



**City of Missoula, Montana
City Council Committee Agenda item**

Committee: Climate, Conservation and Parks

Item: Emergency ordinance amending Missoula Municipal Code Chapter 12.40 regarding overnight camping in City public spaces

Date: May 18, 2023

Sponsor(s): Mayor Hess and the Mayor's Urban Camping Policy Advisory Team

Prepared by: Dale Bickell

Ward(s) Affected:

<input checked="" type="checkbox"/> Ward 1	<input type="checkbox"/> Ward 4
<input type="checkbox"/> Ward 2	<input type="checkbox"/> Ward 5
<input type="checkbox"/> Ward 3	<input type="checkbox"/> Ward 6
<input type="checkbox"/> All Wards	<input type="checkbox"/> N/A

Action Required:

Consider an emergency ordinance

Recommended motion(s):

Adopt an emergency ordinance of the Missoula City Council amending Chapter 12.40, Sections 12.40.010, to come into compliance with the Ninth Circuit decision in *Martin v. City of Boise* by clarifying that not all City lands are closed to overnight camping or sleeping and declaring an emergency to protect public health, safety, and welfare. (2/3 vote of all members elected required.)

Timeline and Recommended Motions:

Committee discussion: May 24, 2023

Council action (or sets public hearing): June 5, 2023

Background and Alternatives Explored:

With the recent decision by the Ninth Circuit court, the imminent loss of ARPA funding, the failure of the Nov 2022 Crisis Levy, and thus the City's inability to sufficiently meet the demands of the unsheltered, plus the onset of summer, we are faced with balancing the many needs of our community. Summer brings thousands of children and guests of all ages to our parks, trails, open spaces, swimming pools and playgrounds. In order to provide safe spaces for all we wish to prevent encampments from developing in these particularly high use areas. The emergency ordinance as drafted brings us into compliance with the Ninth District Court, allowing us to enforce the remaining sections of MMC 12.40 This ordinance amendment accomplishes two goals:

[1] – Brings City code in compliance with *Boise v. Martin*. the Ninth Circuit court held the Cruel and Unusual Punishment clause, part of the Eighth Amendment to the United States Constitution, "prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." The Ninth Circuit extended this ruling in the *Johnson v. Grant's Pass* opinion, stating that the Cruel and Unusual Punishment clause also prohibits criminal enforcement against homeless individuals who use "the most

rudimentary precautions" a homeless person might take against the elements, such as bedding, blankets or sleeping bags.

[2] – Clarifies that the Parks & Recreation Director has the authority to regulate activities and conduct in parks pursuant to MCC 12.40.010 C. through 12.40.065 for such items as erecting structures or depositing, leaving or spilling refuse or other substances other than in receptacles provided for this purpose.

Emergency ordinances require a 2/3 vote of all member elected to be approved and are effective for 90 days.

Financial Implications:

Mitigates risk from an ordinance not in compliance with law.

Links to external websites: