMENT OF PROPERTY IN RIGHTS-OF-WAY, MAKING TECHNICAL CHANGES TO IMPROVE ADMINISTRATION AND DECLARING AN EMERGENCY.

WHEREAS, The City of Redmond desires to allow individuals and families that are temporarily experiencing the effects of homelessness to camp in relatively safe and sanitary locations while they are actively seeking access to stable and affordable housing; and

WHEREAS, The City of Redmond desires to establish codes related to camping in the City to allow for legal camping during reasonable time periods, while protecting sensitive areas of the City that are disproportionately impacted by the negative effects of such activity; and

WHEREAS, The City of Redmond desires to discourage camping in areas where such activities fundamentally undermine the public's ability to use that public property for its intended purpose and create unsafe and unsanitary living conditions, which can threaten the general health, welfare and safety of the City and its inhabitants; and

WHEREAS, The City of Redmond encourages the active participation of all concerned persons, organizations, businesses and public agencies to work in partnership with the City and the homeless community to address the short- and long-term impacts of unsheltered and homelessness in the community; and

WHEREAS, the City of Redmond wishes to create a process to ensure camping is available and appropriately regulated in limited situations; and

WHEREAS, the City of Redmond recognizes changes are needed to the City Code to create consistency and improve the regulation of property in rights-of-way; and

WHEREAS, the City Council finds that the attached code amendments (Exhibit A) are necessary to further the above interests and to protect the health, safety and welfare of City of Redmond residents.

NOW, THEREFORE, THE CITY OF REDMOND ORDAINS AS FOLLOWS:

SECTION ONE: The City of Redmond hereby amends the Redmond City Code Chapter 4 – Utilities, Chapter 5 – Public Protection, Chapter 6 – Traffic, and Chapter 7 – Business. A copy of the code amendments is attached hereto as “Exhibit A.”

SECTION TWO: SEVERABILITY. The provisions of this Ordinance are severable. The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given without such invalid part or parts.

SECTION THREE: The City Council finds that it is in the best interest of the City of Redmond to have this Ordinance take effect immediately upon adoption and signature.

Therefore, the City Council hereby declares an emergency.

PASSED by the City Council and **APPROVED** by the Mayor this 14th day of March 2023.

/s/ Ed Fitch
Ed Fitch, Mayor

ATTEST:

/s/ Kelly Morse
Kelly Morse, City Recorder

Exhibit A Redmond City Code Proposed Amendments

Proposed text amendments are shown in strike-through and in Red or Red Underline.

CONTENTS

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5 PUBLIC PROTECTION

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<u>Camping Regulations</u> Safe Parking Program and Vehicle Camping	5.700 to 5.7 <u>2</u> 15

(***)

CHAPTER 4: UTILITIES - SYSTEMS DEVELOPMENT CHARGE

(***)

4.735 Credits.

(***)

5. *Transferability of credits.* Credits shall be transferable from one property or development to another, provided that the transferor shall note in writing on the credit certificate the effective date of the transfer, and the name, address and telephone number on the transferee.
- ~~6. *Affordable Housing SDC Credit Transfer Policy.* The City Council may establish an Affordable Housing SDC Credit Transfer Policy by Resolution. Any such policy will include at a minimum the following elements:~~
 - ~~A. The policy shall establish a SDC credit bank with credit derived from publicly owned demolished or relocated single family dwelling unit structures previously utilized by city infrastructure.~~
 - ~~B. The value of SDC credit within the bank shall be calculated as the cash value of the SDC (improvement and reimbursement) at the time of demolition.~~
 - ~~C. The cash value of the SDC credit shall be applied to qualified affordable housing projects as determined by the Affordable Housing SDC Credit Transfer Policy.~~
 - ~~D. The policy shall provide a process to be followed by applicants for the allocation of any credits in the City's SDC credit bank. Such applications shall be reviewed by the Public Works Director and decided in writing by the City Manager or his/her designee. Appeals of decisions under the Policy shall be made consistent with Section 4.740. Neither this code provision or the related Policy guarantee either the existence of credits or the approval of any transfer request.~~
67. *Limitations on credits.*
 - A. Credits are not transferable from one type of SDC systems development charge to another.

- B. Credits shall be used within ten years from the date the credit is given.
- C. Credits are not refundable for cash or any other thing of value.
- 78. *Application for credit.* Application for SDC credits upon construction of a qualified public improvement, including any eligible right-of-way dedication, must be made within 90 days of City acceptance of the improvement (not including warranty period).
- 8. *Affordable Housing SDC Credit Transfer Policy. The City Council may establish an Affordable Housing SDC Credit Transfer Policy by Resolution. Any such policy will include at a minimum the following elements:*
 - A. The Policy shall establish a SDC credit bank with credit derived from publicly owned demolished or relocated dwelling unit structures previously connected to city infrastructure.
 - B. The value of SDC credit within the bank shall be calculated as the cash value of the SDC (improvement and reimbursement) at the time of demolition or relocation.
 - C. The cash value of the SDC credit shall be applied to qualified affordable housing projects as determined by the Affordable Housing SDC Credit Transfer Policy (Policy).
 - D. The Policy shall provide a process to be followed by applicants for the allocation of any credits in the City's SDC credit bank. Such applications shall be reviewed by the Community Development Department and decided in writing by the City Manager or designee. Appeals of decisions under the Policy shall be made consistent with Section 4.740. Neither this code provision or the related Policy guarantee either the existence of credits or the approval of any transfer request.
 - E. Limits on Affordable Housing SDC Credits:
 - 1. Credits shall be used within two years from the date the credit is given.
 - 2. Credits are only applicable to projects constructed by non-profit organizations.

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Chapter 5: Public Protection

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Parks

5.312 Definitions. For purposes of Section 5.314, the following shall mean:

City Property. Other real property owned or controlled by the City either within or without the city limits, excluding maintained city streets.

Person. A person, firm or corporation, not including City or Redmond Area Parks and Recreation District ~~Central Oregon Park & Recreation District~~ personnel or those acting with the authority or permission of the Council or the Redmond Area Parks and Recreation District ~~Central Oregon Park & Recreation District~~.

Public Parks. All property owned or controlled by the City or Redmond Area Parks and Recreation District ~~by the Central Oregon Park and Recreation District~~ and operated for the public's recreational use.

5.314 Violations.

- 1. Persons using public parks and other city property shall comply with ~~obey~~ the following rules and regulations:
 - A. No person shall cut, remove, or damage flowers, trees, or trails.

- B. No person shall build a fire except within a provided fireplace or portable gas, gasoline, charcoal, or oil camp stove or fireplace provided. Fires shall not be left unattended and every fire must be extinguished before its user leaves the park. A provided fireplace or portable gas, gasoline, charcoal, or oil camp stove Portable gas, gasoline, charcoal and oil camp stove may only be used in the parks only if it is found to be in safe operating condition and only if operated in a safe manner.
- C. No person shall camp as defined in Section 5.705, except as allowed pursuant to in areas Section 5.700 et seq. designated for camping or in connection with activities authorized by the Council.
- D. No person shall damage or injure a structure, building, installation, equipment or other property ~~in public parks.~~
- E. No person shall sell merchandise or services or operate a concession ~~in public parks~~ without first obtaining any applicable ~~the appropriate a permits~~ or business license.
- F. No person shall litter, ~~in the parks.~~ bring, or dispose of garbage or refuse. Garbage and or refuse shall be deposited in proper receptacles ~~provided for this purpose.~~ Garbage and refuse shall not be brought to parks.
- G. No person shall operate or park a motor vehicle except on roads or designated parking areas.
- H. No person shall operate in or bring ~~into a public park~~ a vehicle with a gross weight exceeding five tons, except buses carrying passengers to the park and vehicles necessarily used in the construction and maintenance of public facilities.
- I. No persons shall use a device to amplify sound unless done so in a manner allowed by the City's Noise Ordinance, or otherwise authorized by permit from the City. ~~without a permit from the City, except radios, tape and CD players and similar devices may be used if done so in a manner allowed by the City of Redmond Noise Ordinance.~~
- J. No person shall ride or lead a horse ~~in a public park~~ except on a designated bridle path. Horses or other animals shall not be tied to a tree or shrub in such manner as to cause damage to the tree or shrub.
- K. No person shall use golf clubs, archery equipment, discus, javelin, shot put or model aircraft ~~in parks~~ except as permitted by the City.
- L. Except as authorized ~~by permit~~ by the City of Redmond or, where required, a permit from the Oregon State Fish and Game Commission, no person shall hunt, pursue, trap, kill, injure, or disturb the habitat of a ~~bird or~~ an animal.

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- Q. No person shall use the public parks between from one hour after sunset until sunrise, except as permitted by the City Manager or designee. No person shall use public park structures, and buildings, or maintained areas except as posted and as permitted by the City Manager or designee and regulated per Section 5.700 et seq.
- R. No person shall enter any building, enclosure, or place within any of the parks upon which the words "no admittance" is displayed or posted by sign, placard, or otherwise, without the consent of the Public Works Department or Parks Division parks supervisor.
- S. No person shall refuse to comply with a request ~~to obey~~ any reasonable direction of a City employee park officer or employee employed by the Public Works Department, ~~or an officer of the Redmond City Police Department.~~

- T. No person shall willfully mark, scratch, disfigure, deface, or in any manner injure any public drinking fountain in the City, or throw, place, or deposit in any cup or basin of same any cigar stub or cigarette stub, or any other matter or refuse ~~whatever~~, or obstruct the regular flow of water thereof in any manner ~~whatever~~ in public parks.
2. A violation of this section is a Class B civil infraction.

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CAMPING REGULATIONS ~~SAFE PARKING PROGRAM AND VEHICLE CAMPING~~

5.700 Purpose and Scope.

1. The purpose of this section is to maintain rights-of-way, streets, parks, and other public areas within the city in a clean, sanitary, and accessible condition and to adequately protect the health, safety, and public welfare of the community by addressing time, place, and manner regulations that identify when, where, and how camping is not prohibited, as well as define enforcement and compliance. This section addresses camping in tents and other portable shelters, as well as camping and sleeping in vehicles.
2. This section is meant to regulate the use of public property within the city and is not intended to regulate activities on private property.

~~Safe parking, provided through overnight camping and transitional overnight parking accommodations as described in this section, is intended to be used on a limited basis for emergency or transitional shelter purposes by individuals, families, or households who lack permanent or safe shelter.~~

5.705 Definitions. For the purposes of Sections 5.700 to 5.745 5.725, the following definitions mean terms and phrases shall have the meaning set forth herein:

Camp or Camping. To pitch, erect, create, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.

Campsite. Any place where one or more persons have established temporary sleeping accommodations by use of camp facilities or camp paraphernalia.

Camp Facilities. Include, but are not limited to, tents, bivouacs, huts, other temporary or portable shelters, and vehicles or Recreational Vehicle.

Camp Paraphernalia. Includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or other sleeping matter, or non-city designated cooking facilities and similar equipment.

Park Areas. A publicly owned grounds operated under the supervision of the City's Public Works Department, providing outdoor passive and active recreation opportunities.

Parking Lot. A developed location that is designated for parking motor vehicles, whether developed with asphalt, concrete, gravel, or other material.

Person in Charge. A person who has lawful control of a premises by ownership, by official position, or by another legal relationship to the premises.

Public Property. Any real property or structure owned, leased or managed by the City, including public rights-of-way and easements.

Recreational Vehicle (RV). See section 5.325.

Religious Institution or Place of Worship. A structure used primarily as a meeting area for religious activities.

Sanitary Facilities. Including, but not limited to, toilet, hand washing, and trash disposal facilities.

Solid Waste. Any garbage, trash, debris, yard waste, food waste, other discarded materials, and items in unsanitary condition or with no apparent value or utility.

Solid Waste Disposal Services. Contracted solid waste collection service for a collection of solid waste.

Store or Storage. To put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

Street. Any highway, lane, road, street, right-of-way, alley, and every way or place in the City of Redmond that is publicly owned or maintained for public vehicular travel.

Utility Facility. Any major structure owned or operated by a public, private, or cooperative electric, fuel, communication, sewage, or water company for the generation, transmission, distribution, or processing its products or for the disposal of cooling water, waste, or by-products, and including power transmission lines, major trunk pipelines, power substations, dams, water towers, sewage lagoons, sanitary landfills, and similar facilities. A minor utility facility is excluded (i.e., sewer, water, gas, telephone, and power local distribution or service lines, lift-stations and similar facilities allowed in any zone).

Vehicle. A car, camper, travel trailer, recreational vehicle, or similar conveyance. All vehicles must be operable and movable, either by their own power or towing if designed to be towed.

Vehicle Camp. Set up, or remain in a vehicle, for the purpose of establishing or maintaining a temporary place to live.

Vehicle Camping Site for Homeless Persons. A location where overnight camping spaces are provided temporarily to homeless persons living in vehicles.

~~5.715 – Regulations for camping that is not part of the Safe Parking program.~~

5.710 Prohibited Camping. Except as expressly authorized in the City Code, it shall be unlawful for any person to:

1. Establish or occupy a campsite at any time on the following property:
 - A. Structures or buildings on developed or regularly maintained portions of Public Park Areas.
 - B. In the Central Business District (C-2) Commercial, Limited Service Commercial (C-4), and Public Facilities (PF) zones.
 - C. Public Works facility or Public Parking Lot.
 - D. Those containing a Utility Facility and within 500 feet.
 - E. Within 1,000 feet of any school zone or public, private, or parochial school as defined by 18 USC § 921(a)(25) & (26).
 - F. Within 1,000 feet of any certified or registered child care facility or preschool recorded program as defined in ORS 329A.250, as amended.

- G. Within 500 feet from any permitted shelter use or Safe Parking and Vehicle Program site authorized by the City.
 - H. On sidewalks or in a pedestrian right-of-way in a manner reducing the clear, continuous sidewalk width of less than five feet.
- 2. Camp or maintain a campsite on any Public Property from 7:00 a.m. until 9:00 p.m.
- 3. Store personal property, including camp facilities and camp paraphernalia, on any Public Property from 7:00 a.m. until 9:00 p.m.
- 4. Knowingly leave personal property unattended on Public Property from 7:00 a.m. until 9:00 p.m. Personal property left unattended may be removed and disposed by the City, in accordance with State law, if:
 - A. The property poses an immediate threat to public health, safety or welfare;
 - or
 - B. The property has been posted with a written notice in accordance with State law.
 - C. Any property removed by the City shall be held and disposed of pursuant to State law if not claimed within 30 days after removal.
 - 1. Individuals may claim their property, without a fee, by contacting the Police Department within 30 days.
 - 2. Items that have no apparent value, utility or are in unsanitary condition may be immediately discarded.
 - 3. Weapons, controlled substances other than prescription medication, and items that appear to be either stolen or evidence of a crime shall be retained and disposed of by the Police Department in accordance with applicable legal requirements for the property in question.
- 5. Notwithstanding the provisions of this Section, the City Manager or designee may temporarily authorize camping or storage of personal property on public property by
written order that specifies the period of time and location:
 - A. In the event of emergency circumstances; or
 - B. In conjunction with a public assembly, special event or temporary usepermit.

5.715 Penalties and Enforcement (Camping)

- 1. Violation of any provisions in Section 5.700 et al is a Class C violation pursuant to the City Code and may result in a violation of ORS Chapter 153. Each day that a violation occurs will be considered a separate offense.
- 2. In addition to any other penalties that may be imposed, any campsite used for overnight sleeping in a manner not authorized by Section 5.710 or other provisions of the City Code shall constitute a public nuisance and may be abated as such and in accordance with State law.

5.710 Safe Parking and Vehicle Camping

5.720 Safe Parking and Vehicle Camping Guidelines. Safe parking, provided through overnight camping and transitional overnight parking accommodations as described in

this section, is intended to be used on a limited basis for emergency or transitional shelter purposes by individuals, families, or households who lack permanent or safe shelter. ~~Guidelines.~~ Vehicle-camping is hereby authorized, subject to the standards and requirements set forth below:

1. Vehicle-camping is limited to properties operated by a religious institution or place of worship, non-profit, public, or commercial entity, and not currently used for a residential use. Vehicle-camping is not allowed within the Downtown Overlay District (DOD) or on Limited Service Commercial (C-4) ~~on commercially zoned properties~~ without City Council approval.
2. Notwithstanding any other provision of the Redmond City Code, persons may sleep overnight in a vehicle on a premises by an entity that owns or leases real property on which a structure and an associated parking lot are located, provided:
 - A. That said persons have obtained the permission of the Person in Charge.
 - B. The property owner has applied for and received approval for operation and registers the location with the City's Community Development Department.
 - C. The property owner agrees to abide by all conditions, including acceptance of liability and demonstration of insurance coverage in amounts acceptable to the City.
3. A person in charge who allows a person or persons to sleep overnight in a vehicle on the premises pursuant to this section shall:
 - A. Not grant permission for more than six (6) vehicles used for sleeping to utilize the parking lot at any one (1) time.
 - B. Provide or make available on the premises sanitary facilities including, but not limited to, toilet, handwashing, and trash disposal facilities at all hours people are authorized to be present for overnight parking.
 - C. Require all vehicles used for camping be licensed, and registered and operable.
 - D. Not require payment of any fee, rent, or other monetary charge for overnight sleeping in a vehicle as authorized by this section.
 - E. Not allow open flames at the premises, ~~including~~ or within vehicles unless contained in a Recreational Vehicle (RV) currently titled and registered with the State of Oregon Department of Motor Vehicles.
 - F. Develop reasonable policies that set out:
 1. How individuals who may stay on the premises will be selected.
 2. How many continuous days someone may stay at the premise.
 3. What supervision will be provided.
 4. What structures or other items may be placed on the premises.
 5. Any other safety or aesthetic requirements for staying on the premises.
4. A person in charge who permits overnight sleeping in a vehicle pursuant to this section may revoke that permission at any time and for any reason. Any person who receives permission to sleep on a premises as provided in this section shall leave the premises immediately after permission has been revoked. The owner-operator has the right to refuse entry or discontinue use for any individual.
5. Parking spaces used for vehicle camping, and storage and sanitary facilities are located at a minimum:
 - A. No less than 10 feet from property lines of the premises/subject site.
 - B. Storage and sanitary facilities are no less than 20 feet from property lines.
 - C. Clear of pedestrian walkways, fire lanes, or other emergency access areas, or areas needed for corner vision or sight distance.
 - D. Applicable siting standards are subject to specific site constraints.

6. Camping is prohibited within 500 feet of a Safe Parking and Vehicle Program site permitted by the City.

5.715 Enforcement.

5.725 Enforcement (Safe Parking and Vehicle Camping)

1. This section shall not be construed to abrogate or limit the jurisdiction or authority of the Redmond Police Department or any other law enforcement agency.
2. Notwithstanding any other provision of this section, the City Manager or designee may:
 - A. Revoke authorization for safe parking programs and vehicle camping for violations of the requirements of this section.
 - B. Prohibit safe parking programs and vehicle camping on a property if the City finds that any activity related to safe parking or vehicle camping on that property constitutes a nuisance or other threat to the public welfare.
3. Nothing in this section of this code creates any duty on the part of the City or its agents to ensure the protection of persons or property with regard to permitted safe parking programs and vehicle camping accommodations.

CHAPTER 6: TRAFFIC

(***)

- 6.020 Definitions.** In addition to the definitions contained in the Oregon Vehicle Code, the following mean:

Abandoned vehicle. ~~A vehicle left unoccupied and unclaimed, unregistered or uninsured, inoperable or could not be lawfully operated on the streets or highway, or in a damaged or dismantled condition upon the streets or alleys of the City and includes motor vehicles, boats, trailers, or other personal property.~~ Any vehicle, trailer, boat or property left upon any public highway, rights-of-way, or public parking lot, which reasonably appears to be inoperative, wrecked, discarded, totally or partially dismantled, or could not be legally operated upon a public highway, or is either uninsured or not registered in Oregon.

(***)

Parking Regulations

(***)

- 6.153 Prohibited Storage.** No person shall store any vehicle, boat, trailer, or other personal property on the City streets or within City the right-of-way for the City of Redmond. A vehicle or other personal property is considered stored on the street or within the right-of-way if it is not being presently used for local personal transportation and has been parked on a street or within the right-of-way for more than 72 consecutive hours ~~seven days in any six month period.~~ A violation of this section is a parking violation.

- 6.155 Prohibited Parking or Standing.** In addition to those areas designated in ORS 811.550, no person shall stop, park or leave standing any vehicle, whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, in any of the following places:

1. Semi-truck tractor or trailer on a street in a residential zone or a residential area with an established residential use between the hours of 9 p.m. and 7 a.m.
- ~~2. A semi-truck tractor or trailer blocking a sidewalk in a residential zone or a residential area with an established residential use.~~
23. A vehicle in an alley, except for a stop of not more than 30 consecutive minutes for loading or unloading persons or materials.
34. A vehicle in violation of lawfully erected parking limitation sign.
45. Upon State US Highway 97 or State Hwy 126, except for authorized parking spots, within City limits. from Highland Avenue south to City limits.
- ~~6. A commercial trailer or utility trailer (including but not limited to boat trailer, dump trailers) for any purpose located on a street in a residential or commercial zone for a consecutive period exceeding 10 hours. Provided however, the Chief of Police may issue a parking permit for a period not to exceed 48 hours in the event said period is needed to load or unload personal property. Provided further, brief interruptions in parking (for a period of 2 hours or less) shall not interfere with the 10 hour parking restriction.~~
57. A motor home, camp trailer or other vehicle that is being used to reside or sleep in on a street in a residential zone or a residential area with an established residential use, for more than 72 consecutive hours in any six month period.
6. A vehicle parked on SW Fifth Street or SW Sixth Street, between SW Black Butte Avenue and SW Forest Avenue for more than 72 consecutive hours.
78. A violation of this section is a parking violation.

6.157 Prohibiting Parking on Certain Streets Overnight and During Snow Emergencies.

- ~~1. No person shall park any vehicle, boat, trailer or other personal property except in compliance with directions of a peace officer or an official traffic control device on any of the following streets between the hours of 2:30 a.m. and 5:30 a.m.:~~
 - ~~A. Fifth and Sixth Streets between Forest Avenue and Black Butte Avenue.~~
 - ~~B. The following avenues between Fifth and Seventh Streets:~~
 - ~~1. Forest Avenue~~
 - ~~2. Evergreen Avenue~~
 - ~~3. Deschutes Avenue~~
 - ~~4. Cascade Avenue~~
 - ~~5. Black Butte Avenue~~
12. In the event that there is an accumulation of snow in excess of four (4) inches, the City Manager or designee is hereby authorized to prohibit any person from parking a vehicle on the streets described in Section 6.157(1)(2) until the snow is removed. The City Manager or designee shall publish notice of said prohibition as soon as it can be reasonably determined that said prohibition shall be necessary. For the purpose of this Section, public notice shall only require dissemination of the prohibition to the news media and the posting of temporary no parking signs in various locations on said streets.
2. During a snow emergency, no person shall park any vehicle, boat, trailer or other property except in compliance with directions of a City employee or an official traffic control device on any of the following streets between the hours of 2:30 a.m. and 5:30 a.m.:
 - A. SW Fifth and SW Sixth Streets between SW Forest Avenue and SW Black Butte Avenue.
 - B. The following avenues between SW Fifth and SW Seventh Streets:
 1. SW Forest Avenue
 2. SW Evergreen Avenue

3. SW Deschutes Avenue
4. SW Cascade Avenue
5. SW Black Butte Avenue

3. The City Manager or designee is also hereby authorized to remove any vehicles, boats, trailers or other personal property parked in violation of Section 6.157(2)(1) immediately without any further notice to the registered owner or operator thereof. ~~The City Council specifically finds that~~ Said vehicles constitute a hazard and an obstruction to motor vehicle traffic using the road or highway as defined in ORS 819.120. Any vehicle or other ~~personal~~ property removed under the provisions of this action shall be subject to the provisions of ORS 819.120.
4. A violation of this section is a parking violation.

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6.163 Removal or Towing of Illegally Parked Vehicles & Property

1. The City may remove (tow) or otherwise cause to be moved an illegally parked vehicle or property that is unattended or that is not removed after a request is made to the owner or person in charge of the vehicle or property.
2. The City should not remove any vehicle that was originally legally parked, unless:
 - A. The vehicle or property has remained illegally parked or stored for a period three times longer than the time originally allowed for the vehicle or property to be parked or stored.
 - B. Removal is needed for street cleaning, snow removal, or maintenance after at least 24 hours' notice.
 - C. The vehicle is obstructing traffic, including blocking of bicycle lanes.
 - D. The vehicle has been parked unmoved for a period of two times longer than the time originally allowed upon SW Fifth Street and SW Sixth Street between SW Forest Avenue and SW Black Butte Avenue.
 - E. The vehicle is parked on a street that has been closed or scheduled for closure.
3. Said vehicles constitute a hazard and an obstruction to motor vehicle traffic using the road or highway as defined in ORS 819.120. Any vehicle or other property removed under the provisions of this action shall be subject to the provisions of ORS 819.120. When the property removed is not subject to 819.120, the City may pursue liens against the owner of the property through process defined by City Code.

- 6.165 Prohibited Parking.** No operator shall park and no owner shall allow a vehicle, boat, trailer or other ~~personal~~ property to be parked on a street for the principal purpose of:
1. Displaying the vehicle, boat, trailer or other ~~personal~~ property for sale.
 2. Repairing or servicing the vehicle, boat, trailer or other ~~personal~~ property, except repairs necessitated by an emergency.
 3. Displaying advertising from the vehicle, boat, trailer or other ~~personal~~ property.
 4. Selling merchandise from the vehicle, boat, trailer or other ~~personal~~ property, except when authorized.
 5. A violation of this section is a parking violation.

6.167 Prohibited Parking for Displaying of a Vehicle, Boat, Trailer or Other Personal Property or its Contents for Sale. For the purpose of displaying a vehicle, boat, trailer, other property or its contents for sale:

1. No person shall park a vehicle, boat, trailer or other ~~personal~~ property for more than four (4) hours in a twenty-four (24) hour period on private property not owned or leased by the owner of the vehicle, boat, trailer or other ~~personal~~ property where such property is in view of or upon:

A. State US Highway 97.

B. NW/SW Fifth and Sixth Streets. (including but not limited to 5th and 6th Streets), State

C. State Highway 126 (Highland Avenue and Glacier Avenue), Airport Way and Veterans Sisters Avenue.

~~for the purpose of displaying the vehicle, boat, trailer or other personal property or its contents for sale, nor shall a person park a vehicle, boat, trailer or other personal property for more than four (4) hours in a twenty four (24) hour period on State Highway 97 (including but not limited to 5th and 6th Streets), State Highway 126 (Highland Avenue and Glacier Avenue) for the purpose of displaying the vehicle, boat, trailer or other personal property or its contents for sale, nor shall a person park a vehicle, boat, trailer or other personal property at any time on Airport Way or on Sisters Avenue for the purpose of displaying the vehicle, boat, trailer or other personal property or its contents for sale.~~

2. For purposes of this subsection, the display of any sign or notice that a vehicle, boat, trailer, ~~or other personal property or its contents~~ are for sale shall be sufficient proof that the vehicle, boat, trailer or other ~~personal~~ property is parked for the purpose of displaying the vehicle, boat, trailer, ~~or other personal property or its contents~~ for sale.
3. A violation of this section is a parking violation.

6.168 Prohibited parking in public parking lots, and enforcement. Enforcement of ~~parking regulations in public parking lots.~~

1. No person shall park a vehicle, boat, trailer or other ~~personal~~ property in a public parking lot in violation of the posted restrictions including but not limited to fire lanes, time limitations and handicapped parking. No person shall park in a public parking lot except in within a designated parking space. No person shall store any vehicle, boat, trailer, or other personal property in a public parking lot. A vehicle or other personal property is stored in a public parking lot if it is not being presently used for ~~local personal~~ transportation and has been parked in the parking lot for more than 72 consecutive hours ~~seven days in any six month period~~. For the purposes of this section, public parking lots shall include lots owned by the City of Redmond and the Redmond School District.
2. The Redmond Police Department, and its designees, ~~its officers and employees~~ are authorized to enforce such regulations by the issuance of parking citations.
3. A violation of Section One above shall be a parking violation.

6.170 Use of Loading Zone. No person shall stand or park a vehicle for any purpose or length of time in a place designed as a loading zone when the hours applicable to the loading zone are in effect, except for loading or unloading persons or materials. When the hours applicable to the loading zone are in effect, the stop for loading and unloading shall not exceed the time limits posted. If no time limits are posted, use of the zone shall not exceed 30 minutes. A violation of this section shall be a parking violation.

6.175 Unattended Vehicles. When a Redmond Police Officer or Police Department employee finds an unlocked motor vehicle parked or standing unattended with the ignition key in the vehicle, the agent officer is authorized to remove the key from the vehicle and deliver the key to the person in charge of the police Department station.

6.180 Standing or Parking Buses and Ground Transportation Services Taxicabs. The operator of a bus or ground transportation service (inclusive of rideshare services) taxicab shall not stand or park the vehicle on a street in a business district at a place other than a bus stop or ground transportation designated area. taxicab stand, except that this This provision shall not prevent the operator of a ground transportation service taxicab from temporarily stopping the ground transportation vehicle taxicab outside a traffic lane while loading or unloading passengers if no parking spaces are readily available.

6.185 Restricted Use of Bus and Ground Transportation Taxicab Stands Parking Areas. No person shall stand or park a vehicle other than a ground transportation vehicle taxicab in a designated ground transportation parking area taxicab stand or a bus in a bus stop, except that the operator of a passenger vehicle may stop temporarily while engaged in loading or unloading passengers when stopping does not interfere with a bus or ground transportation service taxicab waiting to enter or about to enter the restricted space.

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6.200 Time limit.

1. No person shall park in excess of a time limit duly posted for said area.
2. ~~No business owner, operator, employee or resident of a business or property on any street located between Black Butte Avenue and Glacier Avenue and 5th Street and 7th Street shall park in violation of any applicable parking restrictions for the streets within said area. If a business owner, operator, employee or resident therein violates the provisions of this Section, the applicable fine shall be set by resolution.~~
2. A violation of Section One above shall be a parking violation.

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CHAPTER 7: BUSINESS

Itinerant Merchants

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7.574 Conditions of Permit. Conditions of operation that are necessary to protect the public health, safety, morals and general welfare may be imposed on a permit. A permit also shall be subject to the following conditions:

1. All signage and display of merchandise shall meet the City's clear vision area requirements.
2. All outdoor storage and display shall not interfere with a property's ingress and egress.
3. All items and display paraphernalia must be removed from the site at the close of business each day.

4. No camping or residential use is permitted and is subject to Section 5.700 et seq. (Camping Regulations).

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Temporary Businesses

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7.587 Conditions of Permit. Conditions of operation that are necessary to protect the public health, safety, morals and general welfare may be imposed on a permit. A permit also shall be subject to the following conditions:

1. All signage and display of merchandise shall meet the City's clear vision area requirements.
2. All outdoor storage and display shall not interfere with a property's ingress and egress, and off-street parking requirements.
3. No camping or residential use is permitted and is subject to Section 5.700 et seq. (Camping Regulations).

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//End//

Title 4

CITY RESPONSES TO HOUSELESSNESS

Chapter 4.05 HOUSELESSNESS RESPONSE POLICY

4.05.010 Findings and Purpose

A. The City of Bend finds that each community member of Bend is entitled to a basic level of dignity, respect, and wellness, regardless of whether they are housed or unhoused. It is the official policy of the City that its responses to homelessness will be undertaken in accordance with these principles.

B. It is the policy of the City of Bend to utilize all existing and potential sources of funding that are made available from the federal and state governments for the provision of services and shelter for homeless individuals.

C. The intent of the City Council is to regulate camping and survival sheltering in public right-of-way only in the context of the work that has been done by the City and will continue to occur at the City and regional level, and the City remains committed to a comprehensive houselessness policy, including through a Camping Resolution Strategy.

D. As its regional efforts continue, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with limited resources.

E. The City Council acknowledges the lack of nightly shelter beds and housing currently available regionally and recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness.

F. The City Council acknowledges that it is currently unavoidable that some people will live or shelter for survival outdoors until they are able to access affordable or free shelter or housing. In Bend, this has typically meant sheltering, sometimes for extended periods of time, on City rights-of-way and City property, and at times on other agency property (such as ODOT).

G. Public rights-of-way are generally intended for public use and travel. The City Council is the road authority for rights-of-way within the City; as such, the City must consider the safety of motorists and pedestrians travelling on roadways and sidewalks, including to and from neighboring properties, businesses, and residences. The City has had increasing concerns regarding safety due to camping on or in rights-of way in or near streets, roads, sidewalks, and public access points.

H. Over the long term and working with the Deschutes County Coordinated Homeless Response Office, the City's goal is that people should not have to live outside

and there should be safer options because long-term camping for survival sheltering outside is not a solution for people without houses.

I. The City owns extremely limited property where camping can or should be allowed, particularly since the City does not own or manage parks in the City. City utility properties (stormwater, water, sewer) are sensitive and generally closed to the public or have limited access for safety, environmental and security reasons.

J. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way, which are intended to be as compatible as possible with the needs of everyone in Bend to be healthy, safe, and have access to public places. Smaller sites support the safety of people who are camping for survival on public property.

K. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way which will address issues such as fire risk, unsanitary conditions, trash, and public safety hazards to people camping and neighboring businesses and community members, and environmental degradation, which have occurred with longer-term camping in the City.

L. It is the intent of the City to evaluate each removal of a campsite in light of the criteria in Chapter 4.20 and with considerations of public health and safety, including for the people who are sheltering in the camps, potential user conflicts, and available resources. The City will use a team approach and coordinate with the Deschutes County Coordinated Homeless Response Office as appropriate.

M. When the City of Bend removes a camp or closes a location people are sheltering in the public right-of-way, it will provide a minimum 72-hour notice to everyone that would be affected by the move, except in cases of exceptional emergency or criminal activity, as allowed by state law and set forth in this Title. The City looks for the safest options for cleaning the camp, often hiring a contract company that uses best practices and safe collection and works with service providers and the regional office for trauma informed care and minimizing harm. Unless there is a public health or safety reason for emergency removal, service providers or other community resources will be notified in advance to be on hand for support and outreach ahead of time, consistent with State law.

Chapter ~~5.704.10~~

SAFE PARKING PROGRAMS

Sections:

4.10.0105.70.005	Purpose and Scope-
4.10.0105.70.010	Overnight Camping
4.10.0205.70.015	Transitional Overnight Parking Accommodations-
4.10.0255.70.020	Enforcement-

4.10.0105.70.005 Purpose and Scope.

- A. Notwithstanding any other provision of this code or the Bend Development Code, up to three vehicles may be used by people who lack access to permanent or safe shelter and who cannot obtain other low-income housing for overnight camping in a parking lot or paved or gravel surface of a parcel of any size owned or leased by a religious institution, nonprofit, business or public entity, with permission of the property owner and lessee, if applicable.
- B. A property owner or lessee who allows overnight camping on a property pursuant to this section shall:
1. Provide persons camping overnight with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities at all times people are authorized to be present for overnight camping; and
 2. Not require payment of any fee, rent or other monetary charge for overnight camping authorized by this section.
- C. A property owner who permits overnight camping pursuant to this section may revoke that permission at any time and for any reason. Any person who has permission to sleep on that property as provided in this section shall leave the property immediately after permission has been revoked.
- D. The provisions of this section are not intended to limit or otherwise change any land uses that may be permitted on property under the Bend Development Code. [Ord. NS-2402, 2021]

4.10.0155.70.010 Overnight Camping

- A. Notwithstanding any other provision of this code or the Bend Development Code, up to three vehicles may be used by people who lack access to permanent or safe shelter and who cannot obtain other low-income housing for overnight camping in a parking lot, or paved or gravel surface of a parcel of any size owned or leased by a religious institution, nonprofit, business or public entity, with permission of the property owner and lessee, if applicable.
- B. A property owner or lessee who allows overnight camping on a property pursuant to this section shall:
1. Provide persons camping overnight with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities at all times people are authorized to be present for overnight camping; and
 2. Not require payment of any fee, rent or other monetary charge for overnight camping authorized by this section.
- C. A property owner who permits overnight camping pursuant to this section may revoke that permission at any time and for any reason. Any person who has permission

to sleep on that property as provided in this section shall leave the property immediately after permission has been revoked.

D. The provisions of this section are not intended to limit or otherwise change any land uses that may be permitted on property under the Bend Development Code. [Ord. NS-2402, 2021]

4.10.0205.70.015 Transitional Overnight Parking Accommodations.

A. With authorization from the City, up to six vehicles and/or tents may be used for overnight accommodation of people who lack permanent or safe shelter and who cannot obtain other low-income housing in a parking lot, or paved or gravel surface of property owned or leased by a religious institution, nonprofit, business or public entity, with permission of the property owner and lessee, if applicable, as temporary transitional overnight parking accommodations. A public entity may allow more than six vehicles and/or tents on property owned or leased by the public entity, with a plan approved by the City, based on the size of the parcel, supervision plan, and sanitation plan proposed by the public entity. Temporary transitional overnight parking accommodations must be located at least 150 feet from a childcare facility or school, unless the parking accommodations are located on property owned or leased by a public entity or religious institution.

B. These temporary transitional overnight parking accommodations are intended to be used by individuals, families, or households on a limited basis for seasonal, emergency or transitional housing purposes. The transitional overnight parking accommodations may provide parking facilities, walkways and access to water, toilet, shower, laundry, cooking, telephone or other services either through separate or shared facilities. Any sanitation or other facilities added to the location for temporary transitional overnight parking accommodation must be temporary and removable.

C. Temporary transitional overnight parking accommodations must, at a minimum:

1. Apply for and receive authorization for operation from the City Manager or designee, and agree to abide by all conditions, including acceptance of liability and demonstration of insurance coverage in amounts acceptable to the City. City authorization is not a land use decision;
2. Provide access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities at all hours, people are authorized to be present for overnight parking, including the additional hours campers may stay at the site;
3. Provide supervision, case management, or supportive services. Supervision must include at a minimum nightly contact with each camper;
4. Develop policies that set out how individuals who may stay at the site will be selected, number of continuous days that someone may stay at the site, hours that overnight campers may stay at the site in addition to 9:00 p.m. to 7:00 a.m.,

what supervision will be provided, and what structures and other items may be placed on the site;

5. Not require payment of any fee, rent, or other monetary charge for temporary transitional housing accommodation; and

6. Prior to allowing any person to stay overnight as part of a temporary transitional overnight parking accommodation, provide notice of the intention to allow temporary transitional overnight parking to each property owner and occupant of each adjacent property, and, every night any person stays overnight, post a notice at a prominent location on the site. These notices must include the following information:

a. The name of the property owner or lessee and person or entity providing site supervision, and a telephone number where the entity or individual providing supervision may be contacted;

b. The number of approved vehicles and/or tents; and

c. The hours that overnight campers may stay at the site in addition to 9:00 p.m. to 7:00 a.m.

D. Property owners who allow temporary transitional overnight parking under this section may revoke permission for program operation at any time and for any reason. Any person who is on property for temporary transitional overnight parking accommodations under this section must leave the property immediately after permission has been revoked.

E. The provisions of this section for temporary transitional overnight parking are not intended to limit or otherwise change any land uses that may be permitted on property under the Bend Development Code. [Ord. NS-2402, 2021]

4.10.0255.70.020 Enforcement.

A. Notwithstanding any other provision of this section, the City Manager or designee may:

1. Revoke authorization for temporary transitional overnight parking for violations of the requirements of this chapter;

2. Prohibit overnight camping or temporary transitional overnight parking on a property if the City finds that any activity related to the overnight camping or temporary transitional overnight parking on that property constitutes a nuisance or other threat to the public welfare; or

3. Revoke permission for a person to camp overnight, whether in a temporary transitional overnight parking accommodation or not, on City-owned property if the City has a reasonable suspicion that the person has violated any

applicable law, ordinance, rule, guideline or agreement, or that the activity constitutes a nuisance or other threat to the public welfare.

B. No activity associated with overnight camping or temporary transitional overnight parking is allowed to occur that constitutes a nuisance or other threat to the public welfare.

C. Violation of the provisions of this chapter is a Class A infraction each day a violation occurs.

D. The City Manager may adopt administrative rules in the manner provided in BC [1.30.005](#) to implement this section.

E. Nothing in this section of this code creates any duty on the part of the City or its agents to ensure the protection of persons or property with regard to permitted overnight camping or temporary transitional overnight parking accommodations. [Ord. NS-2402, 2021]

Chapter 4.20

USE OF PUBLIC RIGHTS-OF-WAY AND CITY PROPERTY FOR CAMPING

Sections:

4.20.010	Purpose and Scope.
4.20.015	Definitions
4.20.020	Camping Prohibited
4.20.025	Enforcement.
4.20.030	Time, Place and Manner Regulation
4.20.035	Vehicles
4.20.040	Violations

4.20.010 Purpose

This Chapter is intended to balance and prioritize several interests: recognition of the essential human dignity of everyone in the City of Bend; the need to have safe and orderly conditions in City rights-of-way for the safety and benefit of everyone in Bend; the right of everyone in Bend to have shelter for sleep and safety; and respect for public spaces and public property in service to the entire community.

With this in mind, this Chapter is intended to regulate the use of public rights-of-way and City property to protect and preserve public places for their designed and intended purposes, while also making them available for shelter and sleeping by people who have no other options for shelter.

The City recognizes that surviving on City streets is typically an option of last resort. This Chapter and the City's enforcement efforts will be focused on mitigating the impacts to public health and safety that can arise from survival camping in public places.

4.20.015 Definitions

A. To "camp" or the act of "camping" means to pitch, use, or occupy camp materials or a camp for the purpose of occupancy, habitation, or sheltering for survival, and in such a way as will facilitate sleeping or storage of personal belongings, carrying on cooking activities, taking measures to keep protected from the elements including heat and cold, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep. A "camp" is a location where people camp or are camping.

B. "Camp materials" may include, but are not limited to, tents, huts, awnings, lean-tos, chairs, tarps or tarpaulins, cots, beds, sleeping bags, blankets, mattresses, sleeping or bedding materials, food or food storage items, and/or similar items that are or appear to be used as living and/or sleeping accommodations, or to assist with living and/or sleeping activities.

C. "Established campsite" means a location or locations in the public right-of-way or on City property where a camp, camps, and/or camp materials have been set up for 24-hours or more.

Note: "camp" "camping" "camp materials" and "established campsite" do not include vehicles, automobiles, or recreational vehicles used for shelter and/or sleeping, which are regulated at Section 4.20.025 of this Chapter.

D. "City parking lot or parking structure" is a type of City property, and means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated and/or used for parking vehicles.

E. "Public rights-of-way" means all City-owned or controlled rights-of-way, whether in fee title or as holder of a public easement for right-of-way or public access purposes. Public rights-of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or granted to the City for vehicular, pedestrian, or other means, and any planter strip or landscaped area located adjacent to or contained within streets that is part of the public right-of-way.

F. "City property" includes all real property, land and public facilities owned, leased (either to the City or by the City), controlled, or managed by the City of Bend including City parking lots or parking structures, but excluding City owned or managed rights-of-way.

4.20.020 Camping Prohibited on City Property

It is prohibited at all times for any person to use City property to camp or for camping or for the purpose of occupancy, habitation, or sheltering for survival in vehicles, automobiles, or recreational vehicles, provided that the City Manager may, in their discretion, designate certain City properties or portions of properties as areas where camping or using vehicles for sheltering and/or sleeping may be allowed on a limited

basis, and may set the terms and conditions of any camping or vehicle use that may be allowed. Any use of City property will follow the applicable processes, including, where applicable, the Bend Development and/or Municipal Code.

4.20.025 Enforcement

A. The City Manager is specifically authorized to modify or suspend enforcement of any section or element of this Chapter in the event of a declared emergency, pursuant to administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager's authority, regardless of whether an emergency has been declared.

B. The City Manager may adopt administrative rules or policies governing or guiding enforcement of this Chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances.

C. Enforcement should be tailored for various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with the code, or for other reasons that may support discretion in enforcement.

D. Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate. However, the intent of the City is to always resolve violations at the lowest possible level, and to engage to seek compliance and solve problems while maintaining the dignity of all involved. To that end, violations of this Chapter should only result in citations when other means of achieving compliance have been unsuccessful, or are not practicable for the particular situation.

4.20.030 Time, Place and Manner Regulations

A. People who do not have any other permanent residence or domicile and/or are involuntarily homeless are not prohibited from camping in the public rights-of-way, provided camping is occurring in compliance with the following time, place and manner regulations.

B. Time

1. Unless otherwise specified, any camping or camp, where allowed, may only occur for 24-hours at a time in any one location. After a camp has been in one place for 24-hours or more, the City may post notice at the location that the camp, and all associated camp materials, must be removed no more than 72-hours later and all personal property remaining will be removed, as described in Section 4.20.030.

2. After 24-hours in one location, the camp and all associated camp materials must be moved at least one block or 600 feet.

3. Enforcement of time restrictions may be suspended when an individual does not have access to shelter and when an individual is engaged in case management or behavioral health services, or when necessary or appropriate to respond to an individual's disability, as further set forth in the City's comprehensive administrative policy implementing this Chapter, adopted by the City Manager.

C. Place.

1. In addition to the prohibition on camping on City property in Section 4.20.020, camping is not allowed at any time in any of the following places:

- a. Any area zoned Residential (RL, RS, RM, RH) on the City of Bend Zoning Map in effect at the time.¹
- b. Within the Waterway Overlay Zone, as determined by the City of Bend Zoning Map and Bend Development Code.
- c. Any place where camping, a camp, or camp materials create a physical impediment to emergency or non-emergency ingress, egress or access to property, whether private or public, or on public sidewalks or other public rights-of-way, including but not limited to driveways providing access to vehicles, and entrances or exits from buildings and/or other real property.
- d. Any vehicle lane, bicycle lane, or roundabout within any public right-of-way.
- e. Within 1000 feet from any Safe Parking Site or shelter approved under the Bend Development Code and/or any applicable provision of state law.
- f. On any street or public right-of-way, the City has closed to camping due to construction, heavy vehicle use, or other use of the roadway that is incompatible with camping in the right-of-way. The City does not need to close a street to vehicle traffic to close a street to camping under this section.

D. Manner

1. Camping, when and where allowed, is subject to all of the following:
 - a. Individuals, camp materials, camps, or personal property may not obstruct sidewalk accessibility or passage, clear vision, fire hydrants, City

¹ Zone changes amend the City of Bend Zoning Map but may not always be evident on the most recently published version of the map. The formal zoning designation of an area will control even if not reflected on the most recently published map. For public rights-of-way adjacent to properties with different zoning designations, the designation that is more restrictive for purposes of this Chapter will govern the use of that segment of the right-of-way.

or other public utility infrastructure, or otherwise interfere with the use of the right-of-way for vehicular, pedestrian, bicycle, or other passage.

b. A camp or camping must be limited within a spatial footprint of 12 feet by 12 feet, or 144 square feet. The intent of this section is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces as designed and intended.

c. To prevent larger camping sites from forming and the impacts that can result, no more than three camps may be set up per block. If there are any camps set up on a particular block, no other camp may be within 150 feet of any of those camps, including but not limited to across the street or on another block face. A group of up to three camps may not be within 150 feet of any other group of camps.

d. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility in public rights-of-way, on City property, or on any adjacent public or private property.

e. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or heating deemed unsafe by Bend Fire and Rescue are prohibited. Types of cooking stoves and other devices for keeping warm are permitted, as allowed by adopted City policies.

f. Dumping of gray water (i.e., wastewater from baths, sinks, and the like) or black water (i.e., sewage) into any facilities or places not intended for gray water or black water disposal is prohibited. This includes but is not limited to storm drains, which are not intended for disposal of gray water or black water.

g. Unauthorized connections or taps to electrical or other utilities, or violations of Building, Fire, or other relevant codes or standards, are prohibited.

h. Obstruction or attachment of camp materials or personal property to fire hydrants, utility poles or other utility or public infrastructure, fences, trees, vegetation, vehicles, or buildings is prohibited.

i. Individuals may not build or erect structures, whether by using plywood, wood materials, pallets, or other materials. Items such as tents and similar items used for shelter that are readily portable are not structures for purposes of this section.

j. Storage of personal property such as vehicle tires, bicycles or associated components (except as needed for an individual's personal use), gasoline, generators, lumber, household furniture, extra propane

tanks, combustible material, lumber, or other items or materials, is prohibited, other than what is related to camping, sleeping, or keeping warm and dry.

k. Digging, excavation, terracing of soil, alteration of ground or infrastructure, or damage to vegetation or trees is prohibited.

l. Use of emergency power generators that result in a violation of BMC 5.50.020.A. is prohibited.

m. All animals must be leashed or crated at all times.

4.20.035 Vehicles

A. Chapter 6.20 of the Bend Municipal Code governs where and for how long individuals may legally park vehicles on public rights-of-way within the City of Bend. Those standards are applicable to all individuals, including those who use vehicles for shelter and/or sleeping on public rights-of-way in the City.

B. Individuals may use vehicles for shelter and/or sleeping on public rights-of-way under the following circumstances:

1. The vehicle is legally parked in compliance with the Bend Municipal Code and any applicable policies.
2. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, and/or heating deemed unsafe by Bend Fire and Rescue are prohibited in, on, or around vehicles. Types of cooking stoves and other devices for keeping warm are permitted, as allowed by adopted City policies.
3. Dumping of gray water (i.e., wastewater from baths, sinks, and the like) or black water (i.e., sewage) into any facilities or places not intended for gray water or black water disposal is prohibited. This includes but is not limited to storm drains, which are not intended for disposal of gray water or black water.
4. Storage of material outside vehicles is prohibited, other than what is incidental to activities such as short-term loading or unloading a vehicle.
5. Vehicles must be operational, i.e., capable of being started and driven under their own power, or ready to be towed if designed to be towed and may not be discarded or left inoperable in public rights-of-way or on City property.
6. No building or erecting of any structures connecting or attaching to vehicles is permitted, including tents that are not designed and manufactured to be attached to a vehicle.
7. Persons may not accumulate, discard or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility in public rights-of way, on City property, or on any adjacent public or private property.

8. Use of emergency power generators that result in a violation of BC 5.50.020.A., is prohibited.

9. All animals must be leashed or crated at all times.

C. Notwithstanding Bend Municipal Code 6.20 or any other applicable rules or policies governing parking on public rights-of-way, under no circumstances may anyone use a vehicle for shelter and/or sleeping:

1. Within 500 feet of any Safe Parking Site or shelter approved under the Bend Development Code and/or any applicable provision of state law.

2. Within 1000 feet of the City's emergency shelter at 275 NE 2nd Street, but bound by the geographic barriers of the US-97/Parkway to the west and 3rd Street to the east, generally described as follows:

- NE 2nd Street between NE Burnside Ave and NE Franklin Ave;
- NE Emerson Ave from its western terminus east of US-97/Parkway to NE 3rd Street;
- NE Dekalb Ave from its western terminus east of US-97/Parkway to NE 3rd Street;
- NE Burnside Ave from NE 2nd Street to NE 3rd Street;
- SE Scott Street from the US-97/Parkway overpass to SE 3rd Street; and
- SE Aune Street from the US-97/Parkway overpass to SE Scott Street.

2. In any City parking lots or parking structures.

D. Enforcement of violations of this section will be in accordance with applicable state law and City ordinances and policies, including laws, ordinances, and policies governing towing and impounding of vehicles.

4.20.040 Violations

A. A citation for a violation of this Chapter will be for a Class C civil infraction. Citations will be issued only when other means of achieving compliance have been unsuccessful or are not practicable for the particular situation.

B. Before a civil infraction citation is issued, the enforcement personnel will contact the person and provide a reasonable opportunity to cure or remedy the alleged violation. In most cases, enforcement personnel will assess whether the person subject to citation has been referred to service providers and/or the Deschutes County Coordinated Homeless Response Office, and make a referral if it appears none has

been made. The following will be communicated to the person in a manner designed to help them understand the issue or problem:

1. A description or identification of the activity constituting the alleged violation and identification of the recipient as being the person responsible for the violation;
2. A written or verbal statement that the enforcement personnel has determined the activity to be a violation;
3. A written or verbal statement of the action required to fix the violation and the time and/or date by which the violation must be fixed; and
4. A written or verbal statement advising that if the violation is not fixed within the time specified, a citation will be issued and that a civil penalty in the maximum amount provided for the particular infraction may be imposed.

C. A violation of this Chapter may result in the removal and/or clean-up of the camp or camps, camp material, or other personal property that are creating or contributing to the violation(s), typically after a request for voluntary compliance has been made as described in Section B, above, except in the case of an exceptional emergency, such as possible site contamination by hazardous materials or when there is danger to human life or safety or illegal activities, where removal can be immediate or be accomplished more quickly, depending on the severity of the situation. Any camp, camp materials, or personal property in violation of any of the standards in this Chapter may be removed or cleaned-up by the City or its designated contractors, subject to the requirements of storage of personal property and notice of storage described in Section E, below. Camps in violation will generally be prioritized for removal or clean-up based on factors such as risks and negative impacts to public health and safety and repeated violations of this chapter. A camp may be subject to removal or citation, or both.

D. Upon a determination by enforcement personnel that a camp or camping is occurring in violation of this Chapter, an established campsite may be removed pursuant to the following procedures:

1. Prior to removing an established campsite on public rights-of-way or City property, at least 72-hours in advance, except in the case of exceptional emergency or criminal activity, the City must post notice at the location that the campsite must move and all personal property remaining will be removed and must inform local agencies that deliver services to homeless individuals where the notice has been posted that such notice has been posted, including the Deschutes County Coordinated Homeless Response Office.
2. A campsite may be removed for violation of this chapter without posting a 72-hour notice:
 - a. When there are grounds for law enforcement officials to believe that illegal activity, other than camping, is occurring on the campsite or in the

immediate vicinity of the campsite, or the property that comprises the campsite is being used or is intended to be used to commit or facilitate the commission of otherwise illegal activity; or In the event of an exceptional emergency, such as possible site contamination by hazardous materials or when there is immediate danger to human life or safety. If the danger to human life or safety can be reduced by moving the established campsite to a safer location, such as an adjacent landscape strip, the campsite should be moved rather than removed.

3. Once the 72-hour notice has been posted, the City may act on the notice and remove the campsite beginning 72 hours after posting and for up to ten (10) days following the posting.
4. After a camp has been removed subject to a 72-hour notice or under circumstances when no advance notice is required, the camp and all associated camp facilities must be moved at least one block or 600 feet, whichever is greater, and the City may order that no camp be set up in that same location or a 100-foot radius for up to 14 days. The City will post signs informing the public that camping is prohibited at the location.
5. When removing individuals and property from an established campsite, personnel will make reasonable efforts to remove individuals without the use of force, arrest, or citation. No person may be arrested or cited for failing to move under this Chapter prior to being asked by City personnel to move.
6. When removing personal property, the City will make reasonable efforts to determine if the property belongs to an individual and has any apparent utility. The City will make reasonable efforts to identify which established campsite property was removed from, to aid in connecting people with their property. Items that are perishable, or that have no apparent use, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and need not be stored.
7. Weapons, drug paraphernalia, or other contraband, and items that appear to be either stolen or evidence of a crime, shall be given to law enforcement officials. Items that appear to have a value of \$1,000 or more shall be given to law enforcement officials for storage and safekeeping, and shall be made available as described in Section E., below.
8. Following removal of personal property from the right-of-way, the City must post a notice at or as near as possible to the location the property was collected, stating where the personal property is being stored, and listing the phone number and hours a person claiming ownership can collect or make arrangements to collect their personal property.

E. Personal property or camp materials may be removed from City rights-of-way, City property, or a camp or campsite if in violation of the provisions of this Chapter. Advance notice and an opportunity to cure will be provided in most cases.

F. Personal property removed from City rights-of-way or City property and unclaimed at the time of removal will be stored by the City for a minimum of thirty (30) days, or the duration required by law at the time of the removal.

1. Items that are perishable, that have no apparent use, are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and will not be stored. Property discarded, dumped, or otherwise abandoned in the City rights-of-way may be immediately discarded.

2. The City will store personal property at or near one of the City business campuses, where people can reasonably retrieve belongings.

3. The City will make reasonable efforts to provide a range of times the storage location will be available for people to collect their personal property. The City may dispose of any personal property that remains unclaimed after thirty (30) days, or such duration as required or allowed by law.



ORDINANCE NO. 799

AN ORDINANCE CREATING AND ADOPTING CHAPTER 8.65, HB 3115 | *Martin v. Boise* IMPLEMENTATION TO THE MUNICIPAL CODE OF THE CITY OF BROWNSVILLE, OREGON;

WHEREAS, Title 8 of the Brownsville Municipal Code (BMC) defines Health and Safety, and;

WHEREAS, the Council desires to create a response to HB 3115 | *Martin v. Boise* as defined herein, and;

WHEREAS, Council desires to pass this ordinance as an emergency, and;

NOW THEREFORE, the City of Brownsville ordains as follows:

Chapter 8.65 HB 3115 | *Martin v. Boise*

Sections:

8.65.010 Purpose and scope.

8.65.020 Definitions.

8.65.030 Powers and duties.

8.65.040 City Administrator.

8.65.050 Vehicles.

8.65.060 Designated space and rules.

8.65.070 Method of financing and operating.

8.65.010 Purpose and scope.

The State of Oregon has codified the United States Ninth Circuit Court's ruling on the *Martin v. Boise* case. The State's decision to codify this case into law unduly burdens municipalities by delegating requirements for a specific class of people that places significant financial obligations and other responsibilities onto municipalities. By the State adopting code and mandating implementation for this purpose, the State is violating the Oregon Constitution, Article 1, Section 20. The State has allowed municipalities to pass time, place and manner ordinances to comply with this unfunded mandate that comes into full effect of law starting July 1st, 2023.

8.65.020 Definitions.

All definitions shall come from the State of Oregon for this Chapter. The City does not discriminate against individuals based on the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, religion, sex or national origin.



"Camping" means staying overnight in any temporary or make-shift structure including a vehicle.

"Designated Space" means City owned public property.

"Riparian areas" means a boundary of two hundred feet from the Calapooia river or any other water tributary of the Calapooia river.

"Unlawful Campsite" means a location where a person unlawfully places onto private or public property any bedding, sleeping bag, or other sleeping matter; any stove or fire; and/or any structure such as a hut, lean-to-tent, or other temporary structure for the purpose of camping.

"Vehicles" means any car, truck, recreational vehicle or other mode of transportation that's primary purpose is to transport persons.

8.65.030 Powers and duties.

- A. The powers, duties and responsibilities of the City shall not be further limited or defined that would cause the City to incur any financial, expertise, or liability burden as follows:
 - 1) By the State of Oregon,
 - 2) By City/County Insurance Services (CIS) or other insurance or agent used by the City of Brownsville,
 - 3) By any non-profit or other special interest group.
- B. It shall be the duty of the State of Oregon to provide grant funding for this undue burden caused by this unfunded mandate. The City of Brownsville does not have the financial wherewithal or personnel to address this matter as mandated.

8.65.030 City Administrator.

- A. The City Administrator shall have all authority to address both routine and unforeseen issues as they arise concerning these matters.
- B. The City Administrator shall maintain a record of all issues and file a report to Council on each matter.

8.65.050 Vehicles.

- A. Persons are only allowed to sleep in vehicles including cars, trucks, recreational vehicles on private property as allowed by local law.
- B. Persons are allowed to sleep in vehicles including cars, trucks, recreational vehicles from 9:00 p.m. to 7:00 a.m. on City owned public property in designated space(s). The City shall have designated space clearly marked with rules signage and any designated space(s) will have use location and information available on the City website.
- C. Abandoned recreational vehicles shall become the property of the State of Oregon, and any associated costs to abate, remove or dispose of an abandoned recreational vehicle shall be billed to the State of Oregon.



8.65.060 Designated space and rules.

- A. City owned public property that has been designated space for overnight camping will adhere to the guidelines and conditions as follows:
- 1) Camping is allowed on a daily basis from the hours 9:00 p.m. to 7:00 a.m.
 - 2) No camping, loitering, or use of the property is allowed between the hours of 7:00 a.m. to 9:00 p.m. Violators will be trespassed from the property.
 - 3) The City is not responsible for any loss of property, injury, or any other claim resulting from the use of any designated space.
 - 4) The City does not have the financial wherewithal to provide background checks, medical services, utilities or any other amenities to anyone using the designated space for sleeping purposes, and will not be held liable or responsible for any such services.
 - 5) The City will not provide social services to any person using the designated space including the distribution of drug paraphernalia.
 - 6) Any refuse left behind that has to be removed by the City will be billed to the State of Oregon.
 - 7) Any injury suffered by City personnel or damage to equipment in the cleanup of any designated space identified through this ordinance will be billed to the State of Oregon.
- B. Any person in need of social services should contact Linn County for programs and services offered through Linn County & the State of Oregon.
- C. Camping in riparian areas is strictly prohibited.
- D. The City designated space shall be the South Lagoon located at 34371 OR 228.
- E. Regulations governing use of designated spaces or unlawful camping include but are not limited to the following rules:
- 1) Persons using any property in the City whether or not a permit fee has been paid shall be subject to the rules herein and if ordered to leave a property due to violating a rule or regulation within this Chapter, is subject to fee and/or privilege forfeiture by the City.
 - 2) No person shall camp overnight, except in areas specifically designated by the City.
 - 3) No person shall park a pickup-mounted or truck-mounted camper, camp trailer, motor home, or other camp unit in places other than those provided and designated for such purposes unless the person has obtained a permit or permission from the City authorizing such use.
 - 4) No person shall engage in unlawful camping within the City.
 - 5) No person shall operate a concession, either fixed or mobile, solicit, sell or offer for sale, peddle, hawk, or vend any goods, wares, merchandise, foods, liquids, or services without written permission from the City.
 - 6) No person shall allow any animal in the person's custody to annoy or molest any person or other pet.
 - 7) No person shall in any manner, pursue, hunt, trap, or molest any bird or animal.



- 8) All persons shall pick up and properly dispose of their domestic animal's waste while visiting any property within the City.
- 9) No person shall build, light, or maintain any fire except in a stove, pit or fireplace especially designated for such purpose; provided, however, that a person may use a portable gas, gasoline, charcoal, or oil camp stove if the portable gas, gasoline, charcoal, or oil camp stove is in a safe operating condition and used in a manner so as to not start a fire.
- 10) No person shall leave unattended any fire built, lighted, or maintained.
- 11) No person shall pick, mutilate, dig or remove any plant whether living or dead, or in any way deface, mutilate, burn, destroy or defile any tree or plant within the limits of such areas.
- 12) No person shall alter, deface, mutilate or destroy any trail, road, parking lot, bridge, fence, building, sign, barrier, or other facility or structure.
- 13) No person shall dig up or remove any soil, stones, rocks, or other substances whatsoever, make any excavation, or lay or set off any blast or cause or assist therein.
- 14) No person shall discharge, set off, explode, or burn any fireworks, firearm, air, CO2, or spring-actuated rifle or pistol, slingshot, arrow, or other similar devices designed or used to propel a projectile, in or over any property in the City. Such activities are strictly reserved to City authorized personnel.
- 15) No person shall fly or allow to be flown a self propelled aircraft, including but not limited to remote controlled model aircraft and drones, except in areas designated and identified for such purpose.
- 16) No person shall throw rocks, sticks, or other objects, which may endanger the safety of any other person.
- 17) No person shall dive, swim or engage in any water activity in an unsafe manner.
- 18) No person shall use abusive, threatening, obscene, or indecent language or gestures in a manner which causes a public nuisance.
- 19) No person shall fight, promote, instigate, or encourage fighting or similar violent conduct which would threaten the physical well-being of any person.
- 20) No person shall commit the act of public indecency as defined in ORS 163.465.
- 21) No person shall operate radios, television, musical instruments, and other noise producing devices, or otherwise cause unnecessary sound in such a manner and at such times so as to disturb other persons.
- 22) No person shall cause, attempt to cause, or bring about any public demonstrations or disturbances, or in any way create a public nuisance.
- 23) No person may make any noise that would reasonably disrupt normal sleeping activities during quiet hours; 10:00 p.m. to 7:00 a.m.
- 24) No person shall, within the City, refuse to disclose that person's identity to City personnel or law enforcement officer who requests such information.
- 25) No person shall obstruct, harass, or interfere with the official duties of City personnel or a law enforcement officer.



- 26) No person shall deposit any rubbish, garbage, glass or other litter except in receptacles designated for that purpose.
- 27) No person shall remove items from containers designated for recyclables, garbage, sewage, or waste.
- 28) No person shall dump household or commercial garbage.
- 29) No person shall depart from the campsite before removing all camping equipment and cleaning up the campsite.
- 30) No person shall maintain a campsite in an unsightly, unsafe, unclean, or unsanitary condition.

8.65.060 Private property.

- A. No person shall be permitted at any time to camp on sidewalks abutting private property, including businesses, due to the property liability implications associated with such a practice. The City shall not create an undue burden for private residences and private business owners.
- B. Persons loitering near private residences and private business are subject to trespass and removal from the property.
- C. Any personal property or rubbish shall not be allowed to be placed on or along sidewalks and/or pathways. The City retains the right to dispose of any such materials as deemed necessary by the City Administrator.

8.65.070 Method of financing and operating.

The City of Brownsville does not have the financial ability to operate the requirements of this unfunded mandate imposed by the State of Oregon. The City has made time, place and manner guidelines as allowed by law.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR
this 28th day of March, 2023.

Mayor Adam Craven

City Administrator Scott McDowell

ORDINANCE NO. 3164

AN ORDINANCE AMENDING TITLE 10 OF THE COTTAGE GROVE MUNICIPAL CODE REGARDING VEHICLES AND TRAFFIC

WHEREAS, the incidence of homelessness in Oregon and the City of Cottage Grove continues to increase; and

WHEREAS, the Council finds that individuals are camping in vehicles throughout the community of Cottage Grove; and

WHEREAS, the City Council has investigated various options to address homeless campsites on public property; and

WHEREAS, the Council has authorized the development of an emergency shelter location to provide alternative shelters for those experiencing homelessness; and

WHEREAS, the Council has established an overnight camping program to provide opportunities for public and private individuals and entities to participate in addressing homelessness within the community of Cottage Grove; and

WHEREAS, the Council desires to establish regulations to allow camping in vehicles in the street while balancing the need for shelter and ensuring safe and efficient transportation facilities for motorists, cyclists and pedestrians; and

WHEREAS, the authorization to camp in vehicles in the street continues to accomplish the Council's goal of addressing homelessness within the community.

THE CITY OF COTTAGE GROVE ORDAINS AS FOLLOWS:

Section 1. Section 10.040.010 is hereby amended to read as follows:

10.04.010 Title.

The ordinances codified in Chapters 10.04, 10.12, 10.20, 10.24, 10.28, 10.30, 10.32 and 10.40 may be cited as the "Cottage Grove Traffic Ordinance."

Section 2. Section 10.040.020 is hereby amended to read as follows:

10.04.020 Definitions.

In addition to those definitions contained in the Oregon Vehicle Code, the following words and phrases shall apply in this title, except where the context clearly indicates a different meaning:

A. "Bus stop" means a space on the edge of a roadway designated by sign for use by buses loading or unloading passengers.

B. "Holiday" means New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other day proclaimed by the council to be a holiday.

C. "Loading zone" means a space on the edge of a street designated by sign for the purpose of loading or unloading passengers or materials during specified hours of specified days.

D. "Motor vehicle" means every vehicle that is self-propelled, including tractors, fork-lift trucks, motorcycles, road-building equipment, street-cleaning equipment, and any other vehicle capable of moving under its own power, notwithstanding that the vehicle may be exempt from licensing under the motor vehicle laws of Oregon.

E. "Person" means a natural person, firm, partnership, association or corporation.

F. "Street" means highway, roadway or alley, as defined in ORS 801.110, 801.305 and 801.450, including the entire width of the right-of-way.

G. "Taxicab stand" means a space on the edge of a street designated by sign for use by taxicabs.

H. "Traffic lane" means that area of the street used for the movement of a single line of traffic.

I. "Vehicle," as used in subsequent sections of Chapters 10.04, 10.12, 10.20, 10.24, 10.28, 10.32 and 10.40, includes bicycles.

Section 3. Subsection 10.04.030 (A.) is hereby amended to read as follows:

- A. Subject to state laws, the City Council shall exercise all municipal traffic authority for the city except those powers specifically and expressly delegated in Chapters 10.04, 10.12, 10.20, 10.24, 10.28, 10.30, 10.32 and 10.40 or by another ordinance.

Section 4. Section 10.04.070 is hereby amended to read as follows:

10.04.070 Administration--Authority of police and fire officers.

- A. It shall be the duty of the police department to enforce the provisions of Chapters 10.04, 10.12, 10.20, 10.24, 10.28, 10.30, 10.32 and 10.40.
- B. In the event of a fire or other public emergency, police and fire personnel may direct traffic as conditions require, notwithstanding the provisions of Chapters 10.04, 10.12, 10.20, 10.24, 10.28, 10.30, 10.32 and 10.40.

Section 5. Section 10.04.090 is hereby amended to read as follows:

10.04.090 Citation on illegally parked vehicle.

Whenever a vehicle without an operator is found parked in violation of a restriction imposed by Chapters 10.04, 10.12, 10.20, 10.24, 10.28, 10.30, 10.32 and 10.40 or state law, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall conspicuously affix to the vehicle a traffic citation instructing the operator to answer to the charge at the location and time specified in the citation, or pay the presumptive fine as provided in Section 10.04.100(D) and (E).

Section 6. Chapter 10.30 is hereby amended to read as follows:

10.30.10 Unlawful transfer on a street.

- A. A person commits the offense of unlawful transfer on a street if the person:
1. While a driver or passenger in a vehicle on a street within the boundaries of the city of Cottage Grove, gives or relinquishes possession or control, or allows another person in the vehicle to give or relinquish possession or control of any items, money, or tangible personal property to a pedestrian in a manner which impedes or is likely to impede the flow of traffic or poses a safety risk to the pedestrian or other vehicles; or
 2. While a pedestrian accepts, receives, or retains possession or control of any money or tangible personal property from a driver or passenger in a vehicle on a street within the boundaries of the city of Cottage Grove in a manner which impedes or is likely to impede the flow of traffic or poses a safety risk to the pedestrian or other vehicles; or
 3. While a pedestrian steps, or extends any extremity or instrument, into the roadway to accept or deliver any item, money, or personal property with a driver or passenger of a vehicle in a manner which impedes or is likely to impede the flow of traffic or poses a safety risk to the pedestrian or other vehicles.
- B. This section does not apply if the vehicle is legally parked, or to individuals, charities, or businesses operating under a special event permit issued by the city pursuant to Chapter 10.24, with all appropriate and required permit conditions being met.

10.30.20 Camping in the street.

- A. A person may camp in a vehicle on a city street if:
1. The vehicle is parked in conformance with all established parking regulations.
 2. Vehicle is not parked within 100 feet of a public or private school, established licensed daycare or public playground.
 3. The vehicle is operational and can legally operate on the street.
 4. No material, items, supplies or waste are on the street, sidewalk, bike lane or planting strip.
- B. No camping in a tent, structure, shelter, or other non-vehicle is allowed in the street including bike lanes, sidewalks, and planting strips.

**PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF
OCTOBER 2022.**

Jeffrey D. Gowing, Mayor

Dated: _____

ATTEST:

Richard Meyers, City Manager

Dated: _____

ORDINANCE NO.

**AN ORDINANCE ADOPTING CHAPTER 8.40 OF THE COTTAGE GROVE
MUNICIPAL CODE REGARDING OVERNIGHT CAMPING PROGRAM**

WHEREAS, Oregon Revised Statutes 195.520 authorizes cities to allow any public or private entity to allow overnight camping by homeless individuals living in vehicles on the property of the entity; and

WHEREAS, the incidence of homelessness in Oregon and the City of Cottage Grove continues to increase; and

WHEREAS, the Oregon legislature has responded to the perceived crisis with multiple new statutes intended to assist Oregon cities in increasing shelter available to homeless individuals and families; and

WHEREAS, the Council finds that individuals are camping in vehicles throughout the community of Cottage Grove; and

WHEREAS, the City Council has investigated various options to address homeless campsites on public property; and

WHEREAS, one aspect of the Council's program involves authorizing public and private property owners to contribute to the solution; and

WHEREAS, the Council finds that an overnight camping program created pursuant to ORS 195.520 and ORS 197.746 should increase available alternative shelter and reduce the amount of homeless camping on public lands by providing transitional housing for those experiencing homelessness; and

WHEREAS, the overnight camping authorized by the proposed Overnight Camping Program constitutes transitional housing accommodations, as defined in ORS 197.746(2); and

WHEREAS, such transitional housing accommodations are not subject to ORS Chapter 90, Residential Landlord and Tenant laws, pursuant to ORS 197.746(3); and

WHEREAS, the Overnight Camping Program accomplishes the Council's goal of providing opportunities for other public and private individuals and entities to participate in addressing homelessness within the community of Cottage Grove.

THE CITY OF COTTAGE GROVE ORDAINS AS FOLLOWS:

Section 1. Title 8 is hereby amended to ADD a new Chapter 8.40 Overnight Camping Program to read as follows:

Chapter 8.40

Overnight Camping Program

8.40.010 Overnight Camping Program Implementation

Pursuant to ORS 195.520, the City hereby implements a program to allow any public or private property owners to offer overnight camping on their property to homeless individuals or families living in vehicles.

8.40.020 Voluntary Participation

All persons participating in the temporary camping program described in this section do so at their own risk, and nothing in this code creates or establishes any duty or liability for the City or its officers, employees or agents, with respect to any loss related to bodily injury (including death) or property damage.

8.40.030 Authorization Required to Allow Camping

(1) Any public or private property owner may apply for City authorization to provide camping sites to individuals or families experiencing homelessness for one year pursuant to a written agreement with City for the following:

a). Persons may sleep overnight in a vehicle in a parking lot, with written permission of the property owner of a religious institution, place of worship, business or non-profit entity that owns property on which a parking lot and structure is located. The property owner may not grant permission for more than two vehicles used for sleeping at any one time. For purposes of this Chapter the term “vehicle” includes cars, trucks, tents (200 square feet or less), campers, trailers, motor homes and recreational vehicles.

b). Persons experiencing homelessness may sleep overnight in the yard of a single-family residence in a residential zoned district, with written permission of the owner and any tenant of the residence. Such camping cannot be located on the property between the residence and any adjacent street. Not more than one family may sleep in any yard, and not more than one vehicle may be used for sleeping in the yard. As an alternative, but not in addition to sleeping overnight in the yard, not more than one family may sleep in a car, truck, camper, trailer, motor home or recreational vehicle parked in the driveway of a single family residence in a residential zoned district. For purposes of this subsection, “family” means up to two related, unrelated or married adults plus minors for whom one or both permitted adults are either a parent or legal guardian.

c). Persons may sleep overnight in a vehicle on a paved or graveled surface located on a vacant or unoccupied parcel, with the written permission of the property owner. The property owner may not grant permission for more than two vehicles used for sleeping at any one time.

(2) The City may deny, further limit the camping spaces available, and/or impose any other reasonable condition, in City’s sole discretion, based upon, but not limited to available parking,

property size, condition, usage and geography, surrounding property usage, and property owner's experience and capabilities.

(3) A property owner with City authorized camping space must provide campers with access to sanitary facilities, including but not limited to toilet, hand washing, and trash disposal facilities.

8.40.040 Renewal of Authorization

A property owner may apply annually to renew City authorization to provide camping sites to homeless individuals or families under this Chapter.

8.40.050 Camping Location

Authorized camping under this Chapter must be located at least five feet from any side or rear property line.

8.40.060 Compensation Prohibited

A property owner with City authorized camping space shall not require or accept the payment of any monetary charge or performance of any valuable service in exchange for camping on their property under this Chapter. Nothing in this section prohibits a property owner from requiring campers to perform services necessary to maintain safe, sanitary and habitable conditions at the campsite.

8.40.070 Revocation

(1) A property owner who permits camping pursuant to this Chapter may revoke that permission from one or more campers at any time and for any reason.

(2) Notwithstanding any other provision of this Chapter, the City Manager or the City Manager's designee may revoke the City's authorization to provide camping sites to homeless individuals or families on property pursuant to this Chapter upon finding that such activity violates this Chapter, is incompatible with the uses of adjacent properties, or constitutes a nuisance or other threat to the public welfare.

8.40.080 Camping Closure Notice

Upon expiration or revocation of City authority to provide camping sites on private property the property owner shall post written notice to vacate the property at the campsite entrance.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF JULY 2022.

Jeffrey D. Gowing, Mayor

Dated: _____

ATTEST:

Richard Meyers, City Manager

Dated: _____

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTERS 9.28 AND 12.24 OF THE COTTAGE GROVE MUNICIPAL CODE REGARDING OFFENSES BY OR AGAINST MINORS AND CITY PARKS AND PUBLIC PLAYGROUNDS

WHEREAS, (1) the City of Cottage Grove finds that each community member of Cottage Grove is entitled to a basic level of dignity, respect, and wellness, regardless of whether they are housed or unhoused. It is the official policy of the City that its responses to homelessness will be undertaken in accordance with these principles; and

WHEREAS, (2) the City recognizes the social nature of the problem of homelessness that has contributed to individuals locating themselves in City streets and on publicly-owned property and establishing campsites there. This Ordinance is intended to ensure the most humane treatment for removal of homeless individuals from campsites on public property, as required by ORS 195.500. The City recognizes that people experiencing homelessness need a place to sleep, shelter themselves, and store belongings. The City is committed to the safety and security of all people in the city, including people experiencing homelessness, property owners, and the traveling public, while protecting all people in the city from unsafe and dangerous conditions; and

WHEREAS, (3) the City Council acknowledges the lack of nightly shelter beds and housing currently available and recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness; and

WHEREAS, (4) the State of Oregon is facing an overwhelming crisis of people experiencing homelessness; and

WHEREAS, (5) using the Lane County Homeless by Name List (HBNL) data the number of individuals reported as experiencing homelessness has been increasing, Lane County has seen an increase in individuals experiencing homeless from 3,477 in October 2020 to 3,754 in October 2021 to 4,599 in October 2022 and the City of Cottage Grove has seen similar increases in the average number of individuals experiencing homelessness in January through October each year from 209 in 2019 to 165 in 2020 to 152 in 2021 to 229 in 2022, the most significant increases over the last three years have occurred in the last three months with an all-time high of 270 individuals identified by the HBNL as experiencing homelessness in Cottage Grove; and

WHEREAS, (6) organizations and service providers continue to indicate that additional community members will become unhoused in the coming months through evictions or elimination of funding from federal and state programs; and

WHEREAS, (7) the City Council intends to regulate sitting, lying, sleeping, and keeping warm and dry and survival sheltering outdoors on City streets and public property that is open to the public only in the context of the work that has been done by the City and will continue to occur at the City, and the City remains committed to a comprehensive response to homelessness, including through the adoption of a Management Plan for the Use of Public Lands by Individuals Experiencing Homelessness (hereafter called Management Plan); and

WHEREAS, (8) as city and other regional efforts develop, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with limited resources; and

WHEREAS, (9) the City Council acknowledges that it is currently unavoidable that some people will live or shelter for survival outdoors until they are able to access affordable or free shelter or housing. In Cottage Grove, this has typically meant sheltering, sometimes for extended periods of time, on City streets and City property, and at times on other agency property (such as Lane County, ODOT); and

WHEREAS, (10) over the long term and working with Lane County and other local agencies, the City's goal is that people should not have to live outside and there should be safer options because long-term camping for survival sheltering outside is not a solution for people without houses; and

WHEREAS, (11) there are constitutional limits on a city's ability to address how public places can be used by people who do not have options for shelter. The Eighth Amendment to the United States Constitution prohibits "cruel and unusual punishment." The Ninth Circuit Court of Appeals has interpreted this prohibition to forbid cities from criminalizing sitting, lying sleeping and keeping warm and dry on all outside public property that is open to the public, at all times, by those who lack the financial means to pay for adequate shelter, unless adequate shelter is available to such person free of charge; and

WHEREAS, (12) the City owns property where sitting, lying, sleeping and keeping warm and dry can or should be allowed and some City properties are generally closed to the public or have limited access for safety, environmental and security reasons; and

WHEREAS, (13) it is the purpose and intent of the City Council to provide standards for sitting, lying, sleeping and keeping warm and dry and survival sheltering on City streets or property which are intended to be as compatible as possible with the needs of all Cottage Grove residents to be healthy, safe, and have access to public places. Smaller sites support the safety of people who are camping for survival on public property; and

WHEREAS, (14) it is the purpose and intent of the City Council to provide standards for sitting, lying, sleeping and keeping warm and dry and survival sheltering on City streets and properties which will address issues such as fire risk, unsanitary conditions, trash, and public safety hazards to people sitting, lying, sleeping and keeping warm and dry and neighboring businesses and community members, and environmental degradation, which have occurred with longer-term sitting, lying, sleeping and keeping warm and dry or established camping sites in the City; and

WHEREAS, (15) the proposed ordinance and Management Plan are the product of a lengthy public process that has involved time and attention of Council since December 2021. The City has solicited and been open to community feedback throughout the process, and made both the original and revised drafts of code revisions and proposals available for public review and comment. The Council held four Work Sessions and one Special Council meeting to discuss and review proposals regarding the community's responses to homelessness. The City held a

Town Hall on April 5, 2022, focused on educating the community about federal and state laws regarding management of public places and homelessness and collected input regarding possible responses and code revisions. The Council discussed and or received comments at every Council meeting from January 10, 2022 through July 25, 2022. Comments were received from citizens, business representatives, service providers, and people who have or are experiencing homelessness; and

WHEREAS, (16) City streets are designed and intended for travel and transportation, and provision of utility services, among other uses. City streets are not designed or intended for overnight use in the same way as a recreational camp site. People living in makeshift camps in the right-of-way and in vehicles often lack access to safe and sanitary restrooms and trash receptacles, resulting in unsanitary conditions from improper disposal of human waste and trash; and

WHEREAS, (17) the placement of tents, bedding, and other structures on City streets on or next to paved surfaces and/or between curblines is dangerous to those sitting, lying, sleeping and keeping warm and dry because of the proximity to vehicles and other users of the streets. Placement of those items on sidewalks or bike lanes or paths can impede the use of sidewalks, bike lanes, paths and other public ways if clear passage is not maintained. The City has a responsibility as the road authority to maintain the streets, sidewalks and bike lanes and paths as safe, passable, and accessible, and to act to avoid death and injury to all users of the streets, including those without other homes; and

WHEREAS, (18) the current Cottage Grove Municipal Code does not ban camping on City streets in vehicles parked in compliance with parking regulations that apply to all vehicles, including no parking of vehicles in one location for more than 72 hours at a time, whether used for shelter or not; and

WHEREAS, (19) the Council adopted Ordinance 3164 on October 24, 2022, amending Cottage Grove Municipal Code Title 10, relating to Vehicles and Traffic, which established additional regulations prohibiting camping in vehicles within 200 feet of schools and daycare facilities to avoid impeding traffic circulation and the placement of non-vehicular structures in the street or obstructing the street, including the sidewalk, bike lane, or planting strip; and

WHEREAS, (20) the development of Cottage Grove Municipal Code 10.30.20 balanced the Council established regulations related to camping in vehicles in the street against the need for shelter while ensuring safe and efficient transportation facilities in high traffic areas for motorists, cyclists, and pedestrians, particularly minors; and

WHEREAS, (21) the City of Cottage Grove has just over 45 miles of developed streets within the community and more than 30 miles of the developed streets have parking; and

WHEREAS, (22) the Council adopted Ordinance No. 3161 on July 25, 2022, establishing an Overnight Camping Program (CGMC 8.40) to allow public and private property owners to participate in addressing homelessness within the community by providing RV camping in driveways or camping in the backyard of private properties; and

WHEREAS, (23) the sheltering options created by Council amendments to Chapters 8.40 and 10.30 of the Cottage Grove Municipal Code will not be adequate to meet the needs of all the unsheltered in the community and may not be suitable to manage all circumstances of unsheltered individuals experiencing homelessness; and

WHEREAS, (24) the City purchased a shower trailer and supplies and partnered with Community Sharing to provide showers and clothing to individuals in the community experiencing homelessness, using local volunteers and staff, every Wednesday since July, 2021; and

WHEREAS, (25) the City partnered with Community Sharing to develop and operate a non-congregate warming shelter facility when the existing congregate warming shelter program, Beds For Freezing Nights, could not operate during the cold weather season in 2020-21 and 2021-22; and

WHEREAS, (26) the warming shelter facility activated 29 evenings and served a total of 78 unduplicated guests during the final cold season in 2021-22; and

WHEREAS, (27) on August 15, 2022, the City Council authorized the development of an Emergency Shelter location at 2205 HWY 99 with 33 shelters for single occupancy, or double occupancy for related individuals, and an existing house for offices, restroom/shower, kitchen, laundry and support services; and

WHEREAS, (28) beginning October 3, 2022, the City contracted with Carry it Forward to operate the Emergency Shelter facility, provide case management and support services, as well as manage the facility, and residents began receiving those services on October 10, 2022; and

WHEREAS, (29) in anticipation of filling the Emergency Shelter site and to provide sitting, lying, sleeping and keeping warm and dry locations for those not eligible for occupancy at the emergency shelter, the City began discussing and evaluating use of all public lands; and

WHEREAS, (30) the City has developed a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness in order to secure locations that do not pose a risk to the health and safety of individuals experiencing homelessness who are unable to access the Emergency Shelter, while sitting, lying, sleeping, and staying warm and dry; and

WHEREAS, (31) the City recognizes the need to provide such locations within the City for individuals experiencing homelessness who are unable access shelter at the Emergency Shelter site to sit, lie, sleep, and keep warm and dry, while also protecting the intended use of public property via objectively reasonable time, place, and manner regulations; and

WHEREAS, (32) the City Council and staff identified all City owned public lands, excluding streets; and

WHEREAS, (33) the City evaluated each area designated for sitting, lying, sleeping and keeping warm and dry, considering public health and safety, including the people who are sheltering in the areas, potential user conflicts, existing uses, geographic location, site

improvements, fire and life safety, accessibility to the area and to other services, and available City resources; and

WHEREAS, (34) the review resulted in the development of the Management Plan for Use of Public Lands by Individuals Experiencing Homelessness, which establishes designated public land that will allow sitting, lying, sleeping and keeping warm and dry by individuals experiencing homelessness and unable to access shelter at the Emergency Shelter facility; and

WHEREAS, (35) the City finds that limiting the size and number of designated sitting, lying, sleeping and keeping warm and dry areas supports the safety of people in the areas, as well as the community, by allowing people to shelter together, while avoiding larger congregations of people and belongings that, in the City's experience, has led to more criminal activity and calls for law enforcement services; and

WHEREAS, (36) this Ordinance does not criminalize or otherwise subject an individual to citation for the acts of sitting, lying, sleeping, or keeping warm and dry outside on public property, as prohibited by the Ninth Circuit in the *Martin v. City of Boise*, *Blake v. City of Grants Pass* and *Johnson v. City of Grants Pass* cases. Instead, this ordinance establishes reasonable time, place, and manner regulations that balance the rights of people without shelter to use some outside public places to meet basic needs with the City's obligation to manage public spaces to meet their intended uses and to maintain health and safety for everyone in Cottage Grove.

THE CITY OF COTTAGE GROVE ORDAINS AS FOLLOWS:

Section 1. Section 9.28.030, Curfew, is hereby repealed in its entirety.

Section 2. Chapter 12.24 is hereby renamed "Public Places."

Section 3. Section 12.24.010, Definitions, is hereby amended to read as follows:

12.24.010 Definitions.

A. "Park" or "park area" means the city's community parks, area parks and other park classifications, the buildings and other facilities or improvements located within such areas, public bike paths and pedestrian ways (but not sidewalks along city streets), recreation facilities, including those grounds, areas, or facilities or improvements, which may be privately owned, covered by a conservation easement duly accepted by the City of Cottage Grove for park and recreation purposes by the general public, also including those grounds and areas commonly referred to as greenway and riverbank areas, or portions thereof, which have been placed under City jurisdiction, either by deed or dedication, regardless of whether such areas have been opened up for public use and any public lands, excluding streets, that have been designated as an area allowing camping. Park areas include any river or stream adjacent to park areas.

B. "Camp" or "Camping" means to pitch, use, or occupy camp materials or a camp for the purpose of occupancy, habitation, or sheltering for survival, and in such a way as will facilitate sleeping or storage of personal belongings, carrying on cooking activities, taking measures to

keep protected from the elements including heat and cold, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep. A "camp" is a location where people camp or are camping.

E. "City parking lot or parking structure" is a type of City property, and means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated and/or used for parking vehicles.

F. "City property" includes all real property, land and public facilities owned, leased (either to the City or by the City), controlled, or managed by the City of Cottage Grove including City parking lots or parking structures, but excluding streets, as that terms is defined in Title 10 of this Code.

G. "Council" means the Cottage Grove City Council.

H. "Special event" means the use of City property area which constitutes one or more of the following:

1. An event involving a large group or special use of City property or facility;
2. An event which creates a special demand for park or City services such as parking, cleaning, power or water;
3. An event which requires coordination so that other users can co-exist without disruption; and
4. An event which constitutes a commercial use.

Section 4. Section 12.24.020, Prohibited Conduct or Activities, is hereby amended to read as follows:

12.24.020 Prohibited Conduct or Activities.

A. It shall be unlawful to:

1. Build or permit to be built a fire in any City property unless said fire is confined to:
 - a. Park camp stoves or fireplaces;
 - b. Portions of City property designated as permitting fires;
 - c. Portable stoves in established picnic areas and designated where fires are permitted.
2. No fire shall be left unattended, and every fire shall be extinguished before its user leaves City property.
3. If, in the judgment of the City Manager or designee, there exists a danger that even confined fires may spread, such as in dry seasons or during times of high winds, all outdoor fires may be prohibited on City property.
4. Use any animal or any weapon, stick, stone, missile or other device of any kind which causes or tends to result in the destruction, injury, disturbance, or molestation of any wild or domestic animal, fowl, or fish (except fishing in designated area) or any habitat thereof on City property.

5. Discharge any firearm, pellet gun, BB gun, slingshot, bow and arrow, or other weapon capable of injuring any person, bird or animal; provided, however, this paragraph shall not apply to the use of officially approved weapons by duly authorized peace officers so authorized under the laws of the state of Oregon or the federal government, or to the use of such weapon under agreement or special authorization of the council on City property.

6. Possess any firearm, pellet gun, or BB gun on City property except as provided by law or by peace officers authorized under the laws of the state of Oregon or the federal government, or by agreement or special authorization of the council.

B. For any person other than a person authorized by the city manager, public works director, or their designee, the following acts are hereby declared to be unlawful:

1. The removal, destruction, breaking, injuring, mutilating, or defacing in any way any structure, monument, statue, vase, fountain, faucet, barrier, wall, fence, gate, railing, or other enclosure or part thereof or any vehicle, traffic recorder, sign, marker, bench, tree, shrub, fern, plant, flower, fixture or other property on any City property.

2. The act of bringing upon any of the parks or having in such person's possession while therein any tree, shrub or plant, or any newly plucked branch or leaf of a tree, shrub or plant.

3. The movement or removal of any sign, marker, monument, fence, barrier, faucet, buoy, traffic recorder, or other structure or facility of any kind on City property.

4. The digging, defacing, or removal of any dirt, stones, rock or other substance whatever, make any excavation, quarry any stone, possess or discharge any explosive device, or lay or set off any blast, or roll any stones or other objects, or cause or assist in doing any such things on City property.

5. The possession, discharge or causing to be discharged of any firecracker, explosive, torpedo, rockets propelled by either water pressure or combustible materials, fireworks as defined by ORS 480.111, or other substance which could be harmful to City property, visitors, or resources.

6. The obstruction of free use and enjoyment of any City property, the placement of any straw, grass clippings, dirt, chips, paper, shavings, shells, ashes, swill, garbage, rubbish, refuse or debris, or the leaving or abandonment of any vehicle or part thereof in or upon any City property; provided, however, the foregoing prohibition shall not apply to the landscaping and other maintenance activities of city employees and agents.

7. The entering of any City property with straw, grass clippings, chips, paper, shavings, shells, ashes, swill, garbage, rubbish, refuse or debris that has originated from outside the property, for the purpose of disposing of any of the rubbish, refuse, or debris on the City property; provided, however, the foregoing prohibition shall not apply to the disposal of garbage or refuse that results from the normal use of the property for recreational or other lawful purposes.

8. The operation or permission to operate any sound amplification system which is plainly audible at a distance of fifty feet or more from the source of the sound, unless that system is being operated to request assistance or warn of a hazardous situation. This paragraph shall not apply to sound amplification approved as a part of an approved special event permit granted pursuant to Chapter 10.24, to emergency vehicles as defined in ORS 801.260, vehicles operated by utilities as defined in ORS 757.005, 758.505 and 759.005, audio alarm systems installed in vehicles and Federal Communications Commission licensed two-way radio communications system. As used in this paragraph, "plainly audible" means any sound for which the information content of that sound is unambiguously communicated to the listener including, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal or comprehensible musical rhythms or vocal sounds.

C. It is unlawful for any person to sell, peddle or offer for sale any goods, liquids, edibles for human consumption, or any goods, wares, services or merchandise or to solicit for contribution on City property unless that person is doing so as part of a special event for which a permit has been granted by the city manager pursuant to Chapter 10.24 of this code or by other permit granted by the city council. Any person acting under a permit shall act in conformance with applicable state and county regulations.

D. Motor vehicles shall be operated and parked only on roads and in parking areas designated for motor vehicle use. Said roads and parking areas are intended for the use of the general public for vehicles and subject to all city, county and state ordinances and regulations. No operator shall park and no owner shall allow a vehicle to be parked on City property for the principal purpose of repairing or servicing the vehicle, except repairs necessitated by an emergency. No motor vehicle, off-road vehicle, motorcycle, trailer, bicycle, skates, skateboards, or other vehicle shall be permitted on any trail or on any part of City property not designated for such use, or on any road or trail posted as closed to the public; provided, however, this subsection shall not apply to those motor vehicles used in connection with city maintenance, fire and emergency medical vehicles or police patrol, or as permitted by the city manager or designee.

E. Except for fire and emergency medical response and police patrols, no person shall operate any motor vehicle within a park at a speed in excess of fifteen miles per hour unless the roadway is posted otherwise.

F. No person shall ride, drive, lead or keep a horse or other livestock on any City property, except on such roads, trails, or areas designated for that purpose or pursuant to a special permit issued under Chapter 10.24. No horse or other such animal shall be hitched or tied in such a manner that may cause damage to such tree, shrub, improvement, or structure.

G. Any form of gathering for special events or use of City property at special times or for special uses or events shall be unlawful without specific authorization from the city manager and shall be in accord with state law, city and county ordinance and regulations as may now or hereby exist. During any gathering for special events or use of City property area authorized under this section, no person shall use, possess, or consume alcoholic beverages in any location other than a location designated by the city manager in the special event permit authorizing such gathering.

H. No person shall wash any clothing or other materials, or deposit any material or other substance, or clean any fish, or introduce or place polluting substance, waste or litter in a stream, fountain or river in or along City property.

I. It shall be unlawful for any person to camp out or sleep in any park area at such time when the park is closed, except by specific permission of the city manager or designee and only in areas designated for such purpose or as authorized by the city manager or the manager's designees pursuant to a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness adopted by City Council resolution.

J. Certain activities, including, but not limited to, group picnicking, camping, group camping, hiking, and driving of vehicles, and riding of bicycles, skates, skateboards and horses may be restricted by the city manager and/or public works director or their designee to designated zones or areas, and such designations shall be observed. The city manager or the manager's designee may set specific rules for the activity in the designated area.

K. It shall be unlawful for any person to enter or remain in any park or part thereof from 10:00 p.m. to 5:00 a.m., except as provided below:

1. A gathering for a special event or use of a park area at special times or for special uses or events which are authorized under subsection I of this section.

2. The following persons, when engaged in the course of their duties: city employees, law enforcement officers, fire and emergency medical personnel, and those persons authorized by the city manager and/or city council.

3. Specific park areas may be exempt from park closure hours pursuant to a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness, adopted by City Council resolution.

L. It is unlawful for any person to climb any tree, or walk, stand, climb or sit upon a monument, vase, railing, or fence in any City property. It is unlawful for any person to walk, stand or sit upon any fountain.

M. It is unlawful for any person to injure, deface, or destroy any notice of the rules and regulations for the government of the City property, or other official notice which has been posted or permanently affixed by order or permission of the public works director or designee.

N. No male person, other than a child with its mother, or city or law enforcement employee in the discharge of such employee's regular duties, or as otherwise specified by state or federal law, shall enter a public restroom or portable toilet marked "women", or loiter about the entrances of such restroom or portable toilet facility.

O. No female person, other than a child with its father, or a city or law enforcement employee in the discharge of such employee's regular duties, or as otherwise specified by state or federal law, shall enter a public restroom or portable toilet marked "men", or loiter about the entrances of such restroom or portable toilet facility.

P. It is unlawful for any person to blow, spread, or place any nasal or other bodily discharge or waste or to spit, urinate or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public restroom or portable toilet or in any place in such facility, excepting directly into the particular fixture provided for that purpose. Nor shall any person place any bottle, can, cloth, rag, or metal, wood, or stone substance in any of the plumbing fixtures in any such station.

Q. It is unlawful for any person to stand or climb on any toilet fixture, toilet seat, basin, partition, or other furniture, fixture or fitting, or to push, crowd, or otherwise act in a disorderly manner, or to interfere with any attendant in the discharge of their duties on City property.

R. It is unlawful for any person to cut, deface, mar, destroy or break, or write on or scratch any wall, floor, ceiling, partition, fixture, or furniture, or use towels in any improper manner, or waste soap, toilet paper, or any of the facilities provided in any public restroom or portable toilet facility on City property.

S. It is unlawful for any person to willfully mark, scratch, disfigure, deface, or in any manner injure any public drinking fountain in the city, or throw, place, or deposit in any cup or basin of same any cigar or cigarette stub, or any other matter or refuse whatever, or obstruct the regular flow of water thereof in any manner whatever.

T. In case of an emergency, or in case where life or property are endangered, all persons, if requested to do so by a peace officer or other city employee, shall depart from the portion of the City property specified by such officer or employee, and shall remain off the same until permission is given to return.

U. No person shall engage in activity prohibited by any state, county, or municipal law of Oregon while on City property.

V. It shall be unlawful for any person to engage in, promote, instigate, encourage or cause fighting or similar violent conduct which would threaten the physical well-being of the public on City property.

W. No person may use any tobacco product, smoke, as defined in Chapter 8.28, or carry any lighted smoking instrument, on any City property, unless in a properly designated smoking area.

X. It shall be unlawful for any person to consume alcohol, to possess an open container holding alcohol, or to open a container holding alcohol while on any City property, except pursuant to a special event permit issued by the city manager or designee.

Y. No person shall wade, swim or enter the water or cause or allow any domestic animal to enter the water of a pond, fountain or water feature that is constructed to contain storm water or wastewater effluent for irrigation purposes.

Section 5. Section 12.24.040, Excluding a Person from a Park, is hereby amended as follows:

12.24.040 Excluding a person from a park.

A. In addition to other measures provided for violation of this chapter or the laws of the state of Oregon, any peace officer may exclude from all or any part of a park any person cited to appear, arrested, or otherwise taken into custody for violating any provision of ORS Chapters 163, 164, 166 and 167, Title 9 of this code, or for two or more violations of section 12.24.020 within six months, for a period not to exceed ninety days.

B. A person excluded under this section may not enter or remain upon any part of the park from which said person is excluded during the period of exclusion. An excluded person who enters or remains upon any part of a park from which the person has been excluded is a trespasser and may be arrested and prosecuted for the crime of criminal trespass in the second degree pursuant to either or both Section 9.24.050 of this code and ORS 164.245.

C. Notice.

1. At the time a person is cited to appear, arrested, or otherwise taken into custody within a park for any offense identified in Section 12.24.040.A, the officer making such arrest may deliver to that person an order excluding that person from that park or a designated area of that park. Any exclusion order shall not take effect until the sixth day after the notice is issued.

2. The order shall specify the reason for the exclusion, the area from which the person is excluded, the length of the exclusion, the penalty for entering the excluded area, and contain information concerning the recipient's right to appeal the exclusion to the Cottage Grove municipal court.

3. The person to whom the exclusion order is issued shall sign a written acknowledgement of receipt of the notice. If that person refuses to sign the acknowledgement, the arresting officer shall make a written record of the refusal.

D. The public works director or his designee is authorized to prepare a form of notice to be used in connection with excluding a person from a park and to include therein information identified in the prior subsection and such additional material considered necessary for administrative purposes.

Section 6. Section 12.24.050, Appeals, is hereby amended as follows:

12.24.050 Appeals.

A. The procedures contained in this section shall apply to orders of police officers excluding a person from a park pursuant to Section 12.24.040 and the City Manager or the City Council revoking a permit or authorization for use of a park pursuant to Section 12.24.060.B. Failure to follow the procedures contained herein shall constitute a waiver of the person's right to bring an appeal of such order.

B. Not later than six days after issuance of an order revoking a permit or excluding a person, the affected person may appeal in writing to the Cottage Grove municipal court for de novo review of

the order or may petition the Cottage Grove municipal court to rescind or alter the order, or reduce the duration of exclusion. The exclusion shall be stayed during the pendency of the appeal.

C. An appeal shall contain a copy of the order, a request for a hearing or request for written review without a hearing, and a statement setting forth the reason that the order is invalid, otherwise improper, or why it should be changed. Failure to raise an issue with sufficient specificity to afford the police officer or City Manager an opportunity to respond to the issue precludes appeal to the municipal court on that issue.

D. If, as part of the written appeal, the person requests a hearing, a public hearing will be conducted by the Cottage Grove municipal court within ten days after the appeal is filed.

E. The City shall have the burden to show by a preponderance of evidence that the exclusion was based upon conduct proscribed by Section 12.24.040.A. Copies of documents in City control and which are intended to be used by the City at the hearing shall be made available to the appellant at least two days prior to the hearing.

F. A determination by the municipal court judge that the officer who issued the exclusion notice at the time had probable cause to cite the person to whom the exclusion notice was issued for the conduct described in Section 12.24.040.A shall be prima facie evidence that the exclusion was based on conduct prohibited by law.

Section 7. The recitals set forth above on which the amendments are based are hereby adopted as support for the proposed amendments.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 9th DAY OF JANUARY 2023.

Candace L. Solesbee, Mayor

Dated: _____

ATTEST:

Richard Meyers, City Manager

Dated: _____

BACKGROUND

Enrolled House Bill 3115

Sponsored by Representative KOTEK; Representatives DEXTER, MARSH, MCLAIN, POWER,
REYNOLDS, WILDE, Senators DEMBROW, MANNING JR, RILEY

CHAPTER

AN ACT

Relating to the regulation of public property with respect to persons experiencing homelessness; and
declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) “City or county law” does not include policies developed pursuant to ORS 203.077 or 203.079.

(b)(A) “Keeping warm and dry” means using measures necessary for an individual to survive outdoors given the environmental conditions.

(B) “Keeping warm and dry” does not include using any measure that involves fire or flame.

(c) “Public property” has the meaning given that term in ORS 131.705.

(2) Any city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness.

(3) It is an affirmative defense to a charge of violating a city or county law described in subsection (2) of this section that the law is not objectively reasonable.

(4) A person experiencing homelessness may bring suit for injunctive or declaratory relief to challenge the objective reasonableness of a city or county law described in subsection (2) of this section. The action must be brought in the circuit court of the county that enacted the law or of the county in which the city that enacted the law is located.

(5) For purposes of subsections (2) and (3) of this section, reasonableness shall be determined based on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness.

(6) In any suit brought pursuant to subsection (4) of this section, the court, in its discretion, may award reasonable attorney fees to a prevailing plaintiff if the plaintiff:

(a) Was not seeking to vindicate an interest unique to the plaintiff; and

(b) At least 90 days before the action was filed, provided written notice to the governing body of the city or county that enacted the law being challenged of an intent to bring the action and the notice provided the governing body with actual notice of the basis upon which the plaintiff intends to challenge the law.

(7) Nothing in this section creates a private right of action for monetary damages for any person.

SECTION 2. Section 1 of this 2021 Act becomes operative on July 1, 2023.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 15, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 9, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

HB 3115-1
(LC 2805)
3/11/21 (ASD/ps)

Requested by Representative WALLAN

**PROPOSED AMENDMENTS TO
HOUSE BILL 3115**

1 On page 1 of the printed bill, line 13, after “Any” insert “state law or”.

2 In line 16, after “violating” insert “a state law or”.

3 Delete lines 18 through 21 and insert:

4 “(4)(a) A person experiencing homelessness may bring suit for injunctive
5 or declaratory relief to challenge the objective reasonableness of a state law
6 or a city or county law described in subsection (2) of this section.

7 “(b) The action must be brought in the circuit court of:

8 “(A) The county that enacted the law;

9 “(B) The county in which the city that enacted the law is located; or

10 “(C) Any county in which the state law is in effect.”.

11 Delete line 28.

12 On page 2, delete lines 1 through 3 and insert:

13 “(b) At least 90 days before the action was filed, provided written notice
14 to the Department of Justice in the case of a state law, or the governing
15 body in the case of a city or county law, of an intent to bring the action and
16 the notice provided the department or governing body, as applicable, with
17 actual notice of the basis upon which the plaintiff intends to challenge the
18 law.”.

Enrolled House Bill 3124

Sponsored by Representative LIVELY; Representatives POWER, WILDE, Senator GORSEK

CHAPTER

AN ACT

Relating to homelessness; amending ORS 203.079 and section 1, chapter 21, Oregon Laws 2018; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 203.079 is amended to read:

203.079. (1) A policy developed pursuant to ORS 203.077 shall *[include, but is not limited to,]* **conform, but is not limited, to the following[:] provisions.**

(2) As used in this section, "personal property" means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

[(a)] (3) [Prior to] Except as provided in subsection (9) of this section, at least 72 hours before removing homeless individuals from an established camping site, law enforcement officials shall post a written notice, [written] in English and Spanish, [24 hours in advance] at all entrances to the camping site to the extent that the entrances can reasonably be identified.

[(b)] (4)(a) [At the time that a 24-hour] When a 72-hour notice is posted, law enforcement officials shall inform the local agency that delivers social services to homeless individuals as to where the notice has been posted.

[(c)] (b) The local agency may arrange for outreach workers to visit the camping site [where a notice has been posted] that is subject to the notice to assess the need for social service assistance in arranging shelter and other assistance.

[(d)] (5)(a) All [unclaimed] personal property at the camping site that remains unclaimed after removal shall be given to [law enforcement officials whether 24-hour] a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (10) of this section, whether notice is required under subsection (3) of this section or not.

(b) The unclaimed personal property must be stored:

(A) For property removed from camping sites in counties other than Multnomah County, in a facility located in the same community as the camping site from which it was removed.

(B) For property removed from camping sites in Multnomah County, in a facility located within six blocks of a public transit station.

(c) Items that have no apparent value or utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.

(d) Weapons, controlled substances other than prescription medication and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.

(6) The written notice required under subsection (3) of this section must state, at a minimum:

(a) Where unclaimed personal property will be stored;

(b) A phone number that individuals may call to find out where the property will be stored; or

(c) If a permanent storage location has not yet been determined, the address and phone number of an agency that will have the information when available.

(7)(a) The unclaimed personal property shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.

(b) The property shall be stored for a minimum of 30 days during which it *[will]* **shall** be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed *[for]* **after** 30 days may be disposed of or donated to a corporation described in section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2020. *[For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site. Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials.]*

[(e)] (8) Following the removal of homeless individuals from a camping site on public property, the law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a humane and just manner and to determine if any changes are needed in the policy.

[(2)] (9)(a) The *[24-hour]* **72-hour** notice *[required]* **requirement** under subsection *[(1)]* (3) of this section *[shall]* **does** not apply:

[(a)] (A) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring **at an established camping site**.

[(b)] (B) In the event of an exceptional emergency *[such as]* **at an established camping site, including, but not limited to,** possible site contamination by hazardous materials *[or when there is], a public health emergency or other* immediate danger to human life or safety.

(b) If a funeral service is scheduled with less than 72 hours' notice at a cemetery at which there is a camping site, or a camping site is established at the cemetery less than 72 hours before the scheduled service, the written notice required under subsection (3) of this section may be posted at least 24 hours before removing homeless individuals from the camping site.

[(3)] (10) A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance may not issue the citation if the citation would be issued within 200 feet of *[the]* a notice *[described in]* **required under subsection (3) of this section** and within two hours before or after the notice was posted.

(11) Any law or policy of a city or county that is more specific or offers greater protections to homeless individuals subject to removal from an established camping site pre-empts contrary provisions of this section.

SECTION 1a. If Senate Bill 410 becomes law, section 1 of this 2021 Act (amending ORS 203.079) is repealed and ORS 203.079, as amended by section 1, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 410), is amended to read:

203.079. (1) A policy developed pursuant to ORS 203.077 shall *[include, but is not limited to,]* conform, but is not limited, to the following~~[:]~~ provisions.

(2) As used in this section, "personal property" means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

[(a)] (3) *[Prior to]* **Except as provided in subsection (9) of this section, at least 72 hours before** removing homeless individuals from an established camping site, law enforcement officials

shall post a **written** notice, *[written]* in English and Spanish, *[24 hours in advance]* **at all entrances to the camping site to the extent that the entrances can reasonably be identified.**

[(b)] (4)(a) *[At the time that a 24-hour]* **When a 72-hour** notice is posted, law enforcement officials shall inform the local agency that delivers social services to homeless individuals **as to where the notice has been posted.**

[(c)] (b) The local agency may arrange for outreach workers to visit the camping site *[where a notice has been posted]* **that is subject to the notice** to assess the need for social service assistance in arranging shelter and other assistance.

[(d) Except as otherwise provided in paragraph (e) of this subsection:]

[(A)] (5)(a) All *[unclaimed]* personal property **at the camping site that remains unclaimed after removal** shall be given to *[law enforcement officials whether 24-hour]* **a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (10) of this section, whether notice is required under subsection (3) of this section or not.**

(b) **The unclaimed personal property must be stored:**

(A) **For property removed from camping sites in counties other than Multnomah County, in a facility located in the same community as the camping site from which it was removed.**

(B) **For property removed from camping sites in Multnomah County, in a facility located within six blocks of a public transit station.**

(c) **Items that have no apparent value or utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.**

(d) **Weapons, controlled substances other than prescription medication and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.**

(6) **The written notice required under subsection (3) of this section must state, at a minimum:**

(a) **Where unclaimed personal property will be stored;**

(b) **A phone number that individuals may call to find out where the property will be stored; or**

(c) **If a permanent storage location has not yet been determined, the address and phone number of an agency that will have the information when available.**

(7)(a) **The unclaimed personal property shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.**

(b) **The property shall be stored for a minimum of 30 days during which it *[will]* shall be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed *[for]* after 30 days may be disposed of or donated to a corporation described in section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2020.**

[(B) For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.]

[(C) Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.]

[(e) For unclaimed personal property located in Multnomah County:]

[(A) All unclaimed personal property shall be given to a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (3) of this section, whether 24-hour notice is required or not.]

[(B) Facilities for storage of personal property under paragraph (d) of this subsection must be located within six blocks of a public transit station.]

[(f)] (8) Following the removal of homeless individuals from a camping site on public property, the law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a humane and just manner and to determine if any changes are needed in the policy.

[(2)] (9)(a) The [24-hour] **72-hour notice [required] requirement** under subsection [(1)] (3) of this section [shall] **does** not apply:

[(a)] (A) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring **at an established camping site**.

[(b)] (B) In the event of an exceptional emergency [such as] **at an established camping site, including, but not limited to,** possible site contamination by hazardous materials [or when there is], **a public health emergency or other** immediate danger to human life or safety.

(b) **If a funeral service is scheduled with less than 72 hours' notice at a cemetery at which there is a camping site, or a camping site is established at the cemetery less than 72 hours before the scheduled service, the written notice required under subsection (3) of this section may be posted at least 24 hours before removing homeless individuals from the camping site.**

[(3)] (10) A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance may not issue the citation if the citation would be issued within 200 feet of [the] **a notice [described in] required under subsection (3) of this section** and within two hours before or after the notice was posted.

(11) Any law or policy of a city or county that is more specific or offers greater protections to homeless individuals subject to removal from an established camping site pre-empts contrary provisions of this section.

SECTION 2. Section 1, chapter 21, Oregon Laws 2018, is amended to read:

Sec. 1. (1) The Department of Transportation may enter into an intergovernmental agreement with a city that has a population of 500,000 or more for the removal, storage and disposition of personal property deposited, left or displayed on property that is owned by the department.

(2) Notwithstanding ORS 377.650, 377.653 and 377.655, an intergovernmental agreement entered into under this section may provide alternative provisions related to the removal, storage and disposition of personal property if the alternative provisions conform with the requirements for local government policy for removal of homeless individuals and personal property [described] under ORS 203.079[*, except that under this section the notices described in ORS 203.079 must be posted 48 hours in advance*].

(3) In addition to the requirements described in subsection (2) of this section, an intergovernmental agreement entered into under this section must include the following:

(a) Requirements for posting notice before the removal of personal property, including but not limited to the following:

(A) That the notice is created using durable materials and securely posted within 30 feet of the personal property to be removed;

(B) That the notice must provide the date the notice begins and the date upon which the city may begin removing personal property; and

(C) That the notice must provide a description of:

(i) How an individual may access personal property that is removed and stored; and

(ii) The length of time the city will store personal property before the city disposes of it.

(b) A requirement that the notice expires 10 days after the city posts the notice.

(c) A severe weather protocol regarding the weather conditions under which the city will not remove personal property.

(d) Provisions related to inventorying and storing the personal property to be removed.

(e) Provisions related to the city relinquishing unclaimed personal property after the storage period to the city's designated agent.

(f) Provisions related to when the city will provide impact reduction services, including but not limited to trash collection.

(4) The [48-hour] **72-hour** notice **under ORS 203.079** required under subsection (2) of this section does not apply:

(a) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring;

(b) Where there is an exceptional emergency, such as possible site contamination by hazardous materials; or

(c) When there is immediate danger to human life or safety.

(5) Before the city adopts an intergovernmental agreement under this section or changes to the agreement, the city shall invite public comment on the proposed agreement or the proposed changes to the agreement.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 19, 2021

Received by Governor:

Repassed by House June 9, 2021

.....M.,....., 2021

Approved:

.....
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2021

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 8, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Peter Courtney, President of Senate

.....
Shemia Fagan, Secretary of State

Blake v. City of Grants Pass

Decided Jul 22, 2020

Case No. 1:18-cv-01823-CL

07-22-2020

DEBRA BLAKE, GLORIA JOHNSON, JOHN LOGAN, individuals, on behalf of themselves and all others similarly situated, Plaintiffs, v. CITY OF GRANTS PASS, Defendant.

CLARKE, Magistrate Judge.

OPINION AND ORDER

This case involves a certified class of homeless individuals residing in and around Grants Pass, Oregon. The class members allege that the City of Grants Pass has a web of ordinances, customs, and practices that, in combination, punish people based on their status of being involuntarily homeless. This case comes before the Court on cross-motions for summary judgment. The Court has also considered amicus briefs submitted by League of Oregon Cities and the National Law Center on Homelessness and Poverty. For the reasons below, Plaintiffs' *2 Motion for Summary Judgment (Dkt. No. 62) is GRANTED in part and DENIED in part, and Defendant's Motion for Summary Judgment (Dkt. No. 80) is DENIED.¹

¹ The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

STANDARD OF REVIEW

Summary judgment shall be granted when the record shows that there is no genuine dispute as to any material facts and the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(a)*; *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

242, 247 (1986). The moving party has the initial burden of showing that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc). The court cannot weigh the evidence or determine the truth but may only determine whether there is a genuine issue of fact. *Playboy Enters., Inc. v. Welles*, 279 F.3d 796, 800 (9th Cir. 2002). An issue of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

When a properly supported motion for summary judgment is made, the burden shifts to the opposing party to set forth specific facts showing that there is a genuine issue for trial. *Id.* at 250. Conclusory allegations unsupported by factual material are insufficient to defeat a motion for summary judgment. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposing party must, by affidavit or as otherwise provided by Rule 56, designate specific facts which show there is a genuine issue for trial. *Devereaux*, 263 F.3d at 1076. In assessing whether a party has met its burden, the court views the evidence in the light most favorable to the non-moving party. *Allen v. City of Los Angeles*, 66 F.3d 1052, 1056 (9th Cir. 1995). *3

BACKGROUND

This case is about respecting the dignity of homeless individuals and the City of Grants Pass' ability to protect the safety and welfare of its citizens. Unsheltered homelessness is an ever-growing crisis nationwide, and the overwhelming majority of homeless individuals are not living

⁷ *Housing Not Handcuffs*, *supra* note 2, at 71.

⁸ See Joshua Howard et al., *At What Cost: The Minimum Cost of Criminalizing Homelessness in Seattle and Spokane*, HOMELESS RIGHTS ADVOCACY PROJECT iii (2015), <https://digitalcommons.law.seattleu.edu/hrap/10>.

The City of Grants Pass, Oregon, the city involved in this case, had a population of 23,000 people according to the 2000 census, and it is now estimated to have more than 38,000 people.⁹ The development of affordable housing in Grants Pass has not kept up with the population growth. City Manager Aaron Cubic confirmed in his deposition that Grants Pass has a vacancy rate of 1% and that "essentially means that there's no vacancy." Edward Johnson Decl., Ex. 1, Cubic Depo. at p. 49, lines 1-10 (Dkt. #63-1). Kelly Wessels, the Chief Operating Officer of the Community Action Agency that serves Grants Pass testified that

⁵ "Grants Pass" *5 stock of affordable housing has dwindled to almost zero. Landlords routinely require an applicant to have an income that is three times the monthly rent. Rental units that cost less than \$1,000/month are virtually unheard of in Grants Pass." Kelly Wessels Decl. ¶ 7 (Dkt. #42).

⁹ <http://worldpopulationreview.com/us-cities/grants-passor-population/>.

A point-in-time count of homeless individuals was conducted by the United Community Action Network ("UCAN") on January 30, 2019, in Grants Pass. UCAN counted 602 homeless individuals in Grants Pass. Wessels Decl. ¶ 6 (Dkt. #42). Another 1,045 individuals were counted as "precariously housed," meaning that they were sleeping at the home of somebody else, or "couch surfing." *Id.*

In March 2013, the Grants Pass City Council hosted a Community Roundtable, hereinafter referred to as the "2013 Roundtable Meeting," to "identify solutions to current vagrancy problems."

Wessels Decl. ¶ 8, Ex. 1 (minutes of public roundtable) (Dkt #65). Minutes from this meeting show that the City Council President stated, "the point is to make it uncomfortable enough for them in our city so they [referring to homeless individuals] will want to move on down the road." Wessels Decl., Ex. 1 at 2 (Dkt. #65-1). At the end of the meeting, a list of "actions to move forward on" was created. These action items included (i) ways to increase police presence downtown; (ii) create an exclusion zone and possibly have a blanket trespassing regulation; (iii) specific amount of misdemeanors leading to prosecution; (iv) not feeding in parks or other specific areas in the city; (v) posting "zero tolerance" signs stating certain ordinances will be strictly enforced; (vi) look into the possibility of creating a "do not serve" or "most unwanted" list; (vii) pass out the trespassing letters and get word out to have them signed; and (viii) provide assistance in constructing safe areas at agencies to protect volunteers from aggressive behavior. *Id.* at 13. City Manager Aaron Cubic confirmed that the action items from the 2013 Roundtable Meeting

⁶ were copied into the City's strategic plans in the *6 form of an objective to "address the vagrancy issue" starting with the 2013-14 Grants Pass Strategic Plan up to the current 2019 Grants Pass Strategic Plan. Edward Johnson Decl., Ex. 1, Cubic Depo. at p. 29 lines 11-16; p. 46 line 20 to p. 48 line 10. (Dkt. #63-1). The City Manager also confirmed that one of the action items related to this objective was the "targeted enforcement of illegal camping." *Id.* at p. 36 line 16 to p. 37 line 5.

There are no homeless shelters in Grants Pass that qualify as "shelters" under the criteria provided by HUD. The housing option cited by the City that most resembles a shelter is the Gospel Rescue Mission ("GRM"), which operates transitional housing programs in Grants Pass. GRM Director of Resident Services, Brian Bouteller, testified that GRM offers 30-day transitional housing in two facilities: one facility is for women and children

in a room they use for storage approximately four to five nights a week. *Id.* ¶ 3. However, that job ended in October or November 2019. *Id.* Class representative, Gloria Johnson, has been living out of her van since at least before this litigation began. Johnson Decl. ¶ 2 (Dkt. #91). Ms. Johnson has parked her van to sleep outside of town on both BLM land and county roads. She claims that she has been asked to move along several times. *Id.* ¶¶ 3-5. While their exact circumstances and stories may vary, the three class representatives all share the need to conduct the life sustaining activities of resting, sleeping, and seeking shelter from the elements while living in Grants Pass without a permanent home.

Through their appointed class representatives, Plaintiffs move for summary judgment on each of their claims. Plaintiffs allege that the City of Grants Pass, through a combination of ordinances, customs, and policies, has unconstitutionally punished them for conducting life-sustaining activities and criminalized their existence as homeless individuals. Plaintiffs seek an order from this Court declaring that the City's enforcement of Grants Pass Municipal Codes ("GPMC") 5.61.020 (the "anti-sleeping ordinance"); GPMC 5.61.030 and GPMC 6.46.090 (the "anti-camping ordinances"), GPMC 6.46.350 (the "park exclusion ordinance") and criminal trespass laws stemming from violations of those ordinances are unconstitutional as applied to the *9 plaintiff class. Plaintiffs also seek an injunction prohibiting the City from enforcing those ordinances and related criminal trespass laws against the plaintiff class unless and until members of the class have the opportunity to obtain shelter within the City. The exact language of the ordinances at issue are as follows:

5.61.010 Definitions

A. "To Camp" means to set up or to remain in or at a campsite.

B. "Campsite" means any place where bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed, established, or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

5.61.020 Sleeping on Sidewalks, Streets, Alleys, or Within Doorways Prohibited

A. No person may sleep on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety,

B. No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk.

C. In addition to any other remedy provided by law, any person found in violation of this section may be immediately removed from the premises.

5.61.030 Camping Prohibited

No person may occupy a campsite in or upon any sidewalk, street, alley, lane, public right of way, park, bench, or any other publicly-owned property or under any bridge or viaduct, unless (i) otherwise specifically authorized by this Code, (ii) by a formal declaration of the City Manager in emergency circumstances, or (iii) upon Council resolution, the Council may exempt a special event from the prohibitions of this section, if the Council finds such exemption to be in the public interest and consistent with Council goals and notices and in accordance with conditions imposed by the Parks and Community Services Director. Any conditions imposed will include a condition requiring that the applicant

a. *Martin v. Boise* is controlling precedent.

The United States Constitution prohibits punishing people for engaging in unavoidable human acts, such as sleeping or resting outside when they have no access to shelter. *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019) cert. denied 2019 U.S. LEXIS 7571 (Dec. 16, 2019). In *Martin*, the Ninth Circuit held that "so long as there is a greater number of homeless individuals in [a city] than the number of available beds [in shelters]," a city cannot punish homeless individuals for "involuntarily sitting, lying, and sleeping in public." *Id.* at 617. That is, as long as there are no emergency shelter beds available to homeless individuals, "the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter." *Id.* (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), vacated on other grounds, 505 F.3d 1006 (9th Cir. 2007)).

Martin is binding precedent on this Court. In *Martin*, six plaintiffs who were or had recently been homeless residents of Boise, Idaho challenged two city ordinances that punished homeless people for sleeping or camping in public spaces. The Boise "camping ordinance" prohibited and punished the "use of 'any streets, sidewalks, parks, or public places as a camping *12 place at any time.'" *Id.* at 603. Camping was defined as "the use of public property as a temporary or permanent place of dwelling, lodging, or residence." *Id.* at 603-604. The Boise "disorderly conduct ordinance" prohibited "occupying, lodging, or sleeping in any building, structure, or public place, whether public or private . . . without the permission of the owner or person entitled to possession or in control thereof." *Id.* at 604.

In this case, Grants Pass' two anti-camping ordinances prohibit "occupying a campsite" on "any publicly-owned property" in the City of Grants Pass. GPMC 5.61.030; GPMC 6.46.090. "Campsite" is defined as "any place where bedding, sleeping bag, or other material used for

bedding purposes . . . is placed . . . for the purpose of maintaining a temporary place to live." GPMC 5.61.010(B). The camping ordinances apply to all public spaces in Grants Pass at all times, including parks. The camping ordinances also prohibit anyone from sleeping in their cars for two consecutive hours within any Grants Pass park parking lot between the hours of midnight and 6:00 a.m. GPMC 6.46.090(B). The anti-sleeping ordinance prohibits sleeping "on public sidewalks, streets, or alleyways at any time" GPMC 5.61.020. Additionally, "[n]o person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk." *Id.* These ordinances, in combination, prohibit individuals from sleeping in any public space in Grants Pass while using any type of item that falls into the category of "bedding" or is used as "bedding."

Grants Pass takes the position that *Martin* simply confirms that a city cannot criminalize the unavoidable act of sleeping outside when there are not enough shelter beds available. Grants Pass argues that the City amended its anti-camping ordinances to remove the word "sleeping" after *Martin*. On January 2, 2019, the City amended GPMC 6.46.090 by removing the word "sleeping" so that the act of "sleeping" was to be distinguished from the prohibited conduct of *13 "camping" under the City's Camping in the Parks Ordinance. Aaron Hisel Decl. ¶¶ 12, 13, Exs. 11, 12 (Dkt. #81) . The City's intent for making this change "was to make it clear that those without shelter *could* engage in the involuntary acts of sleeping or resting in the City's parks but would still be prohibited from the voluntary conduct of maintaining a 'campsite' in the parks as a 'place to live.'" Defendant's Motion at 35 (Dkt. #80) (emphasis in original). The Court appreciates the City's attempt to comply with *Martin*. However, Grants Pass ignores the basic life sustaining need to keep warm and dry while sleeping in order to survive the elements. Under the Grants Pass ordinances, if a homeless person sleeps on public

or Josephine County land, is not supported by *Martin*. Additionally, the record does not support the suggestion that homeless people are welcome to live without interruption by law enforcement at these locations. BLM land is available for recreational camping, not as a space for emergency shelter. Fed. Reg. Vol. 70, No. 159 (Aug. 18, 2005). The campsites cost money. Aaron Hisel Decl., Ex. 1 at 52 (Dkt. #81-1). Living, establishing occupancy, or using this land for "residential purposes" is specifically prohibited, and there are limits on how long a person can stay. Fed. Reg. Vol. 70, No. 159; *See also* Gloria Johnson Decl. ¶¶ 3-5; Blake Decl. ¶ 15. Homeless people who attempt to live on BLM land are subject to trespass prosecution under [43 C.F.R. 2808.10](#), fined \$330, and summoned to this Court. Likewise, Josephine County does not welcome non-recreational camping in its parks. The County issued a letter from its Parks Director on November 12, 2019, stating that "County Parks are not a good alternative for nonrecreational campers - individuals or families who need a place to sleep, due to not having a permanent [sic] residents [sic]." Wessels Decl., Ex. 1 (Dkt. #89-1). This letter urges homeless services providers not to pay for campsites for homeless individuals in County Parks. Wessels Decl. ¶ 8 (Dkt. #89). Similarly, camping, setting up a tent, or remaining in a rest stop for more than 12 hours in a 24-hour period are explicitly prohibited. [OAR 734-030-0010\(18\)](#).

Finally, the City lists three services offered within Grants Pass that similarly do not change the equation under *Martin*. In February 2020, the

16 Umpqua Community Action Network *16 (UCAN) opened a warming center that may hold up to 40 individuals on nights when the temperature is either below 30 degrees or below 32 degrees with snow. Wessels Decl. ¶ 9 (Dkt. #89). From the record, it appears 131 different people have stayed at the warming center since it opened. *Id.* ¶¶ 9-11. As of the filing of Plaintiffs' Reply Brief, the center had been open sixteen

nights and reached capacity on every night except the first night it opened, when it had 32 occupants. *Id.* ¶ 11. While the opening of a warming shelter is positive for the City, this emergency warming facility is not a shelter for the purposes of the *Martin* analysis because the facility does not have beds and is not available consistently throughout the year. *Id.* ¶ 9. Even if the warming center did count as a shelter under HUD, the capacity of the warming center is not large enough to accommodate the amount of homeless people in Grants Pass.

The City also referenced a "sobering center" where intoxicated individuals may be temporarily held and a youth shelter. Response Br. at 13 (Dkt. #80). The sobering center is not a shelter. It allows for temporary placement for "highly intoxicated" individuals while they sober up, and for individuals who are creating a nuisance but "do not warrant a trip to jail." Aaron Hisel Decl., Ex. 1 at 33 (Dkt. #81-1). Plaintiffs claim that the sobering center has no beds and consists of a chair with restraints and 12 locked rooms with toilets where people can sober up for several hours. Edward Johnson Decl., Ex. 2 (Dkt. #92-2). Hearts with a Mission Youth Shelter runs an 18-bed facility where minors aged 10-17 may stay for 72 hours, unless they have parental consent to stay longer. Edward Johnson Decl. ¶ 4 (Dkt. #92). This shelter does not have enough beds to serve the number of homeless individuals in Grants Pass and is not "practically available" to class members in this case because it is reserved for minors. The record is undisputed that Grants Pass has far more homeless individuals than it has practically

17 available shelter beds. *17

This case cannot be distinguished from the holding in *Martin*. The alternative shelters suggested by the City do not change the equation set out in *Martin*. Because Grants Pass lacks adequate shelter for its homeless population, its practice of punishing people who have no access to shelter for the act of sleeping or resting outside while having a blanket or other bedding to stay

Violations of the Boise ordinances analyzed in *Martin* were misdemeanors, 920 F.3d at 603, so the Ninth Circuit at times used the word "criminal" in its analysis. However, a careful reading of *Martin* shows that this language was not a limitation on when the Eighth Amendment's prohibition on cruel and unusual punishment applies. The Ninth Circuit stated the broad question that it was addressing was "[D]oes the

19 Cruel and Unusual Punishments Clause of *19 the Eighth Amendment preclude the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter?" *Id.* at 615. The Ninth Circuit held that it does, quoting *Jones*, "the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being." *Id.* at 616. It is the punishment of a person's unavoidable status that violates the constitution, not whether that punishment is designated civil or criminal. *See id.* The main difference between Grants Pass' punishment scheme and that of Boise's in *Martin* is that Grants Pass first issues fines for violations and then either issues a trespass order or excludes persons from all parks before a person is charged with misdemeanor criminal trespass. This makes no difference for Eighth Amendment purposes because the result, in Boise and Grants Pass, is identical: involuntarily homeless people are punished for engaging in the unavoidable acts of sleeping or resting in a public place when they have nowhere else to go.

Additionally, as the Supreme Court noted, "whether a particular statutorily defined penalty is civil or criminal is a matter of statutory construction." *United States v. Ward*, 448 U.S. 242, 248 (1980). In Oregon, violations are defined as criminal actions and are prosecuted in criminal proceedings. ORS 131.005(6)-(7). The Grants Pass Municipal Code uses the language and procedures of criminal law, discussing those "guilty" of code violations. GPMC 1.36.010(A). The violations are prosecuted in the Josephine

County Circuit Court by the Josephine County District Attorney's office. ORS 153.076(6). As in a criminal trial, a defendant may not be compelled to testify and the same pretrial discovery that applies in misdemeanor and felony cases applies, ORS 153.076(3)-(4). The judgment from a camping violation in Grants Pass reads, "[t]he court finds the defendant GUILTY of the charges

20 *20 designated CONVICTED in the section below." Edward Johnson Decl., Ex. 9 at 3-4 (Dkt. #63-9).

Moreover, even if *Martin* and the Eighth Amendment were limited to "criminal" punishments, which they are not, Grants Pass' enforcement scheme involves criminal punishment. Violations for sleeping and "camping" are an element of future Criminal Trespass II arrests and initiate the criminal process in two common circumstances: (1) after a person is "trespassed" from an area for "camping" and either does not leave or returns, or (2) after an officer excludes a person from a park for prohibited camping. In either situation, if that person does not move along or returns to the location, they are subject to arrest and prosecution for Criminal Trespass II. The criminal process is initiated with the original citation and that citation is an element of the subsequent criminal trespass charge once the person is trespassed or excluded under threat of arrest for criminal trespassing.

Therefore, Grants Pass' enforcement scheme is subject to Eighth Amendment analysis. Under such analysis, the ordinances at issue and their enforcement, as applied to plaintiff class members, violate the Cruel and Unusual Punishment Clause of the Eighth Amendment.

II. Grants Pass' policy and practice of enforcing the ordinances at issue violates the Excessive Fines Clause of the Eighth Amendment.

Grants Pass' enforcement of the ordinances at issue also violates the Excessive Fines Clause of the Eighth Amendment. The Supreme Court has

inquiry. *Bajakajian* at 340, n.15; see also *Timbs* at 688 quoting 4 W. Blackstone, Commentaries on the Laws of England 372 (1769) "[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear"

Here, the decisive consideration is that Plaintiffs are being punished for engaging in the unavoidable, biological, life-sustaining acts of sleeping and resting while also trying to stay warm and dry. Plaintiffs do not have enough money to obtain shelter, so they likely cannot pay these fines. When the fines remain unpaid, the additional collection fees are applied and the fines still remain unpaid, subjecting plaintiffs to collection efforts, the threat of driver license 23 suspensions (Johnson Decl., Ex. 9 at 3-4 (Dkt. #63-9)), and damaged credit that makes it even more difficult for them to find housing, exacerbating the homeless problem in Grants Pass (Wessels Dec. ¶11 (Dkt #65)). As the Supreme Court recognized in the cruel and unusual punishment context, "even one day in prison would be cruel and unusual punishment for the 'crime' of having a common cold." *Robinson v. California*, 370 U.S. 660, 667 (1962). So too here. Fining a homeless person in Grants Pass who must sleep outside beneath a blanket because they cannot find shelter \$295 (\$537.60 after collection fees are inevitably assessed) is grossly disproportionate to the "gravity of the offense." Any fine is excessive if it is imposed on the basis of status and not conduct. For Plaintiffs, the conduct for which they face punishment is inseparable from their status as homeless individuals, and therefore, beyond what the City may constitutionally punish. The fines associated with violating the ordinances at issue, as applied to Plaintiffs, are unconstitutionally excessive.

Having found that the ordinances violate the Cruel and Unusual Punishment Clause as well as the Excessive Fines Clause of the Eight Amendment,

the Court declines to decide whether the ordinances are also unconstitutionally vague.

III. The appeal process for park exclusions in Grants Pass violates procedural due process rights.

a. Plaintiffs' claim that park exclusions violate procedural due process was adequately pled and standing has been established.

Grants Pass does not challenge the merits of plaintiffs' procedural due process claim regarding the City's park exclusion ordinance in its response to Plaintiffs' motion for summary judgment. Instead, Grants Pass argues that this claim was not properly pled in the operative complaint. The Court disagrees. This claim seems to be the sole reason for the Third Amended Complaint filed on November 13, 2019. (Dkt. #50). The only changes from the Second Amended Complaint were to add the allegation at paragraph 87 that, "Plaintiffs have 24 been *24 excluded from Grants Pass parks without due process of law" and to specifically add "GPMC 6.46.350 (the park exclusion ordinance)" to the injunctive and declaratory relief sought in this case. Third Amended Complaint ¶ 87, Prayer ¶¶ 3-4 (Dkt. #50). Although the City correctly points out that GPMC 6.46.355 (the ordinance that explains the appeal procedure) is missing from the operative complaint, Plaintiffs made clear that they were challenging park exclusions under the Procedural Due Process Clause. The City did not object to the amendment or ask that it be clarified or made more specific. Therefore, the claim was pled, and the City was on notice.

Second, Grants Pass argues that if the claim was pled, it should be dismissed because Plaintiffs have not alleged or sufficiently established standing. The City argues, "plaintiffs do not even attempt to produce a plaintiff or rely upon any individual's standing." Response at 51 (Dkt. #80). The Court disagrees. The record shows that of the 59 park exclusions produced to Plaintiffs by the City, all were issued to homeless individuals and 42 were issued for illegal camping. Pltfs' Motion

City Manager, at which point the objection will be placed on the City Council's agenda. GPMC 6.46.355.

Sixteen years ago, this Court found a substantially identical appeal process in Portland's park exclusion ordinance to violate procedural due process rights.

The risk of erroneous deprivation is compounded by PCC 20.12:265's deficient appeal procedures and lack of a pre-deprivation hearing. An exclusion takes effect immediately upon issuance and is not stayed pending appeal. Thus, a person excluded from a park is subject to arrest for reentry as soon as she receives the exclusion notice. An appeal may be filed within five days, but the individual continues to be excluded from the parks. Thus, even if the exclusion is ultimately found to be invalid, the individual has been kept from the public park(s) for at least a significant portion of the thirty days.

Yeakle v. City of Portland, 322 F. Supp. 2d 1119, 1130 (D. Or. 2004). For the same reasons, Grants Pass' park exclusion ordinance is also unconstitutional and violates the procedural

27 protections of the due process clause. *27

The *Yeakle* court applied the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) to Portland's functionally identical park exclusion appeal process. The court found that excluded individuals have a strong liberty interest in avoiding unjust exclusion because of the importance of public parks as a "treasured and unmatched resource" for members of the public. 322 F. Supp. 2d at 1129. In this case, that interest is even greater for Plaintiffs because several parks in Grants Pass contain benches, tables and restrooms that homeless individuals may use for basic activities of daily life when they have no alternative place to dwell. The court also found that "the risk of erroneous deprivation under the present procedure is considerable" given the lack

of pre-deprivation process and the lack of "any evidentiary standard." *Id.* at 1130. The same is true here. There is no requirement in the ordinance that the Grants Pass police officer have enough evidence or reasonable suspicion of the excludable conduct to issue an exclusion or make an arrest. The officer need not witness the violation or have any other reliable information that a violation occurred under the language of the ordinance. Further, just like in *Yeakle*, "a person is subject to arrest for reentry as soon as she receives the exclusion notice" and "even if the exclusion is ultimately found to be invalid, the individual has been kept from the public parks for at least a significant portion of the thirty days." *Id.* The *Yeakle* Court concluded that "a pre-deprivation hearing or other procedural safeguard would not unduly burden the government" and "there would be no additional burden on the City if the park exclusions were simply stayed in the event that an individual filed an appeal." *Id.* at 1131. For the same reasons, the procedures for appealing park exclusions in Grants Pass violate Plaintiffs' procedural due process rights. *28

28

IV. Plaintiffs are denied summary judgment on their Equal Protection Claim.

The Equal Protection Clause guarantees that "all persons similarly circumstanced shall be treated alike." *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Plaintiffs allege selective enforcement of the ordinances at issue. As such, they "must demonstrate that enforcement had a discriminatory effect and the police were motivated by a discriminatory purpose." *Rosenbaum v. City and County of San Francisco*, 484 F.3d 1142, 1152 (9th Cir. 2007). Further, because the class seeks to enjoin enforcement, they must demonstrate that the selective enforcement "is part of a 'policy, plan, or a pervasive pattern.'" *Id.* at 1153 (quoting *Thomas v. County of Los Angeles*, 978 F.2d 504, 509 (9th Cir. 1993)).

under the summary judgment standard. This Court's holding that the enforcement of Grants Pass' ordinances violate the Eight Amendment does not automatically translate to a finding that Grants Pass officials acted with deliberate indifference or reckless disregard for Plaintiffs' fundamental rights. Whether Grants Pass' conduct shocks the conscience is a question of material fact. Therefore, Plaintiffs are denied summary judgment on their substantive due process claim.

VI. Conclusion

The holding in this case does not say that Grants Pass must allow homeless camps to be set up at all times in public parks. Just like in *Martin*, this holding in no way dictates to a local government that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the street at any time and at any place. See *Martin*, 920 F.3d 584, 617. Nor does this holding "cover individuals who do have access to adequate temporary shelter, whether they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it." *Id.*, at n. 8. The City may implement time and place restrictions for when homeless individuals may use their belongings to keep warm and dry and when they must have their belonging packed up. The City may also implement an anti-camping ordinance that is more

31 *31 specific than the one in place now. For example, the City may ban the use of tents in public parks without going so far as to ban people from using any bedding type materials to keep warm and dry while they sleep. The City may also consider limiting the amount of bedding type materials allowed per individual in public places. Moreover, this holding does not limit Grants Pass' ability to enforce laws that actually further public health and safety, such as laws restricting littering, public urination or defecation, obstruction of roadways, possession or distribution of illicit substances, harassment, or violence. Grants Pass would retain a large toolbox for regulating public space without violating the Eight Amendment.

There is no doubt that homelessness is a serious public health concern. Homeless individuals have higher rates of chronic physical and mental health conditions, increased rates of mortality, and related diseases and co-occurring disorders.¹² With the lack of access to the most basic of human needs, including running water, toilets, and trash disposal, infectious diseases—like COVID-19—can spread quickly. Uprooting homeless individuals, without providing them with basic sanitation and waste disposal needs, does nothing more than shift a public health crisis from one location to another, potentially endangering the health of the public in both locations. This concern is particularly acute during the current COVID-19 pandemic. As the U.S. Centers for Disease Control and Prevention (the "CDC") explained in its *Interim Guidance for Responding to Coronavirus Disease 2019 (COVID-19) among People Experiencing Unsheltered Homelessness*: Unless individual housing units are available, do not clear encampments during community spread of COVID-19.

¹² *Housing Not Handcuffs*, *supra* note 2 at 68.

32 The Court encourages Grants Pass to work with local homeless services experts and mental health professionals to develop training programs that cover techniques and tools for *32 interacting with homeless individuals and for deescalating mental health crises. For example, the City of Eugene, Oregon has used the services from an organization called CAHOOTS ("Crisis Assistance Helping Out on the Streets") to provide free "immediate stabilization in cases of urgent medical need or psychological crisis, assessment, information referral, advocacy [and] (in some cases) transportation to the next step in treatment" to the people of Eugene, Oregon.¹³ As *The Wall Street Journal* noted, Gary Marshall, a 64-year-old who previously lived on the streets of Eugene, said the police approach was "name, serial number and up against the van." In contrast, when he was having

22 *Id.*; see also April Ehrlich, *Law Enforcement Officials Argue Rural Homeless Services Worsen Problem*, NPR (Jan. 21, 2020), <https://www.npr.org/2020/01/21/797497926/law-enforcement-officials-argue-rural-homeless-services-worsen-problem> ("Hope Village in Oregon faced some pushback in its early stages a few years ago. Some people feared that it would increase crime and generate litter. But resident Buckshot Cunningham says those fears proved to be wrong. 'Look at this place,' he says, motioning to the neat row of cottages. 'It's clean; it's beautiful. And it stays that way seven days a week, all year round. It's pretty simple.'").

23 Mail Tribune Editorial Board, *Medford can be proud of Hope Village*, THE MAIL TRIBUNE (Aug. 4, 2019), <https://mailtribune.com/opinion/editorials/medford-can-be-proud-of-hope-village>.

24 Madison LaBerge, *New tiny home village in Grants Pass for homeless population*, FOX 26 (June 10, 2020), <https://fox26medford.com/new-tiny-home-village-in-grants-pass-for-homeless-population/>

As the League of Oregon Cities noted in its amicus brief, "Oregon's cities are obligated to provide safe and livable communities for all residents." Cities Br. at 2 (Dkt. #87). Laws that punish people because they are unhoused and have no other place to go undermine cities' ability to fulfill this obligation. Indeed, enforcement of such "quality of life laws" do nothing to cure the homeless crisis in this country. Arresting the homeless is almost never an adequate solution because, apart from the constitutional impediments, it is expensive, not rehabilitating, often a waste of limited public resources, and does nothing to serve those homeless individuals who suffer from mental illness and substance abuse addiction.

Quality of life laws erode the little trust that remains between homeless individuals and law enforcement officials. This erosion of trust not only increases the risk of confrontations between law enforcement and homeless individuals, but it also makes it less likely that homeless individuals will cooperate with law enforcement.²⁵ Moreover, quality of life laws, even civil citations, contribute to a cycle of incarceration and recidivism. Indeed, civil citations requiring appearance in court can lead to warrants for failure to appear when homeless people, who lack a physical address or phone number, do not receive notice of relevant hearings and wind up incarcerated as a result.²⁶

Moreover, unpaid civil citations can impact a person's credit history and be a direct bar to housing access in competitive rental markets where credit history is a factor^{*35} in tenant selection. In this way, civil penalties can prevent homeless people from accessing the very housing that they need to move from outdoor public spaces to indoor private ones.

²⁵ *Housing Not Handcuffs*, *supra* note 2 at 65.

²⁶ *Id.* at 52. -----

There are many options available to Grants Pass to prevent the erection of encampments that cause public health and safety concerns without violating the Eight Amendment. The Court reminds governing bodies of the importance of empathy and thinking outside the box. We must try harder to protect our most vulnerable citizens. Let us not forget that homeless individuals are citizens just as much as those fortunate enough to have a secure living space.

ORDER

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment (Dkt. No. 62) is GRANTED in part and DENIED in part, and Defendant's Motion for Summary Judgment (Dkt. No. 80) is DENIED.

IT IS SO ORDERED and DATED this 22nd day of July, 2020.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT MARTIN; LAWRENCE LEE
SMITH; ROBERT ANDERSON; JANET
F. BELL; PAMELA S. HAWKES; and
BASIL E. HUMPHREY,
Plaintiffs-Appellants,

v.

CITY OF BOISE,
Defendant-Appellee.

No. 15-35845

D.C. No.
1:09-cv-00540-
REB

ORDER AND
AMENDED
OPINION

Appeal from the United States District Court
for the District of Idaho
Ronald E. Bush, Chief Magistrate Judge, Presiding

Argued and Submitted July 13, 2017
Portland, Oregon

Filed April 1, 2019

Before: Marsha S. Berzon, Paul J. Watford,
and John B. Owens, Circuit Judges.

Order;
Concurrence in Order by Judge Berzon;
Dissent to Order by Judge Milan D. Smith, Jr.;
Dissent to Order by Judge Bennett;
Opinion by Judge Berzon;
Partial Concurrence and Partial Dissent by Judge Owens

The panel first held that two plaintiffs had standing to pursue prospective relief because they demonstrated a genuine issue of material fact as to whether they faced a credible risk of prosecution on a night when they had been denied access to the City's shelters. The panel noted that although the 2014 amendment precluded the City from enforcing the ordinances when shelters were full, individuals could still be turned away for reasons other than shelter capacity, such as for exceeding the shelter's stay limits, or for failing to take part in a shelter's mandatory religious programs.

The panel held that although the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994), and its progeny precluded most — but not all — of the plaintiffs' requests for retrospective relief, the doctrine had no application to plaintiffs' request for an injunction enjoining prospective enforcement of the ordinances.

Turning to the merits, the panel held that the Cruel and Unusual Punishments Clause of the Eighth Amendment precluded the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter. The panel held that, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.

Concurring in part and dissenting in part, Judge Owens disagreed with the majority's opinion that *Heck v. Humphrey* did not bar plaintiffs' claim for declaratory and injunctive relief. Judge Owens stated that a declaration that the city ordinances are unconstitutional and an injunction against their future enforcement would necessarily demonstrate the

Dissenting from the denial of rehearing en banc, Judge Bennett, joined by Judges Bea, Ikuta, R. Nelson, and joined by Judge M. Smith as to Part II, stated that the panel's decision, which allows pre-conviction Eighth Amendment challenges, is wholly inconsistent with the text and tradition of the Eighth Amendment.

COUNSEL

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Brady J. Hall (argued), Michael W. Moore, and Steven R. Kraft, Moore Elia Kraft & Hall LLP, Boise, Idaho; Scott B. Muir, Deputy City Attorney; Robert B. Luce, City Attorney; City Attorney's Office, Boise, Idaho; for Defendant-Appellee.

rehearing en banc); *see also* Marsha S. Berzon, *Dissent, "Dissentials," and Decision Making*, 100 Calif. L. Rev. 1479 (2012). Often times, the dramatic tone of these dissents leads them to read more like petitions for writ of certiorari on steroids, rather than reasoned judicial opinions.

Despite my distaste for these separate writings, I have, on occasion, written concurrences in the denial of rehearing en banc. On those rare occasions, I have addressed arguments raised for the first time during the en banc process, corrected misrepresentations, or highlighted important facets of the case that had yet to be discussed.

This case serves as one of the few occasions in which I feel compelled to write a brief concurrence. I will not address the dissents' challenges to the *Heck v. Humphrey*, 512 U.S. 477 (1994), and Eighth Amendment rulings of *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), as the opinion sufficiently rebuts those erroneous arguments. I write only to raise two points.

First, the City of Boise did not initially seek en banc reconsideration of the Eighth Amendment holding. When this court solicited the parties' positions as to whether the Eighth Amendment holding merits en banc review, the City's initial submission, before mildly supporting en banc reconsideration, was that the opinion is quite "narrow" and its "interpretation of the [C]onstitution raises little actual conflict with Boise's Ordinances or [their] enforcement." And the City noted that it viewed prosecution of homeless individuals for sleeping outside as a "last resort," not as a principal weapon in reducing homelessness and its impact on the City.

But even putting aside the use of a pre-*Martin*, outside-the-record photograph from another municipality, the photograph does not serve to illustrate a concrete effect of *Martin*'s holding. The opinion clearly states that it is not outlawing ordinances "barring the obstruction of public rights of way or the erection of certain structures," such as tents, *id.* at 1048 n.8, and that the holding "in no way dictate[s] to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place," *id.* at 1048 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)).

What the pre-*Martin* photograph *does* demonstrate is that the ordinances criminalizing sleeping in public places were never a viable solution to the homelessness problem. People with no place to live will sleep outside if they have no alternative. Taking them to jail for a few days is both unconstitutional, for the reasons discussed in the opinion, and, in all likelihood, pointless.

The distressing homelessness problem—distressing to the people with nowhere to live as well as to the rest of society—has grown into a crisis for many reasons, among them the cost of housing, the drying up of affordable care for people with mental illness, and the failure to provide adequate treatment for drug addiction. *See, e.g.,* U.S. Interagency Council on Homelessness, *Homelessness in America: Focus on Individual Adults* 5–8 (2018), https://www.usich.gov/resources/?uploads/asset_library/HIA_Individual_Adults.pdf.

web.archive.org/web/20170405225036/homeless.lacounty.gov/implementing-the-los-angeles-county-homeless-initiative/#]; *see also* Los Angeles County (@CountyofLA), Twitter (Nov. 29, 2017, 3:23 PM), <https://twitter.com/CountyofLA/status/936012841533894657>.

I respectfully dissent from our court's refusal to correct this holding by rehearing the case en banc.

I.

The most harmful aspect of the panel's opinion is its misreading of Eighth Amendment precedent. My colleagues cobble together disparate portions of a fragmented Supreme Court opinion to hold that "an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them." *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018). That holding is legally and practically ill-conceived, and conflicts with the reasoning of every other appellate court² that has considered the issue.

A.

The panel struggles to paint its holding as a faithful interpretation of the Supreme Court's fragmented opinion in *Powell v. Texas*, 392 U.S. 514 (1968). It fails.

To understand *Powell*, we must begin with the Court's decision in *Robinson v. California*, 370 U.S. 660 (1962). There, the Court addressed a statute that made it a "criminal

Office of Cmty. Planning & Dev., The 2018 Annual Homeless Assessment Report (AHAR) to Congress 1 (Dec. 2018), <https://www.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>.

² Our court previously adopted the same Eighth Amendment holding as the panel in *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), but that decision was later vacated. 505 F.3d 1006 (9th Cir. 2007).

showing that he was unable to stay off the streets on the night he was arrested. *Id.* at 552–53 (White, J., concurring in the result). He wrote that it was “unnecessary to pursue at this point the further definition of the circumstances or the state of intoxication which might bar conviction of a chronic alcoholic for being drunk in a public place.” *Id.* at 553.

The panel contends that because Justice White concurred in the judgment alone, the views of the dissenting Justices constitute the holding of *Powell*. *Martin*, 902 F.3d at 1048. That tenuous reasoning—which metamorphosizes the *Powell* dissent into the majority opinion—defies logic.

Because *Powell* was a 4–1–4 decision, the Supreme Court’s decision in *Marks v. United States* guides our analysis. 430 U.S. 188 (1977). There, the Court held that “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.’” *Id.* at 193 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (plurality opinion)) (emphasis added). When *Marks* is applied to *Powell*, the holding is clear: The defendant’s conviction was constitutional because it involved the commission of an act. Nothing more, nothing less.

This is hardly a radical proposition. I am not alone in recognizing that “there is definitely no Supreme Court holding” prohibiting the criminalization of involuntary conduct. *United States v. Moore*, 486 F.2d 1139, 1150 (D.C. Cir. 1973) (en banc). Indeed, in the years since *Powell* was decided, courts—including our own—have routinely upheld state laws that criminalized acts that were allegedly

The Court also acknowledged that lower courts have inconsistently interpreted the holdings of fractured decisions under *Marks*.⁵

Those criticisms, however, were based on the assumption that *Marks* means what it says and says what it means: Only the views of the Justices concurring in the judgment may be considered in construing the Court's holding. *Marks*, 430 U.S. at 193. The Justices did not even think to consider that *Marks* allows dissenting Justices to create the Court's holding. As a *Marks* scholar has observed, such a method of vote counting "would paradoxically create a precedent that contradicted the judgment in that very case."⁶ And yet the panel's opinion flouts that common sense rule to extract from *Powell* a holding that does not exist.

What the panel really does is engage in a predictive model of precedent. The panel opinion implies that if a case like *Powell* were to arise again, a majority of the Court would hold that the criminalization of involuntary conduct violates the Eighth Amendment. Utilizing such reasoning, the panel borrows the Justices' robes and adopts that holding on their behalf.

But the Court has repeatedly discouraged us from making such predictions when construing precedent. See *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). And, for good reason. Predictions about how

⁵ *Id.* at 49.

⁶ Richard M. Re, *Beyond the Marks Rule*, 132 Harv. L. Rev. (forthcoming 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090620.

previously upheld by the California Supreme Court. Both courts cannot be correct.

The California Supreme Court acknowledged that homelessness is a serious societal problem. It explained, however, that:

Many of those issues are the result of legislative policy decisions. The arguments of many amici curiae regarding the apparently intractable problem of homelessness and the impact of the Santa Ana ordinance on various groups of homeless persons (e.g., teenagers, families with children, and the mentally ill) should be addressed to the Legislature and the Orange County Board of Supervisors, not the judiciary. Neither the criminal justice system nor the judiciary is equipped to resolve chronic social problems, but criminalizing conduct that is a product of those problems is not for that reason constitutionally impermissible.

Id. at 1157 n.12. By creating new constitutional rights out of whole cloth, my well-meaning, but unelected, colleagues improperly inject themselves into the role of public policymaking.⁷

⁷ Justice Black has also observed that solutions for challenging social issues should be left to the policymakers:

I cannot say that the States should be totally barred from one avenue of experimentation, the criminal process, in attempting to find a means to cope with this difficult social problem [I]t seems to me that the

The Eleventh Circuit has agreed. In *Joel v. City of Orlando*, the court held that a city ordinance prohibiting sleeping on public property was constitutional. 232 F.3d 1353, 1362 (11th Cir. 2000). The court rejected the plaintiffs' Eighth Amendment challenge because the ordinance "targets conduct, and does not provide criminal punishment based on a person's status." *Id.* The court prudently concluded that "[t]he City is constitutionally allowed to regulate where 'camping' occurs." *Id.*

We ought to have adopted the sound reasoning of these other courts. By holding that Boise's enforcement of its Ordinances violates the Eighth Amendment, our panel has needlessly created a split in authority on this straightforward issue.

C.

One would think our panel's legally incorrect decision would at least foster the common good. Nothing could be further from the truth. The panel's decision generates dire practical consequences for the hundreds of local governments within our jurisdiction, and for the millions of people that reside therein.

The panel opinion masquerades its decision as a narrow one by representing that it "in no way dictate[s] to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place." *Martin*, 902 F.3d at 1048 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)).

even then “not everybody really gets counted.”⁹ Lest one think Los Angeles is unique, our circuit is home to many of the largest homeless populations nationwide.¹⁰

If cities do manage to cobble together the resources for such a system, what happens if officials (much less volunteers) miss a homeless individual during their daily count and police issue citations under the false impression that the number of shelter beds exceeds the number of homeless people that night? According to the panel’s opinion, that city has violated the Eighth Amendment, thereby potentially leading to lawsuits for significant monetary damages and other relief.

⁹ Matt Tinoco, *LA Counts Its Homeless, But Counting Everybody Is Virtually Impossible*, LAist (Jan. 22, 2019, 2:08 PM), https://laist.com/2019/01/22/los_angeles_homeless_count_2019_how_volunteer.php. The panel conceded the imprecision of such counts in its opinion. *See Martin*, 902 F.3d at 1036 n.1 (acknowledging that the count of homeless individuals “is not always precise”). But it went on to disregard that fact when tying a city’s ability to enforce its laws to these counts.

¹⁰ The U.S. Department of Housing and Urban Development’s 2018 Annual Homeless Assessment Report to Congress reveals that municipalities within our circuit have among the highest homeless populations in the country. In Los Angeles City and County alone, 49,955 people experienced homelessness in 2018. The number was 12,112 people in Seattle and King County, Washington, and 8,576 people in San Diego City and County, California. *See supra* note 1, at 18, 20. In 2016, Las Vegas had an estimated homeless population of 7,509 individuals, and California’s Santa Clara County had 6,556. Joaquin Palomino, *How Many People Live On Our Streets?*, S.F. Chronicle (June 28, 2016), <https://projects.sfchronicle.com/sf-homeless/numbers>.

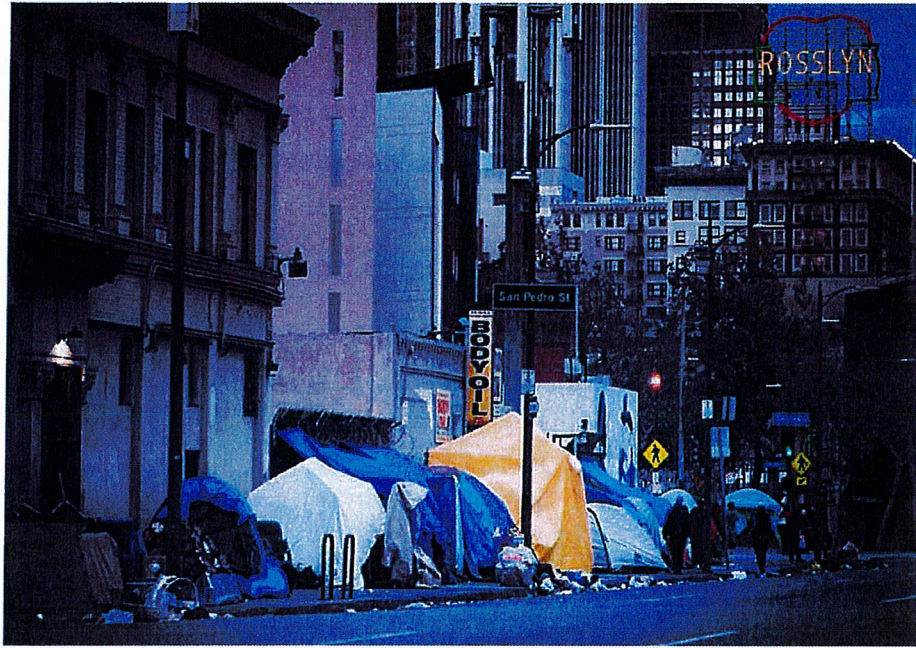
effectively allows homeless individuals to sleep and live wherever they wish on most public property. Without an absolute confidence that they can house every homeless individual, city officials will be powerless to assist residents lodging valid complaints about the health and safety of their neighborhoods.¹³

As if the panel's actual holding wasn't concerning enough, the logic of the panel's opinion reaches even further in scope. The opinion reasons that because "resisting the need to . . . engage in [] life-sustaining activities is impossible," punishing the homeless for engaging in those actions in public violates the Eighth Amendment. *Martin*, 902 F.3d at 1048. What else is a life-sustaining activity? Surely bodily functions. By holding that the Eighth Amendment proscribes the criminalization of involuntary conduct, the panel's decision will inevitably result in the

no longer penalize people for sleeping in public areas."); Brandon Pho, *Buena Park Residents Express Opposition to Possible Homeless Shelter*, Voice of OC (Feb. 14, 2019), <https://voiceofoc.org/2019/02/buena-park-residents-express-opposition-to-possible-homeless-shelter/> (stating that Judge David Carter of the U.S. District Court for the Central District of California has "warn[ed] Orange County cities to get more shelters online or risk the inability the enforce their anti-camping ordinances"); Nick Welsh, *Court Rules to Protect Sleeping in Public: Santa Barbara City Parks Subject of Ongoing Debate*, Santa Barbara Indep. (Oct. 31, 2018), <http://www.independent.com/news/2018/oct/31/court-rules-protect-sleeping-public/?jqm> ("In the wake of what's known as 'the Boise decision,' Santa Barbara city police found themselves scratching their heads over what they could and could not issue citations for.").

¹³ In 2017, for example, San Francisco received 32,272 complaints about homeless encampments to its 311-line. Kevin Fagan, *The Situation On The Streets*, S.F. Chronicle (June 28, 2018), <https://projects.sfchronicle.com/sf-homeless/2018-state-of-homelessness>.

equipped with mini refrigerators, cupboards, televisions, and heaters, [that] vie with pedestrian traffic” and “human waste appearing on sidewalks and at local playgrounds.”¹⁶



A Los Angeles Public Sidewalk

II.

The panel’s fanciful merits-determination is accompanied by a no-less-inventive series of procedural rulings. The panel’s opinion also misconstrues two other areas of Supreme Court precedent concerning limits on the parties who can

¹⁶ Scott Johnson and Peter Kiefer, *LA’s Battle for Venice Beach: Homeless Surge Puts Hollywood’s Progressive Ideals to the Test*, *Hollywood Reporter* (Jan. 11, 2019, 6:00 AM), <https://www.hollywoodreporter.com/features/las-homeless-surge-puts-hollywoods-progressive-ideals-test-1174599>.

not entitled to good-time credits, and that *Heck*, therefore, did not bar prospective injunctive relief. *Id.* at 648.

Here, in contrast, a declaration that the Ordinances are unconstitutional and an injunction against their future enforcement necessarily demonstrate the invalidity of the plaintiffs' prior convictions. According to data from the U.S. Department of Housing and Urban Development, the number of homeless individuals in Boise exceeded the number of available shelter beds during each of the years that the plaintiffs were cited.¹⁷ Under the panel's holding that "the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property" "as long as there is no option of sleeping indoors," that data necessarily demonstrates the invalidity of the plaintiffs' prior convictions. *Martin*, 902 F.3d at 1048.

B.

The panel also erred in holding that Robert Martin and Pamela Hawkes, who were cited but not convicted of violating the Ordinances, had standing to sue under the Eighth Amendment. In so doing, the panel created a circuit split with the Fifth Circuit.

The panel relied on *Ingraham v. Wright*, 430 U.S. 651 (1977), to find that a plaintiff "need demonstrate only the

¹⁷ See U.S. Dep't of Hous. & Urban Dev., PIT Data Since 2007, <https://www.hudexchange.info/resources/documents/2007-2018-PIT-Counts-by-CoC.xlsx>; U.S. Dep't of Hous. & Urban Dev., HIC Data Since 2007, <https://www.hudexchange.info/resources/documents/2007-2018-HIC-Counts-by-CoC.xlsx>. Boise is within Ada County and listed under CoC code ID-500.

violating the sleeping in public ordinance. *Id.* at 445. The Fifth Circuit explained that *Ingraham* clearly required a plaintiff be convicted under a criminal statute before challenging that statute's validity. *Id.* at 444–45 (citing *Robinson*, 370 U.S. at 663; *Ingraham*, 430 U.S. at 667).

By permitting Martin and Hawkes to maintain their Eighth Amendment challenge, the panel's decision created a circuit split with the Fifth Circuit and took our circuit far afield from "[t]he primary purpose of (the Cruel and Unusual Punishments Clause) . . . [which is] the method or kind of punishment imposed for the violation of criminal statutes." *Ingraham*, 430 U.S. at 667 (quoting *Powell*, 392 U.S. at 531–32).

III.

None of us is blind to the undeniable suffering that the homeless endure, and I understand the panel's impulse to help such a vulnerable population. But the Eighth Amendment is not a vehicle through which to critique public policy choices or to hamstring a local government's enforcement of its criminal code. The panel's decision, which effectively strikes down the anti-camping and anti-sleeping Ordinances of Boise and that of countless, if not all, cities within our jurisdiction, has no legitimate basis in current law.

I am deeply concerned about the consequences of our panel's unfortunate opinion, and I regret that we did not vote to reconsider this case en banc. I respectfully dissent.

Rights of 1689,¹ and there is no question that the drafters of the Eighth Amendment were influenced by the prevailing interpretation of Section 10. *See Solem v. Helm*, 463 U.S. 277, 286 (1983) (observing that one of the themes of the founding era “was that Americans had all the rights of English subjects” and the Framers’ “use of the language of the English Bill of Rights is convincing proof that they intended to provide at least the same protection”); *Timbs v. Indiana*, 586 U.S. ____ (2019) (Thomas, J., concurring) (“[T]he text of the Eighth Amendment was ‘based directly on . . . the Virginia Declaration of Rights,’ which ‘adopted verbatim the language of the English Bill of Rights.’” (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 266 (1989))). Thus, “not only is the original meaning of the 1689 Declaration of Rights relevant, but also the circumstances of its enactment, insofar as they display the particular ‘rights of English subjects’ it was designed to vindicate.” *Harmelin v. Michigan*, 501 U.S. 957, 967 (1991) (Scalia, J., concurring).

Justice Scalia’s concurrence in *Harmelin* provides a thorough and well-researched discussion of the original public meaning of the Cruel and Unusual Punishments Clause, including a detailed overview of the history of Section 10 of the English Declaration of Rights. *See id.* at 966–85 (Scalia, J., concurring). Rather than reciting Justice Scalia’s *Harmelin* discussion in its entirety, I provide only a broad description of its historical analysis. Although the issue Justice Scalia confronted in *Harmelin* was whether the

¹ 1 Wm. & Mary, 2d Sess., ch. 2, 3 Stat. at Large 440, 441 (1689) (Section 10 of the English Declaration of Rights) (“excessive Baile ought not to be required, nor excessive Fines imposed; nor cruell and unusuall Punishments inflicted.”).

Tr. 1227, 1316 (K.B. 1685)). Years after the sentence was carried out, and months after the passage of the Declaration of Rights, the House of Commons passed a bill to annul Oates's sentence. Though the House of Lords never agreed, the Commons issued a report asserting that Oates's sentence was the sort of "cruel and unusual Punishment" that Parliament complained of in the Declaration of Rights. *Harmelin*, 501 U.S. at 972 (citing 10 Journal of the House of Commons 247 (Aug. 2, 1689)). In the view of the Commons and the dissenting Lords, Oates's punishment was "'out of the Judges' Power,' 'contrary to Law and ancient practice,' without 'Precedents' or 'express Law to warrant,' 'unusual,' 'illegal,' or imposed by 'Pretence to a discretionary Power.'" *Id.* at 973 (quoting 1 Journals of the House of Lords 367 (May 31, 1689); 10 Journal of the House of Commons 247 (Aug. 2, 1689)).

Thus, Justice Scalia concluded that the prohibition on "cruell and unusuall punishments" as used in the English Declaration, "was primarily a requirement that judges pronouncing sentence remain within the bounds of common-law tradition." *Harmelin*, 501 U.S. at 974 (Scalia, J., concurring) (citing *Ingraham*, 430 U.S. at 665; 1 J. Chitty, *Criminal Law* 710–12 (5th Am. ed. 1847); Anthony F. Granucci, *Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57 Calif. L. Rev. 839, 859 (1969)).

But Justice Scalia was careful not to impute the English meaning of "cruell and unusuall" directly to the Framers of our Bill of Rights: "the ultimate question is not what 'cruell and unusuall punishments' meant in the Declaration of Rights, but what its meaning was to the Americans who adopted the Eighth Amendment." *Id.* at 975. "Wrenched out of its common-law context, and applied to the actions of a

In short, when the Framers drafted and the several states ratified the Eighth Amendment, the original public meaning of the Cruel and Unusual Punishments Clause was “to proscribe . . . methods of punishment.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). There is simply no indication in the history of the Eighth Amendment that the Cruel and Unusual Punishments Clause was intended to reach the substantive authority of Congress to criminalize acts or status, and certainly not before conviction. Incorporation, of course, extended the reach of the Clause to the States, but worked no change in its meaning.

II.

The panel here held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018). In so holding, the panel allows challenges asserting this prohibition to be brought in advance of any conviction. That holding, however, has nothing to do with the punishment that the City of Boise imposes for those offenses, and thus nothing to do with the text and tradition of the Eighth Amendment.

The panel pays only the barest attention to the Supreme Court’s admonition that the application of the Eighth Amendment to substantive criminal law be “sparing[,]” *Martin*, 902 F.3d at 1047 (quoting *Ingraham*, 430 U.S. at 667), and its holding here is dramatic in scope and completely unfaithful to the proper interpretation of the Cruel and Unusual Punishments Clause.

(internal alterations omitted) (quoting *Graham v. Connor*, 490 U.S. 386, 392 n.6 (1989)).⁴

The panel's holding thus permits plaintiffs who have never been convicted of any offense to avail themselves of a constitutional protection that, historically, has been concerned with prohibition of "only certain modes of punishment." *Harmelin*, 501 U.S. at 983; see also *United States v. Quinn*, 123 F.3d 1415, 1425 (11th Cir. 1997) (citing *Harmelin* for the proposition that a "plurality of the Supreme Court . . . has rejected the notion that the Eighth Amendment's protection from cruel and unusual punishment extends to the type of offense for which a sentence is imposed").

Extending the Cruel and Unusual Punishments Clause to encompass pre-conviction challenges to substantive criminal law stretches the Eighth Amendment past its breaking point. I doubt that the drafters of our Bill of Rights, the legislators of the states that ratified it, or the public at the time would ever have imagined that a ban on "cruel and unusual punishments" would permit a plaintiff to challenge a substantive criminal statute or ordinance that he or she had not even been convicted of violating. We should have taken this case en banc to confirm that an Eighth Amendment challenge does not lie in the absence of a punishment following conviction for an offense.

to crimes lacking an actus reus). The panel's holding here throws that caution to the wind.

⁴ Judge Friendly also expressed "considerable doubt that the cruel and unusual punishment clause is properly applicable at all until after conviction and sentence." *Johnson v. Glick*, 481 F.2d 1028, 1032 (2d Cir. 1973).

for violating one or both of two city ordinances. The first, Boise City Code § 9-10-02 (the “Camping Ordinance”), makes it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.” The Camping Ordinance defines “camping” as “the use of public property as a temporary or permanent place of dwelling, lodging, or residence.” *Id.* The second, Boise City Code § 6-01-05 (the “Disorderly Conduct Ordinance”), bans “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private . . . without the permission of the owner or person entitled to possession or in control thereof.”

All plaintiffs seek retrospective relief for their previous citations under the ordinances. Two of the plaintiffs, Robert Anderson and Robert Martin, allege that they expect to be cited under the ordinances again in the future and seek declaratory and injunctive relief against future prosecution.

In *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007), a panel of this court concluded that “so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds [in shelters]” for the homeless, Los Angeles could not enforce a similar ordinance against homeless individuals “for involuntarily sitting, lying, and sleeping in public.” *Jones* is not binding on us, as there was an underlying settlement between the parties and our opinion was vacated as a result. We agree with *Jones*’s reasoning and central conclusion, however, and so hold that an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them. Two of the plaintiffs, we further hold, may be entitled

time count will undercount the homeless population,” as many homeless individuals may have access to temporary housing on a given night, and as weather conditions may affect the number of available volunteers and the number of homeless people staying at shelters or accessing services on the night of the count.

There are currently three homeless shelters in the City of Boise offering emergency shelter services, all run by private, nonprofit organizations. As far as the record reveals, these three shelters are the only shelters in Ada County.

One shelter — “Sanctuary” — is operated by Interfaith Sanctuary Housing Services, Inc. The shelter is open to men, women, and children of all faiths, and does not impose any religious requirements on its residents. Sanctuary has 96 beds reserved for individual men and women, with several additional beds reserved for families. The shelter uses floor mats when it reaches capacity with beds.

Because of its limited capacity, Sanctuary frequently has to turn away homeless people seeking shelter. In 2010, Sanctuary reached full capacity in the men’s area “at least half of every month,” and the women’s area reached capacity “almost every night of the week.” In 2014, the shelter reported that it was full for men, women, or both on 38% of nights. Sanctuary provides beds first to people who spent the previous night at Sanctuary. At 9:00 pm each night, it allots any remaining beds to those who added their names to the shelter’s waiting list.

nights; women and children in the Emergency Services Program may stay at City Light for up to 30 consecutive nights. After the time limit is reached, homeless individuals who do not join the Discipleship Program may not return to a BRM shelter for at least 30 days.⁴ Participants in the Emergency Services Program must return to the shelter every night during the applicable 17-day or 30-day period; if a resident fails to check in to a BRM shelter each night, that resident is prohibited from staying overnight at that shelter for 30 days. BRM's rules on the length of a person's stay in the Emergency Services Program are suspended during the winter.

The Discipleship Program is an "intensive, Christ-based residential recovery program" of which "[r]eligious study is the very essence." The record does not indicate any limit to how long a member of the Discipleship Program may stay at a BRM shelter.

The River of Life shelter contains 148 beds for emergency use, along with 40 floor mats for overflow; 78 additional beds serve those in non-emergency shelter programs such as the Discipleship Program. The City Light shelter has 110 beds for emergency services, as well as 40 floor mats to handle overflow and 38 beds for women in non-emergency shelter programs. All told, Boise's three homeless shelters contain 354 beds and 92 overflow mats for homeless individuals.

⁴ The parties dispute the extent to which BRM actually enforces the 17- and 30-day limits.

cited under the Camping Ordinance for sleeping outside; he was cited again in 2012 under the same ordinance.

B. Procedural History

The plaintiffs filed this action in the United States District Court for the District of Idaho in October of 2009. All plaintiffs alleged that their previous citations under the Camping Ordinance and the Disorderly Conduct Ordinance violated the Cruel and Unusual Punishments Clause of the Eighth Amendment, and sought damages for those alleged violations under 42 U.S.C. § 1983. *Cf. Jones*, 444 F.3d at 1138. Anderson and Martin also sought prospective declaratory and injunctive relief precluding future enforcement of the ordinances under the same statute and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

After this litigation began, the Boise Police Department promulgated a new “Special Order,” effective as of January 1, 2010, that prohibited enforcement of either the Camping Ordinance or the Disorderly Conduct Ordinance against any homeless person on public property on any night when no shelter had “an available overnight space.” City police implemented the Special Order through a two-step procedure known as the “Shelter Protocol.”

Under the Shelter Protocol, if any shelter in Boise reaches capacity on a given night, that shelter will so notify the police at roughly 11:00 pm. Each shelter has discretion to determine whether it is full, and Boise police have no other mechanism or criteria for gauging whether a shelter is full. Since the Shelter Protocol was adopted, Sanctuary has reported that it was full on almost 40% of nights. Although BRM agreed to the Shelter Protocol, its internal policy is never to turn any

or reversed at any time by the Boise Chief of Police. *Id.* at 899–900.

Finally, *Bell* rejected the City’s argument that the plaintiffs lacked standing to seek prospective relief because they were no longer homeless. *Id.* at 901 & n.12. We noted that, on summary judgment, the plaintiffs “need not establish that they in fact have standing, but only that there is a genuine issue of material fact as to the standing elements.” *Id.* (citation omitted).

On remand, the district court again granted summary judgment to the City on the plaintiffs’ § 1983 claims. The court observed that *Heck* requires a § 1983 plaintiff seeking damages for “harm caused by actions whose unlawfulness would render a conviction or sentence invalid” to demonstrate that “the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called into question by a federal court’s issuance of a writ of habeas corpus.” 512 U.S. at 486–87. According to the district court, “a judgment finding the Ordinances unconstitutional . . . necessarily would imply the invalidity of Plaintiffs’ [previous] convictions under those ordinances,” and the plaintiffs therefore were required to demonstrate that their convictions or sentences had already been invalidated. As none of the plaintiffs had raised an Eighth Amendment challenge as a defense to criminal prosecution, nor had any plaintiff successfully appealed their conviction, the district court held that all of the plaintiffs’ claims for retrospective relief were barred by *Heck*. The district court also rejected as barred by *Heck* the plaintiffs’ claim for prospective injunctive relief under § 1983, reasoning that “a ruling in favor of Plaintiffs on even a

II. Discussion

A. Standing

We first consider whether any of the plaintiffs has standing to pursue prospective relief.⁵ We conclude that there are sufficient opposing facts in the record to create a genuine issue of material fact as to whether Martin and Anderson face a credible threat of prosecution under one or both ordinances in the future at a time when they are unable to stay at any Boise homeless shelter.⁶

“To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1147 (2013) (citation omitted). “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes — that the injury is *certainly* impending.” *Id.* (citation omitted). A plaintiff need not, however, await an arrest or prosecution to have standing to challenge the constitutionality of a criminal statute. “When the plaintiff has alleged an

⁵ Standing to pursue retrospective relief is not in doubt. The only threshold question affecting the availability of a claim for retrospective relief — a question we address in the next section — is whether such relief is barred by the doctrine established in *Heck*.

⁶ Although the SAC is somewhat ambiguous regarding which of the plaintiffs seeks prospective relief, counsel for the plaintiffs made clear at oral argument that only two of the plaintiffs, Martin and Anderson, seek such relief, and the district court considered the standing question with respect to Martin and Anderson only.

The plaintiffs have pointed to substantial evidence in the record, however, indicating that whether or not the BRM facilities are ever full or turn homeless individuals away *for lack of space*, they *do* refuse to shelter homeless people who exhaust the number of days allotted by the facilities. Specifically, the plaintiffs allege, and the City does not dispute, that it is BRM's policy to limit men to 17 consecutive days in the Emergency Services Program, after which they cannot return to River of Life for 30 days; City Light has a similar 30-day limit for women and children. Anderson testified that BRM has enforced this policy against him in the past, forcing him to sleep outdoors.

The plaintiffs have adduced further evidence indicating that River of Life permits individuals to remain at the shelter after 17 days in the Emergency Services Program only on the condition that they become part of the New Life Discipleship program, which has a mandatory religious focus. For example, there is evidence that participants in the New Life Program are not allowed to spend days at Corpus Christi, a local Catholic program, "because it's . . . a different sect." There are also facts in dispute concerning whether the Emergency Services Program itself has a religious component. Although the City argues strenuously that the Emergency Services Program is secular, Anderson testified to the contrary; he stated that he was once required to attend chapel before being permitted to eat dinner at the River of Life shelter. Both Martin and Anderson have objected to the overall religious atmosphere of the River of Life shelter, including the Christian messaging on the shelter's intake form and the Christian iconography on the shelter walls. A city cannot, via the threat of prosecution, coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment. *Inouye v.*

available. We note that despite the Shelter Protocol and the amendments to both ordinances, the City continues regularly to issue citations for violating both ordinances; during the first three months of 2015, the Boise Police Department issued over 175 such citations.

The City argues that Martin faces little risk of prosecution under either ordinance because he has not lived in Boise since 2013. Martin states, however, that he is still homeless and still visits Boise several times a year to visit his minor son, and that he has continued to seek shelter at Sanctuary and River of Life. Although Martin may no longer spend enough time in Boise to risk running afoul of BRM's 17-day limit, he testified that he has unsuccessfully sought shelter at River of Life after being placed on Sanctuary's waiting list, only to discover later in the evening that Sanctuary had no available beds. Should Martin return to Boise to visit his son, there is a reasonable possibility that he might again seek shelter at Sanctuary, only to discover (after BRM has closed for the night) that Sanctuary has no space for him. Anderson, for his part, continues to live in Boise and states that he remains homeless.

We conclude that both Martin and Anderson have demonstrated a genuine issue of material fact regarding whether they face a credible risk of prosecution under the ordinances in the future on a night when they have been denied access to Boise's homeless shelters; both plaintiffs therefore have standing to seek prospective relief.

B. *Heck v. Humphrey*

We turn next to the impact of *Heck v. Humphrey* and its progeny on this case. With regard to retrospective relief, the

confinement, *Preiser* recognized an implicit exception from § 1983's broad scope for actions that lie "within the core of habeas corpus" — specifically, challenges to the "fact or duration" of confinement. *Id.* at 487, 500. The Supreme Court subsequently held, however, that although *Preiser* barred inmates from obtaining an injunction to restore good-time credits via a § 1983 action, *Preiser* did not "preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid prison regulations." *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974) (emphasis added).

Heck addressed a § 1983 action brought by an inmate seeking compensatory and punitive damages. The inmate alleged that state and county officials had engaged in unlawful investigations and knowing destruction of exculpatory evidence. *Heck*, 512 U.S. at 479. The Court in *Heck* analogized a § 1983 action of this type, which called into question the validity of an underlying conviction, to a cause of action for malicious prosecution, *id.* at 483–84, and went on to hold that, as with a malicious prosecution claim, a plaintiff in such an action must demonstrate a favorable termination of the criminal proceedings before seeking tort relief, *id.* at 486–87. "[T]o recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.*

petition for habeas corpus. *See Muhammad v. Close*, 540 U.S. 749, 752 & n.2 (2004). But in *Spencer*, five Justices suggested that *Heck* may not apply in such circumstances. *Spencer*, 523 U.S. at 3.

The petitioner in *Spencer* had filed a federal habeas petition seeking to invalidate an order revoking his parole. While the habeas petition was pending, the petitioner's term of imprisonment expired, and his habeas petition was consequently dismissed as moot. Justice Souter wrote a concurring opinion in which three other Justices joined, addressing the petitioner's argument that if his habeas petition were mooted by his release, any § 1983 action would be barred under *Heck*, yet he would no longer have access to a federal habeas forum to challenge the validity of his parole revocation. *Id.* at 18–19 (Souter, J., concurring). Justice Souter stated that in his view “*Heck* has no such effect,” and that “a former prisoner, no longer ‘in custody,’ may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy.” *Id.* at 21. Justice Stevens, dissenting, stated that he would have held the habeas petition in *Spencer* not moot, but agreed that “[g]iven the Court’s holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear . . . that he may bring an action under 42 U.S.C. § 1983.” *Id.* at 25 n.8 (Stevens, J., dissenting).

Relying on the concurring and dissenting opinions in *Spencer*, we have held that the “unavailability of a remedy in habeas corpus because of mootness” permitted a plaintiff released from custody to maintain a § 1983 action for damages, “even though success in that action would imply the

inclusion of the citations on plaintiffs' criminal records; and (2) the accumulation of a host of criminal fines and incarceration costs. Plaintiffs seek orders compelling the City to "expunge[] . . . the records of any homeless individuals unlawfully cited or arrested and charged under [the Ordinances]" and "reimburse[] . . . any criminal fines paid . . . [or] costs of incarceration billed."

With respect to these two incidents, the district court erred in finding that the plaintiffs' Eighth Amendment challenge was barred by *Heck*. Where there is no "conviction or sentence" that may be undermined by a grant of relief to the plaintiffs, the *Heck* doctrine has no application. 512 U.S. at 486–87; *see also Wallace v. Kato*, 549 U.S. 384, 393 (2007).

Relying on *Ingraham v. Wright*, 430 U.S. 651, 664 (1977), the City argues that the Eighth Amendment, and the Cruel and Unusual Punishments Clause in particular, have no application where there has been no conviction. The City's reliance on *Ingraham* is misplaced. As the Supreme Court observed in *Ingraham*, the Cruel and Unusual Punishments Clause not only limits the types of punishment that may be imposed and prohibits the imposition of punishment grossly disproportionate to the severity of the crime, but also "imposes substantive limits on what can be made criminal and punished as such." *Id.* at 667. "This [latter] protection governs the criminal law process as a whole, not only the imposition of punishment postconviction." *Jones*, 444 F.3d at 1128.

Ingraham concerned only whether "impositions outside the criminal process" — in that case, the paddling of schoolchildren — "constituted cruel and unusual

that statute prospectively so as to avoid arrest and conviction for violating that same statute in the future.

Neither *Wilkinson* nor any other case in the *Heck* line supports such a result. Rather, *Wolff*, *Edwards*, and *Wilkinson* compel the opposite conclusion.

Wolff held that although *Preiser* barred a § 1983 action seeking restoration of good-time credits absent a successful challenge in federal habeas proceedings, *Preiser* did not “preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid . . . regulations.” *Wolff*, 418 U.S. at 555. Although *Wolff* was decided before *Heck*, the Court subsequently made clear that *Heck* effected no change in the law in this regard, observing in *Edwards* that “[o]rdinarily, a prayer for . . . prospective [injunctive] relief will not ‘necessarily imply’ the invalidity of a *previous* loss of good-time credits, and so may properly be brought under § 1983.” *Edwards*, 520 U.S. at 648 (emphasis added). Importantly, the Court held in *Edwards* that although the plaintiff could not, consistently with *Heck*, seek a declaratory judgment stating that the procedures employed by state officials that deprived him of good-time credits were unconstitutional, he *could* seek an injunction barring such allegedly unconstitutional procedures in the future. *Id.* Finally, the Court noted in *Wilkinson* that the *Heck* line of cases “has focused on the need to ensure that state prisoners use only habeas corpus (or similar state) remedies *when they seek to invalidate the duration of their confinement*,” *Wilkinson*, 544 U.S. at 81 (emphasis added), alluding to an existing confinement, not one yet to come.

The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The Cruel and Unusual Punishments Clause “circumscribes the criminal process in three ways.” *Ingraham*, 430 U.S. at 667. First, it limits the type of punishment the government may impose; second, it proscribes punishment “grossly disproportionate” to the severity of the crime; and third, it places substantive limits on what the government may criminalize. *Id.* It is the third limitation that is pertinent here.

“Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.” *Robinson v. California*, 370 U.S. 660, 667 (1962). Cases construing substantive limits as to what the government may criminalize are rare, however, and for good reason — the Cruel and Unusual Punishments Clause’s third limitation is “one to be applied sparingly.” *Ingraham*, 430 U.S. at 667.

Robinson, the seminal case in this branch of Eighth Amendment jurisprudence, held a California statute that “ma[de] the ‘status’ of narcotic addiction a criminal offense” invalid under the Cruel and Unusual Punishments Clause. 370 U.S. at 666. The California law at issue in *Robinson* was “not one which punishe[d] a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration”; it punished addiction itself. *Id.* Recognizing narcotics addiction as an illness or disease — “apparently an illness which may be contracted innocently or involuntarily” — and observing that a “law which made a criminal offense of . . . a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment,” *Robinson* held

Four Justices dissented from the Court's holding in *Powell*; Justice White concurred in the result alone. Notably, Justice White noted that many chronic alcoholics are also homeless, and that for those individuals, public drunkenness may be unavoidable as a practical matter. "For all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking. . . . For some of these alcoholics I would think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment — the act of getting drunk." *Id.* at 551 (White, J., concurring in the judgment).

The four dissenting Justices adopted a position consistent with that taken by Justice White: that under *Robinson*, "criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change," and that the defendant, "once intoxicated, . . . could not prevent himself from appearing in public places." *Id.* at 567 (Fortas, J., dissenting). Thus, five Justices gleaned from *Robinson* the principle that "that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being." *Jones*, 444 F.3d at 1135; *see also United States v. Roberston*, 875 F.3d 1281, 1291 (9th Cir. 2017).

This principle compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. As *Jones*

We are not alone in reaching this conclusion. As one court has observed, “resisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible. . . . As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the [E]ighth [A]mendment — sleeping, eating and other innocent conduct.” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992); *see also Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994) (holding that a “sleeping in public ordinance as applied against the homeless is unconstitutional”), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995).⁹

Here, the two ordinances criminalize the simple act of sleeping outside on public property, whether bare or with a

of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes. *Id.* at 1136.

⁹ In *Joel v. City of Orlando*, 232 F.3d 1353, 1362 (11th Cir. 2000), the Eleventh Circuit upheld an anti-camping ordinance similar to Boise’s against an Eighth Amendment challenge. In *Joel*, however, the defendants presented unrefuted evidence that the homeless shelters in the City of Orlando had never reached capacity and that the plaintiffs had always enjoyed access to shelter space. *Id.* Those unrefuted facts were critical to the court’s holding. *Id.* As discussed below, the plaintiffs here have demonstrated a genuine issue of material fact concerning whether they have been denied access to shelter in the past or expect to be so denied in the future. *Joel* therefore does not provide persuasive guidance for this case.

indicia of “camping” — the erection of temporary structures, the activity of cooking or making fire, or the storage of personal property — are present. For example, a Boise police officer testified that he cited plaintiff Pamela Hawkes under the Camping Ordinance for sleeping outside “wrapped in a blanket with her sandals off and next to her,” for sleeping in a public restroom “with blankets,” and for sleeping in a park “on a blanket, wrapped in blankets on the ground.” The Camping Ordinance therefore can be, and allegedly is, enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements. We conclude that a municipality cannot criminalize such behavior consistently with the Eighth Amendment when no sleeping space is practically available in any shelter.

III. Conclusion

For the foregoing reasons, we **AFFIRM** the judgment of the district court as to the plaintiffs’ requests for retrospective relief, except as such claims relate to Hawkes’s July 2007 citation under the Camping Ordinance and Martin’s April 2009 citation under the Disorderly Conduct Ordinance. We **REVERSE** and **REMAND** with respect to the plaintiffs’ requests for prospective relief, both declaratory and injunctive, and to the plaintiffs’ claims for retrospective relief insofar as they relate to Hawkes’ July 2007 citation or Martin’s April 2009 citation.¹⁰

¹⁰ Costs shall be awarded to the plaintiffs.

would necessarily demonstrate the invalidity of confinement or its duration.

Id. at 81–82. Here, the majority acknowledges this language in *Wilkinson*, but concludes that *Heck*’s bar on any type of relief that “would necessarily demonstrate the invalidity of confinement” does not preclude the prospective claims at issue. The majority reasons that the purpose of *Heck* is “to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge,” and so concludes that the plaintiffs’ prospective claims may proceed. I respectfully disagree.

A declaration that the city ordinances are unconstitutional and an injunction against their future enforcement necessarily demonstrate the invalidity of the plaintiffs’ prior convictions. Indeed, any time an individual challenges the constitutionality of a substantive criminal statute under which he has been convicted, he asks for a judgment that would necessarily demonstrate the invalidity of his conviction. And though neither the Supreme Court nor this court has squarely addressed *Heck*’s application to § 1983 claims challenging the constitutionality of a substantive criminal statute, I believe *Edwards v. Balisok*, 520 U.S. 641 (1997), makes clear that *Heck* prohibits such challenges. In *Edwards*, the Supreme Court explained that although our court had recognized that *Heck* barred § 1983 claims challenging the validity of a prisoner’s confinement “as a substantive matter,” it improperly distinguished as not *Heck*-barred *all* claims alleging only procedural violations. 520 U.S. at 645. In holding that *Heck* also barred those procedural claims that would necessarily imply the invalidity of a conviction, the Court did not question our conclusion that claims challenging a conviction “as a substantive matter” are barred by *Heck*.

TITLE 10

SPECIAL ORDINANCES, REGULATIONS, RULES, POLICIES, AND BARGAINING AGREEMENTS

SUBTITLE 3 — POLICIES

POLICY 43

REMOVAL OF UNLAWFUL CAMPSITES LOCATED ON COUNTY PUBLIC PROPERTY

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Appendix 1 - Notice of Unlawful Camping

I. BACKGROUND

43.010 Purpose

The County recognizes the social nature of the problem of homeless individuals Camping on Public Property. Accordingly, the purpose of this policy is to develop a countywide policy for the humane removal of homeless camps from Public Property pursuant to ORS 203.077.

[Adopted 2018-369 eff 11/27/2018]

43.020 Application

(A) This policy applies to all county-elected officials, employees, volunteers, or contractors engaged in the removal of Unlawful Campsites from County-owned property.

(B) In cases where an Unlawful Campsite is located within a crime scene, or the Linn County Sheriffs's Office seizes property for reasons outside the scope of the camp cleanup, then standard law enforcement property and evidence control procedures shall be followed.

[Adopted 2018-369 eff 11/27/2018; amd 2021-194 eff 07/06/2021]

43.030 Definitions

As used in this policy, the following definitions apply:

(A) “**Camp**” or “**Camping**” means to set up, or to remain in or at, an Unlawful Campsite for the purpose of establishing or maintaining a temporary place to eat, sleep, or live.

(B) “**County**” means Linn County.

(C) “**County Departments**” means the departments and/or offices that provide public services on behalf of the County.

(D) “**Department Head**” means the person(s) appointed by the Linn County Board of Commissioners to serve as the head of their respective County Department.

(E) “**Disposable Items**” means items with no apparent value or utility or that are in an unsanitary condition;

(F) “**Personal Property**” means any item that can be reasonably recognized as belonging to a person and that has apparent value or utility.

(G) “**Public Property**” means any lands, premises, structures, or buildings owned, leased, or managed by the County, including under any bridge or viaduct.

(H) “**Social Service Agency**” means a public or private nonprofit organization providing direct assistance, usefulness, or care to individuals experiencing homelessness.

(I) “**Unlawful Campsite**” means a location where a person unlawfully places onto Public Property any bedding, sleeping bag, or other sleeping matter; any stove or fire; and/or any structure such as a hut, lean-to-tent, or other temporary structure for the purpose of Camping.

[Adopted 2018-369 eff 11/27/2018; amd 2021-194 eff 07/06/2021]

II. POLICY

43.100 County Department Authority

(A) County Departments with legal authority for managing Public Property upon which an Unlawful Campsite has been established may decide if and when to initiate cleanup of an Unlawful Campsite. All persons found to be Camping unlawfully on Public Property shall be removed pursuant to this Policy.

(B) Department Heads are responsible for ensuring that this Policy is implemented and followed.

[Adopted 2018-369 eff 11/27/2018]

43.110 Posting of Written Notice

(A) Department Heads, or authorized agents thereunder, shall post a notice at the location of the Unlawful Campsite no less than seventy-two (72) hours prior to removing persons from an Unlawful Campsite.

(B) The notice shall:

(1) Be posted at all entrances to the Unlawful Campsite to the extent that the entrances can be reasonably identified;

(2) Notify those persons that they are maintaining an Unlawful Campsite and that the County intends to clear the Unlawful Campsite, and remove any persons thereon, on a specified date;

(3) Provide referral information and current contact information for local Social Service Agencies;

(4) Inform the persons that any Personal Property retained as a result of the cleanup of the Unlawful Campsite will be stored at a facility located within the same community as the Unlawful Campsite for a period of thirty (30) days;

(5) Provide the location where the Personal Property will be stored, the time at which it may be picked up, and a phone number that individuals may call to arrange for pick-up;

(6) Confirm that Disposable Items retained as a result of the cleanup will be immediately discarded, and weapons, controlled substances other than prescription drugs, and items that appear to be either stolen or evidence of a crime will be turned over to law enforcement officials; and

(7) Be written in English and Spanish.

[Adopted 2018-369 eff 11/27/2018; amd 2021-194 eff 07/06/2021]

43.120 Exceptions to Notice Requirement

The notification requirements of LCP 43.110 do not apply:

(A) When the County reasonably believes that illegal activities other than Camping are occurring

at an Unlawful Campsite; or

(B) In the event of an exceptional emergency at an Unlawful Campsite, including, but not limited to, possible site contamination by hazardous materials, a public health emergency, or other immediate danger to human life or safety.

[Adopted 2018-369 eff 11/27/2018; amd 2021-194 eff 07/06/2021]

43.130 Communication with Other Agencies

(A) Prior to posting the 72-hour notice, the Department Head, or an authorized agent thereunder, shall notify a local Social Service Agency of the County's intention to remove the Unlawful Campsite. Whenever feasible, the Department Head shall arrange for outreach workers from the local Social Service Agency to visit the Unlawful Campsite to assess the need for additional assistance in arranging shelter or providing additional care as needed.

(B) The Department Head may, at their discretion, request assistance from local law enforcement agencies in the removal and cleanup of an Unlawful Campsite.

[Adopted 2018-369 eff 11/27/2018; amd 2021-194 eff 07/06/2021]

43.140 Unlawful Campsite Cleanup and Storage Requirements

(A) All unclaimed Personal Property retained as a result of the cleanup of an Unlawful Campsite shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined. The County may, at its discretion, inventory, photograph, and bag all Personal Property prior to storing it.

(B) All Disposable Items collected during the cleanup of an Unlawful Campsite shall be disposed of in an appropriate manner.

(C) Weapons, controlled substances other than prescription drugs, and items that appear to be either stolen or evidence of a crime shall be turned over to law enforcement officials regardless of their condition.

(D) Every effort shall be made by the

Department Head to secure the health and welfare of any employee assigned to clear and/or clean an Unlawful Campsite and to utilize properly trained personnel with adequate equipment to manage the potential for exposure to hazardous and infectious materials.

(E) The County Department managing the cleanup shall store any unclaimed Personal Property at a facility located within the same community as the Unlawful Campsite for a minimum of thirty (30) days, during which time it shall be reasonably available to any individual claiming ownership. Any Personal Property that remains unclaimed for at least thirty (30) days may be disposed of or donated to a 501(c)(3) nonprofit corporation.

(F) The County may, at its discretion, seek reimbursement for expenses incurred by the County in relation to the cleanup of an Unlawful Campsite, including expenses incurred in the removal and storage of Personal Property, from a person found to be maintaining an Unlawful Campsite. Any civil action to obtain reimbursement must be filed in the Linn County Circuit Court within twelve (12) months of the date of cleanup.

[Adopted 2018-369 eff 11/27/2018; amd 2021-194 eff 07/06/2021]

43.150 [repealed]

[Adopted 2018-369 eff 11/27/2018; repealed 2021-194 eff 07/06/2021]

43.160 Criminal Trespass

If a person is found to be Camping unlawfully on Public Property, and the person refuses to be removed from the premises, the Department Head may, at their discretion, file a criminal trespassing complaint with the appropriate law enforcement agency pursuant to ORS 164.245.

[Adopted 2018-369 eff 11/27/2018]

References and Authorities:

ORS 203.077; ORS 203.079; ORS 164.245

Legislative History of Policy 43:

Adopted 2018-369 eff 11/27/2018

Amendments to 2018-369:

#1 2021-194 eff 07/06/2021



LINN COUNTY

NOTICE OF UNLAWFUL CAMPING

Notificacion De Acampar Ilegal

This area is public property. All persons found to be unlawfully camping will be removed.

Esta area es propiedad publica. Todas las personas que se encuentren acampando ilegalmente serán removidas.

Individuals are being removed from this property pursuant to Linn County Policy 43, Removal of Persons from Unlawful Campsites Located on County Public Property. All persons must leave and remove all personal property by:

Date and Time: _____

La entrada en esta area es prohibida. Todas las personas deben salir y retirar toda propiedad personal antes de las:

Fecha y Hora: _____

Items left behind that have no apparent utility or value, or that are found to be unsanitary, will be immediately discarded. Weapons, controlled substances other than prescription drugs, and items that appear to be either stolen or evidence of a crime will be given to law enforcement officials. Any unclaimed personal property with apparent utility or value will be stored by Linn County for 30 days at the following location:

Address: _____

Phone: _____

Individuals can retrieve any personal property by requesting it in person at this location. If the property has not been retrieved within 30 days, it will be deemed abandoned and legally disposed of.

Los artículos que se dejen atrás y que no tengan utilidad o valor aparente, o que resulten insalubres, se desecharán de inmediato. Las armas, la parafernalia de drogas y artículos que parecen haber sido robados o evidencia de un crimen serán entregados a los oficiales de la ley. Cualquier propiedad personal no reclamada con utilidad o valor aparente será almacenada por Linn County durante 30 días en la siguiente ubicación:

Dirección: _____

Teléfono: _____

Las personas pueden recuperar cualquier propiedad personal solicitándola en persona en este lugar. Si la propiedad no se ha recuperado dentro de los 30 días, se considerará abandonada y se eliminará legalmente.