

**City Council Study/Work Session
Agenda**

January 17, 2024

5:30 p.m. Public Meeting

Hybrid Meeting in Person and Via Zoom

Phoenix Plaza Civic Center 220 N. Main St./Via Zoom

*A complete agenda packet is available on the city's website. This meeting is being conducted in person and virtually to allow for public participation. A recording of the meeting in its entirety will be posted to www.phoenixoregon.gov. To comment on agenda items, please write your name on the sign-in sheet and include the item number, if attending via Zoom raise your hand when the topic is discussed by Council. **If you need special accommodations, please give the City Recorder 72-hours prior notice.***

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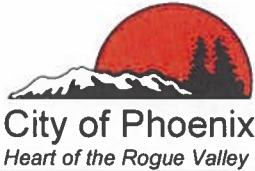
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1. Call to Order / Roll Call / Confirmation of a Quorum

Except as provided in Section 33 of the City Charter, a minimum of four Council Members are needed for a quorum and to conduct city business. If the Mayor is needed to establish a quorum, then he/she may become a voting member for that meeting (Phoenix Municipal Code, Chap. 2.28.020.A.4).

2. Discussion – Proposed Changes Camping Ordinance,.....3

3. Adjournment



City of Phoenix
Heart of the Rogue Valley

Agenda Item #: 2.

Agenda Report to Mayor and Council

Agenda item title: Proposed Changes to Camping Ordinance

Meeting Date: January 16, 2024

From: Douglas M McGeary, City Attorney

Action: Motion, Ordinance, Resolution, Work Study Session

SUMMARY

Over the past two decades, the legal landscape surrounding homelessness and transient populations in Oregon has evolved significantly. The City of Phoenix has largely avoided substantial impact. However, recent federal and state laws have imposed additional requirements on cities, necessitating specific adjustments to Phoenix's longstanding laws and approach to camping and public space occupation.

This revision aims to effectively guide homeless individuals toward using the newly established shelter spaces while ensuring legal compliance and addressing the broader issue of homelessness in our community.

This proposed ordinance modifies our existing ordinances. These changes are designed to strike a balance between recognizing the unique challenges faced by the homeless population and safeguarding the integrity of our public spaces.

BACKGROUND AND DISCUSSION

Civil rights lawsuits filed in federal courts have contested the legality of camping prohibitions, resulting in restrictions on the conventional enforcement of these measures. These legal challenges have invoked the 8th Amendment, which safeguards individuals against cruel and unusual punishment. In a series of rulings, the courts have maintained that it is essentially impermissible to penalize individuals for engaging in basic life activities, such as sleeping, lying, or sitting, particularly when they are involuntarily homeless and lack alternative locations to conduct these essential daily functions. You can find an in-depth explanation of the developing case law in this field on homelessness, provided by the League of Oregon Cities.

Regardless of federal law interpretation, Oregon's legislature has anticipated the need for comprehensive protections for homeless individuals on public property. This has led to the passage of laws such as HB 3115 and HB 3124, which went into effect in July, 2023.

The proposed ordinance aims to restore the city's capacity and necessity to regulate camping on public property in a way that differentiates addressing behavior rather than the status of individuals who are involuntarily homeless. The proposed Prohibited Camping ordinance is an updated version of ordinances previously employed by our city, as well as by most municipalities throughout the state. What sets Phoenix apart is its distinctive prohibition on camping or occupying a specific public area with the intent of excluding others from its use, rather than establishing a temporary campsite for the purpose of

"maintaining a temporary place to live," which is typically the norm in ordinances of other Oregon cities. This shift in approach signifies a departure from prohibiting individuals from living in public spaces and, instead, places emphasis on addressing the issue of individuals establishing residency or asserting a sense of ownership over public property.

The changes to the prohibited camping ordinance concentrate on clarifying definitions for phrases that have either been utilized or left ambiguous by federal courts, as well as in HB 3115 and HB 3124. For instance, the term "involuntarily homeless" in the proposed ordinance aligns precisely with the courts' established definition of the term. In contrast, HB 3115 and HB 3124 employ terms like "established camping site" and "apparent value or utility" to respectively specify the duration a campsite must remain in place and what belongings can or cannot be left at that campsite. Without clear definitions, the city remains vulnerable to judicial interpretation of these phrases, which could significantly affect the city's ability to prevent recurrent violations of camping regulations and determine how to handle the substantial volume of property left behind at illegal campsites.

The remaining adjustments to these ordinances are crafted to align with established "time, place, and manner" regulations commonly applied in constitutional analyses of government laws. These ordinances are designed to prevent individuals from camping on streets, parks, or other unsuitable areas. Defendants are given the option to cease their occupation of the site, or they may face citation and penalties. However, they allow for specified periods of time for a camper to move after becoming "established", which is also time period based.

In terms of location or "place" restrictions, certain areas are designated as inherently prohibited for any form of camping. These areas are typically identified as sensitive areas to ensure public safety, well-being, and the preservation of public spaces, such as parks and buildings. But importantly they rely on sensitive populations such as children and Oregon criminal statutes relating to littering waters of the state. There are amendments to the ordinance that address unique challenges posed by camping in cars or RVs on public streets.

Regarding "manner" regulation, this ordinance anticipates situations where individuals experiencing involuntary homelessness may not find available shelter spaces within the city limits. In such cases, the city may enter into contracts with organizations across the region that offer accessible shelter, easily reachable via local public transit, and designed and operated to safeguard involuntarily homeless individuals and other vulnerable populations. Oregon's new laws also establish specific responsibilities for the city in managing property left behind by both homeless individuals and others who may have left their belongings due to lack of alternatives. In these instances, the ordinance sets reasonable limits on what the city is required to store and the quantity thereof.

PMC 8.08.020 through 8.08.030, although interesting and instructive as to how this issue has evolved over the last century, because of this they are obsolete.

FISCAL IMPACT - None

RECOMMENDATION

Staff recommends that Council make suggested changes and approve moving the matter to First Reading of Ordinance and send it thereafter to second Reading for its enactment.

ATTACHMENTS

Proposed Ordinance Relating to Prohibited Camping and Prohibited Occupancy; Replacing and Amending PMC CHAPTER 8.08.010 and Removing PMC 8.08.020 through 8.08.030.

1 CITY OF PHOENIX
2 PHOENIX, OREGON

3
4 ORDINANCE NO. _____

5
6 AN ORDINANCE OF THE CITY OF PHOENIX, WITHDRAWING LANGUAGE OF
7 PMC 8.08.010 PROHIBITED CAMPING AND REPLACING LANGUAGE

8 Annotated to show deletions and additions to the Phoenix Municipal Code sections being
9 modified. Deletions are ~~bold-lined through~~, and additions are bold underlined.

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13 WHEREAS, the City of Phoenix must balance and prioritize several interests: recognition
14 of the essential human dignity of everyone in the City of Phoenix; the need to have safe and
15 orderly conditions in City rights-of-way for the safety and benefit of everyone in Phoenix;
16 the right of everyone in Phoenix to have shelter and safety; and respect for public spaces
17 and public property in service to the entire community.

18 It is in the public interest to regulate public streets and dedicated rights of way in a way
19 that could allow all to use the roads and sidewalks as they are intended and in the way that
20 they remain safe and accessible. Similarly, it is in the public interest to regulate park
21 spaces, playgrounds, and other public areas protected by the nature of their cultural and
22 historic character and their importance to the businesses and community that relies upon
23 and enjoys their preservation.

24 The City acknowledges that living on its streets is often a last resort for individuals. For
25 many of these persons the lack access to shelter is involuntary due to unforeseen
26 circumstances beyond a person's control that occurs when a person lacks viable options to
27 obtain housing due to factors such as economic hardship, loss of social network, health or
28 disability, or having exhausted available options for temporary or permanent housing
29 assistance.

30 This chapter is intended to regulate the use of public rights-of-way and City property to
protect and preserve the above-described public places for their designed and intended
purposes, while providing alternative space and shelter to rest and sleep for persons who
lack access to suitable temporary shelter due to either financial inability or the
unavailability of free, viable options.

1 While recent federal case law is unclear as to whether the city can differentiate between
2 those who voluntarily choose to live homeless from those who are homeless involuntarily,
3 this chapter and the City's enforcement efforts are primarily intended to minimizing public
4 health and safety concerns related to survival camping in public areas, taking into account
5 the resources and opportunities available to those experiencing involuntary homelessness.

6 Those persons who are involuntarily homeless should feel secure that they will not be
7 penalized for their condition. The objective of this ordinance is to differentiate between
8 those who genuinely lack alternatives and use public spaces out of necessity, and those who
9 have access to suitable alternative spaces and shelter but instead willfully exploit public
10 spaces for personal gain or advantage, to the detriment of the general public that includes
11 the involuntarily homeless population.

12 NOW, THEREFORE, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

13 SECTION 1. Phoenix Municipal Code Chapter 8.08.010 Prohibited Camping is hereby
14 amended to remove its existing language in its entirety and to be replaced with language under
15 the following Section 2:

16 SECTION 2.

17 8.08.010. Definitions.

18 A. “Apparent value or utility” in reference to personal property means property that is
19 essential in practicality and significance to the owner's daily life and well-being, and
20 includes but is not limited to, clothing, bedding, personal hygiene items, identification
21 documents, and any tools or resources necessary for survival and meeting basic needs,
22 maintaining dignity, and facilitating self-care. This definition does not include such
23 property as non-functional or broken items, excessive or redundant items, hazardous or
24 dangerous materials, items with limited or no personal value.

25 B. “To camp” means to set up or to remain in or at a campsite.

26 C. “Campsite” means any place where bedding, sleeping bag, or other material used for
27 bedding purposes, or any stove, fire, or cooking apparatus, other than in a designated
28 picnic area, is placed, established, maintained, or occupied, so as to exclude the use of
29 public property by the general public, whether or not such place incorporates the use of
30 any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

1 **D. “Established camping site” means a campsite that has been in its current location for at**
2 **least 72 hours. In the absence of evidence regarding the age of a campsite, a camping site is**
3 **presumed established.**

4 **E. “Designated space or shelter” those areas to be delineated on a map in accordance with**
5 **guidelines set by the City Manager as permitted und 8.08.020(F). Standards for these**
6 **guidelines will, at a minimum, ensure the presence of adequate shelter that is readily**
7 **accessible by local public transit, and that is designed and reasonably operated for the**
8 **purpose of protecting involuntarily homeless persons and other at-risk populations for up**
9 **to 72 hours in one location.**

10 **F. “Involuntarily homeless” means a person who lacks access to suitable temporary shelter**
11 **due to either financial inability or the unavailability of free, viable options.**

12 **G. “Occupy” or “Occupancy” means to maintain physical control over a publicly owned**
13 **area of 50 square feet or greater by a person or person’s private property, wherein the**
14 **primary effect is to exclude the use of the public property by the general public for more**
15 **than two (2) hours. Occupancy does not include recreational park use.**

16
17 **8.08.020. Camping Prohibited**

18
19 **A. Except as otherwise provided herein, no person shall camp in or upon any sidewalk,**
20 **street, alley, lane, public right-of-way, business-front, park, playground, or any**
21 **other publicly owned property or under any bridge or viaduct.**

22 **B. The prohibition on camping may be subject to the following exemptions:**

23 **a. A camping exemption due to an emergency as declared under state law or**
24 **the powers granted to the City Manager under law;**

25 **b. The offender is Involuntarily Homeless and a Designated Space or Shelter is**
26 **unavailable.**

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28 **C. Camping is strictly prohibited under any circumstance that includes existence of a**
29 **fire or gas stove, or when the campsite exceeds 100 square feet (10 feet by 10 feet),**
30 **or when located:**

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- i. On Sidewalks,
- ii. Parks with playgrounds,
- iii. Within 250 feet of a preschool, kindergarten, elementary or secondary school, or a childcare center licensed, certified or authorized under ORS 329a.250-329a.460, ORS 418.205 to 418.970: OAR 419-410-0010 to OAR 419-490--0170,
- iv. Within 250 feet of a Designated Space or Shelter;
- v. Within 250 feet of freeway entrance or exits;
- vi. Within 150 feet of other campsites;
- vii. Within 100 yards of water or the waters of the state as defined by ORS 468B.005; or
- viii. Attached to any fence, trees, building, or vehicle.

D. Involuntarily Homeless persons who use vehicles for shelter in a lawful parking space in the following circumstances:

- a. The vehicle must be operational and must be moved at least 1000 feet from its original location every 24 hours.
- b. The parking space cannot be within a 100' radius of any residence.
- c. No building or erecting of any structures connecting or attaching to vehicles is permitted, including tents that are not designed and manufactured to be attached to a vehicle.
- d. Persons may not accumulate, discard or leave behind garbage, debris, unsanitary hazardous materials, or other items of no apparent utility in public rights-of-way, on City Property, or on any adjacent public or private property.
- e. All animals must be under the keeper's control or otherwise leashed or crated at all times.

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f. 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.

E. Except as provided herein, the City will remove established campsites and unclaimed property having Apparent Value or Utility from a campsite as provided by ORS 195.505.

a. The following campsites are subject to immediate removal:

- i. Campsites that are not established;
- ii. Site contamination by hazardous materials, fire hazards, a public health emergency or other immediate danger to human life or safety;
- iii. The occurrence or presence of evidence of criminal activity or violation of the Phoenix Municipal Code (excluding this offense)

b. Property held having no apparent value or utility, unless hazardous, will be held for fourteen (14) days upon the demand of owner, and processed as follows:

- i. The owner may appeal the determination utilizing and in accordance with Administrative review, PMC 8.06.280 - .300, seeking to have the determination rescinded and the property returned. The appeal notice shall specify the relief sought and the reason for said relief.
- ii. The Hearing Officer shall uphold the determination if, upon de novo review, the preponderance of the evidence establishes that the property does not meet the definition of having apparent value or utility according to PMC 8.08.010(A).

F. The City Manager has the authority to establish additional administrative rules regarding time, place, and manner regulations as deemed necessary to address particular situations arising from conditions affecting Involuntarily Homeless individuals, and that are intended to safeguard the safety, health, and welfare of both the general public and those who are Involuntarily Homeless.

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8.08.030. Prohibited Occupancy.

A. Subject to PMC 8.08.020 or authorized permit, no person shall occupy a public area or street furniture in excess of the time period as provide in definitions of "Occupancy" defined under PMC 8.08.010(H).

8.08.020 040 Grounds requirements.

~~There shall be erected, on a lot, in the city, to be used as a campground, as many closets for the use of the traveling public, as the health committee may in their judgment deem sufficient to supply their needs. A stove shall be furnished in which to burn paper and such refuse that can be burnt. Sacks shall be hung up in which to put all tin cans. Closed containers shall be placed where they, the campers, can put all refuse that cannot be burned and which draw flies and endanger public health. One water tap is to be placed on the ground. A cesspool shall be built, in which soap suds, dish water, and all waste water shall be poured, the expense of the above improvements to be borne by the city.~~

8.08.030 050 Fees.

~~All persons who may use the camp shall pay a fee in advance of twenty five cents per car per night, and give the collecting officer their right name and address, and inform him how long they expect to stay. They shall use every precaution to keep the grounds clean and sanitary. They shall not scatter paper and garbage over the ground, but shall burn all that can be burnt, shall put tin cans in the sacks provided, and other refuse in the covered containers, and keep the lid closed. They shall be required to take good care of all city property on the ground, shall demean themselves as good citizens and become subject to the laws and ordinances of the city, in which they are temporarily residing.~~

8.08.040 060 Violation--Penalty.

~~Those breaking the rules of the State Board of Health, or the laws and ordinances of the city, or refusing to comply with their requirements, shall be subject to a fine of from five to ten dollars, or from two to five days imprisonment, or to both such fine and imprisonment, as the court may adjudge. Any person who violates any provision of this Chapter is~~

1 subject to PMC 1.20 violation and enforcement is pursuant to a category Class C violation
2 under ORS 153.012.

3 **SECTION 3. Codification.** Provisions of this Ordinance shall be incorporated in the City
4 Code, and the word “ordinance” may be changed to “code”, “article”, “section”, or another word,
5 and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any
6 Whereas clauses and boilerplate provisions (*i.e.*, Sections [No(s.)] need not be codified, and the
7 City Recorder is authorized to correct any cross-references and any typographical errors.

8
9 The foregoing ordinance was first read by title only in accordance with Chapter III, Section 17 of
10 the City Charter on the ____ day of _____, 2023, and duly PASSED and ADOPTED
11 this ____ day of _____, 2023.

12 ATTEST:
13
14 _____
15 Bonnie Pickett, City Recorder

16 SIGNED and APPROVED this ____ day of _____, 2023.

17
18 _____
19 Terry Baker, Mayor