

ORDINANCE NO. 25-1706

AN ORDINANCE OF THE CITY OF LYNDEN REPEALING LYNDEN MUNICIPAL CODE CHAPTER 12.40.070, REGARDING ENFORCEMENT OF SECTION 12.40.040 AND SECTION 12.40.050 AGAINST PERSONS WHO LACK THE FINANCIAL MEANS TO PAY FOR ADEQUATE SHELTER.

WHEREAS, the City of Lynden ("City") has experienced an increase in certain behavior among visitors to City parks, including unauthorized camping and other violations of the Lynden Municipal Code, which damages park infrastructure and substantially interferes with the enjoyment of such parks by the wider public; and

WHEREAS, in response to these issues, in August of 2022 the Lynden City Council passed Ordinance No. 1649, which amended the Lynden Municipal Code to expressly establish park rules and enforcement procedures to prevent individuals from camping on any public property, as such activity creates a public health and safety hazard; and

WHEREAS, Ordinance No. 1649 amended Lynden Municipal Code Chapter 12.24 (City Parks) and added a new Chapter 12.40 (Camping On Public Property); and

WHEREAS, Ordinance No. 1649 was drafted to comply with the United States Court of Appeals for the Ninth Circuit's *Martin v. City of Boise* decision (902 F.3d 1031 (9th Cir. 2018)) ("*Martin*"), which held on Eighth Amendment grounds that governments cannot criminalize indigent, homeless individuals for sleeping outdoors on public property when said individuals did not have access to adequate temporary shelter; and

WHEREAS, to comply with *Martin*, Ordinance No. 1649 included a section, later codified at Lynden Municipal Code 12.40.070, that suspended enforcement of Section 12.40.040 (Unlawful camping) and Section 12.40.050 (Unlawful storage of personal property in public places) against "persons who lack the financial means to pay for adequate shelter unless the city first confirms there is an available overnight shelter space that can be utilized by the particular person(s);" and

WHEREAS, on June 28, 2024, the United States Supreme Court issued its opinion in *City of Grants Pass v. Johnson* (144 S. Ct. 2202 (2024)) ("*Grants Pass*"), which addressed local government's ability to impose criminal penalties on sleeping or camping in public; and

WHEREAS, in *Grants Pass*, the Supreme Court overturned *Martin* and held that local governments do not violate the Eighth Amendment by enacting and enforcing ordinances that impose commonly used criminal penalties for public sleeping and camping offenses; and

WHEREAS, in light of the Supreme Court's *Grants Pass* decision, the City now wishes to amend the Lynden Municipal Code to remove Section 12.40.070; and

WHEREAS, this ordinance is declared to be an exercise of the policy power of the City of Lynden, and its provisions shall be liberally construed for the preservation and protection of the natural environment, public peace, health, safety, welfare, and to preserve parks and other open spaces for its citizens and all future generations; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lynden, Washington, as follows:

Section 1: Section 12.40.070 of the Lynden Municipal Code is hereby repealed in its entirety:

~~12.40.070 — Enforcement suspended.~~

~~The city shall not enforce the provisions of Section 12.040 or Section 12.050 against persons who lack the financial means to pay for adequate shelter unless the city first confirms there is an available overnight shelter space that can be utilized by the particular person(s).~~

Section 2: Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 3: If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 4: This ordinance shall be in full force and effect five (5) days after its passage, approval, and publication as provided by law.

AFFIRMATIVE VOTE ____ IN FAVOR, AND ____ AGAINST, AND SIGNED BY
THE MAYOR THIS ____ DAY OF _____ 2024.

Scott Korthuis, Mayor

ATTEST:

Pamela Brown, City Clerk

APPROVED AS TO FORM:

Robert A. Carmichael, City Attorney