



**DIVERSITY, EQUITY AND INCLUSION COMMITTEE MEETING
STAFF REPORT**

Meeting Date: March 14, 2023		Subject: Prohibited Camping Code Update Project	
		Staff Members: Amanda Guile-Hinman, City Attorney; Nick McCormick, Law Clerk	
		Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable	
		Comments: N/A	
Staff Recommendation: N/A			
Recommended Language for Motion: N/A			
Project / Issue Relates To:			
<input type="checkbox"/> Council Goals/Priorities:	<input type="checkbox"/> Adopted Master Plan(s):	<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COMMITTEE: Review initial draft code provisions regarding prohibited camping. The draft code provisions are attached hereto as **Attachment A**.

EXECUTIVE SUMMARY:

The City is undertaking a review and update to its local code provisions regarding camping on city property and city rights-of-way such as streets and sidewalks in response to new state laws and federal court cases. This is state-mandated work that every city in Oregon is or will be in the process of doing. The goal of the City's camping code update project is to do so in a way that is humane, and complies with state and federal law, by establishing clear rules about where, when, and how camping is allowed or not allowed on City property and rights-of-way.

Based on the state laws and federal case law, community members' and stakeholders' feedback, Council's policy direction from its February 23 and March 6 meetings, and code updates conducted by other jurisdictions based on the new state mandates, staff has prepared an initial draft of Wilsonville Code updates regarding prohibited camping. The initial draft has been reviewed by the City inter-departmental team (Legal, Parks & Recreation, Public Works, Library, Police, Code Enforcement, Administration) working on this project. Staff seeks feedback from the DEI Committee on the draft code and will bring back further revisions for Council review and discussion at its March 20, 2023 and April 17, 2023 work sessions.

This staff report will provide (1) a brief background of the federal case law and state laws that provide the basis for this project; (2) an overview of the City project; and (3) an explanation of the various draft code provisions.

I. BACKGROUND

A. Federal Cases on Camping Ban Enforcement

Two key lawsuits out of the Ninth Circuit Court of Appeals are the impetus for both the later state legislation and this City code update project. A more in-depth discussion of the nuances of these lawsuits may be found in the February 23 and March 6, 2023 staff reports.

The decisions in *Martin v. Boise* and *Johnson v. City of Grants Pass*¹ held the following: (1) that the Eighth Amendment prohibition against cruel and unusual punishment does not allow jurisdictions to penalize individuals who cannot obtain shelter for sitting, sleeping, or lying outside on public property; and (2) that such individuals similarly must be permitted to take minimal measures to keep warm and dry while sleeping.

¹ The originating trial court decision that the Ninth Circuit reviewed in its decision in *Johnson v. City of Grants Pass* came out of the US Federal District Court for the District of Oregon and the name of that trial court case is *Blake v. City of Grants Pass*.

B. New Oregon Laws Regulating Local Camping Bans

1. HB 3115 (2021)

With the guidance of the federal case law, the Oregon legislature passed HB 3115 in 2021 (codified as ORS 195.530), which set up specific requirements and limitations for city and county camping ordinances.

Among the requirements is a provision stating that any regulation of use of public property by unhoused persons must be “objectively reasonable.” Whether or not a regulation is objectively reasonable depends on an analysis of all the circumstances, including the impact of the law on the person, as well as other relevant considerations related to the specific conditions involved.

The law also provides for both an affirmative defense to any crime that is objectively unreasonable, as well as a private right of action for declaratory and injunctive relief (not money damages), which means that individuals can sue the City alleging the City Code is unreasonable on its face (no enforcement action by the City is required prior to suing the City for violating the new state law). The private right of action allows for the collection of attorney’s fees at the judge’s discretion also. The law goes into effect on July 1, 2023.

2. HB 3124 (2021)

Additionally, passed as HB 3124 (2021) and effective on June 23, 2021, ORS 195.505 added provisions requiring reasonable prior written notice to individuals of an intent to close an established campsite within 72 hours at each campsite entrance before closure. This policy does not apply if the site is housing illicit activities, in case of emergencies, or sites near a funeral service. Additionally, a citation cannot be given if within 200 feet of a notice posted less than two hours before or after such time.

The law also added provisions regarding the receipt and storage of persons’ belongings left after a valid site closure. Any unclaimed property is to be stored at a designated facility located in that community. The city must leave reasonable notice as to where and how the person may find and retrieve their belongings. A city is not required to store goods that are deemed to have no value or utility, or are unsanitary. A city will give all weapons, illicit substances, and stolen property to law enforcement. The city will store the items for 30 days after reasonable notice is given.

II. CITY PROJECT

Staff formed an inter-departmental internal team to review Wilsonville Code provisions that regulate camping, and other related provisions. This internal team has three goals: (1) to ensure that the City is compliant with HB 3115 prior to its operative date of July 1, 2023; (2) to verify, through work sessions with Councilors and feedback from the community and stakeholders, that any regulations in the Wilsonville Code reflect City values; and (3) to communicate with

and educate the Council and the community about these changes in Oregon law and any corresponding revisions to the Wilsonville Code.

A. What Can and Can't We Do?

In the staff reports for the February 23 and March 6, 2023 work sessions, they detailed the actions that Council can and cannot take regarding camping. For reference, those actions are listed below, and more information can be found in the prior staff reports.

1. We cannot ban camping on public property outright.
2. We are only covering regulations on City-owned property and rights-of-way.
3. We can regulate the timing when camping may occur.
4. We can regulate where camping occurs on City-owned property.
5. We can regulate how camping occurs.
6. We cannot have regulations that are objectively unreasonable.

III. Draft Code Discussion

City staff created draft code provisions and revisions based on: (1) a review of current code provisions that may need to be updated or deleted; (2) federal case law and state law compliance; and (3) input from the community outreach and Council feedback.

A. Consolidation of Regulations

Code provisions governing camping span across several different parts of the City Code, including Parks & Playgrounds regulations (WC 3.000), Parking and Storage regulations (WC 5.200-5.210), campsite removal regulations (WC 6.400), and general camping prohibitions (WC 10.425).

Outside of parks regulations, staff recommend consolidating all permitted and prohibited camping regulations in one location for ease of use, both by individuals seeking to comply with the regulations and by law enforcement and staff seeking to enforce the regulations. Thus, the substantive code provisions governing camping are proposed to be in a new section, WC 10.700 through 10.780 (attached hereto as **Attachment A**). The more detailed discussion of proposed WC 10.700 through 10.780 is in item 4 below.

1. Parks Regulations Remaining in WC 3.000

The community outreach and Council input strongly supported continuing to close City parks at night and to not allow camping in City parks. City parks are closed from 10 pm to 6 am. Since camping would continue to not be allowed in City parks, staff recommend that the prohibition against camping in parks remain in the parks regulations. **Attachment B** consists of the recommended revisions to WC 3.000. The revisions focus on creating a distinction between camping in parks (not allowed) and resting in parks (allowed during open hours). Because the City cannot prohibit some individuals from resting while allowing others (e.g., a child who takes a nap during a sibling's sports event), staff recommend focusing the regulations on where resting cannot occur, namely, on a play structure/playground, water feature, trail, pathway, restroom, or sports field.

2. Separating Standard Parking Regulations from Camping Regulations

Since camping on public property includes sleeping in vehicles, code regulations governing parking and storage on City streets are relevant to the camping code update. Rather than discuss vehicle camping in a completely separate section from other forms of camping, staff recommend pulling out any regulations governing camping on City streets from those governing parking on City streets. **Attachment C** consists of the recommended revisions to WC 5.200 – 5.210.

As noted in Attachment B, staff recommend deleting WC 5.210(12) because it specifically focuses on camping on City streets. The other recommended revisions in WC 5.200 and WC 5.210(2) are to create the distinction between parking a vehicle and camping in a vehicle.

3. Deleting Current, Outdated Camping Regulations

Currently, the General Offenses section of the Wilsonville Code, in subsection 10.425, contains the outright prohibition against camping on public property and on City streets, which is not compliant with state law, and WC 6.400 provides the outdated regulations for providing notice prior to clearing out a campsite. Since the City must develop more nuanced time, place, and manner regulations in light of the federal case law and state statutes, staff recommend deleting WC 10.425 and WC 6.400 and creating a new section in Chapter 10 to govern camping on public property and City streets. **Attachment D** shows the deletion of WC 10.425 and **Attachment E** shows the deletion of WC 6.400.

4. Creating New Section in WC Chapter 10 for Camping Regulations

As discussed above, staff recommends consolidating essentially all camping regulations (outside of the outright ban in the parks regulations) into a new section within WC Chapter 10, under WC 10.700 through 10.780 (see **Attachment A**). The time, place, and manner regulations in proposed WC 10.700 through 10.780 are found in 10.720 through 10.740.

i. Time Regulations

Council indicated its preference for a specific time period to allow camping, as opposed to a certain number of hours allowed (e.g. 24 hours). Council asked for additional information regarding staff/law enforcement availability because Council wanted to ensure that any regulations imposed are able to be enforced. After outreach to the relevant departments, staff will recommend a time period of 9 pm to 7 am to allow camping on designated City property and City streets.

ii. Place Regulations

While the feasibility of specific City properties are still being analyzed by staff, the direction from Council was to primarily focus on allowing camping in a portion of the City Hall parking lot and adjacent City property to the north of City Hall (subject to the time and manner regulations). Council then discussed designating other City properties where camping would be allowed only if number of individuals who are involuntarily homeless exceed the space provided in the City Hall parking lot and adjacent property. Assuming feasible, the next location would be the Community Center parking lot, and the third location would be the Library parking lot. Staff intends to create illustrations of these locations where vehicle and non-vehicle camping may occur.

Since vehicle camping is the most common occurrence of camping in Wilsonville, staff also drafted place regulations as to where vehicle camping on the public rights-of-way is restricted – such restricted areas include streets in areas with residential zoning; within 20 feet of a property that contains a residence, regardless of zoning; the Significant Resource Overlay Zone; and stormwater treatment facilities, among other restrictions.

iii. Manner Regulations

The proposed manner regulations found in WC 10.740 manage how an individual may camp. These regulations focus on ensuring that overnight camps do not obstruct or interfere with City infrastructure or general traffic; are somewhat spaced out and relatively small to avoid the formation of large campsites; do not accumulate garbage or produce unsanitary conditions; and do not utilize, dump, or connect to City systems.

The manner regulations also contain specific regulations regarding vehicle camping to ensure that vehicles are legal and camping materials are self-contained within the vehicle.

iv. Notice of Campsite Removal

HB 3124 (2021) established new requirements on jurisdictions if and when they seek to remove a campsite. WC 6.400 is not compliant with the new regulations, and so proposed WC 10.750 is nearly identical to the requirements of HB 3124.

EXPECTED RESULTS:

Council consideration for adopting code revisions planned for May 2023.

TIMELINE:

Approximate timeline of expected upcoming events:

1. March 20, 2023 – Fourth Council Work Session to review draft Code revisions
2. April 17, 2023 – Fifth Council Work Session for any last revisions
3. May 1, 2023 – First Reading of Ordinance
4. May 15, 2023 – Second Reading of Ordinance
5. July 1, 2023 – New regulations become effective

CURRENT YEAR BUDGET IMPACTS:

None immediately, but there could be potential costs depending on the chosen system for managing prohibitions on camping. Cities are not required to provide facilities for those who are experiencing homelessness, but may be required to create additional procedures for regulating camping.

COMMUNITY INVOLVEMENT PROCESS:

Public involvement is a focal point of the city camping code revision process to ensure a diverse group of community members and stakeholders can provide their priorities, interests, and concerns related to the potential code revisions. The City provided a community survey through Let's Talk, Wilsonville! and staff have met and are meeting with stakeholders, including City advisory boards, private service providers, business and community groups, Clackamas County, the School District, TVF&R, and other government agencies. Staff prepared a memo to Council of the outreach performed as of February 7, 2023, which is attached as **Attachment F**.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

There are several potential impacts on the residential, commercial, and related communities depending on the adopted code revisions. The project team will work with local residents and stakeholders to address concerns and provide equitable solutions that benefits both the community and other impacted individuals.

ATTACHMENTS:

1. Attachment A – Draft WC 10.700-10.780
2. Attachment B – Draft WC 3.000
3. Attachment C – Draft WC 5.200-5.210
4. Attachment D – Draft WC 10.425
5. Attachment E – Draft WC 6.400
6. Attachment F – February 7, 2023 Memo to Council re: Initial Outreach