

# REQUEST FOR COUNCIL ACTION



**Date Action Requested: (October 2nd, 2023)**

Order ☐ Ordinance ☒ Resolution ☐ Motion ☐ Information ☐

No. 2023-2919

**Subject:**

An Ordinance updating the City of Newberg's public camping rules to align with recent case law and Oregon statutes.

Staff: CM

Department: Administration

File No.

Business Session

Order On Agenda:

Hearing Type: Legislative ☒ Quasi-Judicial ☐ Administrative ☐ Not Applicable ☐

**IS THIS ITEM STATE MANDATED? YES ☒ NO ☐**

Recent changes to state law have partly provoked this action.

**If yes, please cite the state house bill or order that necessitated this action:**

Oregon House Bills (HB) 3115 (2021) and HB 3124 (2021).

**Recommendation:**

Staff recommend adoption of ordinance 2023-2919.

**Executive Summary:**

The granting of the ordinance provisions will better align the City's code and practice with recent case law, including *Martin v. Boise*, 920 F.3d 584 (9th Cir., 2019) and *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir., 2022), and changes to Oregon statutes through Oregon House Bills (HB) 3115 (2021) and HB 3124 (2021).

**Fiscal Impact:**

The creation of a camp zone will cost approximately \$6000 per year.

**Council Goals:**

Not directly applicable. There is some applicability under G4 Enhance Community Safety.



# ORDINANCE NO. 2023-2919



An Ordinance updating the City of Newberg's public camping rules to align with recent case law and Oregon statutes.

## Recitals:

1. WHEREAS, pursuant to ORS 195.500, all Oregon municipalities and counties must develop and implement a policy that recognizes the social nature of the of the problem of unhoused individuals camping on public property and ensures the most humane treatment for removal of unhoused individuals from camping sites on public property;
2. WHEREAS, ORS 195.530 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 regards to unhoused individuals;
3. WHEREAS, in 2019, the United States Ninth Circuit Court of Appeals (the "Ninth Circuit"), in its decision in *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), held that government entities are prohibited from imposing "criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them";
4. WHEREAS, in 2022, the Ninth Circuit, in its decision in *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), extended the application of its holding in *Martin v. Boise* to the imposition of civil citations and fines and also held that government entities may not prohibit individuals from taking minimal measures to keep warm and dry while sleeping;
5. WHEREAS, the City of Newberg engaged in research and listening session related to the problem of houselessness as described in **Exhibit A**;
6. WHEREAS, the City of Newberg resides in Yamhill County, which uses state and federal funding to operate housing programs and provide services for the unhoused, along with other similar community programs; and
7. WHEREAS, the City of Newberg seeks to comply with ORS 195.500 *et seq.*, as well as the Ninth Circuit decisions in *Martin v. Boise* and *Johnson v. City of Grants Pass*.

## The City of Newberg Ordains as Follows:

1. To add a new section of municipal code in Chapter 8, Title 15, as set forth in **Exhibit B**.
2. The new code section shall be entitled ***8.15.165 Camping and Public Property***.



**Effective Date** of this ordinance is 30 days after the adoption date, which is: November 1st, 2023.

**Adopted** by the City Council of Newberg, Oregon, this 2<sup>nd</sup> day of October, 2023, by the following votes:

**AYE:**        **NAY:**        **ABSTAIN:**

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Rachel Thomas, City Recorder

**Attest** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Bill Rosacker, Mayor



## **Exhibit A Research and Analysis**

The legal developments that have been occurring at the state and regional level have been followed closely by city staff and our council. Many discussions and collaborative events have been attended by senior city staff including the City Manager, Police Chief and Mayor Rosacker.

These forums and listening sessions included (but are not limited to):

- The Holistic Housing Committee planning and meeting of 2022.
- Public forums on the problems facing the unhoused hosted by the Red Hills Church on July 19<sup>th</sup>, 2023 and August 27<sup>th</sup>, 2023.
- Several meetings in the summer of 2023 with YCAP to register the city's concerns around those experiencing homelessness, and their possible strategies to combat the issue.
- Detailed legal research conducted by Miller Nash from July 10<sup>th</sup> to September 22<sup>nd</sup> of 2023.
- Research based upon the latest updates from the LOC to include both the quarterly updates and the latest edition of their persons experiencing houselessness guide.

Here are the links to the relevant LOC data:

<https://www.orcities.org/resources/reference/homeless-solutions>

<https://www.orcities.org/resources/communications/bulletin/new-guide-persons-experiencing-homelessness>

It was determined that a new course of action was required to address the problem of the unhoused having nowhere to camp if no other shelter is available while staying in compliance with the changing legal and regulatory framework. Naturally, the rules of the city charter were also considered.

During the period before this ordinance change becomes effective, we will additionally work in partnership with CRPD to address any concerns that they may have, so as to ensure close cooperation on the park camping aspect of these changes.



### ***Exhibit B - 8.15.165 Camping and Public Property***

The following Newberg Municipal Code shall be added to the existing code under the section pertaining to Nuisances Affecting Public Safety.

#### **A. THE PURPOSE AND INTENT OF THIS SECTION OF CHAPTER 8 TITLE 15 IS TO:**

1. Recognize that unhoused individuals may not always have access to suitable shelter;
2. Safeguard the right of unhoused individuals to not be punished for the unavoidable consequences of their status or being;
3. Establish rules that recognize the need for reasonable access to City Property and Rights-of-Way, and the City's responsibility to protect the public health, safety, and welfare of all its citizens including unhoused individuals;
4. Ensure the most humane treatment for removal of unhoused individuals from City Property; and
5. Regulate the time, place, and manner in which individuals may Camp on City Property and Rights-of-Way.

#### **B. DEFINITIONS**

For the purpose of 8.15.165, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

**"Camp"** or **"Camping"** means the use of Camp Materials for shelter, sleeping, or survival purposes. Camp or Camping does not include camping in a designated campground under an agreement with the City or Yamhill County.

**"Camp Materials"** may include, but are not limited to, tents, huts, awnings, lean-tos, chairs, tarps or tarpaulins, cots, beds, sleeping bags, blankets, mattresses, sleeping or bedding materials, food or food storage items, and/or similar items that are, or appear to be, used for shelter, sleeping, or survival purposes.

**"Campsite(s)"** means a location where individuals are Camping.

**"City Manager"** means the City of Newberg City Manager or designee.

**"City Property"** means public lands, premises, and buildings, including but not limited to any building used in connection with the transaction of public business or any lands, premises or buildings owned or leased by the City of Newberg.



**“Designated Area(s)”** means the area(s) the City has identified where individuals may Camp in accordance with NMC 8.15.165.

**“Emergency”** means circumstances that could not have been reasonably foreseen, create a substantial risk of loss, damage, or interruption of services, or a substantial threat to property, public health welfare, or safety, and that require prompt action.

**“Established Campsite(s)”** means a Campsite that has been in continuous, uninterrupted use for forty-eight (48) hours or more. For the sake of clarity, Established Campsite includes any Campsite in a Designated Area if allowed to remain in continuous, uninterrupted use in excess of the limited hours described in NMC 8.15.165 subsection (D), and for forty-eight (48) hours or more.

**“Manner Restrictions”** refers to the restrictions in NMC 8.15.165 subsection (D)(1)(a).

**“Notice”** refers to the notice required in NMC 8.15.165 subsection (E)(1).

**“Personal Property”** has the meaning given in ORS 195.505(2).

**“Right(s)-of-Way”** has the meaning given in NMC 12.05.300.

**“Time Restrictions”** refers to the restrictions in NMC 8.15.165 subsection (D)(2).

## **C. RESTRICTION ON CAMPING**

Except as otherwise authorized in Chapter 8, Title 15, at all times it is unlawful for any person to Camp or to establish, maintain, or occupy a Campsite on City Property outside of the Designated Areas. For the avoidance of doubt, Camping is prohibited on all City Property and Rights-of-Way other than Designated Areas. Prohibited areas include, but are not limited to:

1. All parks in the City;
2. All City parking lots;
3. All City buildings and structures;
4. All public transit shelters;
5. All stormwater treatment facilities, including, but not limited to swales, detention ponds, and drainage ways;
6. The Chehalem Cultural Center, all adjacent City Property, and Rights-of-Way;
  - a. The Newberg Public Library, all adjacent City Property, and Rights-of-Way;
  - b. The Newberg Civic Corridor, including all adjacent City Property, and Rights-of-Way.



## **D. PERMISSIBLE CAMPING**

1. Designated Areas. Notwithstanding the restrictions set forth in NMC 8.15.165 subsection (C) and the City Charter, the City may authorize specific areas on City Property where Camping is permitted.
  - a. Designated Areas will be identified by the posting of a physical sign at the relevant site and by noticing the relevant location on the city web site. These physical and digital postings shall occur seventy-two (72) hours before the site becomes operational.
  - b. The Time and Manner Restrictions set forth in NMC 8.15.165 subsection (D)(2) and subsection (D)(3) are applicable to Designated Areas unless otherwise authorized by the City Manager.
  - c. City officials may remove individuals, their Camp Materials, and Personal Property from Designated Areas if the Manner Restrictions or, subject to NMC 8.15.165 subsection (D)(2), the Time Restrictions are violated.
2. Time Restrictions. Camping in Designated Areas is subject to the following Time Restrictions.
  - a. Individuals may Camp in Designated Areas during the hours of 9:00 pm to 9:00 am.
  - b. Individuals Camping in Designated Areas may keep their Personal Property with them in the Designated Areas during the hours of 9:00 pm to 9:00 am.
3. Manner Restrictions. Camping in Designated Areas is subject to the following Manner Restrictions.
  - a. Open flame fires are prohibited.
  - b. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, human or animal waste, or other items of no apparent utility.
  - c. Dumping of gray water (i.e., wastewater from baths, sinks, and the like) or black water (i.e., sewage) into any facilities or places not intended for gray water or black water disposal is prohibited. This includes but is not limited to storm drains, which are not intended for disposal of gray water or black water.
  - d. Unauthorized connections or taps to electrical or other utilities, or violations of building, fire, or other relevant codes or standards, are prohibited.
  - e. Obstruction or attachment of Camp Materials or Personal Property to fire hydrants, utility poles or other utility or public infrastructure, fences, trees, vegetation, buildings, or structures is prohibited.
  - f. All animals must be leashed, crated, or otherwise physically restrained at all times.



- g. City officials may establish additional reasonable restrictions to ensure safety, cleanliness, and order within the Designated Areas. These rules may include determining the layout of a Designated Area (including where each individual may set up Camp, the distance between Campsites, common areas, etc.), restrictions on the dimensions of each Campsite, and others.
- 4. Sanitary Facilities. All Designated Areas must provide individuals access to sanitary facilities, including toilet, handwashing, and trash disposal facilities.
- 5. Temporary Circumstances. The City Manager may temporarily modify camping restrictions under Chapter 8 Section 15 as outlined in this NMC 8.15.165 subsection (D)(5)(a).
  - a. Emergencies. In the event of an Emergency, the City Manager may temporarily authorize:
    - i. Camping or storage of Personal Property on City Property and Rights-of-Way in additional locations to the Designated Areas; or
    - ii. The suspension of Time or Manner Restrictions.
  - b. Other Circumstances. Upon a reasonable finding that it is in the best interest of the public, to prevent substantial damage or injury to persons or property, and consistent with City goals and policies, the City Manager may temporarily authorize:
    - i. Camping or storage of Personal Property on City Property and Rights-of-Way in addition to the Designated Areas; or
    - ii. The suspension of Time or Manner Restrictions.
  - c. Such temporary actions by the City Manager, whether due to an Emergency or other circumstances, must be considered for ratification by the City Council at its next regularly scheduled meeting.

## **E. NOTICE AND REMOVAL OF ESTABLISHED CAMPSITES**

The following requirements are applicable to Established Campsites on City Property.

- 1. Notice. Except as provided in NMC 8.15.165 subsection (E)(2) below, the City must post a Notice at least seventy-two (72) hours before removing individuals, their Camp Materials, or Personal Property from an Established Campsite. The posted Notice must:
  - a. be written in Spanish and English;
  - b. be posted on all reasonably identifiable entrances to the Established Campsite; and



- c. include information about where Personal Property will be stored, or alternatively, a phone number individuals can call to obtain information about where Personal Property will be stored.
- 2. Notice Exceptions. The Notice required under NMC 8.15.165 subsection (E)(1) does not apply:
  - a. when law enforcement officials have grounds to believe that that illegal activity, other than Camping, is taking place at an Established Campsite; or
  - b. in the event of an Emergency at an Established Campsite, including possible site contamination by hazardous materials, a public health emergency, substantial and immediate risk or harm to public infrastructure, or other immediate danger to human life or safety.
- 3. Local Agency Notification. Concurrent with posting the Notice, the City must notify local agencies that deliver social services about the Established Campsite where the Notice has been posted. Such local agencies may visit the Established Campsite to assess the need for assistance.
- 4. Removal, Storage, and Disposal of Personal Property from Established Campsites.
  - a. Removal. All Camping Materials and Personal Property that remains on City Property seventy-two (72) hours after a Notice has been posted at an Established Campsite, will be removed by the City and given to City officials, local agencies delivering social services to unhoused individuals, or the NDPD or Newberg City Public Works department for storage in accordance with this NMC 8.15.165 subsection (E)(4)(b) and subsection (E)(4)(c).
  - b. Storage. Personal Property removed from Established Campsites will be stored in accordance with this NMC 8.15.165 subsection (E)(4)(b).
    - i. Personal Property will be stored in an orderly fashion in a City owned facility located within the City.
    - ii. To the extent ownership can be reasonably determined, the City will keep items that belong to an individual stored together.
    - iii. Personal Property will be stored for a minimum of thirty (30) days.
    - iv. While stored, Personal Property will be reasonably accessible to any individual claiming ownership.
  - c. Disposal. The City may dispose of any Personal Property that remains unclaimed after thirty (30) days in storage. Disposal of Personal Property must comply with the requirements under ORS 195.505.
  - d. Exceptions. Notwithstanding the foregoing, the following exceptions apply to the removal, storage, and disposal of Personal Property from Established Campsites.
    - i. Unsanitary items or items that have no apparent value or utility may be immediately discarded.



- ii. Weapons, controlled substances other than prescription medication, and items that appear to be either stolen or evidence of a crime will be given to or retained by law enforcement officials.

## **F. ENFORCEMENT**

1. Violations. Violation of any restriction under NMC 8.15.165 constitutes a Class 4 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Chapter 230 NMC.
2. Citation. A citation for violating NMC 8.15.165 may not be issued within 200 feet of a Notice required under NMC 8.15.165 subsection (E) or within two (2) hours of the Notice being posted.
3. The City may adopt administrative rules via resolution to support and guide implementation of, and compliance with NMC 8.15.165.

## **G. SEVERABILITY**

If any section, paragraph, subdivision, clause, sentence, or provision of NMC 8.15.165 is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the validity of the remaining portions of MNC 8.15.165.