

ORDINANCE NO. 2023-04

ORDINANCE AMENDING FOREST GROVE CODE OF ORDINANCES
TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94,
REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY;
REPEALING § 92.15, CAMPING; AND AMENDING TITLE XIII (GENERAL
OFFENSES) §130.06, CONSUMPTION OF INTOXICANTS ON PUBLIC PROPERTY,
PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES.

WHEREAS, in 2019, the United States 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; and

WHEREAS, 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); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, HB 3115 becomes operative on July 1, 2023; and

WHEREAS, HB 3115 provides a private right of action for persons experiencing homelessness to seek injunctive or declaratory relief to challenge the objective reasonableness of any jurisdiction's regulations regarding camping on public property; and

WHEREAS, because the City of Forest Grove did not prohibit camping or sleeping on all public property in the City and had objectively reasonable regulations related to public camping, the City was not obligated to amend its municipal code or practices under either the federal court cases or HB 3115; and

WHEREAS, as the homeless population in the City of Forest Grove and Washington County has increased in the last decade, the need for additional and humane regulations to make the City livable for residents has increased as well; and

WHEREAS, the City Council passed Objective 1.2 in 2023 to develop policies and activate partner services that will address homeless services, including an ordinance addressing time, place and manner regulations for homeless services; and

WHEREAS, throughout the last year the City has taken a number of steps to gather information, seek community input and address community needs related to homelessness; these efforts have included holding Committee for Community Involvement meetings on homelessness; creating an updated a city-wide webpage on homelessness; establishing a City Council Subcommittee on homelessness that held several listening and learning community meetings; and entering into an Encampment Program agreement with Washington County to allow for safety and health inspections and encampment clean up; and

WHEREAS, beginning in early 2023, the City undertook a revision of the City's regulation of camping on public property, viewing the issue through the lens of respecting the dignity of all persons, including those experiencing homelessness and the surrounding housed community; and

WHEREAS, the Council conducted work sessions on April 10, 2023, April 24, 2023, May 8, 2023 and May 22, 2023, to review and discuss reasonable time, place, and manner regulations for public camping;

WHEREAS, during these discussions, it became apparent that if shelter is not available to persons experiencing homelessness, the best solution for the City is to provide a city-designated area for overnight camping that is large enough to accommodate the City's estimated homeless population, has a surface suitable for camping, and is close to services such as transit, food banks, and food stores; and

WHEREAS, the Council also recognized that if the designated camping area is either above capacity, or not available for a person experiencing homelessness, the City would need to identify other areas where camping is allowed; and

WHEREAS, regardless of where camping occurred, the Council also considered reasonable time and manner regulations that would provide safe and sanitary conditions for those experiencing homelessness; and

WHEREAS, the Council developed regulations focused on safety and access on streets, sidewalks, trails, and bicycle lanes, preventing unsafe camping in lanes of travel, and limiting camping on sidewalks to allow for community access; and

WHEREAS, the Council also developed regulations focused on community health and sanitation that prohibits the accumulation of trash and other waste in camps to provide a safe and healthy environment for all camp users, as well as developed

regulations that prevent contamination outside the camps such as dumping wastewater; and

WHEREAS, the Council discussed and developed regulations addressing other potential dangers such as open flames and dangerous, unauthorized connections to utilities and other city facilities; and

WHEREAS, the Council also sought to ensure that public property would avoid permanent alterations that could damage the property by restricting digging, excavating, or removing vegetation; and

WHEREAS, the regulations also allow for camping on certain public property for up to 12 hours each day, which provides sufficient time for any person to set up and take down a camp, and sleep for a reasonable amount of time; and

WHEREAS, the Council believes these regulations strike the appropriate balance of providing equitable support and protection for the health, safety, and welfare of all members of the community, including residents, businesses, individuals experiencing homelessness, and other interests affected by these regulations; and

WHEREAS, these regulations are not land use regulations and do not implement the City's comprehensive plan; and

WHEREAS, the City has provided notice of Public Hearing, held a public hearing on June 12, 2023 and June 26, 2023 regarding the proposed revisions to the Forest Grove Code of Ordinances, afforded all interested parties an opportunity to be heard, and duly considered the subject.

NOW THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: The City Council hereby amends Forest Grove Code of Ordinances Title IX (General Regulations) by removing § 92.15, Camping.

Section 2: The City Council hereby amends Forest Grove Code of Ordinances Title XIII (General Offenses) §130.06 as follows:

CONSUMPTION OF ALCOHOLIC ~~BEVERAGES~~ INTOXICANTS ON PUBLIC PROPERTY, PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES.

(A) No person may consume any ~~alcoholic beverage~~ intoxicants or possess an open container of any ~~alcoholic beverage~~ intoxicants on any public property, any public rights-of-way, or upon any premises open to the public unless licensed or permitted for that purpose by the State Liquor Control Commission. “Intoxicants” means liquors, non-legally prescribed controlled substances, inhalants, cannabis, psilocybin, that, when taken into the human body, can impair the person’s mental or physical faculties to a noticeable and perceptible degree.

Section 3: The City Council hereby amends Forest Grove Code of Ordinances Title IX (General Regulations) by adding Code Chapter 94, Regulation of Camps and Camping on Public Property, as set forth in Exhibit A.

Section 4: The ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED first reading this 12th day of June, 2023.

PASSED the second reading this 26th day of June, 2023.

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 26th day of June, 2023.

Malynda Wenzl, Mayor

ORDINANCE NO. 2023-04
EXHIBIT A

CHAPTER 94: REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY

Section

- 94.01 Purpose
- 94.02 Authority
- 94.03 Definitions
- 94.04 Camping Prohibited
- 94.05 City Designated Camping Area(s)
- 94.06 Regulation of Camps and Camping on City Property
- 94.07 Enforcement
- 94.08 Violation
- 94.09 Removing Established Camps

§ 94.01 PURPOSE.

To protect the health and safety of community members, including individuals experiencing homelessness in the City of Forest Grove, to responsibly maintain publicly owned real property and publicly owned assets open to the public for all people of the city, and to increase opportunities to provide outreach to individuals experiencing homelessness to connect those individuals to supportive services including shelter and housing, the council has determined it is necessary to regulate the use of public property for camps and camping with respect to individuals experiencing homelessness. It is the purpose of this chapter to regulate camps and the act of camping, on public property in an objectively reasonable manner with regards to persons experiencing homelessness. This chapter shall be liberally constructed for the accomplishment of this purpose.

§ 94.02 AUTHORITY.

This ordinance is adopted pursuant to the authority granted by Oregon Revised Statutes (O.R.S.) 195.530.

§ 94.03 DEFINITIONS.

For the purpose of this chapter, words in the present tense include the future, the singular includes the plural, and the plural includes the singular, the word “shall” is mandatory and not discretionary, and the term “chapter” shall be deemed to include all amendments hereinafter made to this chapter. As used in this chapter, unless the context requires otherwise, the following words and their deviations shall mean:

(A) “Available” means a shelter that has space for a particular person. A shelter is not available to a person if the shelter:

1. Has a maximum stay rule or temporal requirement or deadline the person has exceeded or not met;
2. Has excluded the person from the shelter for any lawful reason;
3. Cannot reasonably accommodate the person’s mental health or physical needs;

4. Is unavailable due to the person's family status, age, gender, gender identity, sexual orientation, or other status;

5. Excluding general rules that prohibit alcohol or drug use in the shelter or on shelter grounds, is unavailable to the person because the shelter has rules about alcohol or drug use that the person does not meet;

6. May prohibit a minor child to be housed in the same facility with at least one parent or legal guardian;

7. Requires participation in religious activity or receipt of religious information or religious teaching the person does not wish to participate in or receive; or

8. Requires a person to leave their pet(s) unattended in order to stay at the shelter. This section does not apply to service animals under the Americans with Disabilities Act.

(B) "Camp" or the act of "camping" means to pitch, erect, create, use or occupy camp materials for the purposes of habitation.

(C) "Camp materials" means, but is not limited to tents, huts, awnings, lean-tos, shacks, or other temporary structures, or parts thereof, tarps or tarpaulin, chairs, cots, beds, sleeping bags, blankets, sleeping or bedding materials, food or food storage items, and/or similar items that are or appear to be used for and aid living and/or sleeping outdoors. "Camp materials" does not include vehicles, automobiles, or recreational vehicles used for shelter and/or sleeping, which are regulated by Chapter 73 of this Code.

(D) "City building" means all facilities and their surrounding grounds, owned, leased, rented, contracted, used, managed and controlled by the City of Forest Grove for conducting public business.

(E) "City designated camping area" means the area(s) the City has identified pursuant to § 94.05.

(F) "City parking lot" means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated for parking of vehicles.

(G) "City property" means, including but not limited to, all real property owned, leased, rented, contracted, used, managed or controlled by the City of Forest Grove including City buildings, City parking lots, public parks and park facilities and public right-of-way.

(H) "Person" means a person who does not have a permanent residence or domicile and are experiencing homelessness.

(I) "Public parks and park facilities" means any public or privately owned real property placed under the jurisdiction of the City, whether within or outside the corporate limits of the City, and designated for park and recreational purposes.

(J) "Public right-of-way" means all interests in real property, subject to the jurisdiction and control of the City of Forest Grove, used, operated and managed for customary roadway purposes and appurtenant uses and which provides or supports public access for vehicles, pedestrians and other modes of travel between places. "Public right-of-way" includes, but is not limited to, public roads, streets, sidewalks, highways, throughways, alleys, road related structures in the right-of-way including tunnels, culverts, landscape areas or planter strips, and similar structures, and structures that provide for continuity of the right-of-way such as bridges.

(K) "Shelter" means a developed or legally established public or private facility for people experiencing homelessness that does not charge for shelter or services.

§ 94.04 CAMPING PROHIBITED.

A. Camping is prohibited on City property when shelter is available to the person.

B. When shelter is not available, camping is prohibited on other City property when there is space available to the person in a City-designated camping area.

C. This section does not prohibit sitting, lying or sleeping on or within City property in a manner that does not create a camp or constitute camping, so long as such use does not obstruct the public right-of-way or access to other City property for its usual and customary purposes.

§ 94.05 CITY DESIGNATED CAMPING AREA(S).

A. When there is no shelter available, a person may camp within the time regulations provided in § 94.06(A) and pursuant to the manner regulations in § 94.06(C) in a City-designated camping area. For avoidance of doubt, camping is prohibited on other City property when space is available in the City-designated camping area.

B. City Council shall identify a City-designated camping area(s) by Council Resolution.

§ 94.06 REGULATION OF CAMPS AND CAMPING ON CITY PROPERTY.

Persons camping on City property because they do not have shelter available, whether in a City-designated camping area or on other City property when allowed under this chapter, may camp subject to the following regulations.

A. Time

Unless otherwise specified, camping, when and where not prohibited, may occur on City property between the hours of seven (7) p.m. and seven (7) a.m. After seven (7) a.m. a camp must be dismantled and the person must remove all camping materials and personal property.

B. Place

In addition to the prohibition set forth in § 94.04, camping is not allowed at any time in the following places:

1. City buildings, City parking lots, and public parks and park facilities. This prohibition does not include camping in City-designated camping area(s) when allowed;
2. Within or on any real property transferred to the City by donation or bequeathment;
3. Within any area designated or operated by the City of Forest Grove, Clean Water Services, Metro, any agency of the State of Oregon, or Federal Emergency Management Agency as a natural resource area, riparian corridor, flood plain, wildlife conservation area, vegetated corridor, stormwater infrastructure, or water quality sensitive area;
4. Within 500 feet from any public and private elementary, middle and high school;
5. Within any area zoned Residential on the City of Forest Grove Zoning Map in effect or public property abutting a parcel used for residential purposes;
6. Within 20 feet of the public entrance to a business;
7. Within 20 feet of a transit stop;

8. Upon any parcel of land managed for the operation and regulatory compliance of the municipal water supply system, stormwater systems, or electrical substations.

C. Manner

Camping, when and where allowed, is subject to the following:

1. Camps and camp materials located on a public sidewalk or trail shall not reduce the clear, continuous sidewalk or trail to less than five (5) feet at all times to assure compliance with the American with Disabilities Act.

2. No camp or camp materials shall obstruct any portion of any street or bicycle lane open to use by vehicles or bicycles.

3. Person(s) camping may not accumulate, discard, or leave behind any materials including camping materials, garbage, debris, unsanitary or hazardous materials on any public or private property.

4. Animals residing in or visiting camps must be leashed or crated at all times.

5. Person(s) camping may not use power generators that result in a violation of the City's noise ordinance.

6. A camp must be limited to one tent or temporary structure per individual or household. The camp can be no larger than 144 square feet, including camping materials and any other personal property.

7. Items presenting a danger to others, including uncontained sharps/needles, uncontained human waste or unauthorized connections or taps to private or public utilities are prohibited.

8. Portable outdoor fireplaces, recreational fires, open burning and bonfires are prohibited. Types of cooking stoves and other devices for keeping warm are permitted, as allowed by adopted City policies.

9. Dumping of gray water (i.e., wastewater from bathwater, sinks and cooking) or black water (sewage) on City property is prohibited.

10. Obstruction or attachment of camp materials to public infrastructure or private property structures, including but not limited to bridges or bridge infrastructure, fire hydrants, utility poles, streetlights, traffic signals, signs, fences, trees, vegetation, vehicles or buildings is prohibited.

11. Digging, excavation, terracing of soil, or other alteration of City property, or damage to vegetation or trees is prohibited. Camps shall not include permanent structures.

12. Nothing in this section is intended to prevent the regulation of camping on a temporary or permanent basis on City property when such regulation is necessary to maintain the ability of everyone to use a public space as designed and intended or for a limited public purpose including capital construction, maintenance, repair, property transfer or during event or special use.

13. The consumption of intoxicants, as defined by Section 130.06, is prohibited on City property.

§ 94.07 ENFORCEMENT.

A. Enforcement personnel or their designee(s) are responsible for determining whether and to what extent shelters and City designated camping areas have capacity and the number of

available shelter beds or camps. Prior to enforcement of § 94.04, enforcement personnel shall determine whether a shelter or City designated camping area has available space that can be used by the person. Enforcement personnel may enforce § 94.06 at all times, unless otherwise provided by this Section.

B. Enforcement personnel may impose a violation of this chapter in the following manner:

1. Enforcement personnel may, as appropriate, use a progressive enforcement process to encourage and compel compliance with this chapter.

2. Methods of enforcement for violations of this chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate.

3. Nothing in this Section is intended to supersede or prevent enforcement personnel's discretion to enforce laws and mitigate hazards as necessary and without progressive enforcement.

C. The City Manager, or their designee(s), is authorized to modify or suspend enforcement of any section or element of this chapter in the event of a City Council declared emergency, pursuant to administrative rules or policies, severe weather condition, or for any other reason within the City Manager's authority.

D. Nothing in this chapter is intended to prevent enforcement of any other section of this code of ordinances or the Oregon State law and shall not be the basis for non-enforcement for violations thereof because shelter is not available to the person.

§ 94.08 VIOLATION.

A. Enforcement personnel may impose a violation of this Chapter as follows:

1. A violation of any regulation in this Chapter constitutes a violation of the Forest Grove Municipal Code and is punishable by a civil penalty of \$100. Every day in which such violation occurs constitutes a separate violation. The Municipal Judge may waive fines for any person providing proof they are actively engaging in social services which relate all or in part to the applicable offense.

2. Citation in lieu of arrest for criminal trespass in the second degree – O.R.S. 164.245;

3. Arrest for criminal trespass in the second degree – O.R.S. 164.245.

B. Any citation or violation of this Chapter may be accompanied by an order of exclusion for up to 90 days using the process established in §§ 92.31 to 92.32.

C. Nothing in this Section is intended to prescribe any particular order of violation or penalty. Enforcement personnel shall have discretion to impose a violation tailored to the circumstances and as necessary to enforce the purposes of this Chapter and maintain the health and safety of persons experiencing homelessness and maintenance of publicly owned property.

§ 94.09 REMOVING ESTABLISHED CAMPS.

The removal of an established camp shall comply with state law. Pursuant to state law, the City may call for the removal of camps, regardless of location, if a campsite poses a safety or health risk to the public or environment.