

COUNCIL ORDINANCE No. 2222

Notice of Clerical or Typographical Error

On February 1, 2023, the City Recorder noted clerical or typographical errors within the text of Ordinance No. 2222, which was originally adopted by the Milwaukie City Council on December 6, 2022, as signed by Mayor Mark Gamba.

The authority to make the corrections noted below is found in Milwaukie Municipal Code (MMC) 1.01.080 Editing the Code:

In preparing adopted ordinances for codification and distribution, the City Recorder shall not alter the sense, meaning, effect, or substance of any ordinance, but, with such limitations, may correct manifest clerical or typographical errors. (Ordinance No. 1902 § 2, 2002)

These corrections are as follows:

- **Section 9.32.030.A.(3)** shall read as follows, removing “special” as the word “special” is not referred to in relation to this part of the MMC.

3. Within any publicly owned Mapped Natural Resource ~~Special~~ Area.

- **Section 9.32.060.C.** shall read as follows, correcting a reference to Oregon Revised Statute (ORS) 202 which should read as 203.

C. In addition to any other penalties that may be imposed under this chapter, any violation of this chapter will constitute a public nuisance and may be abated pursuant to ORS ~~202.077~~ 203.077 and 203.079.



Scott Stauffer, City Recorder

2/1/2023

Date

COUNCIL ORDINANCE No. 2222

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE (MMC) BY ADDING A NEW SECTION 9.32 CAMPING.

WHEREAS recent court cases prohibit civil or criminal punishments for sitting, lying, or sleeping in public when a shelter bed is unavailable, and

WHEREAS Oregon House Bill (HB) 3115 (2021) requires that any law regulating the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be “objectively reasonable” as to time, place, and manner with regards to people experiencing homelessness, and

WHEREAS the metro region is currently facing a housing affordability crisis and thousands of individuals have been priced out of the housing market, and

WHEREAS this city continues to approve the construction of more affordable units, but cannot meet the demand alone, and

WHEREAS the city supports the dignity and wellbeing of individuals needing a safe location to sleep in at night, and

WHEREAS the city strongly recognizes the need to take action to restore and protect our natural areas, ecosystems, climate, and planet, and the shared desire for a resilient community, environmental justice, and access to nature for all community members, and

WHEREAS we must balance the needs of all residents and the natural environment as we strive to meet the needs of our houseless population, and

WHEREAS the city is in the process of hiring and partnering to hire both a mental health specialist and houseless liaison for individuals in crisis, and

WHEREAS the Milwaukie Police Department has an exceptional record of developing positive relationships with our houseless community and working with many to find a path to stable housing, and

WHEREAS the community development department has led work on behalf of the City Council to address the needs of those in crisis over the past six years.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Amendments. The Milwaukie Municipal Code (MMC) is amended as described below.

Section 2. Effective Date. The amendments will become effective 30 days from the date of adoption.

9.32.010 Purpose.

The purpose of this chapter is to provide objectively reasonable time, place, and manner restrictions for temporary camping on public property while also taking into consideration environmental impact, human dignity, and community safety concerns.

9.32.020 Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

“Camp” or “camping” means to pitch, create, maintain, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, temporary shelters, natural materials, or vehicles.

“Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city-designated cooking facilities and similar equipment.

“Camping impact area” means the areas specified within MMC 9.32.030.

“Campsite” means any place where one or more persons have established temporary sleeping accommodations by use of camp facilities and/or camp paraphernalia.

“Family” means any person or group of persons living within a single housekeeping unit as defined in MMC 19.201.

“Mapped natural resource area” means any land designated as a natural resource area on the Natural Resource Administrative Map, including, but not limited to, Habitat Conservation Areas and Water Quality Resources.

“Natural outlet” means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater

“Parking lot” means a developed location that is designated for parking motor vehicles, whether developed with asphalt, concrete, gravel, or other material.

“Public Park” means a park, playground, swimming pool, reservoir, or athletic field within the city that is under the control, operation, management, or ownership of the City of Milwaukie or another public agency as defined in MMC 19.201.

“Solid waste” means any garbage, trash, debris, yard waste, food waste, or other discarded materials.

“Solid waste disposal services” means contracted solid waste collection service for a campsite with the city’s exclusive franchisee for the collection of solid waste.

“Store” means to put aside or accumulate for use when needed, to put for safekeeping, or to place or leave in a location.

“Stormwater system” means any structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including, but

not limited to, pipes, sewers, curbs, gutters, manholes, catch basins, detention facilities, ponds, creeks, underground injection control (UIC) facilities, open drainageways, and their appurtenances.

“Street” means any highway, lane, road, street, right-of-way, boulevard, alley, and every way or place in the City of Milwaukie that is publicly owned or maintained for public vehicular travel.

“Transitional Housing Facility” means a camp facility for which a permit has been sought and obtained from the Milwaukie City Manager, or their designee, and/or a city-sponsored Transitional Housing Facility

“Vehicle” means a device in, upon, or by which any person or property is or may be transported or drawn upon a public street, except devices moved by human power or used exclusively upon stationary rails or tracks as defined in MMC 19.201

“Water Supply System” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes, and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use.

9.32.030 Unlawful Camping.

A. *Camping Impact Areas.* It is unlawful to camp at any time within a camping impact area. The following locations are camping impact areas:

1. Within 1000 feet of the nearest point of any transitional housing facility;
2. Within 50 feet of the nearest edge of the Willamette River, Kellogg Creek, and Johnson Creek.
3. Within any publicly owned Mapped Natural Resource ~~Special~~ Area
4. Upon any land managed for the operation and regulatory compliance of the municipal water supply system, stormwater systems and associated natural outlets.

This section revised 2/1/23.

B. *Daytime Camping Prohibited.* During the hours of 7:00 a.m. to 9:00 p.m., it will be unlawful for any person to camp, occupy camp facilities for purposes of habitation, or use camp paraphernalia in the following areas:

1. Any Public Park or Mapped Natural Resource Area;
2. Any street or sidewalk; or
3. Any publicly owned or maintained parking lot, alley, public right-of-way or other publicly owned or maintained area, improved or unimproved.

9.32.040 Unlawful storage of personal property in public space.

Except as otherwise provided within this chapter, during the hours of 7:00 a.m. to 9:00 p.m., it will be unlawful for any person to store personal property, including camp facilities (other than vehicles) and camp paraphernalia, in the following areas:

1. Any Park or Mapped Natural Resource Area;
2. Any street or sidewalk; or
3. Any publicly owned or maintained parking lot, alley, public right-of-way or other publicly owned or maintained area, improved or unimproved.

9.32.050 Penalty for violations.

Before issuing a citation under this chapter, a municipal police officer will first give the person a written, and if possible, a verbal notice of violation with guidance and direction to remedy the violation. The written notice will be physically served on the camp occupant(s) if they can be contacted or prominently posted at the camp. The person will be given a minimum of 72 hours to remedy from the violation. The person will also be offered assistance accessing social services, including shelter resources (to the extent they are available), veteran resources, mental health support, and drug and alcohol addiction and recovery resources. A citation will not be issued if the person promptly complies with the direction and remedies the violation within the 72 hours following the notice of violation. Any person who does not remedy the violation within 72 hours may be subject to the following penalties:

1. First violation in 30-days: Written and/or verbal warning that violation is subject to citation and/or arrest. City staff will initiate outreach and support for accessing social services.
2. Second violation in 30-days: A citation of not more than \$50 and a 30-day exclusion pursuant to MMC 9.20.020.
3. Third violation in 30-days: A municipal citation of not more than \$50 and a 90-day exclusion pursuant to MMC 9.20.020.

OR a criminal citation for violation of any applicable Oregon Revised Statute including, but not limited to, the following:

- a. ORS 164.805- Offensive Littering;
- b. ORS 164.775- Deposit of trash within 100 yards of a waterway.
- c. ORS 166.025- Disorderly Conduct II;
- d. ORS 162.247-Interfering with a Peace Officer I; and
- e. ORS 162.235- Obstructing Governmental or Judicial Administration.

Any single municipal citation and fine issued to a person experiencing homelessness will not exceed \$50.00. The Municipal Court Judge may waive fines for anyone providing proof they are actively engaging in social services which relate all or in part

to the offense cited for (camping, mental health support, addiction, and recovery support).

9.32.060 Removal of Campsite.

A. The City may call for the removal of campsites, regardless of location, if a campsite poses a safety or health risk to the public or environment. These circumstances include, but are not limited to, the following:

1. Violation of the Milwaukie Municipal Code.
2. To ensure the safety of people camping and other users of the roadway, including pedestrians, due to camp facilities being in or near the portion of the right-of-way used by vehicles.
3. To abate solid waste and debris left in the right-of-way or on nearby public or private property other than the right-of-way if attempts to manage solid waste and debris have been unsuccessful.
4. To prevent violence and/or criminal activity reported to and/or observed by the Milwaukie Police Department.
5. To prevent adverse environmental impact including, but not limited to, improper disposal of solid waste, public urination and defecation, and open burning.
6. To prevent hostile interactions and/or altercations (which are not protected under the state and federal constitution as free speech) with members of the public.
7. To prevent the construction or erection of unpermitted structures in the right-of-way.
8. To prevent a campsite from blocking vehicle or bicycle travel lanes or reducing the clear, continuous sidewalk width to less than three feet.

B. The 72-hour notice requirement under 9.32.050 does not apply:

1. When law enforcement officials have a reasonable belief or suspicion that illegal activities other than camping are occurring at an established camping site.
2. In the event of an exceptional emergency at an established camping site, including, but not limited to, possible site contamination by hazardous materials, a public health emergency or other immediate danger to human life or safety.
3. If a funeral service is scheduled with less than 72 hours' notice at a cemetery at which there is a camping site, or a camping site is established at the cemetery less than 72 hours before the scheduled service, the written notice required under 9.32.050 may be posted at least 24 hours before removing people camping from the camping site.

Any person ordered to remove a campsite under this subsection must vacate and remove all belonging from the campsite within four hours of receiving notice of the

safety or health risk to the public necessitating the removal unless additional time is otherwise required by law.

C. In addition to any other penalties that may be imposed under this chapter, any violation of this chapter will constitute a public nuisance and may be abated pursuant to ORS 203.077 and 203.079. **This section revised 2/1/23.**

D. Property seized will be stored for a minimum of 30 days. Property that has no apparent utility or value, or that is in an unsanitary condition rendering it unsafe to store, will be discarded immediately. An unsanitary condition is one that will likely lead to injury or health problems for individual near it or required to handle it. Property simply being wet and/or dirty does not constitute an unsanitary condition for the purpose of this ordinance. A substance or material is hazardous or contaminated if it is capable of posing an unreasonable risk to health, safety and property when contacted or transported. There will be no fee to retrieve property collected and stored for safekeeping.

9.32.070 Administrative Rules.

The city manager or designee may adopt administrative rules to implement any of the provisions of this chapter.

Read the first time on 12/6/2022 and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 12/6/2022.

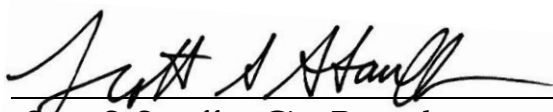
Signed by the Mayor on 12/6/2022.



Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney