

<u>CITY RECORDER USE ONLY:</u>	
AGENDA ITEM #:	F. 1.
MEETING DATE:	06.26.2023
FINAL ACTION:	SECOND READING ORD 2023-04

CITY COUNCIL STAFF MEMORANDUM

TO: *City Council*

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

MEETING DATE: *June 26, 2023*

SUBJECT TITLE: *Second Reading and Public Hearing for Ordinance 2023-04 amending the Forest Grove Code of Ordinances Title IX (General Regulations) by adding Chapter 94, Regulation of Camps and Campsites on Public Property; repealing Chapter 92.15, Camping; and amending Title XIII (General Offenses) section 130.06, Consumption of Intoxicants on Public Property, Public Rights-of-Way, and Public Premises*

ACTION REQUESTED:

<input checked="" type="checkbox"/>	Ordinance	<input type="checkbox"/>	Order	<input type="checkbox"/>	Resolution	<input type="checkbox"/>	Motion	<input type="checkbox"/>	Informational
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X all that apply

On June 12, 2023 the Council conducted the first reading of Ordinance 2023-04 and held a public hearing. At the June 12th meeting, the Council also voted to amend Forest Grove Code of Ordinances section §130.06 to prohibit the consumption of intoxicants on public property, public rights-of-way and public premise. The Council then amended section §194.06.C to include the prohibition against consumption of intoxicants as a “manner” regulation for camping on city property.

Since the first reading, staff has proposed minor additional changes to Ordinance 2023-04. Staff recommends adding a “whereas” clause to clarify that the time, place and manner regulations are not land use regulations and do not implement the City’s comprehensive plan. This insertion is in response to a question raised at the first hearing regarding if the City needed to employ the land use process when implementing the changes to the City’s municipal code. On review, city staff determined that the legal requirement for the City to provide a place for camping under certain temporary circumstances is not subject to the state’s planning laws or the City’s development code.

Second, staff has proposed the City clarify that the definition of “intoxicants” excludes legally prescribed controlled substances and to further clarify that the consumption of intoxicants is prohibited on “city property” as that term is defined in the Forest Grove Code of Ordinances chapter §94 rather than on “public property, public rights-of-way and public premise” as those terms are used in section §130.06. This change maintains consistency within the new chapter.

These changes are reflected in Ordinance 2023-04. Staff has also compiled and published a “Frequently Asked Questions” reference guide that is included with this Staff Report.

Prior to voting on Ordinance 2023-04, Mayor Wenzl should read aloud section 2 of the ordinance (definition of intoxicants) and in exhibit A, section 95.06.C.13.

For reference, the Staff Report from June 12, 2023 is included below.

BACKGROUND:

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. 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. The ordinance before you today establishes objectively reasonable time, place, and manner regulations. HB 3115 becomes operable on July 1, 2023. As a result, many municipalities, including Portland, Hillsboro, Beaverton, Tualatin, Tigard, Washington County, and more are establishing similar time, place, and manner ordinances prior to July 1, 2023.

CURRENT STATUS:

Addressing homelessness has been a top priority of City Council for several years and in 2023, the City Council established Goal 1 to Support housing stability and Objective 1.2 to Develop policies and activate partner services that will address homeless services, i.e., time, place, and manner ordinances. The desired outcome of the Goal and Objective was to accomplish homeless policies to address needs for service and community concerns.

In late 2021, the City Council established a Homelessness Subcommittee to gather information, study pertinent laws and court cases, seek community input, address community needs, and make recommendations to City Council. Throughout 2022, the Subcommittee held nearly a dozen meetings, including three open house community conversation meetings in June, 2022. The Subcommittee also heard from various municipalities and non-profits about their efforts to address homelessness, including Washington County, Hillsboro, Forest Grove Foundation, Centro Cultural, and more.

From these meetings came a refinement of the City Council Goals and Objectives and an Intergovernmental Agreement with Washington County to manage the health and safety of area

encampments under Washington County's Encampments Program (Program). This program aided clean-up of the Kyle Property in August, 2022 and again in January, 2023. The Kyle Property currently does not have persons of homelessness camping on it. The Kyle Property was bequeathed to the City and is the subject of a study to construct a trail and public improvements on it.

Camping on public property was also the primary topic of the October, 2022, Quarterly Town Meeting, and has been a topic of discussion at several other town meetings. Recently, public camping has resulted in extensive public comment pertaining to Washington County's potential purchase of property on Elm Street for pods and/or affordable housing and the encampment on Highway 47 which is located on property owned and managed by Washington County.

TIME, PLACE AND MANNER ORDINANCE:

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, while also being mindful of impacts to the surrounding community. The process has sought to 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.

The City Council conducted work sessions on April 10, 2023, April 24, 2023, May 8, 2023 and May 22, 2023, to review and discuss objectively reasonable time, place, and manner regulations for public camping. During these discussions, it became apparent that if shelter is not available, the best solution for the City and community is to provide a city-designated area for overnight camping that is large enough to accommodate the City's estimated homeless population, has a suitable surface for an overnight stay, and is close to services such as transit, food banks, and food stores. The Council also recognized that if the designated camping area is at capacity and there is a need for public camping, the City should identify other areas where camping is allowed on public property.

Regardless of where camping occurred, the Council also considered objectively reasonable time and manner regulations that would provide safe and sanitary conditions for those experiencing homelessness and the surrounding community. The Council discussed and developed regulations addressing 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 assure compliance with the American with Disabilities Act (ADA). The Council also discussed regulations focused on community health and sanitation that prohibits the accumulation of trash and other waste in camps, as well as discussed regulations that prevent contamination outside the camps such as dumping wastewater. The Council also discussed and developed regulations addressing other potential dangers such as open flames and dangerous, unauthorized connections to utilities and other city facilities.

The Council also sought to ensure that public property would avoid permanent alterations that could damage the property by prohibiting digging, excavating, or removing vegetation. Lastly, the Council reached a consensus on restricting the time camping could occur from 7 p.m. to 7 a.m., providing sufficient time for any person to set up and take down a camp and sleep for a reasonable amount of time.

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 \$20,000 per year for a port-a-potty and daily removal of camping debris. The City is working with Washington County on potential funding for these services. Enforcement of the ordinance is expected to require approximately the same amount of time and personnel as it does currently, however, the time will vary widely depending on the number of camps. If the number of camps increases from existing levels, it may require the addition of personnel or reassignment of existing personnel from other duties.

STAFF RECOMMENDATION:

Staff recommends the City Council consider, amend as necessary, and pass the ordinance. If passed, the ordinance would become effective July 26, 2023. Staff will embark on an aggressive public information effort to assure all persons are well aware of the new regulations prior to progressively enforcing them.

As noted above, prior to voting on Ordinance 2023-04, Mayor Wenzl should read aloud section 2 of the ordinance (definition of intoxicants) and in exhibit A, section 95.06.C.13.

ATTACHMENTS:

- 1) Proposed Ordinance 2023-04 and Exhibit A – Clean
- 2) Proposed Ordinance 2023-04 and Exhibit A – Track Changes
- 3) Ordinance 2023-04 Frequently Asked Questions