



**PARKS AND RECREATION ADVISORY BOARD SPECIAL MEETING
STAFF REPORT**

Meeting Date: February 9, 2023		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 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 BOARD: An informational session to discuss the recent passage of Oregon laws and court rulings related to local laws regulating camping, as well as a discussion regarding community outreach for this project. 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:

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 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.

This Staff Report provides background information that requires the City to revise its prohibited camping code provisions, what the City can and cannot regulate, and some policy questions for the Board that staff will use to help inform the ultimate revisions to the City Code.

I. BACKGROUND

A. Federal Cases on Camping Ban Enforcement

In 2018, 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 facilities for persons experiencing houselessness 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 unhoused 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 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.

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 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 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. 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. As staff undertake the community outreach component of this project, staff seeks feedback from the Parks and Recreation Advisory Board regarding policy questions concerning this prohibited camping project.

I. What Can and Can't We Do?

Below is a summary of the policy considerations that we can examine and that we cannot examine regarding prohibited camping:

1. We cannot ban camping outright – in the Ninth Circuit's jurisdiction (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington), only cities with sufficient shelter beds for unhoused individuals can ban camping outright. Currently, staff is not aware of any city that is able to meet this threshold. Portland's mayor recently stated a policy goal to reach this threshold, but otherwise, no city is able to ban camping outright.
2. The federal case law and state regulations only apply to camping on City-owned property – they do not require us to allow camping on private property and we do not have authority to regulate camping on other public entities' property such as the School District or Metro property. However, we can consider a program that allows private property owners to apply to allow some camping on their property – several Oregon jurisdictions have implemented such programs.
3. We can regulate the timing when camping may occur, such as between certain hours (e.g., from 10 pm to 6 am)
4. We can regulate where camping occurs on City-owned property (e.g., parking lots, vacant City-owned lots, sidewalks, parks, etc).
5. We can regulate how camping occurs, such as to prohibit open flames/fire, certain structures, and size of structures.

6. We cannot not have regulations that are objectively unreasonable. Reasonableness is determined by examining the totality of the circumstances, including the impact of the regulations on persons experiencing homelessness.

II. Policy Questions

These policy questions are designed for the Board to consider not just how unhoused individuals may use the parks, but also how other community members also recreate in the parks, to ensure that any restrictions and regulations do not specifically target unhoused individuals while allowing others to engage in the same conduct. For example, if a person may use an outdoor shade tent during a soccer tournament at a park, the City cannot restrict others from also using such a tent for other lawful purposes, such as resting, while the park is open.

Policy Question 1: Whether the Council should continue to close parks at night (parks posted to be closed from 10 pm to 6 am)? This would have the effect of prohibiting all camping in public parks at night. This allows the preservation of the parks and the City's investment in the parks, but the City will need to ensure that there are other City-owned areas where individuals are able to camp in order for such a prohibition to be considered "objectively reasonable." Also, importantly, individuals may still use the parks during the daytime in any way that does not otherwise violate city code. In other words, individuals are allowed to recreate in city parks during open hours in any manner that does not violate City regulations.

Policy Question 2: Whether the forested park areas, in particular, should certain conduct be prohibited at all times (not just when the parks are closed)? If so, what conduct would be prohibited? For example, should the City consider allowing anyone, while the park is open, to sit, lie, and/or sleep in forested areas? Should the City consider restricting the items an individual may use if sitting/lying/sleeping, such as chairs, blankets, pillows, or tents? This policy question implicates not only the place, but the manner in which individuals may recreate and camp in the forested areas while the park is open.

Policy Question 3: Should there be restrictions on the kinds of materials that may be used in the parks? Currently, the City already restricts open flames in parks except in designated areas.

Policy Question 4: Are there any other regulations that should be considered as part of this prohibited camping project – particularly, regarding the time, place, or manner that camping is allowed?

EXPECTED RESULTS:

Contemporaneous with the community outreach, the project team has begun the process of reviewing current city code and locating code sections to be revised in light of the new state laws, with the city potentially approving a final revised code by May 2023.

TIMELINE:

Approximate timeline of expected upcoming events:

1. February 23, 2023 – Second Council Work Session to go over policy considerations and initial community feedback
2. March 20, 2023 – Third Council Work Session to review draft Code revisions
3. April 17, 2023 – Fourth Council Work Session for any last revisions
4. May 1, 2023 – First Reading of Ordinance
5. May 15, 2023 – Second Reading of Ordinance
6. 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 houselessness, 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, and other government agencies.

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