

MEMORANDUM

TO: Mayor and City Council

FROM: Richard Meyers, City Manager

SUBJECT: **AN ORDINANCE AMENDING CHAPTERS 9.28 AND 12.24 OF THE COTTAGE GROVE MUNICIPAL CODE REGARDING OFFENSES BY OR AGAINST MINORS AND CITY PARKS AND PUBLIC PLAYGROUNDS**

DATE: December 7, 2022

Background

At the October 24, 2022 City Council meeting the Council approved the draft proposal of the Management Plan for the Use of Public Lands by Individuals Experiencing Homelessness (Management Plan) and requested that staff bring back the proposal prepared for codification. The Council will be considering a Resolution to adopt the Management Plan.

Under the court cases and State Statute camping must be allowed on public lands if there is not alternative shelter available. Case and state law allow for objectively reasonable time, place and manner restrictions. The Management Plan provides objectively reasonable time and place restrictions by establishing a plan for designating land for camping.

The attach ordinance incorporates the Management Plan, after it is adopted by Resolution, into Chapter 12.24 of the City Code. When public land is designated for camping pursuant to the Management Plan all other public lands are subject to all applicable regulations of Chapter 12.24. The land designated for camping is not subject to Section 12.24.020 I & J. All other provisions of Chapter 12.24 will be enforced in the area designated for camping.

The City Attorney preformed an audit of the City Code searching for provisions that would violate the provisions of HB 3115. The youth curfew provisions of Section 9.28.030 could be challenged in the event of an unaccompanied minor living on the street. Removing the section from the code could be addressed by enforcing the provisions of ORS 419C.680 which states:

(1)No minor shall be in or upon any street, highway, park, alley or other public place between the hours of 12 midnight and 4 a.m. of the following morning, unless:

(a)Such minor is accompanied by a parent, guardian or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor;

(b)Such minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during the hours specified in this section; or

(c)The minor is emancipated pursuant to ORS 419B.550 (Definitions for ORS 419B.550 to 419B.558) to 419B.558

The provisions of HB 3115 only apply to “city or county law” so there is no issue under HB 3115 in enforcing state law.

The ordinance also amends the park exclusion provisions to comply with the Johnson v. Grants Pass and subsequent remand from the 9th Circuit Court.

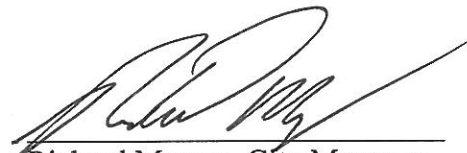
The attached ordinance and recitals do not prohibit camping on public land but creates reasonable tools to regulate the use of public land.

Recommendation

That the City Council hold the first vote on the Ordinance amending chapters 9.28 and 12.24 of the Cottage Grove Municipal code regarding Offenses by or Against Minors and City Parks and Public Playgrounds. This ordinance cannot be adopted in one meeting.

Cost

No Cost



Richard Meyers, City Manager

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTERS 9.28 AND 12.24 OF THE COTTAGE GROVE MUNICIPAL CODE REGARDING OFFENSES BY OR AGAINST MINORS AND CITY PARKS AND PUBLIC PLAYGROUNDS

WHEREAS, (1) the City of Cottage Grove finds that each community member of Cottage Grove is entitled to a basic level of dignity, respect, and wellness, regardless of whether they are housed or unhoused. It is the official policy of the City that its responses to homelessness will be undertaken in accordance with these principles; and

WHEREAS, (2) the City recognizes the social nature of the problem of homelessness that has contributed to individuals locating themselves in City streets and on publicly-owned property and establishing campsites there. This Ordinance is intended to ensure the most humane treatment for removal of homeless individuals from camping sites on public property, as required by ORS 195.500. The City recognizes that people experiencing homelessness need a place to sleep, shelter themselves, and store belongings. The City is committed to the safety and security of all people in the city, including people experiencing homelessness, property owners, and the traveling public, while protecting all people in the city from unsafe and dangerous conditions; and

WHEREAS, (3) the City Council acknowledges the lack of nightly shelter beds and housing currently available and recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness; and

WHEREAS, (4) the State of Oregon is facing an overwhelming crisis of people experiencing homelessness; and

WHEREAS, (5) using the Lane County Homeless by Name List (HBNL) data the number of individuals reported as experiencing homelessness has been increasing, Lane County has seen an increase in individuals experiencing homeless from 3,477 in October 2020 to 3,754 in October 2021 to 4,599 in October 2022 and the City of Cottage Grove has seen similar increases in the average number of individuals experiencing homelessness in January through October each year from 209 in 2019 to 165 in 2020 to 152 in 2021 to 229 in 2022, the most significant increases over the last three years have occurred in the last three months with an all-time high of 270 individuals identified by the HBNL as experiencing homelessness in Cottage Grove; and

WHEREAS, (6) organizations and service providers continue to indicate that additional community members will become unhoused in the coming months through evictions or elimination of funding from federal and state programs; and

WHEREAS, (7) the City Council intends to regulate camping and survival sheltering on City streets and public property only in the context of the work that has been done by the City and will continue to occur at the City, and the City remains committed to a comprehensive response to homelessness, including through the adoption of a Management Plan for the Use of Public Lands by Individuals Experiencing Homelessness (hereafter called Management Plan); and

WHEREAS, (8) as city and other regional efforts develop, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with limited resources; and

WHEREAS, (9) the City Council acknowledges that it is currently unavoidable that some people will live or shelter for survival outdoors until they are able to access affordable or free shelter or housing. In Cottage Grove, this has typically meant sheltering, sometimes for extended periods of time, on City streets and City property, and at times on other agency property (such as Lane County, ODOT); and

WHEREAS, (10) over the long term and working with Lane County and other local agencies, the City's goal is that people should not have to live outside and there should be safer options because long-term camping for survival sheltering outside is not a solution for people without houses; and

WHEREAS, (11) there are constitutional limits on a city's ability to address how public places can be used by people who do not have options for shelter. The Eighth Amendment to the United States Constitution prohibits "cruel and unusual punishment." The Ninth Circuit Court of Appeals has interpreted this prohibition to forbid cities from criminalizing camping in all outside public places, at all times, by those who lack the financial means to pay for adequate shelter, unless adequate shelter is available to such person free of charge; and

WHEREAS, (12) the City owns property where camping can or should be allowed and some City properties are generally closed to the public or have limited access for safety, environmental and security reasons; and

WHEREAS, (13) it is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City streets or property which are intended to be as compatible as possible with the needs of all Cottage Grove residents to be healthy, safe, and have access to public places. Smaller sites support the safety of people who are camping for survival on public property; and

WHEREAS, (14) it is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City streets and properties which will address issues such as fire risk, unsanitary conditions, trash, and public safety hazards to people camping and neighboring businesses and community members, and environmental degradation, which have occurred with longer-term camping in the City; and

WHEREAS, (15) the proposed ordinance and Management Plan are the product of a lengthy public process that has involved time and attention of Council since December 2021. The City has solicited and been open to community feedback throughout the process, and made both the original and revised drafts of code revisions and proposals available for public review and comment. The Council held four Work Sessions and one Special Council meeting to discuss and review proposals regarding the community's responses to homelessness. The City held a Town Hall on April 5, 2022, focused on educating the community about federal and state laws regarding management of public places and homelessness and collected input regarding possible responses and code revisions. The Council discussed and or received comments at every

Council meeting from January 10, 2022 through July 25, 2022. Comments were received from citizens, business representatives, service providers, and people who have or are experiencing homelessness; and

WHEREAS, (16) City streets are designed and intended for travel and transportation, and provision of utility services, among other uses. City streets are not designed or intended for overnight use in the same way as a recreational camp site. People living in makeshift camps in the right-of-way and in vehicles often lack access to safe and sanitary restrooms and trash receptacles, resulting in unsanitary conditions from improper disposal of human waste and trash; and

WHEREAS, (17) the placement of tents, bedding, and other structures on City streets on or next to paved surfaces and/or between curblines is dangerous to those camping or sleeping, because of the proximity to vehicles and other users of the streets. Placement of those items on sidewalks or bike lanes or paths can impede the use of sidewalks, bike lanes, paths and other public ways if clear passage is not maintained. The City has a responsibility as the road authority to maintain the streets, sidewalks and bike lanes and paths as safe, passable, and accessible, and to act to avoid death and injury to all users of the streets, including those without other homes; and

WHEREAS, (18) the current Cottage Grove Municipal Code does not ban camping on City streets in vehicles parked in compliance with parking regulations that apply to all vehicles, including no parking of vehicles in one location for more than 72 hours at a time, whether used for shelter or not; and

WHEREAS, (19) the Council adopted Ordinance 3164 on October 24, 2022, amending Cottage Grove Municipal Code Title 10, relating to Vehicles and Traffic, which established additional regulations prohibiting camping in vehicles within 200 feet of schools and daycare facilities to avoid impeding traffic circulation and the placement of non-vehicular structures in the street or obstructing the street, including the sidewalk, bike lane, or planting strip; and

WHEREAS, (20) the development of Cottage Grove Municipal Code 10.30.20 balanced the Council established regulations related to camping in vehicles in the street against the need for shelter while ensuring safe and efficient transportation facilities in high traffic areas for motorists, cyclists, and pedestrians, particularly minors; and

WHEREAS, (21) the City of Cottage Grove has just over 45 miles of developed streets within the community and more than 30 miles of the developed streets have parking; and

WHEREAS, (22) the Council adopted Ordinance No. 3161 on July 25, 2022, establishing an Overnight Camping Program (CGMC 8.40) to allow public and private property owners to participate in addressing homelessness within the community by providing RV camping in driveways or camping in the backyard of private properties; and

WHEREAS, (23) the sheltering options created by Council amendments to Chapters 8.40 and 10.30 of the Cottage Grove Municipal Code will not be adequate to meet the needs of all the unsheltered in the community and may not be suitable to manage all circumstances of unsheltered individuals experiencing homelessness; and

WHEREAS, (24) the City purchased a shower trailer and supplies and partnered with Community Sharing to provide showers and clothing to individuals in the community experiencing homelessness, using local volunteers and staff, every Wednesday since July, 2021; and

WHEREAS, (25) the City partnered with Community Sharing to develop and operate a non-congregate warming shelter facility when the existing congregate warming shelter program, Beds For Freezing Nights, could not operate during the cold weather season in 2020-21 and 2021-22; and

WHEREAS, (26) the warming shelter facility activated 29 evenings and served a total of 78 unduplicated guests during the final cold season in 2021-22; and

WHEREAS, (27) on August 15, 2022, the City Council authorized the development of an Emergency Shelter location at 2205 HWY 99 with 33 shelters for single occupancy, or double occupancy for related individuals, and an existing house for offices, restroom/shower, kitchen, laundry and support services; and

WHEREAS, (28) beginning October 3, 2022, the City contracted with Carry it Forward to operate the Emergency Shelter facility, provide case management and support services, as well as manage the facility, and residents began receiving those services on October 10, 2022; and

WHEREAS, (29) in anticipation of filling the Emergency Shelter site and to provide camping locations for those not eligible for occupancy at the emergency shelter, the City began discussing and evaluating use of all public lands; and

WHEREAS, (30) the City has developed a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness in order to secure locations that do not pose a risk to the health and safety of individuals experiencing homelessness who are unable to access the Emergency Shelter, while sitting, lying, sleeping, and staying warm and dry; and

WHEREAS, (31) the City recognizes the need to provide such locations within the City for individuals experiencing homelessness who are unable access shelter at the Emergency Shelter site to sit, lie, sleep, and keep warm and dry, while also protecting the intended use of public property via objectively reasonable time, place, and manner regulations; and

WHEREAS, (32) the City Council and staff identified all City owned public lands, excluding streets; and

WHEREAS, (33) the City evaluated each area designated for camping, considering public health and safety, including the people who are sheltering in the camps, potential user conflicts, existing uses, geographic location, site improvements, fire and life safety, accessibility to the area and to other services, and available City resources; and

WHEREAS, (34) the review resulted in the development of the Management Plan for Use of Public Lands by Individuals Experiencing Homelessness, which establishes designated

public land that will allow camping by individuals experiencing homelessness and unable to access shelter at the Emergency Shelter facility; and

WHEREAS, (35) the City finds that limiting the size and number of designated camping areas supports the safety of people in the campsites, as well as the community, by allowing people to shelter together, while avoiding larger congregations of people and belongings that, in the City's experience, has led to more criminal activity and calls for law enforcement services; and

WHEREAS, (36) this Ordinance does not criminalize or otherwise subject an individual to citation for the acts of sitting, lying, sleeping, or keeping warm and dry outside on public property, as prohibited by the Ninth Circuit in the *Martin v. City of Boise*, *Blake v. City of Grants Pass* and *Johnson v. City of Grants Pass* cases. Instead, this ordinance establishes reasonable time, place, and manner regulations that balance the rights of people without shelter to use some outside public places to meet basic needs with the City's obligation to manage public spaces to meet their intended uses and to maintain health and safety for everyone in Cottage Grove.

THE CITY OF COTTAGE GROVE ORDAINS AS FOLLOWS:

Section 1. Section 9.28.030, Curfew, is hereby repealed in its entirety.

Section 2. Chapter 12.24 is hereby renamed "Public Places."

Section 3. Section 12.24.010, Definitions, is hereby amended to read as follows:

12.24.010 Definitions.

A. "Park" or "park area" means the city's community parks, area parks and other park classifications, the buildings and other facilities or improvements located within such areas, public bike paths and pedestrian ways (but not sidewalks along city streets), recreation facilities, including those grounds, areas, ~~or~~ facilities or improvements, which may be privately owned, covered by a conservation easement duly accepted by the City of Cottage Grove for park and recreation purposes by the general public, also including those grounds and areas commonly referred to as greenway and riverbank areas, or portions thereof, which have been placed under City jurisdiction, either by deed or dedication, regardless of whether such areas have been opened up for public use and any public lands, excluding streets, that have been designated as an area allowing camping. Park areas include any river or stream adjacent to park areas.

B. "Camp" or "Camping" means to pitch, use, or occupy camp materials or a camp for the purpose of occupancy, habitation, or sheltering for survival, and in such a way as will facilitate sleeping or storage of personal belongings, carrying on cooking activities, taking measures to keep protected from the elements including heat and cold, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep. A "camp" is a location where people camp or are camping.

E. "City parking lot or parking structure" is a type of City property, and means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated and/or used for parking vehicles.

F. "City property" includes all real property, land and public facilities owned, leased (either to the City or by the City), controlled, or managed by the City of Cottage Grove including City parking lots or parking structures, but excluding streets, as that terms is defined in Title 10 of this Code.

G. "Council" means the Cottage Grove City Council.

H. "Special event" means the use of City property area which constitutes one or more of the following:

1. An event involving a large group or special use of City property or facility;
2. An event which creates a special demand for park or City services such as parking, cleaning, power or water;
3. An event which requires coordination so that other users can co-exist without disruption; and
4. An event which constitutes a commercial use.

Section 4. Section 12.24.020, Prohibited Conduct or Activities, is hereby amended to read as follows:

12.24.020 Prohibited Conduct or Activities.

A. It shall be unlawful to:

1. Build or permit to be built a fire in any City property unless said fire is confined to:
 - a. Park camp stoves or fireplaces;
 - b. Portions of City property designated as permitting fires;
 - c. Portable stoves in established picnic areas and designated where fires are permitted.
2. No fire shall be left unattended, and every fire shall be extinguished before its user leaves City property.
3. If, in the judgment of the City Manager or designee, there exists a danger that even confined fires may spread, such as in dry seasons or during times of high winds, all outdoor fires may be prohibited on City property.
4. Use any animal or any weapon, stick, stone, missile or other device of any kind which causes or tends to result in the destruction, injury, disturbance, or molestation of any wild or domestic animal, fowl, or fish (except fishing in designated area) or any habitat thereof on City property.
5. Discharge any firearm, pellet gun, BB gun, slingshot, bow and arrow, or other weapon capable of injuring any person, bird or animal; provided, however, this paragraph shall not apply to the use of officially approved weapons by duly authorized peace officers so

authorized under the laws of the state of Oregon or the federal government, or to the use of such weapon under agreement or special authorization of the council on City property.

6. Possess any firearm, pellet gun, or BB gun on City property except as provided by law or by peace officers authorized under the laws of the state of Oregon or the federal government, or by agreement or special authorization of the council.

B. For any person other than a person authorized by the city manager, public works director, or their designee, the following acts are hereby declared to be unlawful:

1. The removal, destruction, breaking, injuring, mutilating, or defacing in any way any structure, monument, statue, vase, fountain, faucet, barrier, wall, fence, gate, railing, or other enclosure or part thereof or any vehicle, traffic recorder, sign, marker, bench, tree, shrub, fern, plant, flower, fixture or other property on any City property.

2. The act of bringing upon any of the parks or having in such person's possession while therein any tree, shrub or plant, or any newly plucked branch or leaf of a tree, shrub or plant.

3. The movement or removal of any sign, marker, monument, fence, barrier, faucet, buoy, traffic recorder, or other structure or facility of any kind on City property.

4. The digging, defacing, or removal of any dirt, stones, rock or other substance whatever, make any excavation, quarry any stone, possess or discharge any explosive device, or lay or set off any blast, or roll any stones or other objects, or cause or assist in doing any such things on City property.

5. The possession, discharge or causing to be discharged of any firecracker, explosive, torpedo, rockets propelled by either water pressure or combustible materials, fireworks as defined by ORS 480.111, or other substance which could be harmful to City property, visitors, or resources.

6. The obstruction of free use and enjoyment of any City property, the placement of any straw, grass clippings, dirt, chips, paper, shavings, shells, ashes, swill, garbage, rubbish, refuse or debris, or the leaving or abandonment of any vehicle or part thereof in or upon any City property; provided, however, the foregoing prohibition shall not apply to the landscaping and other maintenance activities of city employees and agents.

7. The entering of any City property with straw, grass clippings, chips, paper, shavings, shells, ashes, swill, garbage, rubbish, refuse or debris that has originated from outside the property, for the purpose of disposing of any of the rubbish, refuse, or debris on the City property; provided, however, the foregoing prohibition shall not apply to the disposal of garbage or refuse that results from the normal use of the property for recreational or other lawful purposes.

8. The operation or permission to operate any sound amplification system which is plainly audible at a distance of fifty feet or more from the source of the sound, unless that system is being operated to request assistance or warn of a hazardous situation. This

paragraph shall not apply to sound amplification approved as a part of an approved special event permit granted pursuant to Chapter 10.24, to emergency vehicles as defined in ORS 801.260, vehicles operated by utilities as defined in ORS 757.005, 758.505 and 759.005, audio alarm systems installed in vehicles and Federal Communications Commission licensed two-way radio communications system. As used in this paragraph, "plainly audible" means any sound for which the information content of that sound is unambiguously communicated to the listener including, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal or comprehensible musical rhythms or vocal sounds.

C. It is unlawful for any person to sell, peddle or offer for sale any goods, liquids, edibles for human consumption, or any goods, wares, services or merchandise or to solicit for contribution on City property unless that person is doing so as part of a special event for which a permit has been granted by the city manager pursuant to Chapter 10.24 of this code or by other permit granted by the city council. Any person acting under a permit shall act in conformance with applicable state and county regulations.

D. Motor vehicles shall be operated and parked only on roads and in parking areas designated for motor vehicle use. Said roads and parking areas are intended for the use of the general public for vehicles and subject to all city, county and state ordinances and regulations. No operator shall park and no owner shall allow a vehicle to be parked on City property for the principal purpose of repairing or servicing the vehicle, except repairs necessitated by an emergency. No motor vehicle, off-road vehicle, motorcycle, trailer, bicycle, skates, skateboards, or other vehicle shall be permitted on any trail or on any part of City property not designated for such use, or on any road or trail posted as closed to the public; provided, however, this subsection shall not apply to those motor vehicles used in connection with city maintenance, fire and emergency medical vehicles or police patrol, or as permitted by the city manager or designee.

E. Except for fire and emergency medical response and police patrols, no person shall operate any motor vehicle within a park at a speed in excess of fifteen miles per hour unless the roadway is posted otherwise.

F. No person shall ride, drive, lead or keep a horse or other livestock on any City property, except on such roads, trails, or areas designated for that purpose or pursuant to a special permit issued under Chapter 10.24. No horse or other such animal shall be hitched or tied in such a manner that may cause damage to such tree, shrub, improvement, or structure.

G. Any form of gathering for special events or use of City property at special times or for special uses or events shall be unlawful without specific authorization from the city manager and shall be in accord with state law, city and county ordinance and regulations as may now or hereby exist. During any gathering for special events or use of City property area authorized under this section, no person shall use, possess, or consume alcoholic beverages in any location other than a location designated by the city manager in the special event permit authorizing such gathering.

H. No person shall wash any clothing or other materials, or deposit any material or other substance, or clean any fish, or introduce or place polluting substance, waste or litter in a stream, fountain or river in or along City property.

I. It shall be unlawful for any person to camp out or sleep in any park area at such time when the park is closed, except by specific permission of the city manager or designee and only in areas designated for such purpose or as authorized by the city manager or the manager's designees pursuant to a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness adopted by City Council resolution.

J. Certain activities, including, but not limited to, group picnicking, camping, group camping, hiking, and driving of vehicles, and riding of bicycles, skates, skateboards and horses may be restricted by the city manager and/or public works director or their designee to designated zones or areas, and such designations shall be observed. The city manager or the manager's designee may set specific rules for the activity in the designated area.

K. It shall be unlawful for any person to enter or remain in any park or part thereof from 10:00 p.m. to 5:00 a.m., except as provided below:

1. A gathering for a special event or use of a park area at special times or for special uses or events which are authorized under subsection I of this section.
2. The following persons, when engaged in the course of their duties: city employees, law enforcement officers, fire and emergency medical personnel, and those persons authorized by the city manager and/or city council.
3. Specific park areas may be exempt from park closure hours pursuant to a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness, adopted by City Council resolution.

L. It is unlawful for any person to climb any tree, or walk, stand, climb or sit upon a monument, vase, railing, or fence in any City property. It is unlawful for any person to walk, stand or sit upon any fountain.

M. It is unlawful for any person to injure, deface, or destroy any notice of the rules and regulations for the government of the City property, or other official notice which has been posted or permanently affixed by order or permission of the public works director or designee.

N. No male person, other than a child with its mother, or city or law enforcement employee in the discharge of such employee's regular duties, or as otherwise specified by state or federal law, shall enter a public restroom or portable toilet marked "women", or loiter about the entrances of such restroom or portable toilet facility.

O. No female person, other than a child with its father, or a city or law enforcement employee in the discharge of such employee's regular duties, or as otherwise specified by state or federal law, shall enter a public restroom or portable toilet marked "men", or loiter about the entrances of such restroom or portable toilet facility.

P. It is unlawful for any person to blow, spread, or place any nasal or other bodily discharge or waste or to spit, urinate or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public restroom or portable toilet or in any place in such facility, excepting

directly into the particular fixture provided for that purpose. Nor shall any person place any bottle, can, cloth, rag, or metal, wood, or stone substance in any of the plumbing fixtures in any such station.

Q. It is unlawful for any person to stand or climb on any toilet fixture, toilet seat, basin, partition, or other furniture, fixture or fitting, or to push, crowd, or otherwise act in a disorderly manner, or to interfere with any attendant in the discharge of their duties on City property.

R. It is unlawful for any person to cut, deface, mar, destroy or break, or write on or scratch any wall, floor, ceiling, partition, fixture, or furniture, or use towels in any improper manner, or waste soap, toilet paper, or any of the facilities provided in any public restroom or portable toilet facility on City property.

S. It is unlawful for any person to willfully mark, scratch, disfigure, deface, or in any manner injure any public drinking fountain in the city, or throw, place, or deposit in any cup or basin of same any cigar or cigarette stub, or any other matter or refuse whatever, or obstruct the regular flow of water thereof in any manner whatever.

T. In case of an emergency, or in case where life or property are endangered, all persons, if requested to do so by a peace officer or other city employee, shall depart from the portion of the City property specified by such officer or employee, and shall remain off the same until permission is given to return.

U. No person shall engage in activity prohibited by any state, county, or municipal law of Oregon while on City property.

V. It shall be unlawful for any person to engage in, promote, instigate, encourage or cause fighting or similar violent conduct which would threaten the physical well-being of the public on City property.

W. No person may use any tobacco product, smoke, as defined in Chapter 8.28, or carry any lighted smoking instrument, on any City property, unless in a properly designated smoking area.

X. It shall be unlawful for any person to consume alcohol, to possess an open container holding alcohol, or to open a container holding alcohol while on any City property, except pursuant to a special event permit issued by the city manager or designee.

Y. No person shall wade, swim or enter the water or cause or allow any domestic animal to enter the water of a pond, fountain or water feature that is constructed to contain storm water or wastewater effluent for irrigation purposes.

Section 5. Section 12.24.040, Excluding a Person from a Park, is hereby amended as follows:

12.24.040 Excluding a person from a park.

A. In addition to other measures provided for violation of this chapter or the laws of the state of Oregon, any peace officer may exclude from all or any part of a park any person cited to appear, arrested, or otherwise taken into custody for violating any provision of ORS Chapters 163, 164, 166

and 167, Title 9 of this code, or for two or more violations of section 12.24.020 within six months, for a period not to exceed ninety days.

B. A person excluded under this section may not enter or remain upon any part of the park from which said person is excluded during the period of exclusion. An excluded person who enters or remains upon any part of a park from which the person has been excluded is a trespasser and may be arrested and prosecuted for the crime of criminal trespass in the second degree pursuant to either or both Section 9.24.050 of this code and ORS 164.245.

C. Notice.

1. At the time a person is cited to appear, arrested, or otherwise taken into custody within a park for any offense identified in Section 12.24.040.A, the officer making such arrest may deliver to that person an order excluding that person from that park or a designated area of that park. Any exclusion order shall not take effect until the sixth day after the notice is issued.

2. The order shall specify the reason for the exclusion, the area from which the person is excluded, the length of the exclusion, the penalty for entering the excluded area, and contain information concerning the recipient's right to appeal the exclusion to the Cottage Grove municipal court.

3. The person to whom the exclusion order is issued shall sign a written acknowledgement of receipt of the notice. If that person refuses to sign the acknowledgement, the arresting officer shall make a written record of the refusal.

D. The public works director or his designee is authorized to prepare a form of notice to be used in connection with excluding a person from a park and to include therein information identified in the prior subsection and such additional material considered necessary for administrative purposes.

Section 6. Section 12.24.050, Appeals, is hereby amended as follows:

12.24.050 Appeals.

A. The procedures contained in this section shall apply to orders of police officers excluding a person from a park pursuant to Section 12.24.040 and the City Manager or the City Council revoking a permit or authorization for use of a park pursuant to Section 12.24.060.B. Failure to follow the procedures contained herein shall constitute a waiver of the person's right to bring an appeal of such order.

B. Not later than six days after issuance of an order revoking a permit or excluding a person, the affected person may appeal in writing to the Cottage Grove municipal court for de novo review of the order or may petition the Cottage Grove municipal court to rescind or alter the order, or reduce the duration of exclusion. The exclusion shall be stayed during the pendency of the appeal.

C. An appeal shall contain a copy of the order, a request for a hearing or request for written review without a hearing, and a statement setting forth the reason that the order is invalid, otherwise improper, or why it should be changed. Failure to raise an issue with sufficient specificity to afford the police officer or City Manager an opportunity to respond to the issue precludes appeal to the municipal court on that issue.

D. If, as part of the written appeal, the person requests a hearing, a public hearing will be conducted by the Cottage Grove municipal court within ten days after the appeal is filed.

E. The City shall have the burden to show by a preponderance of evidence that the exclusion was based upon conduct proscribed by Section 12.24.040.A. Copies of documents in City control and which are intended to be used by the City at the hearing shall be made available to the appellant at least two days prior to the hearing.

F. A determination by the municipal court judge that the officer who issued the exclusion notice at the time had probable cause to cite the person to whom the exclusion notice was issued for the conduct described in Section 12.24.040.A shall be prima facie evidence that the exclusion was based on conduct prohibited by law.

Section 7. The recitals set forth above on which the amendments are based are hereby adopted as support for the proposed amendments.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 9th DAY OF JANUARY 2023.

Candace L. Solesbee, Mayor

Dated: _____

ATTEST:

Richard Meyers, City Manager

Dated: _____

REDLINE version comparing code change portion of Ordinance

2.24.010 Definitions.

A. "Park" or "park area" means the city's community parks, area parks and other park classifications, the buildings and other facilities or improvements located within such areas, public bike paths and pedestrian ways (but not sidewalks along city streets), recreation facilities, including those grounds, areas, ~~or~~ facilities or improvements, which may be privately owned, covered by a conservation easement duly accepted by the ~~city~~City of Cottage Grove for park and recreation purposes by the general public, ~~and~~ also including those grounds and areas commonly referred to as greenway and riverbank areas, or portions thereof, which have been placed under ~~city~~City jurisdiction, either by deed or dedication, regardless of whether such areas have been opened up for public use. and any public lands, excluding streets, that have been designated as an area allowing camping. Park areas include any river or stream adjacent to park areas. ~~For purposes of this chapter, "recreation facility" shall include the Community Center Library and the surrounding grounds.~~

B. "Camp" or "Camping" means to pitch, use, or occupy camp materials or a camp for the purpose of occupancy, habitation, or sheltering for survival, and in such a way as will facilitate sleeping or storage of personal belongings, carrying on cooking activities, taking measures to keep protected from the elements including heat and cold, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep. A "camp" is a location where people camp or are camping.

E. "City parking lot or parking structure" is a type of City property, and means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated and/or used for parking vehicles.

F. "City property" includes all real property, land and public facilities owned, leased (either to the City or by the City), controlled, or managed by the City of Cottage Grove including City parking lots or parking structures, but excluding streets, as that terms is defined in Title 10 of this Code.

G. "Council" means the Cottage Grove City Council.

H.

~~B. "Council" means the Cottage Grove city council.~~

~~C. "Special event" means the use of a park or park~~City property area which constitutes one or more of the following:

1. ~~1.~~ An event involving a large group or special use of ~~an area~~City property or facility;
2. ~~2.~~ An event which creates a special demand for park or City services such as parking, cleaning, power or water;

3. ~~3.~~—An event which requires coordination so that other users can co-exist without disruption; and

4. ~~4.~~—An event which constitutes a commercial use. (~~Ord. 3022 §2, 2012; Ord. 2872 §2, 2002; Ord. 2824 §2(part), 1998~~)

Section 4. ~~Section 12.24.020, Prohibited conduct or activities.~~ Conduct or Activities, is hereby amended to read as follows:

~~A. In addition to violation of state law or city ordinance it~~

12.24.020 Prohibited Conduct or Activities.

A. It shall be unlawful to:

~~1.~~

1. Build or permit to be built a fire in any ~~park area~~City property unless said fire is confined to:

a.- Park camp stoves or fireplaces;

b. Portions of ~~parks~~City property designated as permitting fires;

c.- Portable stoves in established picnic areas and designated where fires are permitted.

2. No fire shall be left unattended, and every fire shall be extinguished before its user leaves ~~the park area~~City property.

3. If, in the judgment of the ~~fire chief~~City Manager or ~~his~~ designee, there exists a danger that even confined fires may spread, such as in dry seasons or during times of high winds, all outdoor fires may be prohibited ~~in parkson~~ City property.

4. Use any animal or any weapon, stick, stone, missile or other device of any kind which causes or tends to result in the destruction, injury, disturbance, or molestation of any wild or domestic animal, fowl, or fish (except fishing in designated area) or any habitat thereof ~~within a park or park areaon~~ City property.

5. Discharge any firearm, pellet gun, BB gun, slingshot, bow and arrow, or other weapon capable of injuring any person, bird or animal; provided, however, this paragraph shall not apply to the use of officially approved weapons by duly authorized peace officers so authorized under the laws of the state of Oregon or the federal government, or to the use of such weapon under agreement or special authorization of the council on City property.

6. Possess any firearm, pellet gun, or BB gun ~~in park areaon~~ City property except as provided by law or by peace officers authorized under the laws of the state of Oregon or the federal government, or by agreement or special authorization of the council.

B. For any person other than a person authorized by the city manager, public works director, or their designee, the following acts are hereby declared to be unlawful:

1. The removal, destruction, breaking, injuring, mutilating, or defacing in any way any structure, monument, statue, vase, fountain, faucet, barrier, wall, fence, gate, railing, or other enclosure or part thereof or any vehicle, traffic recorder, sign, marker, bench, tree, shrub, fern, plant, flower, fixture or other property ~~in~~on any ~~park~~City property.
2. The act of bringing upon any of the parks or having in such person's possession while therein any tree, shrub or plant, or any newly plucked branch or leaf of a tree, shrub or plant.
3. The movement or removal of any sign, marker, monument, fence, barrier, faucet, buoy, traffic recorder, or other structure or facility of any kind ~~in a park~~on City property.
4. The digging, defacing, or removal of any dirt, stones, rock or other substance whatever, make any excavation, quarry any stone, possess or discharge any explosive device, or lay or set off any blast, or roll any stones or other objects, or cause or assist in doing any such things ~~within a park~~on City property.
5. The possession, discharge or causing to be discharged of any firecracker, explosive, torpedo, rockets propelled by either water pressure or combustible materials, fireworks as defined by ORS 480.~~110~~111, or other substance which could be harmful to ~~park area~~City property, visitors, or resources.
6. The obstruction of free use and enjoyment of any ~~park~~City property, the placement of any straw, grass clippings, dirt, chips, paper, shavings, shells, ashes, swill, garbage, rubbish, refuse or debris, or the leaving or abandonment of any vehicle or part thereof in or upon any ~~park~~City property; provided, however, the foregoing prohibition shall not apply to the landscaping and other maintenance activities of city employees and agents.
7. The entering of any ~~park~~City property with straw, grass clippings, chips, paper, shavings, shells, ashes, swill, garbage, rubbish, refuse or debris that has originated from outside the ~~park~~property, for the purpose of disposing of any of the rubbish, refuse, or debris ~~in~~on the ~~park~~City property; provided, however, the foregoing prohibition shall not apply to the disposal of garbage or refuse that results from the normal use of the ~~park~~property for recreational or other lawful purposes.
8. The operation or permission to operate any sound amplification system which is plainly audible at a distance of fifty feet or more from the source of the sound, unless that system is being operated to request assistance or warn of a hazardous situation. This paragraph shall not apply ~~to sound amplification approved as a part of an approved special event permit granted pursuant to Chapter 10.24~~, to emergency vehicles as defined in ORS 801.260, vehicles operated by utilities as defined in ORS 757.005, 758.505 and 759.005, audio alarm systems installed in vehicles and Federal Communications Commission licensed two-way radio communications system. As used in this paragraph, "plainly audible" means any sound for which the information content of that sound is unambiguously communicated to the listener including, but not limited to, understandable

spoken speech, comprehension of whether a voice is raised or normal or comprehensible musical rhythms or vocal sounds.

C. It is unlawful for any person to sell, peddle or offer for sale any goods, liquids, edibles for human consumption, or any goods, wares, services or merchandise or to solicit for contribution in a city park on City property unless that person is doing so as part of a special event for which a permit has been granted by the city manager pursuant to Chapter 10.24 of this code or by other permit granted by the city council. Any person acting under a permit shall act in conformance with applicable state and county regulations.

D. Motor vehicles shall be operated and parked only on roads and in parking areas designated for motor vehicle use. Said roads and parking areas are intended for the use of the general public for vehicles and subject to all city, county and state ordinances and regulations. No operator shall park and no owner shall allow a vehicle to be parked within a park on City property for the principal purpose of repairing or servicing the vehicle, except repairs necessitated by an emergency. No motor vehicle, off-road vehicle, motorcycle, trailer, bicycle, skates, skateboards, or other vehicle shall be permitted on any trail or ~~in~~ on any part of ~~a park~~ City property not designated for such use, or on any road or trail posted as closed to the public; provided, however, this subsection shall not apply to those motor vehicles used in connection with city maintenance, fire and emergency medical vehicles or police patrol, or as permitted by the city manager or designee.

E. Except for fire and emergency medical response and police patrols, no person shall operate any motor vehicle within a park at a speed in excess of fifteen miles per hour unless the roadway is posted otherwise.

F. No person shall ride, drive, lead or keep a horse or other livestock ~~in~~ on any ~~park~~ City property, except on such roads, trails, or areas designated for that purpose or pursuant to a special permit issued under Chapter 10.24. No horse or other such animal shall be hitched or tied in such a manner that may cause damage to such tree, shrub, improvement, or structure.

G. Any form of gathering for special events or use of ~~a park area~~ City property at special times or for special uses or events shall be unlawful without specific authorization from the city manager and shall be in accord with state law, city and county ordinance and regulations as may now or hereby exist. During any gathering for special events or use of ~~a park~~ City property area authorized under this section, no person shall use, possess, or consume alcoholic beverages in any location other than a location designated by the city manager in the special event permit authorizing such gathering.

H. No person shall wash any clothing or other materials, or deposit any material or other substance, or clean any fish, or introduce or place polluting substance, waste or litter in a stream, fountain or river in or along ~~a park~~ City property.

I. It shall be unlawful for any person to camp out or sleep in any park area at such time when the park is closed, except by specific permission of the city manager or designee and only in areas designated for such purpose or as authorized by the city manager or the manager's designees

pursuant to a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness adopted by City Council resolution.

J. Certain activities, including, but not limited to, group picnicking, camping, group camping, hiking, and driving of vehicles, and riding of bicycles, skates, skateboards and horses may be restricted by the city manager and/or public works director or their designee to designated zones or areas, and such designations shall be observed. The city manager or the manager's designee may set specific rules for the activity in the designated area.

K. It shall be unlawful for any person to enter or remain in any park or part thereof from 10:00 p.m. to 5:00 a.m., except as provided below:

1. A gathering for a special event or use of a park area at special times or for special uses or events which are authorized under subsection I of this section.

2. The following persons, when engaged in the course of their duties: city employees, law enforcement officers, fire and emergency medical personnel, and those persons authorized by the city manager and/or city council.

3. Specific park areas may be exempt from park closure hours pursuant to a Management Plan for Use of Public Lands by Individuals Experiencing Homelessness, adopted by City Council resolution.

L. It is unlawful for any person to climb any tree, or walk, stand, climb or sit upon a monument, vase, railing, or fence in any ~~park~~City property. It is unlawful for any person to walk, stand or sit upon any fountain.

M. It is unlawful for any person to injure, deface, or destroy any notice of the rules and regulations for the government of the ~~parks~~City property, or other official notice which has been posted or permanently affixed by order or permission of the public works director or designee.

N. No male person, other than a child with its mother, or a ~~park~~city or law enforcement employee in the discharge of such employee's regular duties, or as otherwise specified by state or federal law, shall enter a public restroom or portable toilet marked "women", or loiter about the entrances of such restroom or portable toilet facility.

O. No female person, other than a child with its father, or a ~~park~~city or law enforcement employee in the discharge of such employee's regular duties, or as otherwise specified by state or federal law, shall enter a public restroom or portable toilet marked "men", or loiter about the entrances of such restroom or portable toilet facility.

P. It is unlawful for any person to blow, spread, or place any nasal or other bodily discharge or waste or to spit, urinate or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public restroom or portable toilet or in any place in such facility, excepting directly into the particular fixture provided for that purpose. Nor shall any person place any

bottle, can, cloth, rag, or metal, wood, or stone substance in any of the plumbing fixtures in any such station.

Q. It is unlawful for any person to stand or climb on any toilet fixture, toilet seat, basin, partition, or other furniture, fixture or fitting, or to push, crowd, or otherwise act in a disorderly manner, or to interfere with any attendant in the discharge of ~~his or her~~their duties on City property.

R. It is unlawful for any person to cut, deface, mar, destroy or break, or write on or scratch any wall, floor, ceiling, partition, fixture, or furniture, or use towels in any improper manner, or waste soap, toilet paper, or any of the facilities provided in any public restroom or portable toilet facility on City property.

S. It is unlawful for any person to willfully mark, scratch, disfigure, deface, or in any manner injure any public drinking fountain in the city, or throw, place, or deposit in any cup or basin of same any cigar or cigarette stub, or any other matter or refuse whatever, or obstruct the regular flow of water thereof in any manner whatever.

T. In case of an emergency, or in case where life or property are endangered, all persons, if requested to do so by a peace officer or other city employee, shall depart from the portion of the ~~grounds~~City property specified by such officer or employee, and shall remain off the same until permission is given to return.

U. No person shall engage in activity prohibited by any state, county, or municipal law of Oregon while ~~in a park~~on City property.

V. It shall be unlawful for any person to engage in, promote, instigate, encourage or cause fighting or similar violent conduct which would threaten the physical well-being of the public on City property.

W. No person may use any tobacco product, smoke, as defined in Chapter 8.28, or carry any lighted smoking instrument, ~~in~~on any ~~park~~City property, unless in a properly designated smoking area.

X. It shall be unlawful for any person to consume alcohol, to possess an open container holding alcohol, or to open a container holding alcohol while ~~in~~on any ~~park~~City property, except pursuant to a special event permit issued by the city manager or designee.

Y. No person shall wade, swim or enter the water or cause or allow any domestic animal to enter the water of a pond, fountain or water feature that is constructed to contain storm water or wastewater effluent for irrigation purposes. (~~Ord. 3058 §1, 2015; Ord. 3022 §3, 2012; Ord. 2968 §3, 2008; Ord. 2871 §2, 2002; Ord. 2824 §2(part), 1998~~)

Section 5. Section 12.24.040, Excluding a Person from a Park, is hereby amended as follows:

12.24.040 Excluding a person from a park.~~Share~~

A. In addition to other measures provided for violation of this chapter, or the laws of the state of Oregon, any peace officer, ~~any authorized city employee~~ may exclude from all or any part of a park any person ~~who violates~~ cited to appear, arrested, or otherwise taken into custody for violating any provision of ORS Chapters 163, 164, 166 and 167, Title 9 of this chapter or any law of the state of Oregon code, or for two or more violations of section 12.24.020 within six months, for a period not to exceed ninety days.

B. A person excluded under this section may not enter or remain upon any part of the park from which said person is excluded during the period of exclusion. An excluded person who enters or remains upon any part of a park from which the person has been excluded is a trespasser and may be arrested and prosecuted for the crime of criminal trespass in the second degree (pursuant to either or both Section 9.24.050 of this code and ~~or~~ ORS 164.245).

C. ~~Written notice signed by~~ Notice.

1. At the issuing party shall be issued to time a person excluded from all is cited to appear, arrested, or otherwise taken into custody within a park for any offense identified in Section 12.24.040.A, the officer making such arrest may deliver to that person an order excluding that person from that park or a designated area of that park. Any exclusion order shall not take effect until the sixth day after the notice is issued.

2. part of a park, which notice The order shall specify the reason for exclusion, places and duration of the exclusion, and the consequences for failure to comply with the notice. The notice shall be given either by personal delivery or by certified mail return receipt requested. Unless otherwise expressly set forth in the notice, the area from which the person is excluded, the length of the exclusion shall commence immediately upon delivery of the notice to, the penalty for entering the excluded person area, and contain information concerning the recipient's right to appeal the exclusion to the Cottage Grove municipal court.

3. The person to whom the exclusion order is issued shall sign a written acknowledgement of receipt of the notice. If that person refuses to sign the acknowledgement, the arresting officer shall make a written record of the refusal.

D. The public works director or his designee is authorized to prepare a form of notice to be used in connection with excluding a person from a park and to include therein information identified in the prior subsection and such additional material ~~as are~~ considered necessary for administrative purposes. (~~Ord. 2824 §2(part), 1998~~)

Section 6. Section 12.24.050, Appeals. ~~Share,~~ is hereby amended as follows:

12.24.050 Appeals.

A. The procedures contained in this section shall apply to orders of ~~the public works director, police officers, or authorized park employees~~ excluding a person from a park ~~and~~ pursuant to Section 12.24.040 and the City Manager or the City Council revoking a permit or authorization for use of a park ~~pursuant to Section 12.24.060.B.~~ Failure to follow the procedures contained herein shall constitute a waiver of the person's right to bring an appeal of such order.

B. Not later than ~~ten~~six days after ~~commencement~~issuance of an order revoking a permit or excluding a person, the affected person may appeal in writing to the Cottage Grove municipal court for de novo review of the order or may petition the Cottage Grove municipal court to rescind or alter the order, or reduce the duration of exclusion. The exclusion shall be stayed during the pendency of the appeal.

C. An appeal shall contain a copy of the order, a request for a hearing or request for written review without a hearing, and a statement setting forth the reason that the order is invalid, otherwise improper, or why it should be changed. Failure to raise an issue with sufficient specificity to afford the ~~public works director, police officer, or authorized park employee~~City Manager an opportunity to respond to the issue precludes appeal to the municipal court on that issue.

~~C.~~D. If, as part of the written appeal, the person requests a hearing, a public hearing will be conducted by the Cottage Grove municipal court ~~or designee,~~ within ten days after the ~~hearing~~appeal is filed.

~~D.~~ ~~The procedure to be followed for such hearing shall be as provided in cases of civil infractions. The municipal court may question witnesses and review all documentation referred to by the witnesses. Unless the municipal court orders otherwise, there shall be no continuance or reopening of the hearing.~~E. The City shall have the burden to show by a preponderance of evidence that the exclusion was based upon conduct proscribed by Section 12.24.040.A. Copies of documents in City control and which are intended to be used by the City at the hearing shall be made available to the appellant at least two days prior to the hearing.

F. A determination by the municipal court judge that the officer who issued the exclusion notice at the time had probable cause to cite the person to whom the exclusion notice was issued for the conduct described in Section 12.24.040.A shall be prima facie evidence that the exclusion was based on conduct prohibited by law.

~~E.~~ ~~At any time during an exclusion, an excluded person may petition in writing to the city manager, or designee, for a temporary waiver of the exclusion for good reason. (Ord. 2824 §2(part), 1998)~~