



# CITY OF LYONS

PHONE: (503)859-2167  
FAX: (503)859-5167  
[www.cityoflyons.org](http://www.cityoflyons.org)

449 5<sup>TH</sup> STREET  
LYONS, OREGON 97358  
[cityoflyons@wavecable.com](mailto:cityoflyons@wavecable.com)

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## ORDINANCE NO. 246-2023

AN ORDINANCE AMENDING THE CITY OF LYONS MUNICIPAL CODE 8.20.010, PROHIBITED CAMPING; 8.10.155, UNATTENDED PROPERTY PROHIBITED; AND REPEALING SECTION 9.15, CURFEW, TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF ORS 195.530.

WHEREAS, the City of Lyons (City) finds that each community member of Lyons 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, 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. The City is committed to ensuring the most humane treatment of homeless individuals and to the removal of homeless individuals from established campsites on public property, per 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, 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 sitting, lying, sleeping, and keeping warm and dry on all outside public property that is open to the public, 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, 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, the State of Oregon is facing an overwhelming crisis of people experiencing homelessness; and

WHEREAS, the number of individuals reported as experiencing homelessness in the Tri-County Region (Linn, Benton, and Lincoln Counties) continues to increase; and

WHEREAS, due to the City's small size, unhoused individuals seeking a place to sit, lie, sleep, and keep warm and dry within the City of Lyons to date have been transitory, resulting in no individuals experiencing homelessness sitting, lying, sleeping, or keeping warm and dry outdoors within the City at any given time; and

WHEREAS, the City Council intends to continue regulating sitting, lying, sleeping, keeping warm and dry, and survival sheltering outdoors on City streets and public property that is open to the public only in the context of the City's commitment to monitor available public space available in comparison to the number of unhoused individuals within the City of Lyons on an ongoing basis; and

WHEREAS, 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; and

WHEREAS, 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 campsite. 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, the placement of tents, bedding, and other structures on City streets on or next to paved surfaces and/or between curb lines is dangerous to those sitting, lying, sleeping, and keeping warm and dry 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, the current Lyons Municipal Code (LMC) does not ban camping on City streets in vehicles parked in compliance with parking regulations that apply to all vehicles, allowing the temporary occupancy of vehicles located in City rights-of-way for up to 96 consecutive hours; and

WHEREAS, the City recognizes the need to provide public locations within the City for individuals experiencing homelessness who are unable to access locations within the City 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, the City Council and staff have identified all City owned public lands, including streets and parkland; and

WHEREAS, the City Council recognizes that City law enforcement can rely upon and enforce the state’s minor curfew provisions set forth in ORS 419C.680 in place of the City’s current curfew provisions set forth in LMC 9.15; and

WHEREAS, 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 *Martin v. City of Boise*, *Blake v. City of Grants Pass* and *Johnson v. City of Grants Pass* and ORS 195.530. Instead, this Ordinance ensures that the City’s vehicular and pedestrian traffic regulations constitute 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 Lyons; and

WHEREAS, the City performed a Code Audit to ensure LMC complies with ORS 195.530; and

WHEREAS, the City Council considered possible Code amendments on August 22, 2023, and desires to adopt those amendments in order to further the public purposes set forth in the findings above; and

WHEREAS, the proposed amendments are consistent with other Chapters of LMC.

NOW, THEREFORE,

The City of Lyons ordains as follows:

**Section 1. Findings.** The Council adopts the findings set forth above as support for the City’s existing Code provisions and the amendments adopted thereto by this Ordinance.

**Section 2. Amend.** The following provisions of the Lyons Municipal Code (LMC) are amended as follows:

a. LMC 8.20.010, Prohibited Camping, Subsection B is hereby amended to read:

No person shall camp in or upon any sidewalk, street, alley, lane, public right-of-way, park, or other publicly owned property, unless otherwise specifically authorized by this code. Activities otherwise prohibited by this subsection may be permitted by an Executive Order issued by the Mayor, the City Manager, or their designees for the temporary use of public lands by individuals experiencing homelessness. Such Executive Orders shall specify the period

of time and location where such activity is permitted, based upon all factors relevant to the purposes of this Ordinance and in compliance with applicable state and federal law.

- b. LMC 8.10.155, Unattended Property Prohibited, Subsection D.2, is hereby amended to increase the time period required for posted written notice from 24 to 72 hours. All other Subsections and text remain unamended, in full force and effect.

**Section 3. Repeal.** LMC 9.15, Curfew, is hereby repealed in its entirety.


**Section 4. Continued Effect.** All unamended provisions of the Lyons Municipal Code shall remain unchanged and in full force and effect.

**Section 5. Severability.** The sections, subsections, paragraphs and clauses of this ordinance and the attached Code provisions are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs, and clauses.


**Section 6. Codification.** Provisions of this Ordinance shall be incorporated into the City Code, and the words "ordinance" or "section" may be changed to "code," "article," "chapter," "division," or another word, and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any recital clause and boilerplate provisions of this Ordinance (i.e., Sections 1, and 4 through 7) need not be codified, and the City Manager is authorized to correct any cross-references and any typographical errors.

**Section 7. Effective Date.** This ordinance will go into full force and effect on the 30<sup>th</sup> day after City Council enactment.

Passed by the Council this 5<sup>th</sup> day of December, 2023

Approved:   
Lloyd Valentine  
Mayor of the City of Lyons, Oregon  
Date: Dec 5 2023

ATTEST:

By:   
Micki Valentine  
City Manager for the City of Lyons, OR  
Date: 12-5-2023

	Aye	Nay
Mayor Valentine	✓	—
Pro Tem Ritchie	✓	—
Councilor Wagner	✓	—
Councilor Hyde	✓	—
Councilor Watts	✓	—