

**City of Bend
City Manager Administrative Policy**



TITLE: Management and Removal of Established Campsites in City Rights-of-Way
POLICY NO.: ADM 2021-1



CITY OF BEND

**MANAGEMENT AND REMOVAL OF ESTABLISHED
CAMPSITES IN CITY RIGHTS-OF-WAY
Policy No. ADM 2021-1**

Bend Code Chapter 1.30.005 provides for ‘City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines.’ All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and council ordinances.

The following policy conforms to the above stated standards.

Authorized by City Manager:

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Eric King
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Eric King, City Manager
Dated: 12/17/2021

Reviewed by Legal Counsel:

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Mary Winters, City Attorney
Dated: 12/17/2021

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I. Recitals

A. ORS 203.077 requires cities and counties to develop a policy that recognizes the social nature of the problem of homeless individuals camping on public property and implement the policy as developed, to ensure the most humane treatment for removal of homeless individuals from camping sites on public property.

B. The City Council for the City of Bend is the road authority for rights-of-way within the city of Bend. City Council has delegated to the City Manager the authority to make certain initial decisions and take certain actions relating to the rights-of-way within the city of Bend, including closing or restricting the use of streets and sidewalks, and other rights-of-way.

C. This Policy is intended to address health and safety concerns of both the travelling public and individuals residing or camping on City rights-of-way, reduce potential risks of fire, promote a safe environment, eliminate unsanitary conditions and conditions that can impact public health and safety, reduce negative impacts to the environment from hazardous materials including human waste and other pollutants, allocate public resources effectively, and meet legal and humanitarian standards for all people within the city.

D. The City recognizes the social nature of the problem of homelessness that has contributed to individuals locating themselves on the right-of-way and publicly-owned property and establishing campsites there. 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.

E. In Bend, the barriers to ending homelessness are exacerbated by the lack of short-term and long-term shelter options, the lack of supply of affordable housing, and the overall lack of resources that are needed to treat the conditions that can lead to homelessness for some individuals such as comprehensive substance abuse treatment and mental health disorder treatment. The City has made substantial strides in the last several years in adopting code changes and working with other government partners, non-profit organizations, advocacy groups, community groups, and other stakeholders in creating a network of additional options for the delivery of services and shelter to people who are unhoused and unsheltered.

F. As the road authority, the City must consider the safety of motorists and pedestrians traveling on roadways, including to and from neighboring properties, businesses, and residences. The City, as road authority, has increasing concerns regarding safety due to camping on or in rights-of-way in or near streets, roads, and property access points.

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G. The City is in the midst of a multi-year effort to increase mobility options, design safer streets, and reduce or eliminate fatal and serious injuries on City streets. The 2020 Transportation Systems Plan, 2020 Traffic Safety Action Plan, design standards update, and City Council goals all emphasize designing and operating safer streets working toward no serious injuries or fatalities on City streets. People storing items and occupying tents or other structures at ground level in the street immediately adjacent to vehicle traffic pose an increased street safety risk that is not in alignment with the policies to reduce crashes and injuries on City streets.

H. This Policy sets out steps and procedures the City Manager will use to determine when to remove established campsites on City rights-of-way or take other steps to manage issues on rights-of-way. This Policy is intended to be used to remove those established campsites on City rights-of-way that are having the greatest impact on public health and safety, including for those individuals residing or camping at a particular location, as determined by the City Manager and as set forth in this Policy.

I. The placement of tents, bedding, and other structures in the right-of-way on or next to paved surfaces and or between curblines is dangerous to those camping or sleeping. Placement of those items on sidewalks can impede the use of sidewalks and other public ways if six feet of passage is not maintained. The City has a responsibility as the road authority to maintain the streets and sidewalks as safe, passable, and accessible, and to act to avoid death and injury to all users of the rights-of-way, including those without other homes.

J. This Policy does not regulate, criminalize, or otherwise subject to civil citation the acts of sitting, lying, sleeping, or keeping warm and dry on public property, as prohibited by the Ninth Circuit in the *Martin v. City of Boise* case and the District of Oregon in the *Blake v. City of Grants Pass* case. As required by ORS 203.077 and ORS 203.079, this Policy sets forth when and how the City may remove established campsites in the right-of-way that have been determined to be Unsafe Campsites, as defined below, or are otherwise unsafe as described in Section II.D., below. This policy is intended to be interim and to be revised following adoption of further ordinances by the City Council.

II. Policy

A. Application and Definitions.

1. Application.

- i. This Policy applies to City-owned rights-of-way, whether in fee title or as holder of an easement for right-of-way purposes. This Policy does not apply to property owned or leased by the City in fee title that is not right-of-way.

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- ii. The City may use a contractor to carry out requirements established in this Policy. If a contractor is utilized, the contractor must comply with the same requirements that must be met by the City as identified in this Policy.

2. Definitions. For the purposes of this policy, the following definitions apply.

- i. "Established campsite" means a location on a City right-of-way where one or more tents, awnings, lean-tos, sleeping or bedding materials, cooking implements or materials, or other items or structures have been erected, constructed, or placed, and that appear to be used for human habitation, including but not limited to sleeping, preparing cooking or warming fires, storing personal belongings, and urinating or defecating.
- ii. "Unsafe Campsite" means a segment or portion of a City right-of-way the City Manager has determined is being used as an established campsite consisting of 8 or more tents, structures, vehicles, or other items used for human habitation, in a manner that poses a threat to public health and safety to people camping, the general public, and other users of the right-of-way as a traveled thoroughfare using the evaluation criteria set forth below in Section II.B.
- iii. "Personal property" means any item that is reasonably recognized as belonging to an individual and that has apparent utility.
- iv. "Garbage" means items voluntarily left in the right-of-way for collection by a third party, or otherwise abandoned by the owner, and items not reasonably recognizable as belonging to individual persons and which have no apparent utility or are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination.

B. Unsafe Campsite Removal (for Large, Established Campsites)

1. Campsite Outreach. Prior to determining a location is an Unsafe Campsite, the City Manager will cause City staff, including but not limited to Bend Police Officers, to do the following:

- i. Attempt to connect individuals residing or camping at the location with social services organizations that provide services to houseless individuals, and

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ii. Attempt to mitigate or resolve the health and safety concerns that create the unsafe camping conditions.

2. **Determination of Unsafe Campsite.** The City Manager will only order an established campsite to be removed after determining it constitutes an Unsafe Campsite as defined in this Policy. The City Manager's determination of an Unsafe Campsite must be made in writing, identifying the conditions that provide the basis for the determination, as well as a reasonable description of the location that is an Unsafe Campsite and an estimate of the number of people and structures, tents, vehicles, etc., present at the location.

3. The City Manager may determine a segment or portion of right-of-way where established campsites on City rights-of-way are having the greatest impact on public health and safety is an Unsafe Campsite in consideration of the location's threat to public health, safety, and the environment. The attached Exhibit A may be used in evaluating locations. The impact on public health and safety will be assessed by considering circumstances including but not limited to:

i. Concerns for the safety of people camping and other users of the roadway, including pedestrians, due to camp structures being in or near the portion of the right-of-way used by vehicles;

ii. Increasing amounts of trash and debris left in the right-of-way and whether that trash and debris has spread to nearby public or private property other than the right-of-way and whether attempts to manage trash and debris have been successful;

iii. The amount and seriousness of violence and/or crime being reported and/or observed by Bend Police;

iv. Environmental impact, including public urination and defecation, manner of disposal of human waste, and open burning, and whether attempts to manage human waste and environmental impacts have been successful;

v. Interactions and altercations with other users in the areas;

vi. The number and severity of calls for service received by Bend Police, the Transportation and Mobility Department, and other City departments; and

vii. Whether the campsite is located in rights-of-way near or used to access a nearby school, daycare, playground, or other property providing service to children.

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4. In addition, the City Manager may consider whether any of the following activities are taking place and whether or not citation has been issued:

- i. Construction or erection of unpermitted structures in the right-of-way without a permit, in violation of Bend Code (BC) 3.40.005;
- ii. Violation of BC 5.15, alcoholic liquor;
- iii. Violation of BC 5.30.005, Fire Regulations;
- iv. Public defecation or urination in violation of BC 5.35.015;
- v. Citation or arrest for the crimes listed at BC 5.40.015;
- vi. Trespass to vehicle, in violation of BC 5.40.085;
- vii. The presence of activities that could subject private property to citation as a chronic nuisance, listed at BC 5.45.005.A.;
- viii. Obstructing public ways, in violation of BC 6.15.010;
- ix. Presence of a nuisance affecting public health as described in BC 13.45.005;
- x. Whether vehicles parked and/or structures unlawfully erected in the right-of-way block or limit access for vehicles and pedestrians, and/or whether or not the vehicles or structures constitute an obstruction of public way under BC 6.15.010; and
- xi. Violation of any other statute or City code the City Manager deems relevant to the health and safety of those camping in the right of way and other members of the public.

5. Removal of Unsafe Campsites. Following a City Manager determination that a portion or segment of City right-of-way is an Unsafe Campsite, the City Manager may:

- i. Order the location closed, pursuant to BC 6.10.000.A.8.;
- ii. Order the closure of rights-of-way adjacent or abutting the closed location, as reasonably necessary to facilitate campsite removal, in the sole determination of the City Manager;
- iii. Direct City employees, agents, and/or volunteers to remove the Unsafe Campsite, other personal property, and any debris or garbage from the location; and

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iv. Direct City staff, agents, and/or volunteers, and/or officers to clean and/or restore the right-of-way and discard items that have no apparent utility or are in an unsanitary condition.

6. Notice to service providers and City Council. At least 14 calendar days prior to the closure of any location that has been determined to be an Unsafe Campsite, the City must notify multiple service providers and City Council that deliver services to homeless individuals at the location to be closed.

7. Required Notice. At least 72-hours before a campsite will be removed under this Section B, the City must:

i. Cause notice to be posted at the campsite that the location will be closed, and that all individuals and personal property remaining will be removed; and

ii. Inform local agencies that deliver services to homeless individuals where the notice has been posted that such notice has been posted.

8. Once the 72-hour notice has been posted, removal must proceed as set forth in Section II.D., below.

C. Emergency Campsite Removal (for smaller campsites, or campsites that are blocking or otherwise obstructing the right-of-way)

1. The City Manager may direct Police or other City departments to provide a 72-hour notice to clear an established campsite, or a location consisting of fewer than eight (8) established campsites, in the right-of-way between the edges of pavement or on a paved roadway surface between the curblines if curbs are present, or on the sidewalk if a clear six-foot passageway cannot be maintained, or where a campsite in the right-of-way blocks or obstructs access for the public, businesses, or emergency service providers. The City must notify service providers that deliver services to homeless individuals at the established campsite at least 72-hours in advance of a planned campsite removal under this section. Following notice under this section, campsite removal shall be as provided in Section II.D. below.

i. At least 72-hours before a campsite will be removed under this Section C, the City must:

1. Cause notice to be posted at the campsite that the location will be closed, and that all individuals and personal property remaining will be removed; and

2. Inform local agencies that deliver services to

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homeless individuals where the notice has been posted that such notice has been posted.

- ii. A 72-hour notice posted under this section must provide clear information about how the campsite is unsafe under this section. If the site is moved to remedy the safety issue, the campsite will not be removed.
2. An established campsite may be removed without posting a 72-hour notice:
 - i. When there are grounds for law enforcement officials to believe that illegal activity, other than camping, is occurring on the campsite or in the immediate vicinity of the campsite, or the property that comprises the campsite is being used or is intended to be used to commit or facilitate the commission of otherwise illegal activity; or
 - ii. In the event of an exceptional emergency, such as possible site contamination by hazardous materials or when there is immediate danger to human life or safety. If the danger to human life or safety can be reduced by moving the established campsite to a safer location, such as an adjacent landscape strip, the campsite should be moved rather than removed under Section II.D. below.
 3. Once the 72-hour notice has been posted, or there are grounds to remove the campsite without advance notice under Section II.D.3., above, removal must proceed as set forth in Section II.D., below.

D. Procedure for Removing Campsites

1. When a 72-hour notice has been posted at an established campsite, the City may act on the notice and remove the campsite beginning 72 hours after posting and up to 10 days following the posting.
2. When removing individuals and property from an established campsite, whether following a City Manager determination under II.B., or because of an emergency under Section II.C., the City will make reasonable efforts to remove individuals without the use of force, arrest, or citation. No person may be arrested or cited for failing to move under this Policy prior to being asked by law enforcement or other City official to move.
3. When removing personal property, the City will make reasonable efforts to determine if property belongs to an individual and has any apparent utility. The City will make reasonable efforts to identify which campsite property

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was removed from, to aid connecting people with their property removed by the City. Items that have no apparent use or is in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, and discarded as part of any cleanup efforts by the City.

4. Weapons, drug paraphernalia or other contraband, and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials.

5. Following campsite removal, the City must post a notice stating the location where removed personal property is being stored, and how individuals can contact the City to retrieve their personal property.

6. Storage of personal property. Personal property removed from an established campsite and unclaimed at the time of removal will be stored by the City for a minimum of thirty (30) days, or the duration required by statute at the time of the campsite removal. Stored personal property will be reasonably available for any individual claiming ownership. The City will store personal property at or near one of the City business campuses, where people can reasonably access to retrieve belongings. The City will make reasonable efforts to provide a range of times the storage location will be available for people to collect their property. The City may dispose of any personal property that remains unclaimed after thirty (30) days, or such duration as required by statute.

7. Following, removal of established campsites, and right-of-way cleaning and/or restoration, the City Manager may provide appropriate signs and markings relating to traffic, type, hours and duration of permitted parking, or other limitations on the use of the right-of-way, to preserve the use of the right-of-way for commercial, residential, or other access and use as a thoroughfare.

8. The City Manager may direct staff not to take action on a posted notice, if after posting of a 72-hour notice under this policy and prior to action under the notice, extreme weather conditions threaten human health, including but not limited to the National Weather Service forecasting temperatures below 20 degrees or above 100 degrees, snow accumulation of 3" or more (unless removal is necessary to protect safety for snowplow operations), or issuing a Winter Storm Warning, Ice Storm Warning, Wind Chill Warning, or Excessive Heat Warning. The City may issue a 72-hour notice again when the weather event that delayed action has resolved.

E. Personal Property, Garbage and Debris Removal. Notwithstanding the above Sections II.B.-D. of this Policy, the City Manager may work with the Transportation and Mobility, Police, and other City departments and service providers to

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ensure the safety and protection of the public and those camping in a more expedited manner, including taking some or all of the following steps:

1. Provision of garbage service, handwashing stations, or other sanitation facilities at an established campsite;
2. Provision of notice that public ways must be kept clear, with a six-foot accessible passageway at all times, that no person may construct or install any item in the right-of-way without a City permit, or that no person may place any goods or materials in City right-of-way without a permit, as provided in BMC 6.15.010, 3.40.005, and 3.50.010; and removal of materials or goods placed in the right-of-way in violation of this section, subject to the storage provisions of this policy for personal property;
3. Notice and removal of vehicles parked in the roadway for more than three (3) business days, in violation of BMC 6.20.005. If the only violation is that the vehicle has been parked in one location for more than three (3) business days, and it reasonably appears from the circumstances the vehicle is being lived in and the owner of the vehicle has asserted an inability to pay fines or impoundment fees, the City shall consider other options and weigh the necessity of removing a vehicle before towing and impounding a vehicle;
4. Notice and removal of garbage, debris, or other discarded items placed, stored, piled, or otherwise left in the right-of-way; and
5. Other actions the City Manager deems necessary to protect public health and safety.