



Council Business Meeting

November 21, 2023

Agenda Item	Balancing Homelessness Services with Public Space Regulations for a More Livable City	
From	Douglas M McGeary	Acting City Attorney
Contact	Doug.mcgeary@ashland.or.us	
Item Type	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/>	

SUMMARY

Over the past two decades, the legal landscape surrounding homelessness and transient populations in Oregon has evolved significantly. The City of Ashland has not been immune to these changes and has experienced a substantial impact. Ashland's ordinances and law enforcement practices have continuously adapted to cope with the growing influx of homeless individuals. However, recent federal and state laws have imposed additional requirements on cities, necessitating specific adjustments to Ashland's longstanding laws and approach to camping and public space occupation.

Over the last year and a half, the city has diligently worked to establish alternative shelter spaces for homeless individuals. As a result, the city is now at a crucial juncture, poised to revise its prohibited camping ordinance. This revision aims to effectively guide homeless individuals toward using the newly established shelter spaces while ensuring legal compliance and addressing the broader issue of homelessness in our community.

This proposed ordinance modifies our existing ordinances. These changes are designed to strike a balance between recognizing the unique challenges faced by the homeless population and safeguarding the integrity of our public spaces.

POLICIES, PLANS & GOALS SUPPORTED

Current city priorities encompass upholding effective code enforcement, promoting equity of access, and strong supportive city services, and broadening social and economic opportunities for every member of our community.

BACKGROUND AND ADDITIONAL INFORMATION

Civil rights lawsuits filed in federal courts have contested the legality of camping prohibitions, resulting in restrictions on the conventional enforcement of these measures. These legal challenges have invoked the 8th Amendment, which safeguards individuals against cruel and unusual punishment. In a series of rulings, the courts have maintained that it is essentially impermissible to penalize individuals for engaging in basic life activities, such as sleeping, lying, or sitting, particularly when they are involuntarily homeless and lack alternative locations to conduct these essential daily functions. You can find an in-depth explanation of the developing case law in this field on [homelessness](#), provided by the League of Oregon Cities.

Regardless of federal law interpretation, Oregon's legislature has anticipated the need for comprehensive protections for homeless individuals on public property. This has led to the passage of laws such as HB 3115 and HB 3124, which went into effect in July, 2023. The City of Ashland has partially suspended the enforcement of its ordinances that prohibit camping on public property. This suspension remains in effect until the city has fully





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implemented the requirements mandated by federal case law and these certain protective measures mandated by the state. These protective measures encompass the provision of alternative camping sites, such as the Dusk to Dawn campsite, and the availability of an Emergency Shelter as an alternative refuge for those who are genuinely experiencing involuntary homelessness.

The proposed ordinances aim to restore the city's capacity and necessity to regulate camping on public property in a way that differentiates between addressing behavior rather than the status of individuals who are involuntarily homeless. Prohibited Camping and Prohibited Occupancy are updated versions of ordinances previously employed by our city, as well as by most municipalities throughout the state. What sets Ashland apart is its distinctive prohibition on camping or occupying a specific public area with the intent of excluding others from its use, rather than establishing a temporary campsite for the purpose of "maintaining a temporary place to live," which is typically the norm in ordinances of other Oregon cities. This shift in approach signifies a departure from prohibiting individuals from living in public spaces and, instead, places emphasis on addressing the issue of individuals establishing residency or asserting a sense of ownership over public property. The definition of occupancy also establishes the times in which people are prohibited from exclusively using public spaces for camping, lying or sitting and the length of time for such use during the permitted times.

The changes to the prohibited camping ordinance concentrate on clarifying definitions for phrases that have either been utilized or left ambiguous by federal courts, as well as in HB 3115 and HB 3124. For instance, the term "involuntarily homeless" in the proposed ordinance aligns precisely with the courts' established definition of the term. In contrast, HB 3115 and HB 3124 employ terms like "established camping site" and "apparent value or utility" to respectively specify the duration a campsite must remain in place and what belongings can or cannot be left at that campsite. Without clear definitions, the city remains vulnerable to judicial interpretation of these phrases, which could significantly affect the city's ability to prevent recurrent violations of camping regulations and determine how to handle the substantial volume of property left behind at illegal campsites.

The remaining adjustments to these ordinances are crafted to align with established "time, place, and manner" regulations commonly applied in constitutional analyses of government laws. These ordinances are designed to prevent individuals from camping on streets, parks, or other unsuitable areas. Defendants are given the option to cease their occupation of the site, or they may face citation and penalties. The restrictions related to the "time" and duration for camping, lying, or sitting, as previously explained, are specified within the definition of "occupy or occupancy."

In terms of location or "place" restrictions, certain areas are designated as inherently prohibited for any form of camping. These areas are typically identified as sensitive areas to ensure public safety, well-being, and the preservation of public spaces, such as parks and buildings. There are amendments to the ordinance that address unique challenges posed by camping in cars or RVs on public streets. Additionally, there are considered changes to the City's Persistent Violation ordinance to not only correct the boundaries of the existing Enhanced Law Enforcement Area ("ELEA") but to create ELEAs for other areas that are especially sensitive or prone to increased unlawful activity and then becoming an attraction for more such activity.



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Regarding “manner” regulation, this ordinance anticipates situations where individuals experiencing involuntary homelessness may not find available shelter spaces within the city limits. In such cases, the city may enter into contracts with organizations across the region that offer accessible shelter, easily reachable via local public transit, and designed and operated to safeguard involuntarily homeless individuals and other vulnerable populations for up to 72 hours at a single location. Oregon's new laws also establish specific responsibilities for the city in managing property left behind by both homeless individuals and others who may have left their belongings due to lack of alternatives. In these instances, the ordinance sets reasonable limits on what the city is required to store and the quantity thereof.

FISCAL IMPACTS

None

STAFF RECOMMENDATIONS

Staff recommends that Council approve First Reading of Ordinance No 3228 and send it to second Reading for its enactment.

ACTIONS, OPTIONS, AND POTENTIAL MOTIONS

1. I move to approve First Reading of Ordinance No. 3228 AN ORDINANCE RELATING TO PROHIBITED CAMPING AND PROHIBITED OCCUPANCY; AMENDING AMC CHAPTER 10.46.020 AND AMC 10.46.030 and send it to Second Reading.

REFERENCES & ATTACHMENTS

Proposed ORDINANCE RELATING TO PROHIBITED CAMPING AND PROHIBITED OCCUPANCY; AMENDING AMC CHAPTER 10.46.020 AND AMC 10.46.030

ORDINANCE NO. _____

AN ORDINANCE RELATING TO PROHIBITED CAMPING AND PROHIBITED OCCUPANCY; AMENDING AMC CHAPTER 10.46.010 THROUGH AMC 10.46.050

Annotated to show deletions and additions to the Ashland Municipal Code sections being modified. Deletions are ~~bold lined through~~, and additions are **bold underlined**.

WHEREAS, the City of Ashland must balance and prioritize several interests: recognition of the essential human dignity of everyone in the City of Ashland; the need to have safe and orderly conditions in City rights-of-way for the safety and benefit of everyone in Ashland; the right of everyone in Ashland to have shelter and safety; and respect for public spaces and public property in service to the entire community.

It is in the public interest to regulate public streets and dedicated rights of way in a way that could allow all to use the roads and sidewalks as they are intended and in the way that they remain safe and accessible. Similarly, it is in the public interest to regulate park spaces, playgrounds, and other public areas protected by the nature of their cultural and historic character and their importance to the businesses and community that relies upon and enjoys their preservation.

The City acknowledges that living on its streets is often a last resort for individuals. For many of these persons the lack access to shelter is involuntary due to unforeseen circumstances beyond a person's control that occurs when a person lacks viable options to obtain housing due to factors such as economic hardship, loss of social network, health or disability, or having exhausted available options for temporary or permanent housing assistance.

This chapter is intended to regulate the use of public rights-of-way and City property to protect and preserve the above described public places for their designed and intended purposes, while providing alternative space and shelter to rest and sleep for persons who lack access to suitable temporary shelter due to either financial inability or the unavailability of free, viable options.

While recent federal case law is unclear as to whether the city can differentiate between those who voluntarily choose to live homeless from those who are homeless involuntarily, this chapter and the City's enforcement efforts are primarily intended to minimizing public health and safety concerns related to survival camping in public areas, taking into account the resources and opportunities available to those experiencing involuntary homelessness.

Those persons who are involuntarily homeless should feel secure that they will not be penalized for their condition. The objective of this ordinance is to differentiate between those who genuinely lack alternatives and use public spaces out of necessity, and those who have access to suitable alternative spaces and shelter but instead willfully exploit public

1 spaces for personal gain or advantage, to the detriment of the general public that includes
2 the involuntarily homeless population.

3 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

4 **SECTION 10.46.** Ashland Municipal Code Chapter 10.46 is hereby amended as follows:

5
6 Section 10.46.010. Definitions.

7 A. **“Apparent Value or Utility” in reference to personal property means property that is**
8 **essential in practicality and significance to the owner's daily life and well-being, and**
9 **includes but is not limited to, clothing, bedding, personal hygiene items, identification**
10 **documents, and any tools or resources necessary for survival and meeting basic needs,**
11 **maintaining dignity, and facilitating self-care. This definition does not include such**
12 **property as non-functional or broken items, excessive or redundant items, hazardous or**
13 **dangerous materials, or items with limited or no personal value.**

14 B. “To camp” means to set up or to remain in or at a campsite.

15 C. “Campsite” means any place where bedding, sleeping bag, or other material used for
16 bedding purposes, or any stove, fire, or cooking apparatus, other than in a designated picnic area,
17 is placed, established, maintained, or occupied, so as to exclude the use of public property by the
18 general public, whether or not such place incorporates the use of any tent, lean-to, shack, or any
19 other structure, or any vehicle or part thereof.

20 **D. “Established Camping site” means a campsite that has been in its current location for at**
21 **least five days. In the absence of evidence regarding the age of a campsite, a camping site is**
22 **presumed established.**

23 **E. “Designated Space” are those areas designated by management to be a resting place for**
24 **the involuntarily homeless.**

25 **F. “Shelter” are those areas of adequate shelter that are readily accessible by local public**
26 **transit and that are designed and reasonably operated for the purpose of protecting**
27 **involuntarily homeless persons and other at-risk populations.**

28 **G. “Involuntarily Homeless” means a person who lacks access to suitable temporary**
29 **shelter due to either financial inability or the unavailability of free, viable options.**
30

1 **H. “Occupy” or “Occupancy” means to maintain physical control over a publicly owned**
2 **area of 50 square feet or greater by a person or person’s private property, wherein the**
3 **effect is that the general public is excluded from the use of the public property for more**
4 **than two (2) hours during daytime hours between 8:00 AM and 8:00 P.M.**
5

6 SECTION 10.46.020 . Camping Prohibited

- 7
- 8 A. **Except as otherwise provided herein,** no person shall camp in or upon any sidewalk,
9 street, alley, lane, public right-of-way, business-front, park, playground, **Enhanced Law**
10 **Enforcement Area(s) defined in AMC 10.120.010,** or any other publicly owned
11 property or under any bridge or viaduct, ~~unless otherwise specifically authorized by~~
12 ~~this code, by the owner of the property, or by emergency declaration under AMC~~
13 ~~2.62.030.~~
- 14 B. **The prohibition on camping may be temporarily suspended under the following**
15 **conditions:**
- 16 a. **A camping exemption due to an emergency in accordance with AMC 2.62;**
- 17 b. **The offender is Involuntarily Homeless, and a Designated Space or Shelter is**
18 **unavailable.**
- 19 C. **Camping is strictly prohibited under any circumstance that includes existence of a**
20 **fire or gas stove, or when the campsite exceeds 100 square feet, or when located on,**
21 **attached to, or within:**
- 22 i. **Sidewalks, bikepaths, and walk-ways,**
- 23
- 24 ii. **Lithia Park and parks with playgrounds,**
- 25
- 26 iii. **The Enhanced Law Enforcement Area(s) defined in AMC 10.120.010**
- 27
- 28 iv. **250 feet of a preschool, kindergarten, elementary or secondary school,**
29 **or a childcare center licensed, certified or authorized under ORS**
30 **329a.250-329a.460, ORS 418.205 to 418.970: OAR 419-410-0010 to**
OAR 419-490--0170,
- v. **250 feet of a Designated Space or Shelter;**

- vi. 250 feet of freeway entrance or exits;
- vii. 150 feet of other campsites;
- viii. 100 yards of any river or stream; and
- ix. Any fence, trees, building, or vehicle.

D. Involuntarily Homeless persons may use vehicles for shelter in a lawful parking space in the following circumstances:

- a. The vehicle must be operational and must be moved at least 1000 feet from its original location every 24 hours.
- b. The parking space cannot be within a 100' radius of any residence.
- c. No building or erecting of any structures connecting or attaching to vehicles is permitted, including tents that are not designed and manufactured to be attached to a vehicle.
- d. Persons may not accumulate, discard or leave behind garbage, debris, unsanitary hazardous materials, or other items of no Apparent Value or Utility in public rights-of-way, on City property, or on any adjacent public or private property.
- e. All animals must be under the keeper's control or otherwise leashed or crated at all times.
- f. Dumping of gray water (i.e. wastewater from baths, sinks, and the like) or black water (i.e. sewage) into any facilities or places not intended for gray water or black water disposal is prohibited. This includes but is not limited to storm drains, which are not intended for disposal of gray water or black water.

E. The City Manager has the authority to establish additional administrative rules regarding time, place, and manner regulations as deemed necessary to address particular situations arising from conditions affecting Involuntarily Homeless individuals, and that are intended to safeguard the safety, health, and welfare of both the general public and those who are Involuntarily Homeless.

1 **B. Any person who violates any provision of this Chapter is subject to Section 1.08.020 of**
2 **the Ashland Municipal Code. Any violation of this section is a Class IV Violation. (Ord.**
3 **3137, amended, 2017; Ord. 3026, amended, 08/03/2010; Ord. 2972, amended, 11/04/2008)**

4 SECTION 10.46.030. **Sleeping on Benches. Prohibited Occupancy.**

5 A. **Subject to AMC 10.46.020 or authorized permit, no person shall occupy a public**
6 **area or street furniture during the time as provided in definitions of “Occupancy” defined**
7 **under AMC 10.46.010 H. Property owned by violators shall be subject to the removal**
8 **process in 10.46.040. No person shall sleep on public benches between the hours of 9:00**
9 **p.m. and 8:00 a.m.**

10
11 B. Any person who violates any provision of this Chapter is subject to Section 1.08.020 of the
12 Ashland Municipal Code. Any violation of this section is a Class IV Violation. (Ord. 3137,
13 amended, 2017; Ord. 3026, amended, 08/03/2010)

14 SECTION 10.46.040. Removal of Campsite

- 15
16 A. **Except as provided herein, the City will remove Established Campsites and**
17 **unclaimed property having Apparent Value or Utility from a campsite as provided**
18 **by ORS 195.505, as such statute may be amended or renumbered from time to time.**
- 19 B. **The following campsites are subject to immediate removal:**
- 20 a. **Campsites that are not Established Campsites;**
 - 21
 - 22 b. **An exceptional emergency at an Established Campsite, including but not**
23 **limited to, possible site contamination by hazardous materials, a public**
24 **health emergency, fire hazards, or other immediate danger to human life or**
25 **safety**
 - 26 c. **The occurrence or presence of evidence of criminal activity or violation of the**
27 **Ashland Municipal Code (excluding this offense)**
- 28 C. **Hazardous materials, including but not limited to syringes, drug paraphernalia,**
29 **moldy items, discarded food, items soiled with feces, urine, or vomit, open alcohol**
30 **containers, rotting garbage, or other items in a similar insanitary condition may be**
immediately discarded upon removal of the individuals from the campsite.

1 **D. Except for the items set forth above in subpart C that may be immediately**
2 **discarded, personal property a City employee or agent determines has no Apparent**
3 **Value or Utility will be held by the City for 14 days after its removal from the**
4 **campsite. During the 14-day holding period, the owner may request the return of**
5 **the property by appealing the determination that the property has no Apparent**
6 **Value or Utility. If no appeal is received by the City within 14 days, the City may**
7 **discard the property. The appeal will undergo the following procedure:**

- 8 a. **The owner may appeal the determination in accordance with AMC 2.30,**
9 **seeking to have the determination rescinded and the property returned. The**
10 **appeal notice shall specify the relief sought and the reason for said relief.**
- 11 b. **Upon conducting a de novo review, the Hearing Officer shall affirm the**
12 **determination if the preponderance of evidence demonstrates that the**
13 **property does not conform to the definition of having Apparent Value or**
14 **Utility as defined in AMC 10.46.010(A).**
- 15 c. **If the appeal is unsuccessful, the City may immediately discard the property.**
16 **If the appeal is successful, the property shall be made available to the owner**
17 **within one business day of the conclusion of the successful appeal. If the**
18 **property is not retrieved within the later of (a) 14 days after the successful**
19 **appeal or (b) 30 days from when the property was first removed by the City,**
20 **then the City may discard the property.**

21 ~~**A. Prior to removing the campsite, the City shall post a notice, 24 hours in advance. All**~~
22 ~~**posted notices shall be in English and Spanish. A City enforcement officer shall not issue a**~~
23 ~~**citation for violation of Chapter [10.46](#) if the citation would be issued within 200 feet of the**~~
24 ~~**notice (identified above) and within two hours before or after the notice was posted.**~~

25 ~~**B. At the time that a 24-hour notice is posted, the City shall inform a local agency that**~~
26 ~~**delivers social services to homeless individuals where the notice has been posted.**~~

27 ~~**C. The local agency may arrange for outreach workers to visit the campsite where a notice**~~
28 ~~**has been posted to assess the need for social service assistance in arranging shelter and**~~
29 ~~**other assistance.**~~

30 ~~**D. All personal property shall be given to the police department whether 24-hour notice is**~~
~~**required or not. The property shall be stored for a minimum of 60 days during which it**~~

1 ~~will be reasonably available to any individual claiming ownership. Any personal property~~
2 ~~that remains unclaimed for 60 days may be disposed of consistent with state law and AMC~~
3 ~~2.44 for disposition of found, lost, unclaimed or abandoned property, as applicable. For~~
4 ~~purposes of this paragraph, “personal property” means any item that is reasonably~~
5 ~~recognizable as belonging to a person and that has apparent utility. Items that have no~~
6 ~~apparent value or utility or are in an unsanitary or putrescent condition may be~~
7 ~~immediately discarded. Weapons, drug paraphernalia and items that appear to be either~~
8 ~~stolen or evidence of a crime shall be given to the police department.~~

9 ~~E. The 24-hour notice required under subsection D of this section shall not apply:~~

10 ~~1. When there are grounds for law enforcement officials to believe that illegal~~
11 ~~activities other than camping are occurring.~~

12 ~~2. In the event of an exceptional emergency such as possible site contamination by~~
13 ~~hazardous materials or when there is immediate danger to human life or safety. (Ord.~~
14 ~~2972, amended, 11/04/2008)~~

15 SECTION 10.46.050. Mitigation of Penalties

16
17 A. An offender’s first and second violation of this section is punishable by an AMC Class
18 IV fine.

19 B. After the issuance of two camping violations, the third camping violation is a Class C
20 Misdemeanor, unless either of the first two violations is overturned by a court of competent
21 jurisdiction.

22 C. The court shall consider in mitigation of any punishment imposed upon a person convicted
23 of prohibited camping whether or not the person immediately removed the campsite upon being
24 cited. For purpose of this section, removal of the campsite shall include all litter, including but
25 not limited to bottles, cans, garbage, rubbish and items of no Apparent Value or Utility,
26 deposited by the person in and around the campsite. All litter in and around the campsite shall be
27 presumed to be deposited by the person convicted of prohibited camping. Such presumption shall
28 be rebuttable, however. If an offender who has been cited under this ordinance can show
29 meaningful engagement with a referred service provider or a similar one before a court
30 hearing regarding the violation of this ordinance, the judge may exercise discretion to
reduce the criminal charge or waive the fine. (Ord. 3026, amended, 08/03/2010; Ord. 2972,
amended, 11/04/2008)

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SECTION 10.46.060. Application outside City

Pursuant to ORS [226.010](#), this chapter applies to acts committed on park property owned by the City that is located outside the City. (Ord. 2972, amended, 11/04/2008)

SECTION 3. Codification. Provisions of this ordinance shall be incorporated in the City Code, and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and the sections of this ordinance may be renumbered or re-lettered, provided however, that any Whereas clauses and boilerplate provisions (*i.e.*, Sections [No(s.)] need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

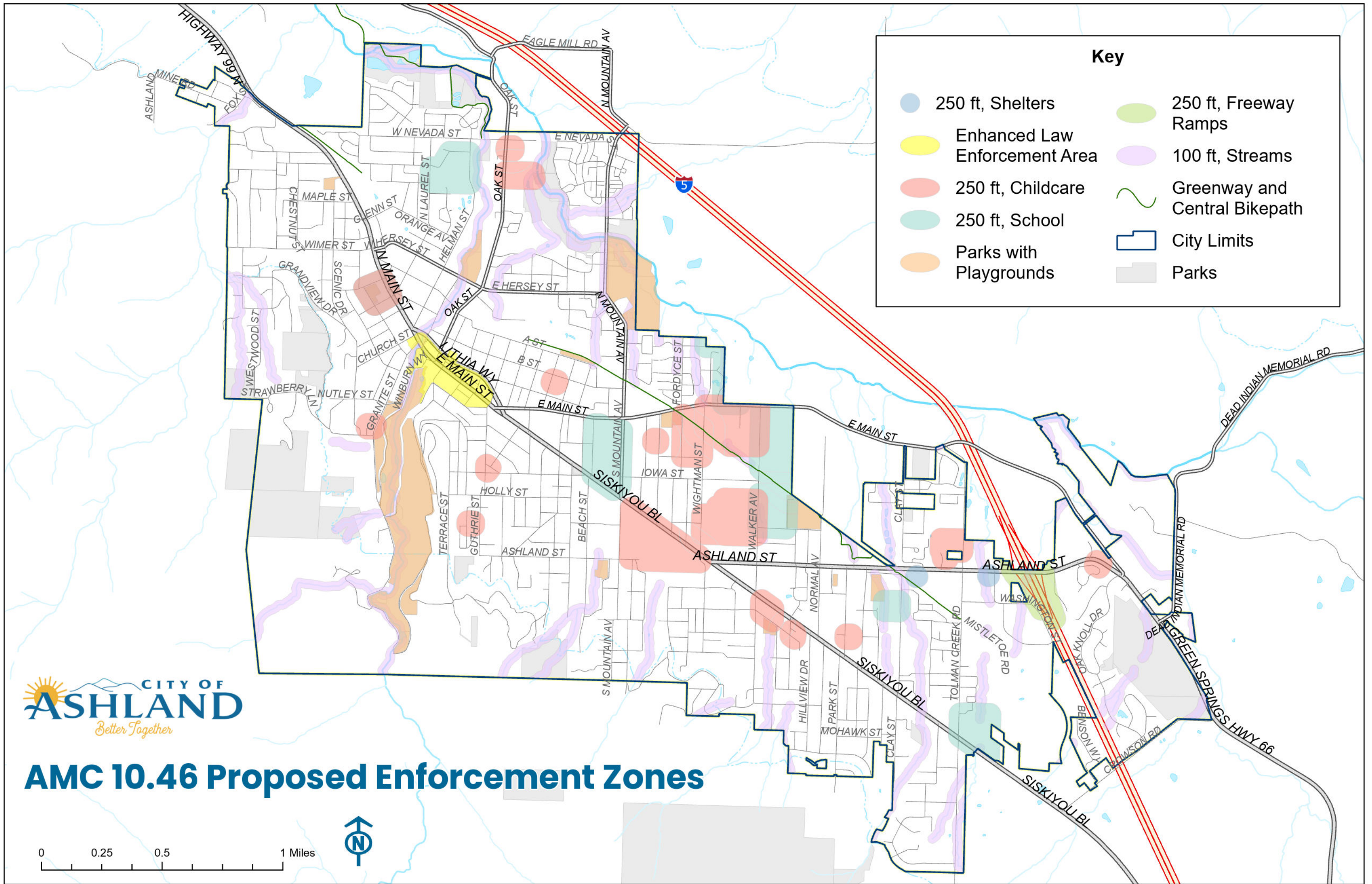
The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of _____, 2023, and duly PASSED and ADOPTED this ____ day of _____, 2023.

ATTEST:











Dana Smith, Acting City Recorder

SIGNED and APPROVED this _____ day of _____, 2023.

Tonya Graham, Mayor



Key

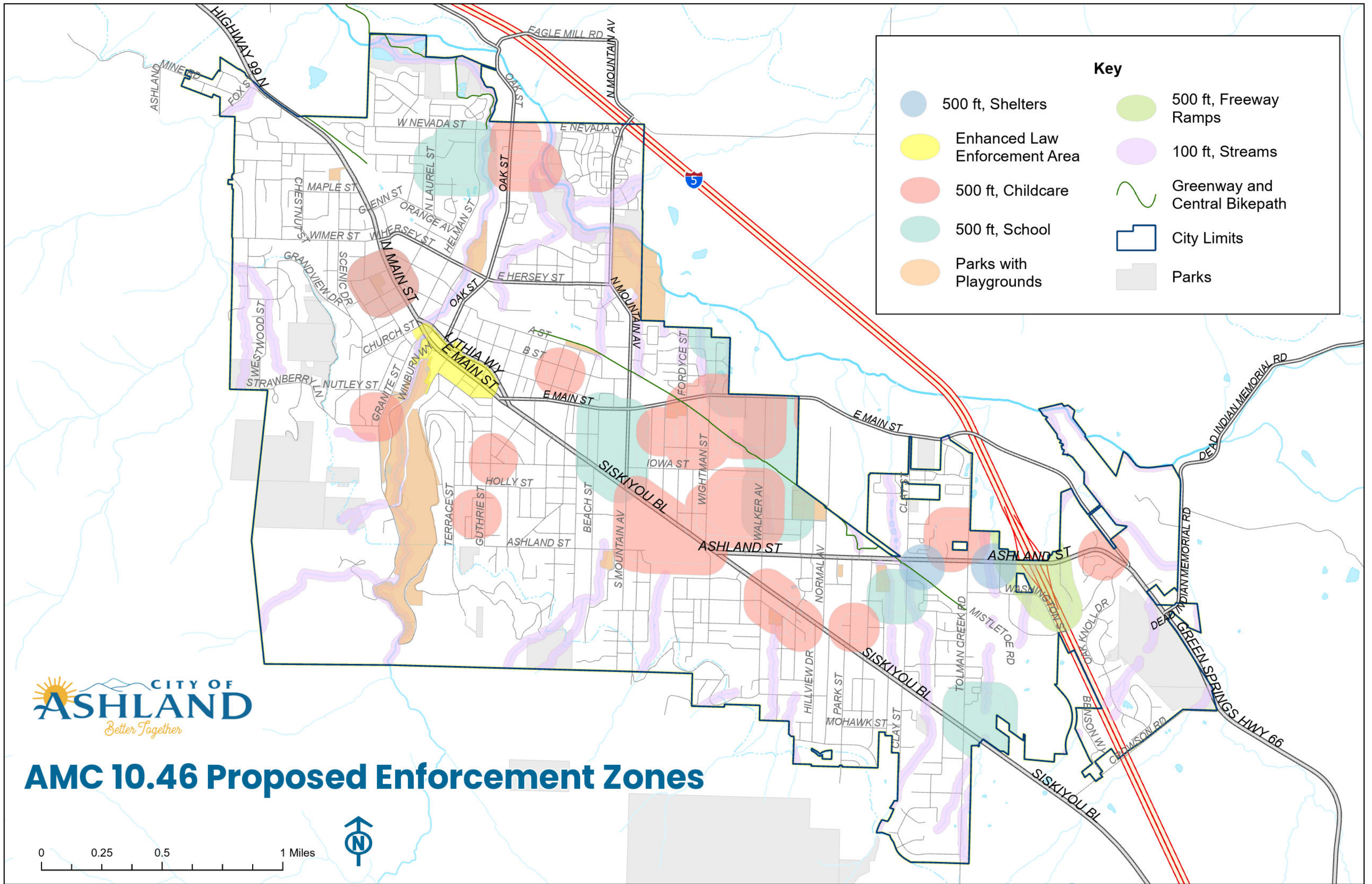
	250 ft, Shelters		250 ft, Freeway Ramps
	Enhanced Law Enforcement Area		100 ft, Streams
	250 ft, Childcare		Greenway and Central Bikepath
	250 ft, School		City Limits
	Parks with Playgrounds		Parks



AMC 10.46 Proposed Enforcement Zones

0 0.25 0.5 1 Miles





AMC 10.46 Proposed Enforcement Zones

