

# CITY OF NEVADA CITY

## STAFF MEMORANDUM

**TO:** Honorable City Council  
**FROM:** Hal DeGraw, City Attorney  
**DATE:** July 12, 2011  
**SUBJECT:** Request for Council Direction on Proposed Ordinance Regarding  
Obstruction of Sidewalks & Streets and Parking Lot Behaviors

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**Recommendation:** Review draft ordinance and provide direction to staff for any recommended changes before it is brought back for a first reading.

**Background:** At the June 8<sup>th</sup> regular meeting, after review of existing laws and regulations related to the loitering issue, Council gave direction to staff to prepare new ordinances and amendments expanding no smoking areas, prohibiting obstruction of sidewalks and streets, and regulating behaviors in municipal parking lots. The ordinance amendment expanding the no smoking area was presented and a first reading held at the June 22<sup>nd</sup> regular meeting. I advised that draft ordinances regarding obstructing sidewalks and streets and regulating parking lot behaviors per the balance of the Council's direction would be presented at a later time.

**Discussion and request for direction:** Attached hereto is a copy of a proposed copy of an ordinance drafted to be responsive to Council direction within the constitutional limits applicable to loitering type ordinances. It is being circulated to the Police Department for comments concurrently with being presented to Council for comments and further direction on any desired additions, deletions, or changes.

**Attachments:** Draft Ordinance  
Excerpt from June 8<sup>th</sup> Council Meeting Minutes

**Fiscal Impact:** No financial impact on the City from drafting/adopting regulations other than expenditure of staff time. Could incur additional enforcement costs if regulations are adopted.

cc: David Brennan, City Manager  
Lou Trovato, Police Chief

**ORDINANCE NO. 2011-\_\_\_**

**AN ORDINANCE OF THE CITY OF NEVADA CITY ADDING  
CHAPTER 9.14 TO THE NEVADA CITY MUNICIPAL CODE  
REGULATING CONDUCT ON PUBLIC PROPERTY**

**WHEREAS**, people are free to congregate and linger in public spaces and are invited to do so in the City as long as their presence does not interfere with the primary purposes of public property or endanger public health, safety and welfare; and

**WHEREAS**, sidewalks are intended primarily for accommodating pedestrian access to the various properties served by those sidewalks and the uses conducted thereon; streets are intended primarily for accommodating vehicular traffic in, around, and through the City; and municipal parking lots are intended primarily for parking of motor vehicles while accessing and patronizing nearby properties and the uses thereon, including shopping and patronizing local businesses or attending local events; and

**WHEREAS**, conduct individually or in groups on public property in such a manner as to substantially impede vehicular or pedestrian traffic or to block parking spaces or to restrict safe access to or egress from them and remaining there to use the public property for purposes other than that for which they are intended creates safety hazards to pedestrians and drivers alike; prevents and interferes with primary uses of the public property to the economic and social detriment of the City; intimidates visitors and residents alike; and creates an atmosphere conducive to illegal behavior such as littering, disturbing the peace, loitering with intent to commit unlawful acts, soliciting, and open container and smoking violations; and

**WHEREAS**, such behaviors can be sufficiently defined and regulated or precluded in a manner so as to give adequate notice of the conduct proscribed and to prevent arbitrary and discriminatory enforcement consistent with individual constitutional rights, including due process rights:

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Nevada City as follows:

**SECTION I:**

There is hereby added to the Nevada County Municipal Code, Chapter 9.14, which attached hereto and incorporated by such reference.

SECTION II:

**STATUTORY CONSTRUCTION & SEVERABILITY:** It is the intent of the City Council of the City of Nevada City to supplement applicable state and federal law and not to duplicate or contradict such law and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Nevada City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

SECTION III:

This Ordinance shall become effective thirty (30) days after the adoption date thereof and within fifteen (15) days of the passage of this Ordinance, the City Clerk shall publish this Ordinance in The Union, a newspaper of general circulation.

**PASSED AND ADOPTED** at a regularly scheduled meeting of the City Council of Nevada City held this \_\_\_ day of \_\_\_\_\_, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
, Mayor

ATTEST:

\_\_\_\_\_  
Niel Locke, City Clerk

## Chapter 9.14 - CONDUCT ON PUBLIC PROPERTY

### Sections:

9.14.010 – Scope of law.

9.14.020 - Definitions.

9.14.030 – Unlawful presence in municipal parking lots.

9.14.040 – Obstruction of movements in public ways.

9.14.050 - Violation—Penalty.

9.14.060 - Subsequent offense within thirty days.

9.14.070 - Intent.

9.14.080 - Savings clause.

### **9.14.010- Scope of law**

Nothing herein contained is intended or nor shall it be construed to be in conflict with or as a limitation upon any of the provisions of the Penal Code, Business and Professions Code, Education Code, Health and Safety Code, Labor Code, or Vehicle Code of the State of California.

### **9.14.020- Definitions**

For the purpose of this chapter, certain terms and words are defined as set out in this section.

- A. "Code" means this Municipal Code of the City of Nevada City.
- B. "Historical District" has the meaning given to it in Title 17 of this Code.
- C. "Municipal parking lot" means any city-owned, leased, or managed public parking facility.
- D. "Police officer" means any police officer of the city, including the chief of police, regular officers of the police department, members of the volunteer police reserve, and community service officers.
- E. "Public way" means any sidewalk, street, or other public right-of-way used by the public for pedestrian or vehicular passage.
- F. "Store or service of any local business" also means and includes city or other governmental facilities.

### **9.14.030- Unlawful presence in municipal parking lots**

A. When a sign is in place giving notice of the provisions hereof, it is unlawful for any person, after having been asked to leave by a police officer, to be or remain upon any municipal parking lot in the city except:

1. While crossing said lot in the course of entering or exiting a store or service of any local business, attending a local event, or visiting a nearby resident; or

2. While exiting, entering, or being in a vehicle lawfully parked in said lot, or while said vehicle is exiting or entering said lot;

3. While exiting, entering, or waiting to use any public restroom facilities located in said lot, if any.

B. The provisions of subsection A shall not apply:

1. To any person or persons who has written permission by an agent of the city to be or remain on said lot or to park a vehicle upon said lot;

2. Where its application would result in an interference with or inhibition of any exercise of a constitutionally protected right of freedom of speech, such as, but not limited to, peaceful expression of political or religious opinions not involving offensive personal conduct; or

3. Where its application results in or is coupled with an act prohibited by the Unruh Civil Rights Act

#### **9.14.040- Obstruction of movements in public ways.**

A. No person, after having been notified by a police officer that he or she is in violation of the prohibition in this section, shall intentionally occupy so much of a public way in the Historical District of the city as to obstruct or interfere with the flow of pedestrian or vehicular traffic thereon, whether such person does so alone or together with one (1) or more other persons, or with equipment or personal property of any nature, and whether such person does so by standing, sitting, lying or in any other manner.

B. The provisions of subsection A shall not apply in the following cases and to the following persons:

1. To persons while waiting for, attending, or viewing any parade, festival, performance or similar event authorized or approved by the city;

2. To persons sitting upon benches or other seating facilities provided or authorized by the city or the Chamber of Commerce for such purposes;

3. During city approved or authorized street closures for special events;

4. To any person or persons with written permission from an agent of the city to be or remain on that designated portion of the public way and to any conduct which is in conformity with the terms of any permit granted pursuant to this Code;

5. To persons sitting or lying down due to an accident or medical emergency;

6. Where its application would result in an interference with or inhibition of any exercise of a constitutionally protected right of freedom of speech, such as, but not limited to, peaceful expression of political or religious opinions not involving offensive personal conduct; or

7. Where its application results in or is coupled with an act prohibited by the Unruh Civil Rights Act.

8. To persons who, as the result of a disability, utilize a wheelchair or similar device to move about.

**9.14.050- Violation—Penalty.**

Any person violating any of the provisions of this title shall be guilty of an infraction, and upon conviction thereof, shall be punishable by the maximum penalty established by state law, with the current penalty being a fine not exceeding one hundred dollars (\$100.00) for the first conviction, a fine not exceeding two hundred dollars (\$200.00) for a second conviction within one (1) year, and a fine not exceeding five hundred dollars (\$500.00) for each additional conviction within one (1) year.

**9.14.060- Subsequent offense within thirty days.**

Notwithstanding Section 9.14.050, any person who violates any section in this chapter and is cited for such a violation, and who within thirty (30) days after receiving such a citation again violates the same section, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two thousand dollars (\$2,000.00) or by imprisonment in the county jail for a period not to exceed one (1) year, or by both fine and imprisonment.

**9.14.070- Intent.**

It is not the intent of this chapter to prohibit protesting, picketing, demonstrating, leafleting, or any other lawful activity permitted under the laws of the state of California, the Constitution of the United States of America, or by the National Labor Relation Act in connection with a labor dispute.

**9.14.080- Savings clause.**

The regulations set forth in this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to this chapter, set forth by the state of California or elsewhere in the city's code.

- Ben Jordan passed out the Maintenance Plan revised June 8, 2011 and stated that the oversight of maintenance will be ongoing by the volunteers and modified for improvement as needed for cleanliness and structural integrity.
- City Manager Albaugh asked if a coordinator had been designated to the volunteers.
- Ben Jordan stated the Sustainable Team's sub committee will be the point of contact.
- Gary Tintle stated that he is the Chairman for the Preservation and Beautification committee at the Chamber of Commerce and the Chamber of Commerce Visitor Center is a potential good contact; it's manned everyday with a live person to take calls; a viable alternative to passing on maintenance issues and to address emergencies.
- City Manager Albaugh stated that he and Ray Bryars processed a bicycle rack grant application without notifying the Council due to time constraints; will report to Council if the City receives the grant.

Public Comment

None

- Councilmember Harris thanked the Sustainable Team; supports the concept; proven successful in other towns.
- Vice Mayor Strawser stated he supports the project and would like to pursue a one-way traffic flow later on.

→ **B. Subject:** Review and Consider a Draft Loitering Type Ordinance and Summary of Existing Laws and Regulations

City Attorney DeGraw reviewed the summary of existing laws and regulations included in the packet and asked Council to provide direction to staff on the nature and extent of further ordinances and regulations to be drafted for Council consideration.

Public Comment

**Chelsea** – Stated that the bar at Cooper's has a patio that could be used for smoking; suggested Council define the language in the ordinance in a positive way, accepting only preferable behaviors.  
**Gail Fox** – Thanked the Council for accepting Mr. Streicher's letter to request terminating the lease for serving meals at the Vet's building; there is a huge difference in the parking lot; supports whatever is going on and encouraged the decision making of the Council.

Public Comment – Closed

**Direction:** City Attorney to prepare and bring back to the Council for consideration and adoption: An Ordinance Amendment providing for no smoking on the proposed Boardwalk project and in City parking lots (Council to talk to business owners on a possible expansion of no smoking areas to include other areas); an Ordinance making illegal conduct in parking lots interfering with the main purpose of those facilities, starting with the Grass Valley Ordinance on unlawful presence in municipal parking lots and making revision deemed advisable; and an Ordinance making it unlawful to sit or lie on a public sidewalk or curb in a manner that obstructs vehicular or pedestrian traffic.

**6. NEW BUSINESS:**

**A. Subject:** Grand Jury of Nevada County Report on Nevada City Police Department Property and Evidence Operations

Public Comment

None

**Direction:** In the future, staff is to email the City Council immediately upon receipt of a Grand Jury Report that a copy of the report has been placed in each Councilmember's box at City Hall.