



A place where families and businesses thrive.

CITY RECORDER USE ONLY:

AGENDA ITEM #: WORK SESSION

MEETING DATE: 11/08/2021

FINAL ACTION: _____

MEMORANDUM

TO: *City Council*

FROM: *Emily Matasar, City Attorney's Office*
Jesse VanderZanden, City Manager

MEETING DATE: *November 8, 2021*

SUBJECT TITLE: *Homelessness Work Session*

PURPOSE OF WORK SESSION:

The purpose of the work session is to brief the Council on recently passed state legislation pertaining to homelessness, provide a status report of homelessness efforts in Forest Grove, and allow Council an opportunity to discuss the issue.

BACKGROUND:

On February 8, 2021, the Council held an extended work session on homelessness to discuss the City's role and responsibility. The work session also provided background and framework for the Council to formulate goals and objectives as part of the annual goal setting process.

As a result, the Council passed *Goal 2: Support housing stability and mitigation of homelessness* and within Goal 2, *Objective 2.2: Partner with other agencies and non-profits to address homelessness needs and access to wraparound services in Forest Grove. Monitor legislation and advocate to meet the needs of the homelessness population.*

On March 15, Washington County presented the local implementation plan for homelessness services as part of Metro's Affordable Housing Bond Program. They noted the Bond would bring in between \$50-75 million per year to Washington County. As a non-entitlement community of less than 50,000 people, the City relies on the County to administer social service programs, including addressing homelessness.

On March 24, Shawn Cardwell and Brian Schimmel from the Forest Grove Foundation provided a status report to Council on the 3-year, \$40,000 per year, Community Impact Grant for homelessness services, funded by Metro Community Enhancement Program monies.

On May 10, the City Attorney presented to Council on the *Martin v. Boise* and *Blake v. Grants* Pass court cases and the then-pending (now passed) House Bill 3115.

On June 10, the Committee for Community Involvement (CCI) held a Quarterly Town Hall Meeting on homelessness that included the County, Forest Grove Foundation, and Centro Cultural. Updates and questions centered on the conversion of the Forest Grove Inn to transitional housing, outreach services to area homelessness, and County social service programs.

On July 19, the Council held an optional work session on homelessness with panelists from the Forest Grove Foundation, Chamber of Commerce, and Anti-Poverty Task Force.

Additional City involvement in support of Goal 2 includes representation on the County's Homeless Policy Advisory Committee (HPAC) via Councilor Uhing; representation on the local Anti-Poverty Task Force (which includes the Forest Grove Foundation and Centro Cultural, owners of the Forest Grove transitional shelter) via Councilor Kottkey and Mayor Truax; and monthly staff meetings with area City Managers and the County's Supportive Housing Services staff.

CURRENT UPDATES:

Centro Cultural completed the purchase of the Forest Grove Inn and recently secured ARP monies to remodel it into a transitional shelter. Centro Cultural was also awarded a contract with the County to hire 2 case workers to provide transitional services to 20 homeless persons per case worker for a total of 40 homeless persons.

The Forest Grove Foundation has expanded their staff, secured additional private and public funding sources, and is renting office space along Pacific Avenue. While Forest Grove remains their primary service hub, the additional funding allows outreach to neighboring communities such as Gaston, Banks, and North Plains.

Washington County will be completing their Quarterly Report on Homelessness soon and are scheduled to present to the City Council on November 22. The County will report on their overall strategy and programs such as encampments, transition services, and winter shelters.

The County has actively been looking for locations to site winter shelters within the County. The Anti-Poverty Task Force have discussed possible locations including local churches, the Community Auditorium, and the Senior Center.

Unlike the former temporary shelter program where churches would host an overnight shelter for 1-2 nights per week, the County's shelter program requires hosting for 7 nights a week to be eligible for County grant monies. The reason for this requirement is to provide additional stability and services to homeless persons while sheltered.

Use of either the Community Auditorium or the Senior Center would require a discontinuance and/or re-appropriation of existing uses to another building. Both buildings are presently used nearly every day of the week and often on weekends by the City, other governments, and non-profits. The Senior Center is governed by an Operating Agreement with the City which gives the Forest Grove Senior and Community Center, a 501(c) 3 non-profit, exclusive use of the facility in return for providing services to seniors. Any change to the Agreement requires a formal vote of Council to re-open the Agreement.

Regarding private commercial and industrial space, there continues to be very little to no vacancy. The City and the Foundation continue to monitor space for sale or rent that could potentially be used for a homeless shelter.

The “B” Street area, undeveloped and unposted land owned by the City that borders Gales Creek to the south, Gales Creek Terrace and residences to the North and West, B Street to the East, and a self-storage business to the Northeast, is presently experiencing camping by homeless persons. The number of campers has remained relatively steady and the Forest Grove Foundation outreaches to them on a frequent basis. Additionally, a private party paid for and placed a portable restroom in the right of way on B Street and has asked the City to fund the restroom once the contract is over. The City has been monitoring the restroom and its association with the nearby campers. The City recently received a complaint about the restroom and campers and is meeting with the landowner next week.

The area North of Highway 47, principally owned by the County and bordered by two acres of undeveloped and unplanned City property to the East, and which was recently the subject of a County Encampments Program clean up, is seeing campers return, although not in the same numbers as before. The County has provided portable restrooms, a wash station, and posted usage rules for campers. The County continues to monitor and assess the camping area in accordance with the attached Highway 47 camp expectations and assessment criteria.

STATE LEGISLATION AND CITY CODE:

In the past year and a half, the laws and landscape related to camping on public property have changed significantly, requiring cities to balance the constitutional rights of people experiencing homelessness with the health, safety, wellness, and economic stability of residents and businesses. Unfortunately, because these legal developments are so recent, many details have yet to be filled in. While it is clear at either end what the City is allowed and not allowed to do, it becomes more difficult to assess where exactly the line lies and precisely how much risk the City takes on by passing particular regulations into code.

The issue first arose in *Martin v. Boise*, where the 9th Circuit Court of Appeals held that the U.S. Constitution’s Eighth Amendment against cruel and unusual punishment prohibits cities from prosecuting people experiencing homelessness for “involuntarily sitting, lying, and sleeping in public” when no alternative shelter is available.

That reasoning was then built upon by the U.S. District Court for the District of Oregon (Medford Division) in *Blake v. Grants Pass*. The court found that the Eighth Amendment also prohibits civilly punishing people experiencing homelessness who are sleeping outside when there are not enough available emergency shelter beds in the area. The *Grants Pass* decision further held that cities must allow people experiencing homelessness “necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available.”

In light of these decisions, the Oregon Legislature passed three pieces of legislation regarding homelessness during the 2021 regular session.

House Bill (HB) 2006:

This bill seeks to create transitional and emergency housing in the state primarily by requiring local governments to approve siting of qualifying emergency shelters by qualifying entities. The bill also expands the description of transitional housing accommodations to include motor-vehicle camping, removes the three-vehicle limit on motor-vehicle camping on religious institution property, and expands motor-vehicle camping that political subdivisions may allow.

No change to City code is needed to comply with the new law. The provision requiring local governments to approve qualified applications for emergency shelters sunsets on July 1, 2022. Shelter applications submitted prior to July 1, 2022, are subject to the law, and shelters approved under the law are allowed to continue operating after the sunset.

HB 3124:

This bill added to the requirements in state law for a local government's humane policy for the removal of homeless camps from public property. For example, the bill changed the notice requirement for removing a camp from 24 to 72 hours prior to removal and required that the notice state how to claim personal property removed from the camp.

No change to City code is needed, however, staff are currently working on City policy to comply with the new law. Additionally, the County is ensuring these provisions are incorporated and followed as part of their Encampments Program.

HB 3115:

This bill is perhaps the most impactful of the three and required the most analysis. This law provides that local law regulating sitting, lying, sleeping or keeping warm and dry outdoors that is open to the public must be "objectively reasonable" as to time, place and manner with regards to persons experiencing homelessness. The objective reasonableness of an anti-camping ordinance is based on the totality of the circumstances. Although HB 3115 does not go into effect until July 1, 2023, it is essentially already in effect as it codifies the *Boise* and *Grants Pass* judicial cases.

CITY CODE:

Prior to discussing the code, it is important to understand the City owns or manages many areas open to the public. These include developed parks and facilities, undeveloped land planned for future parks or facilities, undeveloped land not otherwise planned for parks or facilities, and developed parking lots. The City also manages land that is not owned by the City but that is open to the public. These include rights of way and easements for roads, trails, and public access.

The Forest Grove Code (FGC) contains two sections relevant to camping within the City: Section 71.09 "Obstructing Streets or Public Ways" and Section 92.15 "Camping". Each code provision is described in detail below and both are included in their entirety below for reference.

FGC Section 92.15 applies only in parks. The Code states: "No person shall erect any tent or other portable structure in any park without authorization by the Director of Parks and Recreation." This code is fairly common among municipalities. Any person violating 92.15 "is subject to a civil penalty in the amount of not less than \$100 and not more than \$250."

FGC Section 71.09 states, “Except as may otherwise be specifically provided elsewhere in the code, no person shall place, park, deposit, or leave on a street, alley, public way, sidewalk, or curb any article, thing, or material which prevents, interferes with, or obstructs the free passage of pedestrian or vehicular traffic or obstructs a driver’s view of traffic or official traffic-control signs and signals.” Any person violating 71.09 is subject to the same civil penalty above.

These provisions, taken together, are likely constitutional and no action is legally required at this time. The federal constitution, as interpreted by the cases referenced above, and HB 3115 require that a city allow people experiencing homelessness to sleep and keep warm and dry on public property when there are no emergency shelter beds available in the area. It is not entirely clear what qualifies as “available emergency shelter beds” or even what area in which the beds must be available, but as long as the City does not outright prohibit all camping on public property, the City may still regulate camping on public property so long as the regulations are objectively reasonable as to time, place and manner.

Below are some examples of time, place and manner restrictions that alone or in combination are likely objectively reasonable should the Council want to revise the code.

- Time:
 - prohibit camping in the downtown area between 7 am and 9 pm or allowing camping in certain areas during certain times
- Place:
 - prohibit camping in parks at all times or prohibit camping on public property in residential zones at all times
- Manner:
 - restrict the amount of personal property a person may have with them on public property or regulate vehicle camping on streets

In addition, the City may continue to enforce other existing laws and ordinances (or pass new ones) that target the detrimental effects that unrestricted camping may have on the public’s health, safety, and welfare. Examples include, but are not limited to, injury to public property, use of illegal substances, and debris.

So while the City may not prohibit all camping in the City, it may pass particular time, place and manner regulations that restrict and manage camping in Forest Grove.

DISCUSSION:

Although the City’s existing code is compliant, one question for Council is whether changes to the code are desired and if so, what the changes would be and what effect they would have. For example, some cities are considering stronger provisions that prohibit camping in additional areas besides parks, however, they are simultaneously discussing areas where camping would not be prohibited. Other cities that have a total prohibition on camping are having to amend their code to assure it is “objectively reasonable” as to time, place and manner with regards to persons experiencing homelessness.

ATTACHMENTS:

- Washington County camp expectations and assessment pamphlet
- **§ 92.15 CAMPING.**
No person shall erect any tent or other portable structure in any park without authorization by the Director of Parks and Recreation.
- **§ 71.09 OBSTRUCTING STREETS OR PUBLIC WAYS.**
Except as may otherwise be specifically provided elsewhere in the code, no person shall place, park, deposit, or leave on a street, alley, public way, sidewalk, or curb any article, thing, or material which prevents, interferes with, or obstructs the free passage of pedestrian or vehicular traffic or obstructs a driver's view of traffic or official traffic-control signs and signals.



Hwy 47 CAMP EXPECTATIONS

- No criminal, violent or threatening behavior.
- Maintain “quiet hours” from 10 pm—6 am.
- No open fires are allowed.
- Cooking must be limited to camp stoves or grills with propane or charcoal as fuel.
- No wood structures, campsite blinds, vehicles or RVs of any kind are allowed.
- Marijuana cultivation and the production of illegal substances is prohibited.
- Be respectful of surrounding neighbors and avoid disturbances or confrontations.
- It is expected that cleanliness is maintained at campsites.
 - All trash, bio-hazards, and other unwanted items (*including food and food scraps*) must be disposed of in the garbage bags provided and garbage bags must be placed in designated areas.
 - Sharps/needles to be placed in sharps containers.

Camp Assessments are conducted on a bi-weekly basis to ensure the health & safety of campers, the community and the environment.

Each assessment takes into consideration nine criteria:

- Reported Crimes
- Seasonal Risks; such as, fire or flooding
- Nuisance Impact; such as, uncontained garbage accumulation, vermin
- Environmental Impact- within 100ft of water way, chemical spills, extensive damage to natural areas
- Conspicuous Drug Use/Paraphernalia - all sharps/needles contained in sharps container or hard plastic container with a lid
- Size of Camp - how many tents/camp sites are in occupied
- Blocking Access- right of way, gates
- Restricts ADA Access
- Limits Maintenance

NEED SUPPORT?

Community Connect
503-640-3263

Helping people access housing in Washington County, Oregon

Safe Place for Youth
503-542-2389

Serving youth ages 12 to 20 years experiencing homelessness

Open Door Counseling Center
503-640-6689

Drop-in daytime services including hot meals, showers, laundry, phone and mailbox use

2-1-1 Info
2-1-1 or 503-222-5555

Information and Referral services to wide variety of community resources, including shelters, warming/cooling centers

Washington Co. Sheriff
Non-Emergency Line
503-629-0111

Emergency 9-1-1

Encampment Risk Assessment Criteria

Under 50 = Recommend support; Over 50 and below 75 = two week grace period; Over 75 = recommend vacate

Conspicuous Drug Use/Paraphernalia	Rating: (0)-none of either; (1)- no needles, other paraphernalia present ; (2)-1 or 2 needles found in the area; (3)-1 or 2 needles and other paraphernalia ; (4)-2-5 needles and paraphernalia; (5) 5 or more needles
Impact on Neighborhood Livability (trash/debris)	Rating: Based on amount of trash and debris. (0)-no trash or debris contained within receptacle; (1)-small amount of trash not contained within receptacle; (2)-Trash and debris scattered about 2 or so 50 gallon garbage bags full; (3)-no receptacle, moderate amount of trash and debris scattered about 2-5 50 gallon garbage bags full; (4)-large debris field 10 yd. dumpster full of garbage +haz mat ; (5) large debris field 20 yds. or more + haz-mat
Proximity to school, park w/ playground, or private residence	Rating: (0)-more than 1,000 feet from school, playground or private residence; (1)-more than 1,000 feet from school, playground or private residence, but on a route to school or playground; (2)-within 1,000 feet of school, playground or private residence; (3)-within 500 ft. of a school, playground or private residence; (4)-bordering school, playground or private residence, or within 100 ft. of a school bus-stop; (5)-on school or park property, attached to an occupied private residential property
Environmental Impact	Rating: (0)-no negative impact; (1)-negative impact on the area; (3)- haz-mat cleanup required ; (5) - designated protected natural area with extensive damage
Restricts ADA Access	Rating: Yes (5) or No (0) (less than 4 ft of space to pass on a sidewalk or other paved pathway)
Posted No Trespassing	Rating: Yes (5) or No (0) (fixed and permanent signage)
Size of Camp (Structures)	Rating: (0)-No structures present; (1)-1 to 2 structures present; (2)-3 to 4 tents present; (3)-5 to 6 structures present; (4)-7 to 8 structures present; (5)-9+ structures present.
Violence/Crime Being Reported	Rating: (0)-no reports of crime; (1)-noise disturbances at night; (2)-verbally aggressive to passers-by; (3)-drug traffic, verbal altercations with nearby residents; (4)- threats of physical violence; (5)-physical violence reported of any kind. Based on OPC Reports, PPB, and PP&R Ranger Reports *Please note the violent crime will be addresses by law enforcement
Blocking Public Access	Rating: Yes (5) or No (0)- sidewalk, stairways, trails etc.
Restricts Maintenance	Rating: Yes (5) or No (0)-Blocking access for repair and maintenance crews.