



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: August 15, 2022		Subject: Code Revisions Related to Camping	
		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 type="checkbox"/> Information or Direction <input checked="" 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 COUNCIL:

An informational session to discuss the recent passage of Oregon laws and court rulings related to local laws regulating camping. In June 2020, the League of Oregon Cities published a guide for local jurisdictions regarding these Oregon laws and case law concerning camping regulations is attached hereto as **Attachment A**.

EXECUTIVE SUMMARY:

A. Federal Cases on Camping Ban Enforcement

In 2019, the 9th Circuit in *Martin v. Boise* examined the constitutionality of two Boise ordinances: one that made it a misdemeanor to use “any streets, sidewalks, parks, or public places as a camping place at any time,” and one that banned occupying or otherwise using a public or private structure without permission. The 9th Circuit ruled that these two ordinances generally violated individuals’ rights under the 8th Amendment, which prohibits government from imposing cruel and unusual punishment. What came out of *Martin* was the general understanding that a city cannot criminalize being homeless, but cities are not required to create homeless facilities and can still have reasonable time, place, and manner restrictions for camping.

After *Martin*, many jurisdictions began revising their state and local statutes to comply with the recent decision. In 2020, before these new revisions were completed, a class of homeless individuals challenged various Grants Pass regulations that were similar to those in *Martin* before the U.S. Federal District Court of Oregon in *Blake v. Grants Pass*. Grants Pass had attempted a limited revision to its regulations in light of *Martin* to allow “sleeping” in certain circumstances, but retained all other prohibitions of camping on public property. Among the regulations were bans on camping in parks, camping on public property, and sleeping in public places when any bedding is used, as well as exclusions from parks for violating more than one regulation in one year’s time. The court stated these regulations violated *Martin*, and provided further clarification regarding when cities can or cannot enforce camping prohibitions. The Court in *Blake* held that enforcement through imposition of a civil penalty as opposed to a criminal charge did not relieve Grants Pass from the 8th Amendment analysis in *Martin*. The Court also held that the 8th Amendment prohibits a jurisdiction from punishing people for taking necessary steps to keep themselves warm and dry while sleeping (such as using bedding or a barrier between themselves and the ground).

B. New Oregon Laws Regulating Local Camping Bans

With the guidance of both *Martin* and *Blake*, 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. A copy of HB 3115 is attached hereto as **Attachment B**.

Among the requirements is a provision stating that any regulation of use of public property by persons experiencing homelessness 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 homeless 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. 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.

Additionally, passed as HB 3124 (2021) (attached hereto as **Attachment C**), 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 homeless 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.

C. Other Considerations Regarding Camping Bans

Other concerns related to the regulation of camping on public property include the 1989 U.S. Supreme Court decision of *Deshaney v. Winnebago County Department of Social Services*, which viewed the 14th Amendment as imposing a duty on government actors when they have created dangerous conditions for others. This has been further refined by the 9th Circuit to apply a duty to government actors where an affirmative act puts a person in danger with a deliberate indifference to a known or obvious danger. *LA Alliance for Human Rights v. City of Los Angeles*, 2021 WL 1546235.

This is an important policy consideration for cities in deciding where to prohibit camping and where to allow it. The city must ensure that regulations for camping and related prohibitions do not expose homeless individuals to a greater danger than under current circumstances. This will sometimes require a case-by-case analysis of current environmental conditions and potential harms that may occur after site removal. It is still unclear as to how far the duty stretches under the State Created Danger principle.

D. Next Steps

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.

EXPECTED RESULTS:

After an initial discussion of the current case law and state statutes related to camping prohibitions, the project team will begin the process of reviewing current city code and locating code sections to be revised, with the city potentially approving a final revised code by May 2023.

TIMELINE:

Approximate timeline of expected events:

1. August 15, 2022 – First Council Work Session to inform Council of new Oregon laws
2. October – November 2022 – Stakeholder/community outreach
3. January 19, 2023 – Second Council Work Session to go over draft Code provisions* and community feedback
4. March 20, 2023 – Third Council Work Session to further review draft Code revisions*
5. April 17, 2023 – Fourth Council Work Session for any last revisions*
6. May 1, 2023 – First Reading of Ordinance*
7. May 15, 2023 – Second Reading of Ordinance*
8. July 1, 2023 – Any new regulations become effective

*Assumes that updates to the Wilsonville Code are necessary, which is still being determined by staff.

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 that are homeless, but may be required to create additional procedures for regulating camping by homeless individuals.

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 project team expects several opportunities to facilitate open discussions throughout the revision process.

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.

ALTERNATIVES:

Pursuant to Oregon law, the city must have some form of objectively reasonable camping regulations by July 1, 2023. The city has options it may consider:

1. Take no action and keep the current code; the city will have to justify the reasonableness of the current sections of the code if challenged in the future.
2. Revise the city code, creating more robust regulations and procedures to fully comply with relevant case law and state statutes; this will include choosing among various options to meet the necessary criteria (overnight programs or facilities, time, place, and manner restrictions.)

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. Attachment A – League of Oregon Cities Camping Code Revision Guide
2. Attachment B – ORS 195.530 (HB 3115)
3. Attachment C – ORS 195.505 (HB 3124)