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## CITY COUNCIL STAFF MEMORANDUM

CITY RECORDER USE ONLY:

AGENDA ITEM #:

MEETING DATE: 08.28.2023

FINAL ACTION: RESO 2023-38

**TO:** City Council

**FROM:** Ashley Driscoll, City Attorney  
Henry Reimann, Chief of Police

**MEETING DATE:** August 28, 2023

**SUBJECT TITLE:** Resolution 2023-38 establishing a City-designated camping area pursuant to Forest Grove City Code Section 94.05.

**ACTION REQUESTED:**

Ordinance

Order

X

Resolution

Motion

Informational

*X all that apply*

### **BACKGROUND:**

In 2019, the U.S. Ninth Circuit Court of Appeals (Ninth Circuit) issued its decision in *Martin v. Boise*, 920 F.3d 584 (9th Cir., 2019), holding that governments cannot criminalize certain conduct such as involuntarily sitting, lying, and sleeping in public that is unavoidable as a result of homelessness when alternative shelter is not available. In 2022, the Ninth Circuit issued its decision in *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir., 2022), further holding that certain local regulations cannot prohibit individuals experiencing homelessness from taking minimal measures to keep warm and dry while sleeping, affirming, in part, the 2020 decision by the Oregon Federal District Court in *Blake v. Grants Pass*, No. 1:18-CV-01823-CL, 2020 WL 4209227 (D. Or. July 22, 2020).

While the Grants Pass litigation was pending, the State of Oregon enacted House Bill (HB) 3115 (2021) regarding local jurisdictions' regulation of camping on public property by individuals experiencing homelessness. HB 3115 requires all jurisdictions that regulate acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property to have objectively reasonable time, place, and manner regulations with regard to persons experiencing homelessness prior to July 1, 2023.

On June 26, 2023, the City Council enacted Ordinance No. 2023-04, adding Section 94 to the City Code and establishing objectively reasonable time, place, and manner regulations pertaining to camps and camping on public property. Beaverton, Hillsboro, Tigard, Tualatin, Sherwood and Washington County all enacted similar ordinances during this time.

In summary, the ordinance prohibits camping on all city property when shelter is available. When shelter is not available, the ordinance still prohibits camping at all times in certain areas such as residential areas, parks, city facilities, 500 feet from schools, 20 feet from commercial storefronts, and

environmentally sensitive areas. However, when shelter is not available, the ordinance allows camping in certain rights of way between 7 p.m. to 7 a.m. The ordinance also authorizes City Council to identify a city-designated camping area on city property and in doing so, allows for the prohibition of camping in the aforementioned rights of ways and all other areas in the city. The ordinance also establishes manner regulations to assure safe and sanitary conditions for those experiencing homelessness and the community. Lastly, the ordinance prohibits the consumption of controlled substances on city property.

### **CURRENT STATUS:**

The City Council conducted work sessions on April 10, April 24, May 8, And May 22, to review and discuss objectively reasonable time, place, and manner regulations for public camping. The City Council passed Ordinance No. 2023-04 at first and second readings on June 12 and June 26. During these discussions, it became clear that when shelter is not available, there were two options to assure compliance with federal court cases and state law: 1) allow camping in certain rights of way between 7 p.m. to 7 a.m. or 2) provide a city-designated area for overnight camping and by doing so, prohibit camping in all other areas of the city provided there is space in the city-designated overnight camping area.

The City Council reviewed five city-owned locations for a city-designated camping area including Site B on Pacific Avenue and B Street, the City Hall parking lot southeast of City Hall, the former Stuntzner site south of the Library, Hawthorne and 23<sup>rd</sup> Avenue, and 19<sup>th</sup> Avenue and Highway 47. The criteria used to evaluate the sites included proximity and access to services, transit, employment, and community resources; impacts to the neighborhood; enforceability; and geographic and demographic distribution.

### **CITY-DESIGNATED OVERNIGHT CAMPING AREA:**

During the work sessions, there was consensus to use the southeast City Hall parking lot due to it best meeting the above criteria. The city-designated overnight camping area would be subject to the time, place, and manner restrictions in Section 94. For example, persons using this area will be allowed to set up a tent on or after 7 p.m. and required to remove the tent and any camp materials prior to 7 a.m. City personnel plan to enforce the ordinance daily as the area is also used as a parking lot with active parking during the day. Enforcement personnel plan to use progressive enforcement to assure safe and sanitary conditions in and around the area and to work closely with service providers and the County to help individuals attain shelter.

The City is working with the County to help fund services that would keep the area safe, clean and sanitary. These services could include, but are not be limited to, provision of a port-a-potty, trash bins, daily debris removal, and site monitoring. If the site is approved, the City will pursue an agreement with Washington County to fund services prior to the site becoming effective on October 1, 2023.

### **FISCAL IMPACT:**

The fiscal impact varies depending upon shelter availability. If shelter is available, then a city-designated overnight camping area is not needed and there is little to no cost. If shelter is not available, then a city-designated overnight camping area would cost upwards of \$25,000 per year to fund sanitary and cleaning services. Regarding enforcement, a city-designated location is expected to cost less than enforcing the rights-of-ways. The cost may vary depending upon the number of campers.

**STAFF RECOMMENDATION:**

Staff recommends the City Council consider the attached resolution.

**ATTACHMENTS:**

- 1) Resolution 2023-38 establishing a City-designated overnight camping area pursuant to Forest Grove City Code Section 94.05
- 2) PowerPoint