



AGENDA SUMMARY EUREKA CITY COUNCIL

TITLE: Introduce Bill No. 993-C.S. to Repeal and Replace the City's Camping Ordinance to bring it into conformity with current case law.

DEPARTMENT: City Attorney

PREPARED BY: Robert N. Black

PRESENTED FOR: Action Information only Discussion

RECOMMENDATION

Waive full reading, read by title only, and introduce Bill No. 993-C.S., **AN ORDINANCE OF THE CITY OF EUREKA REPEALING AND REPLACING SECTION 93.02 OF TITLE IX, CHAPTER 93 – PARKS AND RECREATION.**

FISCAL IMPACT

No Fiscal Impact Included in Budget Additional Appropriation

COUNCIL GOALS/STRATEGIC VISION

DISCUSSION

Camping on Public and Private Property

The Bill now before you is up for “re-introduction.” It has been subject to continual review both internally and in response to public comment. Perhaps fortuitously, it had a couple of procedural setbacks that delayed adoption and allowed time for it to be amended. The version now before you has been changed, edited, and re-worded in substantial ways but in its essence it remains the same as the previously introduced version. An attempt has been made to streamline and simplify. For example, the descriptions of the Old Town/Downtown, Gateway, Henderson, and Waterfront Business Districts have now been made part of the new Section, instead of cross-referencing.

In summary, this Bill prohibits camping by anyone in specified places and by anyone between the hours of 30 minutes after sunrise to 30 minutes after sunset, with weather-related exceptions. At the same time, it decriminalizes “involuntary camping” by persons for whom there is no shelter or “available accommodation” in real time in the City for that person.

The Council is aware of the *Martin v. City of Boise*¹ case in which the Ninth Circuit Court of Appeals invalidated Boise's camping ordinance on the grounds that it criminalized necessary human behavior; specifically, sleeping, sitting, and lying on public property when homelessness and lack of available shelter gives individuals no alternative.

“ . . . [T]he Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being.

This principle compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. As *Jones* reasoned, '[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.' *Jones*, 444 F.3d at 1136. Moreover, any 'conduct at issue here is involuntary and inseparable from status — they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.' *Id.* As a result, just as the state may not criminalize the state of being "homeless in public places," the state may not "criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets."

The three-judge panel of the original Boise court goes on to describe its ruling as a "narrow one." "[W]e (the court) in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place."

Later, an attempt was made to have the three-judge decision re-heard by the full Ninth Circuit Court of Appeal. Circuit Judge Berzon, the author of the original opinion, made these comments in a concurrence to the decision to deny the re-hearing:

The City is quite right about the limited nature of the opinion. On the merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment. *Martin*, 902 F.3d at 1035. Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter. (Emphasis in the original.)

¹ [Martin v. City of Boise, 920 F.3d 584, 617, 2019 U.S. App. LEXIS 9453, *41](#)

City staff have supplied the information that over 900 acres of City, State, and Federal public property, not counting streets, sidewalks and buildings, remain outside the prohibited places of the ordinance.

It is with these Boise principles in mind that the attached ordinance was drafted and subsequently revised. First, the new Section 93.02 does not prohibit the conduct that Boise decriminalized, “involuntary camping,” except where it is reasonable to do so, in limited areas and places in the City and at limited times. This current iteration increased the allowed hours to 30 minutes before sunset and 30 minutes after sunrise. A new exception has been added that would allow people lawfully camping to remain in place if it is actively raining or snowing or the temperature has dropped below 40 degrees Fahrenheit as of 30 minutes after sunrise.

The proposed ordinance defines involuntary camping as “camping at such time as there is no accommodation accepting homeless persons within the City that is available to that same person.” Even involuntary camping will be prohibited under the ordinance in certain places. Under the revised ordinance it would be:

PROHIBITED PLACE means each of the following places:

- a. the Sequoia Park Zoo;
- b. the Eureka Municipal Golf Course
- c. the area 75 feet from the centerline of any officially-designated Recreational or Multi-use Trail on City property;
- d. the Downtown/Old Town Business District as defined in Appendix A to this Section;
- e. the Northern Gateway Business District A, as defined in Appendix B to this Section;
- f. the Waterfront Business District, as defined in Appendix C to this Section;
- g. the Henderson Center Business District, as defined in Appendix D to this Section;

To assist the Council in visualizing these exclusion zones, copies of the appendices are included with your agenda material.

Finally, the Bill prohibits camping on public property in a manner that would constitute “obstructive conduct” under Section 130.11 of the EMC or obstructing “public ways” under Section 130.13.

Camping on Private Property

Apart from the Constitutional considerations in the regulation of camping on public property, this ordinance also repeals and replaces the existing provisions of Section 92.03 regulating camping on private property within the City limits. Effectively, under the revised terms, most camping on private property is restricted to residentially zoned property with existing residential use. The permission of the owner of at least a 50% interest in the property is required.

REVIEWED AND APPROVED BY:

- City Attorney
- City Clerk/Information Services
- Development Services
- Finance
- Fire
- Community Services
- Personnel
- Police
- Public Works