

ORDINANCE NO. 2023-04

**ORDINANCE AMENDING FOREST GROVE CODE OF ORDINANCES
TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94,
REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY;
REPEALING § 92.15, CAMPING; AND AMENDING TITLE XIII (GENERAL
OFFENSES) §130.06, CONSUMPTION OF INTOXICANTS ON PUBLIC PROPERTY,
PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES**

WHEREAS, 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; and

WHEREAS, 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); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, HB 3115 becomes operative on July 1, 2023; and

WHEREAS, HB 3115 provides a private right of action for persons experiencing homelessness to seek injunctive or declaratory relief to challenge the objective reasonableness of any jurisdiction's regulations regarding camping on public property; and

WHEREAS, because the City of Forest Grove did not prohibit camping or sleeping on all public property in the City and had objectively reasonable regulations related to public camping, the City was not obligated to amend its municipal code or practices under either the federal court cases or HB 3115; and

WHEREAS, as the homeless population in the City of Forest Grove and Washington County has increased in the last decade, the need for additional and humane regulations to make the City livable for residents has increased as well; and

WHEREAS, the City Council passed Objective 1.2 in 2023 to develop policies and activate partner services that will address homeless services, including an ordinance addressing time, place and manner regulations for homeless services; and

WHEREAS, throughout the last year the City has taken a number of steps to gather information, seek community input and address community needs related to homelessness; these efforts have included holding Committee for Community Involvement meetings on homelessness; creating an updated a city-wide webpage on homelessness; establishing a City Council Subcommittee on homelessness that held several listening and learning community meetings; and entering into an Encampment Program agreement with Washington County to allow for safety and health inspections and encampment clean up; and

WHEREAS, beginning 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 and the surrounding housed community; and

WHEREAS, the Council conducted work sessions on April 10, 2023, April 24, 2023, May 8, 2023 and May 22, 2023, to review and discuss reasonable time, place, and manner regulations for public camping;

WHEREAS, during these discussions, it became apparent that if shelter is not available to persons experiencing homelessness, the best solution for the City is to provide a city-designated area for overnight camping that is large enough to accommodate the City's estimated homeless population, has a surface suitable for camping, and is close to services such as transit, food banks, and food stores; and

WHEREAS, the Council also recognized that if the designated camping area is either above capacity, or not available for a person experiencing homelessness, the City would need to identify other areas where camping is allowed; and

WHEREAS, regardless of where camping occurred, the Council also considered reasonable time and manner regulations that would provide safe and sanitary conditions for those experiencing homelessness; and

WHEREAS, the Council developed regulations focused on 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

WHEREAS, the Council also developed regulations focused on community health and sanitation that prohibits the accumulation of trash and other waste in camps to provide a safe and healthy environment for all camp users, as well as developed

regulations that prevent contamination outside the camps such as dumping wastewater; and

WHEREAS, the Council discussed and developed regulations addressing other potential dangers such as open flames and dangerous, unauthorized connections to utilities and other city facilities; and

WHEREAS, the Council also sought to ensure that public property would avoid permanent alterations that could damage the property by restricting digging, excavating, or removing vegetation; and

WHEREAS, the regulations also allow for camping on certain public property for up to 12 hours each day, which provides sufficient time for any person to set up and take down a camp, and sleep for a reasonable amount of time; and

WHEREAS, the Council believes these regulations 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; and

WHEREAS, these regulations are not land use regulations and do not implement the City's comprehensive plan; and

WHEREAS, the City has provided notice of Public Hearing, held a public hearing on June 12, 2023 and June 26, 2023 regarding the proposed revisions to the Forest Grove Code of Ordinances, afforded all interested parties an opportunity to be heard, and duly considered the subject.

NOW THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: The City Council hereby amends Forest Grove Code of Ordinances Title IX (General Regulations) by removing § 92.15, Camping.

Section 2: The City Council hereby amends Forest Grove Code of Ordinances Title XIII (General Offenses) §130.06 as follows:

CONSUMPTION OF ~~ALCOHOLIC BEVERAGES~~ INTOXICANTS ON PUBLIC PROPERTY, PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES.

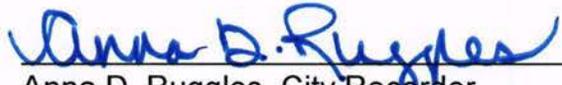
(A) No person may consume any ~~alcoholic beverage~~ intoxicants or possess an open container of any ~~alcoholic beverage~~ intoxicants on any public property, any public rights-of-way, or upon any premises open to the public unless licensed or permitted for that purpose by the State Liquor Control Commission. “Intoxicants” means liquors, non-legally prescribed controlled substances, inhalants, cannabis, psilocybin, that, when taken into the human body, can impair the person’s mental or physical faculties to a noticeable and perceptible degree.

Section 3: The City Council hereby amends Forest Grove Code of Ordinances Title IX (General Regulations) by adding Code Chapter 94, Regulation of Camps and Camping on Public Property, as set forth in Exhibit A.

Section 4: The ordinance is effective 30 days following its enactment by the City Council.

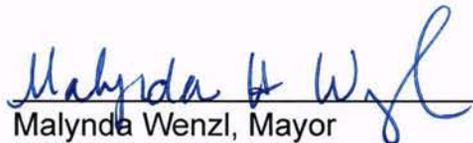
PRESENTED AND PASSED first reading this 12th day of June, 2023.

PASSED the second reading this 26th day of June, 2023.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 26th day of June, 2023.



Malynda Wenzl, Mayor

ORDINANCE NO. 2023-04
EXHIBIT A

CHAPTER 94: REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY

Section

- 94.01 Purpose
- 94.02 Authority
- 94.03 Definitions
- 94.04 Camping Prohibited
- 94.05 City Designated Camping Area(s)
- 94.06 Regulation of Camps and Camping on City Property
- 94.07 Enforcement
- 94.08 Violation
- 94.09 Removing Established Camps

§ 94.01 PURPOSE.

To protect the health and safety of community members, including individuals experiencing homelessness in the City of Forest Grove, to responsibly maintain publicly owned real property and publicly owned assets open to the public for all people of the city, and to increase opportunities to provide outreach to individuals experiencing homelessness to connect those individuals to supportive services including shelter and housing, the council has determined it is necessary to regulate the use of public property for camps and camping with respect to individuals experiencing homelessness. It is the purpose of this chapter to regulate camps and the act of camping, on public property in an objectively reasonable manner with regards to persons experiencing homelessness. This chapter shall be liberally constructed for the accomplishment of this purpose.

§ 94.02 AUTHORITY.

This ordinance is adopted pursuant to the authority granted by Oregon Revised Statutes (O.R.S.) 195.530.

§ 94.03 DEFINITIONS.

For the purpose of this chapter, words in the present tense include the future, the singular includes the plural, and the plural includes the singular, the word “shall” is mandatory and not discretionary, and the term “chapter” shall be deemed to include all amendments hereinafter made to this chapter. As used in this chapter, unless the context requires otherwise, the following words and their deviations shall mean:

(A) “Available” means a shelter that has space for a particular person. A shelter is not available to a person if the shelter:

1. Has a maximum stay rule or temporal requirement or deadline the person has exceeded or not met;
2. Has excluded the person from the shelter for any lawful reason;
3. Cannot reasonably accommodate the person’s mental health or physical needs;

4. Is unavailable due to the person's family status, age, gender, gender identity, sexual orientation, or other status;

5. Excluding general rules that prohibit alcohol or drug use in the shelter or on shelter grounds, is unavailable to the person because the shelter has rules about alcohol or drug use that the person does not meet;

6. May prohibit a minor child to be housed in the same facility with at least one parent or legal guardian;

7. Requires participation in religious activity or receipt of religious information or religious teaching the person does not wish to participate in or receive; or

8. Requires a person to leave their pet(s) unattended in order to stay at the shelter. This section does not apply to service animals under the Americans with Disabilities Act.

(B) "Camp" or the act of "camping" means to pitch, erect, create, use or occupy camp materials for the purposes of habitation.

(C) "Camp materials" means, but is not limited to tents, huts, awnings, lean-tos, shacks, or other temporary structures, or parts thereof, tarps or tarpaulin, chairs, cots, beds, sleeping bags, blankets, sleeping or bedding materials, food or food storage items, and/or similar items that are or appear to be used for and aid living and/or sleeping outdoors. "Camp materials" does not include vehicles, automobiles, or recreational vehicles used for shelter and/or sleeping, which are regulated by Chapter 73 of this Code.

(D) "City building" means all facilities and their surrounding grounds, owned, leased, rented, contracted, used, managed and controlled by the City of Forest Grove for conducting public business.

(E) "City designated camping area" means the area(s) the City has identified pursuant to § 94.05.

(F) "City parking lot" means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated for parking of vehicles.

(G) "City property" means, including but not limited to, all real property owned, leased, rented, contracted, used, managed or controlled by the City of Forest Grove including City buildings, City parking lots, public parks and park facilities and public right-of-way.

(H) "Person" means a person who does not have a permanent residence or domicile and are experiencing homelessness.

(I) "Public parks and park facilities" means any public or privately owned real property placed under the jurisdiction of the City, whether within or outside the corporate limits of the City, and designated for park and recreational purposes.

(J) "Public right-of-way" means all interests in real property, subject to the jurisdiction and control of the City of Forest Grove, used, operated and managed for customary roadway purposes and appurtenant uses and which provides or supports public access for vehicles, pedestrians and other modes of travel between places. "Public right-of-way" includes, but is not limited to, public roads, streets, sidewalks, highways, throughways, alleys, road related structures in the right-of-way including tunnels, culverts, landscape areas or planter strips, and similar structures, and structures that provide for continuity of the right-of-way such as bridges.

(K) "Shelter" means a developed or legally established public or private facility for people experiencing homelessness that does not charge for shelter or services.

§ 94.04 CAMPING PROHIBITED.

A. Camping is prohibited on City property when shelter is available to the person.

B. When shelter is not available, camping is prohibited on other City property when there is space available to the person in a City-designated camping area.

C. This section does not prohibit sitting, lying or sleeping on or within City property in a manner that does not create a camp or constitute camping, so long as such use does not obstruct the public right-of-way or access to other City property for its usual and customary purposes.

§ 94.05 CITY DESIGNATED CAMPING AREA(S).

A. When there is no shelter available, a person may camp within the time regulations provided in § 94.06(A) and pursuant to the manner regulations in § 94.06(C) in a City-designated camping area. For avoidance of doubt, camping is prohibited on other City property when space is available in the City-designated camping area.

B. City Council shall identify a City-designated camping area(s) by Council Resolution.

§ 94.06 REGULATION OF CAMPS AND CAMPING ON CITY PROPERTY.

Persons camping on City property because they do not have shelter available, whether in a City-designated camping area or on other City property when allowed under this chapter, may camp subject to the following regulations.

A. Time

Unless otherwise specified, camping, when and where not prohibited, may occur on City property between the hours of seven (7) p.m. and seven (7) a.m. After seven (7) a.m. a camp must be dismantled and the person must remove all camping materials and personal property.

B. Place

In addition to the prohibition set forth in § 94.04, camping is not allowed at any time in the following places:

1. City buildings, City parking lots, and public parks and park facilities. This prohibition does not include camping in City-designated camping area(s) when allowed;
2. Within or on any real property transferred to the City by donation or bequeathment;
3. Within any area designated or operated by the City of Forest Grove, Clean Water Services, Metro, any agency of the State of Oregon, or Federal Emergency Management Agency as a natural resource area, riparian corridor, flood plain, wildlife conservation area, vegetated corridor, stormwater infrastructure, or water quality sensitive area;
4. Within 500 feet from any public and private elementary, middle and high school;
5. Within any area zoned Residential on the City of Forest Grove Zoning Map in effect or public property abutting a parcel used for residential purposes;
6. Within 20 feet of the public entrance to a business;
7. Within 20 feet of a transit stop;

8. Upon any parcel of land managed for the operation and regulatory compliance of the municipal water supply system, stormwater systems, or electrical substations.

C. Manner

Camping, when and where allowed, is subject to the following:

1. Camps and camp materials located on a public sidewalk or trail shall not reduce the clear, continuous sidewalk or trail to less than five (5) feet at all times to assure compliance with the American with Disabilities Act.

2. No camp or camp materials shall obstruct any portion of any street or bicycle lane open to use by vehicles or bicycles.

3. Person(s) camping may not accumulate, discard, or leave behind any materials including camping materials, garbage, debris, unsanitary or hazardous materials on any public or private property.

4. Animals residing in or visiting camps must be leashed or crated at all times.

5. Person(s) camping may not use power generators that result in a violation of the City's noise ordinance.

6. A camp must be limited to one tent or temporary structure per individual or household. The camp can be no larger than 144 square feet, including camping materials and any other personal property.

7. Items presenting a danger to others, including uncontained sharps/needles, uncontained human waste or unauthorized connections or taps to private or public utilities are prohibited.

8. Portable outdoor fireplaces, recreational fires, open burning and bonfires are prohibited. Types of cooking stoves and other devices for keeping warm are permitted, as allowed by adopted City policies.

9. Dumping of gray water (i.e., wastewater from bathwater, sinks and cooking) or black water (sewage) on City property is prohibited.

10. Obstruction or attachment of camp materials to public infrastructure or private property structures, including but not limited to bridges or bridge infrastructure, fire hydrants, utility poles, streetlights, traffic signals, signs, fences, trees, vegetation, vehicles or buildings is prohibited.

11. Digging, excavation, terracing of soil, or other alteration of City property, or damage to vegetation or trees is prohibited. Camps shall not include permanent structures.

12. Nothing in this section is intended to prevent the regulation of camping on a temporary or permanent basis on City property when such regulation is necessary to maintain the ability of everyone to use a public space as designed and intended or for a limited public purpose including capital construction, maintenance, repair, property transfer or during event or special use.

13. The consumption of intoxicants, as defined by Section 130.06, is prohibited on City property.

§ 94.07 ENFORCEMENT.

A. Enforcement personnel or their designee(s) are responsible for determining whether and to what extent shelters and City designated camping areas have capacity and the number of

available shelter beds or camps. Prior to enforcement of § 94.04, enforcement personnel shall determine whether a shelter or City designated camping area has available space that can be used by the person. Enforcement personnel may enforce § 94.06 at all times, unless otherwise provided by this Section.

B. Enforcement personnel may impose a violation of this chapter in the following manner:

1. Enforcement personnel may, as appropriate, use a progressive enforcement process to encourage and compel compliance with this chapter.

2. Methods of enforcement for violations of this chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate.

3. Nothing in this Section is intended to supersede or prevent enforcement personnel's discretion to enforce laws and mitigate hazards as necessary and without progressive enforcement.

C. The City Manager, or their designee(s), is authorized to modify or suspend enforcement of any section or element of this chapter in the event of a City Council declared emergency, pursuant to administrative rules or policies, severe weather condition, or for any other reason within the City Manager's authority.

D. Nothing in this chapter is intended to prevent enforcement of any other section of this code of ordinances or the Oregon State law and shall not be the basis for non-enforcement for violations thereof because shelter is not available to the person.

§ 94.08 VIOLATION.

A. Enforcement personnel may impose a violation of this Chapter as follows:

1. A violation of any regulation in this Chapter constitutes a violation of the Forest Grove Municipal Code and is punishable by a civil penalty of \$100. Every day in which such violation occurs constitutes a separate violation. The Municipal Judge may waive fines for any person providing proof they are actively engaging in social services which relate all or in part to the applicable offense.

2. Citation in lieu of arrest for criminal trespass in the second degree – O.R.S. 164.245;

3. Arrest for criminal trespass in the second degree – O.R.S. 164.245.

B. Any citation or violation of this Chapter may be accompanied by an order of exclusion for up to 90 days using the process established in §§ 92.31 to 92.32.

C. Nothing in this Section is intended to prescribe any particular order of violation or penalty. Enforcement personnel shall have discretion to impose a violation tailored to the circumstances and as necessary to enforce the purposes of this Chapter and maintain the health and safety of persons experiencing homelessness and maintenance of publicly owned property.

§ 94.09 REMOVING ESTABLISHED CAMPS.

The removal of an established camp shall comply with state law. Pursuant to state law, the City may call for the removal of camps, regardless of location, if a campsite poses a safety or health risk to the public or environment.



A place where families and businesses thrive.

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

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
-------------------------------------	-----------	--------------------------	-------	--------------------------	------------	--------------------------	--------	--------------------------	---------------

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

Ordinance 2023-04 | Frequently Asked Questions

1. Q: WHAT DOES THE CURRENT CITY CODE SAY REGARDING CAMPING?

A: Current city code prohibits camping in parks; however, it does not address other city property such as parking lots, city buildings, public rights of way (i.e., roads and sidewalks) and more.

2. Q: WHAT DOES PROPOSED ORDINANCE 2023-04 SAY REGARDING CAMPING?

A: Proposed Ordinance 2023-04 says that camping is only allowed on city property when there is no alternative shelter available to the person camping. If there is no alternative shelter, and the city opens a city-designated overnight camping area (camping area), a person who needs a place to sleep must use the camping area. If the city does not open a camping area, a person may camp elsewhere in the city, on city property, with the exception that camping is never allowed in the following areas:

- Residential zones
- City buildings
- City parking lots
- Public parks and facilities
- Real property donated or bequeathed to the city
- In environmentally sensitive areas
- Within 500' from schools
- Within 20' from storefronts
- Within 20' from transit stops
- In any land managed for the operation and regulatory compliance of water, storm/sewer, and electrical

These regulations, that restrict where someone can camp, are known as “place” regulations.

3. Q: WHEN CAMPING IS ALLOWED, HOW LONG CAN A CAMP REMAIN?

A: Camping on city property is only allowed at night. All camps on city property, no matter where they are located, must be taken down by 7am every morning. Camping is only allowed from 7pm to 7am. These regulations, that restrict when someone can camp, are known as “time” regulations.

4. Q: WHEN CAMPING IS ALLOWED ARE THERE ADDITIONAL REGULATIONS?

A: Yes. There are a variety of health and safety regulations that apply to all camps. Regulations that restrict how someone can camp are known as “manner” regulations. For example, “manner” regulations prohibit blockage of sidewalks and trails, accumulation of waste, open fires, damage to vegetation, and more.

5. Q: CAN SHELTERS IN NEIGHBORING COMMUNITIES BE CONSIDERED “AVAILABLE”?

A: Yes, shelters in other communities can be considered available if access to them is objectively reasonable.

6. Q: DOES ORDINANCE 2023-04 ESTABLISH A CAMPING AREA?

A: No. The ordinance authorizes the City Council to designate a camping area, however, the City Council has not designated such an area at this time. The City Council would have to pass a separate resolution to establish a camping area. Camping that occurs in the camping area would still be subject to the time and manner regulations. The Council considered several locations and has discussed using the East end of the city-owned gravel lot directly West of the Fire Station as a potential camping area.

7. Q: WHEN WILL A CAMPING AREA BE CONSIDERED?

A: Any consideration of this would likely occur in August or later which is after the proposed Ordinance would become effective.

8. Q: IF A CAMPING AREA IS ESTABLISHED IN THE CITY-OWNED GRAVEL LOT, WILL PARKING STILL BE ALLOWED DURING THE DAY?

A: Yes. Any camping that occurs on a city-designated camping area would still be subject to the daytime camping prohibition which prohibits camping between 7am and 7pm.

9. Q: DOES THE PROPOSED ORDINANCE IMPACT THE HIGHWAY 47 ENCAMPMENT?

A: No. The Highway 47 encampment is located on Washington County owned property outside of the city limits. Washington County has indicated they will close the HWY 47 encampment on June 26, 2023. For more information contact Washington County at <https://www.washingtoncountyor.gov/>

10. Q: WHAT ABOUT THE USE OF DRUGS AND OTHER INTOXICANTS ON CITY PROPERTY?

A: The City Council amended the ordinance to prohibit the consumption of intoxicants on public property. "Intoxicants" means liquors, controlled substances, inhalants, cannabis, psilocybin, that, when taken into the human body, can impair the person's mental or physical faculties to a noticeable and perceptible degree. Intoxicants does not include prescription medications.

11. Q: CAN PEOPLE CAMP ON THE SIDEWALK IN FRONT OF MY HOUSE?

A: No. The proposed ordinance prohibits camping on city property in residential areas including rights-of-way.

12. Q: IS THE CITY FAILING TO FOLLOW ITS OWN DEVELOPMENT CODE IN DESIGNATING A PROPERTY TO BE USED FOR CAMPING?

A: No. The decision to designate an area for camping by persons experiencing homelessness implements the city's obligations under HB 3115 (2021). The law requires the City, if it plans to prohibit people who are experiencing homelessness from camping in certain public areas (for example, parks and sidewalks), to provide a reasonable accommodation by way of an alternative place to rest and sleep. HB 3115 is not part of the state's land use laws and the obligations it imposes on the City are unrelated to zoning, therefore the decision to provide a temporary place for camping is not subject to the state's planning laws or City's development ordinances.

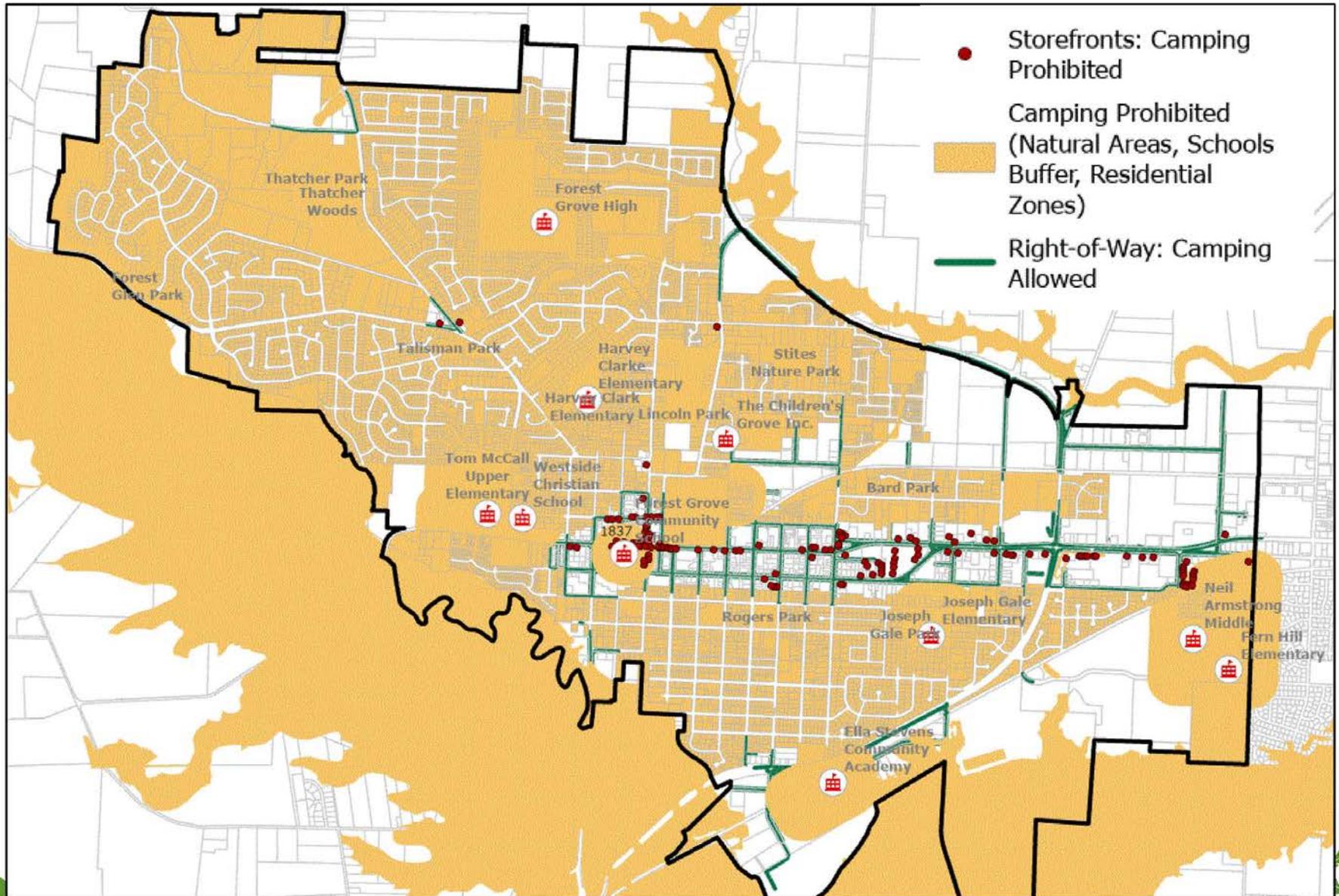
13. Q: ARE THERE SERVICES FOR HOMELESS PERSONS AND WHO PROVIDES THEM?

A: In May 2020, voters approved Metro's Measure 26-210 to help end homelessness in the Metro area. The measure includes a 1% marginal personal income tax on taxable income above \$125,000 for individuals and \$200,000 for those filing jointly and a 1% business income tax on net income for businesses with gross receipts above \$5 million. Unless renewed by voters, the tax will expire in 2031. Monies from the tax go to Washington County who administers the Supportive Housing Services program that delivers services to homeless persons such as housing vouchers, rental assistance, housing case management, encampment outreach, addiction recovery, and more. The city does not receive funds from this tax and relies on the County for these services.

14. Q: WHAT ARE THE NEXT STEPS REGARDING THE ORDINANCE?

A: Passage of an ordinance requires two public hearings at a City Council meeting. The first public hearing was on June 12 and the Ordinance was advanced to the second public hearing. The second public hearing will be at the City Council meeting on June 26, 2023, at the Community Auditorium, which starts at 7:00 p.m.

ALL COMBINED



CITY OF FOREST GROVE
LEGISLATIVE HEARING SCRIPT

CITY OF FOREST GROVE
LEGISLATIVE HEARING SCRIPT

AGENDA ITEM F. 1.

ORDINANCE NO. 2023-04 AMENDING FOREST GROVE CODE OF ORDINANCES
TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94, REGULATION OF
CAMPS AND CAMPING ON PUBLIC PROPERTY; REPEALING § 92.15, CAMPING; AND
AMENDING TITLE XIII (GENERAL OFFENSES) §130.06, CONSUMPTION OF
INTOXICANTS ON PUBLIC PROPERTY, PUBLIC RIGHTS-OF-WAY, AND PUBLIC
PREMISES

Instructional Note: Only read text in **blue**.

Public Hearing Continuation Announcement: This is a legislative hearing requiring City Council consideration at two meetings. At the JUNE 12th Council meeting, the Council held first reading concerning Ordinance 2023-04.

1. **Staff Report:** Police Chief Reimann & City Attorney Driscoll will now brief the City Council on any new information received since the last meeting.
2. **Council Questions of Staff:** Do any Councilors have clarifying questions for staff?
3. **After Staff Report – Public Testimony:** *Any substantive amendment to a proposed ordinance must be read aloud before the Council enacts the ordinance.*

Before proceeding with the Public Hearing on Ordinance 2023-04, I will now read aloud **Section 2 of the Ordinance (Definition of Intoxicants and in Exhibit A, Section 95.06.C.13.) as amended:**

Section 2: The City Council hereby amends Forest Grove Code of Ordinances Title XIII (General Offenses) §130.06 as follows:

CONSUMPTION OF ~~ALCOHOLIC BEVERAGES~~ INTOXICANTS ON PUBLIC PROPERTY,
PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES.

(A) No person may consume any ~~alcoholic beverage~~ intoxicants or possess an open container of any ~~alcoholic beverage~~ intoxicants on any public property, any public rights-of-way, or upon any premises open to the public unless licensed or permitted for that purpose by the State Liquor Control Commission. “Intoxicants” means liquors, non-legally prescribed controlled substances, inhalants, cannabis, psilocybin, that, when taken into the human body, can impair the person’s mental or physical faculties to a noticeable and perceptible degree.

95.06.C.13

The consumption of intoxicants, **as defined by Section 130.6**, is prohibited on city property. ~~as per Section 130.06: Consumption of intoxicants on public property, public rights-of-way and public~~

premises.

I will now continue the Public Hearing on **Ordinance 2023-04** for its **SECOND READING**.

1. City Recorder is there anyone via Zoom who would like to comment on the proposed Ordinance? [If so, please use the “Raise Hand” option. Please provide your name and address for the record. Please limit your comments to three minutes.]
 2. Members of the audience who signed-in may now present testimony on the proposed Ordinance. [If you wish to testify, please provide your name and address for the record and limit comments to three minutes]. Call Proponents? Opponents? Others?
 3. Is there anyone else in the audience who did not sign-in but would like to testify? If so, please come forward and please provide your name and address for the record and limit comments to three minutes.
4. **Public Testimony (Council Questions)**: Do any Councilors have clarifying questions regarding the testimony provided?
 5. **Close Public Hearing**: If there are no further questions, I will now close the Public Hearing.
 6. **Motion**: I will now ask for a motion to adopt **Ordinance 2023-04** by title for its **SECOND READING**.

State The Motion: This motion is... **ORDINANCE 2023-04 AMENDING FOREST GROVE CODE OF ORDINANCES BY ADDING CODE CHAPTER 94, REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY; and REPEALING § 92.15, CAMPING; AND AMENDING TITLE XIII (GENERAL OFFENSES) §130.06, CONSUMPTION OF INTOXICANTS ON PUBLIC PROPERTY, PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES**

Is there a second? **After Seconded**: Do any Councilors wish to comment on the motion?

7. **After Council Deliberations**: City Manager please read the Ordinance by title only for its **SECOND READING**? City Recorder, please call the roll.

Let the record show the motion passes AND **Ordinance 2023-04** is adopted [*or / the motion fails and the ordinance is not adopted*].

IF THE MOTION FAILS: Is there a motion to modify the ordinance as proposed? Is there a second? Do any Councilors wish to comment on the motion? City Recorder, please call the roll. The motion passes / fails.

Effective Date: Ordinances take effect on the 30th day after enactment, or on a later day provided in the ordinance. An ordinance may take effect as soon as enacted or other date less than 30 days after enactment if the ordinance contains an emergency clause.

Public Hearing June 26, 2023

Requesting to Testify on Agenda Item No. F. 1.

Continue Public Hearing and Second Reading:

ORDINANCE NO. 2023-04 AMENDING FOREST GROVE CODE OF ORDINANCES TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94, REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY; REPEALING § 92.15, CAMPING; AND AMENDING TITLE XIII (GENERAL OFFENSES) §130.06, CONSUMPTION OF INTOXICANTS ON PUBLIC PROPERTY, PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES

Public Hearing: Hearings are held on each matter required by state law or City policy. The presiding officer will review the hearing instructions prior to public comment. When addressing the Council, please use the witness table (center front of the room), provide your full name. Please limit your comments to three (3) minutes unless the presiding officer grants an extension. All testimony is electronically recorded. Written testimony may be submitted by 3:00 p.m. the day of the meeting to: CityCouncilors@forestgrove-or.gov. *The City Council hearing are videotaped live and published.*

Please sign-in below to testify:

PROPONENTS: **(please print legibly)*

First & Last Name:	Address:	City/Zip:
First & Last Name:	Address:	City/Zip:
First & Last Name:	Address:	City/Zip:
First & Last Name:	Address:	City/Zip:

OPPONENTS: **(please print legibly)*

First & Last Name: <i>Jon Larson</i>	Address: <i>1904 Council 1632 Main</i>	City/Zip: <i>FG</i>
First & Last Name: <i>Nick Holak</i>	Address: <i>Barnett Street</i>	City/Zip:
First & Last Name: <i>DMU Tufts</i>	Address: <i>Birch St.</i>	City/Zip:
First & Last Name:	Address:	City/Zip:

OTHERS: **(please print legibly)*

First & Last Name:	Address:	City/Zip:
First & Last Name:	Address:	City/Zip:



A place where families and businesses thrive.

CITY COUNCIL STAFF MEMORANDUM

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	F. 1.
MEETING DATE:	06.12.2023
FINAL ACTION:	FIRST READING ORD 2023-04

TO: *City Council*

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

MEETING DATE: *June 12, 2023*

SUBJECT TITLE: *First 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, and repealing Chapter 92.15, Camping.*

ACTION REQUESTED:

<input checked="" type="checkbox"/>	Ordinance	<input type="checkbox"/>	Order	<input type="checkbox"/>	Resolution	<input type="checkbox"/>	Motion	<input type="checkbox"/>	Informational
-------------------------------------	-----------	--------------------------	-------	--------------------------	------------	--------------------------	--------	--------------------------	---------------

X all that apply

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.

After the last work session, several municipalities issued time, place, and manner concepts and/or draft ordinances that staff reviewed. Staff noticed a manner provision in the City of Beaverton's draft ordinance that it would like Council to consider and that was not discussed during the work sessions.

The manner provision Beaverton is considering prohibits the consumption of intoxicants on city property. This provision allows law enforcement to enforce the regulation by any lawful remedy available to it, including but not limited to, a citation for the violation, and, if necessary, an order

excluding the person from the property. A person who fails or refuses to leave City property on the lawful order of a law enforcement officer commits the crime of trespass. The consumption of tobacco (Section 92.17) and alcohol (Section 130.06) is already prohibited on city property. Including this prohibition would add to the list of manner requirements in the ordinance and give enforcement personnel another tool to manage activity on public property.

If Council wishes to amend the ordinance to prohibit the consumption of intoxicants, it would require a two-step process. The first step would be to change existing city code to prohibit the consumption of intoxicants, including liquor, controlled substances, inhalants, cannabis, and psilocybin. The second step would be to amend the proposed time, place, and manner ordinance to prohibit the consumption of intoxicants as a manner restriction for camps and camping.

1. First Step: Once the proposed ordinance is on the floor for consideration, move and second to amend Forest Grove City Code Section 130.06 as follows:

CONSUMPTION OF ~~ALCOHOLIC BEVERAGES~~ INTOXICANTS ON PUBLIC PROPERTY, PUBLIC RIGHTS-OF-WAY, AND PUBLIC PREMISES.

- (A) No person may consume any ~~alcoholic beverage~~ intoxicants or possess an open container of any ~~alcoholic beverage~~ intoxicants on any public property, any public rights-of-way, or upon any premises open to the public unless licensed or permitted for that purpose by the State Liquor Control Commission. "Intoxicants" means liquors, controlled substances, inhalants, cannabis, psilocybin, that, when taken into the human body, can impair the person's mental or physical faculties to a noticeable and perceptible degree.

2. Second Step: Once the proposed ordinance is on the floor for consideration, move and second to amend Exhibit A, Section 94.06, C, to add: "The consumption of intoxicants is prohibited on city property as per Section 130.06: Consumption of intoxicants on public property, public rights-of-way and public premises."

ATTACHMENTS:

- 1) Proposed Ordinance 2023-04 and Exhibit A

ORDINANCE NO. 2023-04

**ORDINANCE AMENDING FOREST GROVE CODE OF ORDINANCES
TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94,
REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY;
AND REPEALING § 92.15, CAMPING**

WHEREAS, 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; and

WHEREAS, 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); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, HB 3115 becomes operative on July 1, 2023; and

WHEREAS, HB 3115 provides a private right of action for persons experiencing homelessness to seek injunctive or declaratory relief to challenge the objective reasonableness of any jurisdiction's regulations regarding camping on public property; and

WHEREAS, because the City of Forest Grove did not prohibit camping or sleeping on all public property in the City and had objectively reasonable regulations related to public camping, the City was not obligated to amend its municipal code or practices under either the federal court cases or HB 3115; and

WHEREAS, as the homeless population in the City of Forest Grove and Washington County has increased in the last decade, the need for additional and humane regulations to make the City livable for residents has increased as well; and

WHEREAS, the City Council passed Objective 1.2 in 2023 to develop policies and activate partner services that will address homeless services, including an ordinance addressing time, place and manner regulations for homeless services; and

WHEREAS, throughout the last year the City has taken a number of steps to gather information, seek community input and address community needs related to homelessness; these efforts have included holding Committee for Community Involvement meetings on homelessness; creating an updated a city-wide webpage on homelessness; establishing a City Council Subcommittee on homelessness that held several listening and learning community meetings; and entering into an Encampment Program agreement with Washington County to allow for safety and health inspections and encampment clean up; and

WHEREAS, beginning 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 and the surrounding housed community; and

WHEREAS, the Council conducted work sessions on April 10, 2023, April 24, 2023, May 8, 2023 and May 22, 2023, to review and discuss reasonable time, place, and manner regulations for public camping;

WHEREAS, during these discussions, it became apparent that if shelter is not available to persons experiencing homelessness, the best solution for the City is to provide a city-designated area for overnight camping that is large enough to accommodate the City's estimated homeless population, has a surface suitable for camping, and is close to services such as transit, food banks, and food stores; and

WHEREAS, the Council also recognized that if the designated camping area is either above capacity, or not available for a person experiencing homelessness, the City would need to identify other areas where camping is allowed; and

WHEREAS, regardless of where camping occurred, the Council also considered reasonable time and manner regulations that would provide safe and sanitary conditions for those experiencing homelessness; and

WHEREAS, the Council developed regulations focused on 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

WHEREAS, the Council also developed regulations focused on community health and sanitation that prohibits the accumulation of trash and other waste in camps to provide a safe and healthy environment for all camp users, as well as developed regulations that prevent contamination outside the camps such as dumping wastewater; and

WHEREAS, the Council discussed and developed regulations addressing other potential dangers such as open flames and dangerous, unauthorized connections to utilities and other city facilities; and

WHEREAS, the Council also sought to ensure that public property would avoid permanent alterations that could damage the property by restricting digging, excavating, or removing vegetation; and

WHEREAS, the regulations also allow for camping on certain public property for up to 12 hours each day, which provides sufficient time for any person to set up and take down a camp, and sleep for a reasonable amount of time; and

WHEREAS, the Council believes these regulations 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; and

WHEREAS, the City has provided notice of Public Hearing, held a public hearing on June 12, 2023 and June 26, 2023 regarding the proposed revisions to the Forest Grove Code of Ordinances, afforded all interested parties an opportunity to be heard, and duly considered the subject.

NOW THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: The City Council hereby amends Forest Grove Code of Ordinances Title IX (General Regulations) by removing § 92.15, Camping.

Section 2: The City Council hereby amends Forest Grove Code of Ordinances Title IX (General Regulations) by adding Code Chapter 94, Regulation of Camps and Camping on Public Property, as set forth in Exhibit A.

Section 3: The ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED first reading this 12th day of June, 2023.

PASSED the second reading this 26th day of June, 2023.

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 26th day of June, 2023.

Malynda Wenzl, Mayor

ORDINANCE NO. 2023-04
EXHIBIT A

CHAPTER 94: REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY

Section

- 94.01 Purpose
- 94.02 Authority
- 94.03 Definitions
- 94.04 Camping Prohibited
- 94.05 City Designated Camping Area(s)
- 94.06 Regulation of Camps and Camping on City Property
- 94.07 Enforcement
- 94.08 Violation
- 94.09 Removing Established Camps

§ 94.01 PURPOSE.

To protect the health and safety of community members, including individuals experiencing homelessness in the City of Forest Grove, to responsibly maintain publicly owned real property and publicly owned assets open to the public for all people of the city, and to increase opportunities to provide outreach to individuals experiencing homelessness to connect those individuals to supportive services including shelter and housing, the council has determined it is necessary to regulate the use of public property for camps and camping with respect to individuals experiencing homelessness. It is the purpose of this chapter to regulate camps and the act of camping, on public property in an objectively reasonable manner with regards to persons experiencing homelessness. This chapter shall be liberally constructed for the accomplishment of this purpose.

§ 94.02 AUTHORITY.

This ordinance is adopted pursuant to the authority granted by Oregon Revised Statutes (O.R.S.) 195.530.

§ 94.03 DEFINITIONS.

For the purpose of this chapter, words in the present tense include the future, the singular includes the plural, and the plural includes the singular, the word “shall” is mandatory and not discretionary, and the term “chapter” shall be deemed to include all amendments hereinafter made to this chapter. As used in this chapter, unless the context requires otherwise, the following words and their deviations shall mean:

(A) “Available” means a shelter that has space for a particular person. A shelter is not available to a person if the shelter:

1. Has a maximum stay rule or temporal requirement or deadline the person has exceeded or not met;
2. Has excluded the person from the shelter for any lawful reason;
3. Cannot reasonably accommodate the person’s mental health or physical needs;

4. Is unavailable due to the person's family status, age, gender, gender identity, sexual orientation, or other status;

5. Excluding general rules that prohibit alcohol or drug use in the shelter or on shelter grounds, is unavailable to the person because the shelter has rules about alcohol or drug use that the person does not meet;

6. May prohibit a minor child to be housed in the same facility with at least one parent or legal guardian;

7. Requires participation in religious activity or receipt of religious information or religious teaching the person does not wish to participate in or receive; or

8. Requires a person to leave their pet(s) unattended in order to stay at the shelter. This section does not apply to service animals under the Americans with Disabilities Act.

(B) "Camp" or the act of "camping" means to pitch, erect, create, use or occupy camp materials for the purposes of habitation.

(C) "Camp materials" means, but is not limited to tents, huts, awnings, lean-tos, shacks, or other temporary structures, or parts thereof, tarps or tarpaulin, chairs, cots, beds, sleeping bags, blankets, sleeping or bedding materials, food or food storage items, and/or similar items that are or appear to be used for and aid living and/or sleeping outdoors. "Camp materials" does not include vehicles, automobiles, or recreational vehicles used for shelter and/or sleeping, which are regulated by Chapter 73 of this Code.

(D) "City building" means all facilities and their surrounding grounds, owned, leased, rented, contracted, used, managed and controlled by the City of Forest Grove for conducting public business.

(E) "City designated camping area" means the area(s) the City has identified pursuant to § 94.05.

(F) "City parking lot" means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated for parking of vehicles.

(G) "City property" means, including but not limited to, all real property owned, leased, rented, contracted, used, managed or controlled by the City of Forest Grove including City buildings, City parking lots, public parks and park facilities and public right-of-way.

(H) "Person" means a person who does not have a permanent residence or domicile and are experiencing homelessness.

(I) "Public parks and park facilities" means any public or privately owned real property placed under the jurisdiction of the City, whether within or outside the corporate limits of the City, and designated for park and recreational purposes.

(J) "Public right-of-way" means all interests in real property, subject to the jurisdiction and control of the City of Forest Grove, used, operated and managed for customary roadway purposes and appurtenant uses and which provides or supports public access for vehicles, pedestrians and other modes of travel between places. "Public right-of-way" includes, but is not limited to, public roads, streets, sidewalks, highways, throughways, alleys, road related structures in the right-of-way including tunnels, culverts, landscape areas or planter strips, and similar structures, and structures that provide for continuity of the right-of-way such as bridges.

(K) "Shelter" means a developed or legally established public or private facility for people experiencing homelessness that does not charge for shelter or services.

§ 94.04 CAMPING PROHIBITED.

A. Camping is prohibited on City property when shelter is available to the person.

B. When shelter is not available, camping is prohibited on other City property when there is space available to the person in a City-designated camping area.

C. This section does not prohibit sitting, lying or sleeping on or within City property in a manner that does not create a camp or constitute camping, so long as such use does not obstruct the public right-of-way or access to other City property for its usual and customary purposes.

§ 94.05 CITY DESIGNATED CAMPING AREA(S).

A. When there is no shelter available, a person may camp within the time regulations provided in § 94.06(A) and pursuant to the manner regulations in § 94.06(C) in a City-designated camping area. For avoidance of doubt, camping is prohibited on other City property when space is available in the City-designated camping area.

B. City Council shall identify a City-designated camping area(s) by Council Resolution.

§ 94.06 REGULATION OF CAMPS AND CAMPING ON CITY PROPERTY.

Persons camping on City property because they do not have shelter available, whether in a City-designated camping area or on other City property when allowed under this chapter, may camp subject to the following regulations.

A. Time

Unless otherwise specified, camping, when and where not prohibited, may occur on City property between the hours of seven (7) p.m. and seven (7) a.m. After seven (7) a.m. a camp must be dismantled and the person must remove all camping materials and personal property.

B. Place

In addition to the prohibition set forth in § 94.04, camping is not allowed at any time in the following places:

1. City buildings, City parking lots, and public parks and park facilities. This prohibition does not include camping in City-designated camping area(s) when allowed;
2. Within or on any real property transferred to the City by donation or bequeathment;
3. Within any area designated or operated by the City of Forest Grove, Clean Water Services, Metro, any agency of the State of Oregon, or Federal Emergency Management Agency as a natural resource area, riparian corridor, flood plain, wildlife conservation area, vegetated corridor, stormwater infrastructure, or water quality sensitive area;
4. Within 500 feet from any public and private elementary, middle and high school;
5. Within any area zoned Residential on the City of Forest Grove Zoning Map in effect or public property abutting a parcel used for residential purposes;
6. Within 20 feet of the public entrance to a business;
7. Within 20 feet of a transit stop;

8. Upon any parcel of land managed for the operation and regulatory compliance of the municipal water supply system, stormwater systems, or electrical substations.

C. Manner

Camping, when and where allowed, is subject to the following:

1. Camps and camp materials located on a public sidewalk or trail shall not reduce the clear, continuous sidewalk or trail to less than five (5) feet at all times to assure compliance with the American with Disabilities Act.

2. No camp or camp materials shall obstruct any portion of any street or bicycle lane open to use by vehicles or bicycles.

3. Person(s) camping may not accumulate, discard, or leave behind any materials including camping materials, garbage, debris, unsanitary or hazardous materials on any public or private property.

4. Animals residing in or visiting camps must be leashed or crated at all times.

5. Person(s) camping may not use power generators that result in a violation of the City's noise ordinance.

6. A camp must be limited to one tent or temporary structure per individual or household. The camp can be no larger than 144 square feet, including camping materials and any other personal property.

7. Items presenting a danger to others, including uncontained sharps/needles, uncontained human waste or unauthorized connections or taps to private or public utilities are prohibited.

8. Portable outdoor fireplaces, recreational fires, open burning and bonfires are prohibited. Types of cooking stoves and other devices for keeping warm are permitted, as allowed by adopted City policies.

9. Dumping of gray water (i.e., wastewater from bathwater, sinks and cooking) or black water (sewage) on City property is prohibited.

10. Obstruction or attachment of camp materials to public infrastructure or private property structures, including but not limited to bridges or bridge infrastructure, fire hydrants, utility poles, streetlights, traffic signals, signs, fences, trees, vegetation, vehicles or buildings is prohibited.

11. Digging, excavation, terracing of soil, or other alteration of City property, or damage to vegetation or trees is prohibited. Camps shall not include permanent structures.

12. Nothing in this section is intended to prevent the regulation of camping on a temporary or permanent basis on City property when such regulation is necessary to maintain the ability of everyone to use a public space as designed and intended or for a limited public purpose including capital construction, maintenance, repair, property transfer or during event or special use.

§ 94.07 ENFORCEMENT.

A. Enforcement personnel or their designee(s) are responsible for determining whether and to what extent shelters and City designated camping areas have capacity and the number of available shelter beds or camps. Prior to enforcement of § 94.04, enforcement personnel shall determine whether a shelter or City designated camping area has available space that can be

used by the person. Enforcement personnel may enforce § 94.06 at all times, unless otherwise provided by this Section.

B. Enforcement personnel may impose a violation of this chapter in the following manner:

1. Enforcement personnel may, as appropriate, use a progressive enforcement process to encourage and compel compliance with this chapter.

2. Methods of enforcement for violations of this chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate.

3. Nothing in this Section is intended to supersede or prevent enforcement personnel's discretion to enforce laws and mitigate hazards as necessary and without progressive enforcement.

C. The City Manager, or their designee(s), is authorized to modify or suspend enforcement of any section or element of this chapter in the event of a City Council declared emergency, pursuant to administrative rules or policies, severe weather condition, or for any other reason within the City Manager's authority.

D. Nothing in this chapter is intended to prevent enforcement of any other section of this code of ordinances or the Oregon State law and shall not be the basis for non-enforcement for violations thereof because shelter is not available to the person.

§ 94.08 VIOLATION.

A. Enforcement personnel may impose a violation of this Chapter as follows:

1. A violation of any regulation in this Chapter constitutes a violation of the Forest Grove Municipal Code and is punishable by a civil penalty of \$100. Every day in which such violation occurs constitutes a separate violation. The Municipal Judge may waive fines for any person providing proof they are actively engaging in social services which relate all or in part to the applicable offense.

2. Citation in lieu of arrest for criminal trespass in the second degree – O.R.S. 164.245;

3. Arrest for criminal trespass in the second degree – O.R.S. 164.245.

B. Any citation or violation of this Chapter may be accompanied by an order of exclusion for up to 90 days using the process established in §§ 92.31 to 92.32.

C. Nothing in this Section is intended to prescribe any particular or order of violation or penalty. Enforcement personnel shall have discretion to impose a violation tailored to the circumstances and as necessary to enforce the purposes of this Chapter and maintain the health and safety of persons experiencing homelessness and maintenance of publicly owned property.

§ 94.09 REMOVING ESTABLISHED CAMPS.

The removal of an established camp shall comply with state law. Pursuant to state law, the City may call for the removal of camps, regardless of location, if a campsite poses a safety or health risk to the public or environment.

**CITY OF FOREST GROVE
LEGISLATIVE HEARING SCRIPT**

AGENDA ITEM F. 1.

ORDINANCE NO. 2023-04 AMENDING FOREST GROVE CODE OF ORDINANCES TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94, REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY; AND REPEALING § 92.15, CAMPING

Instructional Note: Only read text in **blue**.

Public Hearing Announcement: This is a legislative hearing requiring City Council consideration at two meetings. Second reading of the proposed ordinance will be at 7:00 pm, or thereafter, on June 26th. The record will remain open until that time. After the Public Hearing is closed on June 26th, the City Council will deliberate and consider a motion approving, modifying or denying the ordinance.

Opening the Public Hearing: I will now open the Public Hearing for FIRST READING on: **Ordinance 2023-04 amending Forest Grove City Code by adding Code Chapter 94, Regulation of Camps and Camping on Public Property; and Amending Section 92.15, Camping.**

Staff Report: Police Chief Reimann will now present the staff report. Is there any correspondence that has been received after publication of the written report?

Councilor Questions: Do any Councilors have clarifying questions for staff?

After Staff Report – Public Testimony:

I will now open the Public Hearing on **Ordinance No. 2023-04** for **FIRST READING**:

1. City Recorder is there anyone via Zoom who would like to comment on the proposed Ordinance? [If so, please use the “Raise Hand” option. Please state your name and address for the record. Please limit your comments to three minutes.]
2. Members of the audience who signed-in may now present testimony on the proposed Ordinance. [If you wish to testify, please provide your name and address for the record and limit comments to three minutes]. Call Proponents? Opponents? Others?
3. Is there anyone else in the audience who did not sign-in but would like to testify? If so, please come forward and provide your name and address for the record and limit comments to three minutes.

After individual testimony: Do any City Councilors have clarifying questions of the testimony provided?

After the allocated time for this agenda item or if no testimony is offered ask for a motion.

1. **Motion:** I will now ask for a motion to adopt **Ordinance No. 2023-04** by title for FIRST READING.

State The Motion: This motion is... **ORDINANCE NO. 2023-04 AMENDING FOREST GROVE CODE OF ORDINANCES TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94, REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY; AND REPEALING § 92.15, CAMPING**

Is there a second? **After Seconded:** Do any Councilors wish to comment on the motion?

2. **After Council Deliberations:** City Manager please read the Ordinance by title only for its FIRST READING? City Recorder, please call the roll for FIRST READING.

Continue Public Hearing: I will now continue the Hearing on **Ordinance 2023-04** to the June 26th City Council meeting. At which time, the City Council will deliberate and consider a second motion approving, modifying, or denying the ordinance.



A place where families and businesses thrive.

NOTICE OF PUBLIC HEARING FOREST GROVE CITY COUNCIL

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold Public Hearings on **Monday, June 12 and June 26, 2023**, at **7:00 p.m.** or thereafter, in the Community Auditorium, 1915 Main Street, Forest Grove, and via Zoom video conferencing, to consider an ordinance amending Forest Grove City Code Title IX (General Regulations) by adding Chapter 94, Regulation of Camps and Campsites on Public Property, and Repealing Chapter 92.15. The proposed ordinance, if enacted by the City Council, would take effect 30 days immediately after enactment unless City Council declares an emergency.

The hearings will be held in a “hybrid” format allowing the public to attend the meetings virtually via Zoom and in-person. A copy of the Zoom meeting agenda with Zoom instructions and staff report are available seven days prior to the hearing and are published on the City’s website at <https://www.forestgrove-or.gov/meetings>. To provide testimony via Zoom, please email aruggles@forestgrove-or.gov. For assistance, please call the City Recorder’s Office at (503) 992-3235.

###

Anna D. Ruggles, CMC, City Recorder
City of Forest Grove

Publish FG NewsTimes: June 1 and June 8, 2023

Date: JUNE 12, 2023

Agenda Item: F. 1.

Public Hearing and First Reading:

Subject: ORDINANCE NO. 2023-04 AMENDING FOREST GROVE CODE OF ORDINANCES
TITLE IX (GENERAL REGULATIONS) BY ADDING CODE CHAPTER 94,
REGULATION OF CAMPS AND CAMPING ON PUBLIC PROPERTY; AND
REPEALING § 92.15, CAMPING

CITY COUNCIL MEETING

Request to Testify at Public Hearing

Public Hearings: Hearings are held on each matter required by state law or City policy. Sign in before the meeting on the Public Hearing form posted in the foyer. The presiding officer will review the hearing instructions prior to testimony. The presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Council, please use the witness table (center front of the room), provide your full name and please limit your remarks to three (3) minutes unless the presiding officer grants an extension. Written or oral testimony is heard prior to any Council action. All testimony is electronically recorded. Written testimony may be submitted by 3:00 p.m. the day of the meeting to: CityCouncilors@forestgrove-or.gov.

Please sign-in below to testify:

PROPOSERS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:

~~DALE THAYER~~
DALE THAYER

~~1130 ELM ST FOREST GROVE OR 97116~~
2540 19th AVE FG OR 97116

OPPOSERS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:

✓ Jon Larson
✓ Susan M
✓ Allan Hale
✓ Charlotte Gauthier
✓ Daniel Hiett

1632 Main + 1904 Council 97116
2024 15th FOREST GROVE
1130 ELM ST FG 97116
3467 Oak Crest Dr. FG 97114
3634 Coniskey Forest Grove 97116

OTHERS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:

Joseph Smith

3642 Coniskey St. FG 97116

Don Hargen

Please sign-in below to testify

Opponents
~~PROponents~~

(Please print legibly)

First & Last Name:

Dawn Hummell
Lundekugel
tiffany thiet

Address:

City, State & Zip Code:

Oaks Neighborhood
Parks, Forest Grove.
Oak

OPPONENTS:

(Please print legibly)

First & Last Name:

✓ Tim Marble
✓ Erin Best
✓ Jan Long
✓ Brian Long
✓ Teresa McGuire
✓ Don Yeargin
✓ Ashley Hicks
✓ Stephen Kelly
✓ Julie Arent

Address:

City, State & Zip Code:

2013 19th Ave. FG.
North Plains
1400 Thatcher Rd FG
1400 Thatcher Rd FG
1714 Ash St. FG 97114
2036 Pacific Ave
2519 17th Ave Forest Grove 97114
39685 SW Hartley Rd. Gaston, OR
2751 15th Pl. Forest Grove OR

OTHERS:

(Please print legibly)

First & Last Name:

Karla Thaler
Laura Hill
Teresa Johnson
Nicole Higgin
Linda Allen
Wayne
Ralph

Address:

City, State & Zip Code:

21 12th Ave
Elm Street

Forest Grove.
David Hill, Forest Grove, 97116
3015 Main St.
Fg
Fg

Stanish

Resident Address