



Staff Report

File #: 21-213

Version: 1

Date: 5/24/2021

Item #: 5.a.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Dan Atchison, City Attorney

SUBJECT:

Extension and amendment of the Emergency Declaration related to COVID-19

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance; Safe Community; Welcoming and Livable Community.

ISSUE:

Shall City Council adopt Resolution No. 2021-21 to extend the declaration of emergency related to COVID-19 until December 13, 2021, and rescind the allowance for camping in Cascades Gateway and Wallace Marine parks?

RECOMMENDATION:

Adopt Resolution No. 2021-21 to extend the declaration of emergency related to COVID-19 until December 13, 2021 and rescind the allowance for camping in Cascades Gateway and Wallace Marine parks.

SUMMARY:

Resolution No. 2021-21 extends the declaration of emergency related to COVID-19 to December 13, 2021 and rescinds the allowance for camping in Cascades Gateway and Wallace Marine parks. The reduction of camping in Cascades Gateway and Wallace Marine parks will be a gradual process that is operationally sustainable over an extended period. The City's humanitarian approach to encouraging persons to move to appropriate locations will include connection with services and shelter providers.

FACTS AND FINDINGS:

On March 16, 2020, the City Council adopted resolution no. 2020-18 declaring a state of emergency related to COVID-19, restricting public gatherings and suspending laws prohibiting camping in unimproved areas of Wallace Marine and Cascades Gateway parks. The state of emergency has been extended until June 1, 2021 by Resolution No. 2020-57. COVID-19 continues to be a substantial threat to public health and safety. Although safe and effective vaccines are available and many Oregonians and Salem residents have been fully vaccinated, a large portion of the community has not been vaccinated, and therefore the threat from COVID-19 continues. Further, federal recovery programs are expected to extend through 2021 into 2022, and therefore it is necessary to extend the City's state of emergency and modify the emergency actions to align with state guidance.

Resolution no. 2021-21 extends the state of emergency until December 13, 2021 and rescinds the allowance for camping in unimproved areas of Wallace Marine and Cascades Gateway parks.

Limited Camping. The conditions in these camping areas have deteriorated to the extent that the threat to the health and safety of the unsheltered campers, and to the community at large, in terms of communicable disease, including COVID-19, is considerable. Therefore, staff recommends that the City Code provisions restricting camping and overnight use in these two parks be allowed to go back into effect. The lack of adequate shelter in Marion and Polk counties and the legal and practical limits on the City's ability to enforce generally applicable laws make the relocation of a significant number of individuals sheltering in the parks unlikely in the short-term.

The camps in the parks largely do not observe restrictions intended to limit the spread of COVID-19. Campsites proliferate in active park areas. Campsites are often located close to one another. Conflicts between campers, park users, and neighboring residents are common. The conditions in and around some campsites are unsanitary and a potential threat to public health and safety. Flooding over the winter caused large amounts of waste and trash to wash into City waterways and the Oregon Department of Environmental Quality has received multiple complaints about the conditions. The City has attempted to address the conditions in the camping areas by providing frequent trash collection, temporary restrooms and hand-washing stations, and SHA and non-profit service providers frequently visit the camping areas to help residents access services.

All previously issued emergency orders issued by the City Manager relating to this state of emergency will continue in effect unless modified by the City Manager.

While the resolution extends the state of emergency until December 13, 2021, City Council may terminate or modify the declaration at any time. Salem Revised Code provides authority for the City Council to declare a state of emergency if emergency conditions exist within the City, and to authorize the City Manager to take actions to address the conditions.

BACKGROUND:

Clarification of City Enforcement Ability.

While a police response is not the desired method to address conditions caused by unsheltered camping or use of public areas, in some instances it is the only option available to address trespass

or other illegal conduct when other methods are not effective.

The legal and practical enforcement limits include the substantial reduction in county jail capacity due to COVID-19, which practically eliminates the City's ability to arrest and lodge individuals that commit non-violent offenses at the county jails. In addition, the U.S. Circuit Court's decision in *Martin v. Boise* established limits on local governments' authority to cite or prosecute unsheltered individuals for otherwise criminal conduct that arise because of their status as unsheltered. The *Martin v. Boise* decision establishes limits on City enforcement authority as applied to unsheltered individuals:

1. Jurisdictions do not have an obligation to provide sufficient shelter for the homeless, but so long as there are a greater number of homeless individuals in a jurisdiction than the number of available beds in shelters, a jurisdiction cannot criminally prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public;

In the *Martin* case, beds were available at the Boise UGM and other shelter locations, however the individual plaintiffs were unable to utilize those shelters due to religious objections, because they were barred from a shelter due to conduct, or had exceeded the provider's occupancy time limit. It is likely that even if Salem had a variety of shelter options available, some individuals would have court-recognized justifications for not using those options. The City may impose time limits on utilizing public areas, including sidewalks, for camping and other activities, or even an outright prohibition on camping in certain areas such as parks, so long as other location options remain available.

2. This restriction does not apply to individuals who do have reasonable access to adequate shelter, but do not to use it (however, see the commentary above); and
3. Jurisdictions cannot apply criminal penalties to the unsheltered for protecting themselves against inclement weather but may enforce restrictions on obstructing public rights of way or maintaining certain unpermitted structures (subject to State preemption of local criminal laws).

The City requires permits to maintain structures in the public right of way, including sidewalks. In addition, City Council passed SRC 94.720 which limits maintaining a campsite in certain public areas, although as conditioned by Council, SRC 94.720 may not be enforced until qualifying shelter, including coverage from the elements and access to restrooms is available. The *Martin* decision did not provide detail on what protection against the element must be allowed; it is unclear if a tent or other improvised structure is permitted.

Dan Atchison
City Attorney

Attachments:

1. Resolution No. 2021-21