



## CITY OF ST. HELENS PLANNING DEPARTMENT

# M E M O R A N D U M

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**TO:** City Council  
**FROM:** Jacob A. Graichen, AICP, City Planner  
**RE:** HB3115, et. al. – code amendment proposal and Planning Commission recommendation  
**DATE:** April 12, 2023

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At their meeting (last night) the Planning Commission unanimously recommends the code amend concept attached to this memo. This is still a work in progress as formatting and review by our legal counsel are still necessary, but the legislative intent and content is there.

Overall, the Commission's recommendation is based on having a site or two reserved for homeless sleeping/camping use if/as needed.

The findings of the Commission, authored by Commission Chair Toschi, are also attached.

Note the attached February 28, 2023 letter to the City of Bend from the Bend Equity Project, ACLU of Oregon and the Law Office of Thaddeaus Betz. This illustrates many of the issues cities face with the new laws and those defending them in Oregon.

At your April 19<sup>th</sup> work session, both Planning Commission Chair Toschi and myself will present the Commission's recommendation to you and other potential options that the Planning Commission considered. I intend to have some presentation slides to aid in that.

Following Council input, the intent is to work with our legal counsel and, hopefully, have a final draft all can agree on to adopt in the near future. As a reminder, we need to amend our current "camping on public property code" by July 1<sup>st</sup>, and the window of opportunity to adopt new law by ordinance is narrowing.

**Attached:** Planning Commission recommended code amendments

Unsheltered Person Report (Planning Commission)

February 28, 2023 letter to the City of Bend from the Bend Equity Project, ACLU of Oregon and the Law Office of Thaddeaus Betz

*[editor's note: formatting will need to change to be incorporated into the current Chapter 12.20 SHMC. Some terms like "title" will need to change. For the reader, the important aspect of this Planning Commission approved draft is the legislative content, not final fit and finish.]*

**Title 12**  
**Chapter 12.20**

**SLEEPING AND CAMPING ON PUBLIC PROPERTY**

**12.20.??? Findings and Purpose.**

A. The City of St. Helens hereby adopts the provisions of this section regulating sleeping, lying, camping and keeping warm and dry on public property. Pursuant to ORS 195.530, and ORS 195.500, the City of St. Helens recognizes the social nature of the problem of homeless individuals camping on public property and implements the following laws as part of its policies to ensure the most humane treatment for removal of homeless individuals from camping sites on public property per ORS 195.500, 195.505, and 195.530;

B. The City of St. Helens finds as follows:

- (a) The use of public property for sleeping, keeping warm and dry that is within 400 feet of any privately owned or rented property that is not in conformance with places, manners, and time described herein necessarily affects the health and safety of the public, the quiet enjoyment of the persons owning or renting property, whether it be for residential or business purposes;

*[editor's note: 400' is based on one of the "affected area" provisions of right-of-way vacations per ORS Chapter 271. Other distance basis possible.]*

- (b) Public places, roads, parks, trails, rights of way, the waterfront and public property being clean, and safe are vital for the health, safety, and wellbeing of the public;
- (c) The dangers of unlawful use of public property to the public health, safety and welfare are the same regardless of the economic circumstances of the persons violating the law;
- (d) Persons "experiencing homelessness" generally are homeless for the following reasons:
  - i. Mental illness;
  - ii. Drug addiction, including alcohol addiction;
  - iii. Persons purposefully homeless or without funds for housing due to lifestyle choice(s);
  - iv. Persons who do not have sufficient funds to afford housing;
  - v. Any and all of the above.

- (e) The City of St. Helens cannot reasonably care for and house, whether it be in

shelter or campgrounds, persons from outside of St. Helens who are experiencing homelessness other than on a temporary basis;

#### **12.20.010 Definitions.**

- (A) “Campsite” means any place where there is a tent, or any structure or assembly of materials consisting of a top or roof or any other upper covering and enclosed on one or more sides, that is of sufficient size for a person to fit underneath or inside.
- (B) “To camp” means to set up, or to remain in or at, a campsite.
- (C) “Established campsite” means an area on public property where one or more persons have kept their belongings, erected a shelter, tent, or other structure which has remained for more than 7 days in any 30 days without a documented request by a law enforcement or code enforcement officer to vacate the area and move to a location where camping is allowed following a documented discussion with law enforcement consistent with the policies of this Title.
- (D) “Sleeping” means being asleep on public property in places and at times not allowed by this Title;

#### **12.20.020 Where Sleeping and Camping on Public Property is Not Allowed.**

- (A) It is unlawful for any person to sleep in a time place and manner or camp in or on the following areas of public property within the City of St. Helens:
  - i. Anywhere that is not a place described in SHMC12.20.020(B).
- (B) The places where sleeping, keeping warm and dry and camping may occur, and are an exception to subsection A above, shall be:
  - i) An area identified on the backside of the recreation facility on Old Portland Road, subject to the time and manner restrictions herein, and shall be limited to a maximum of 8 persons at this location;

*[editor’s note: this will need to be described better in a final draft, perhaps with a depicting exhibit]*

- ii) An area identified as down Kaster Road subject to the time and manner restrictions herein and shall be limited to a maximum of 7 persons at this location;

*[editor’s note: if a secondary site is determined this will need to be described better in a final version, perhaps with a depicting exhibit]*

- iii) Sand Island upon paying the appropriate fees and per the rules of Sand Island;
- iv) The City Docks per the St. Helens Municipal Code Title 9;
- v) Public streets with an RV or vehicle under Title 10;
- vi) Places allowed by the City Administrator, but only following the City Administrator’s or the Mayor’s public declaration of an emergency, and only for a maximum of 30 days. The express approval of the City Council is required to extend the time allowed to camp in areas due to a declaration of

emergency;

#### **12.20.30 Manner.**

- (a) Any Person Camping or Sleeping under this title must follow the rules and regulations of the particular camping site where they are located, other portions of the St. Helens Municipal Code, and State Law. If there are no such rules or regulations applicable to the particular camping site, these rules apply.
- (b) No Person Camping or Sleeping may use an open fire or flame to keep warm;
- (c) No Person may occupy more than a 12 foot by 12 foot area to camp;
- (d) No person may camp beyond the time allowed in this Title or in Titles referenced in this Title;
- (e) The person will maintain the area where they are sleeping in a clean condition, and upon vacating the site;
- (f) Any dumping of wastewater, or grey water other than in an approved receptacle is considered littering, and punishable under Oregon State Law, and any applicable regulations for unlawfully dumping such waste;
- (g) “Established campsites” and campsites created by a declaration of emergency under Section 12.20.020(B)(v) shall be removed per ORS 195.505 and after a declaration that the emergency no longer exists. All other campsites or sleeping sites which violate this Title may be removed by law enforcement immediately after a documented discussion consistent with the policies of this Title;
- (h) Littering within a site is prohibited.

#### **12.20.040 Time.**

- (a) Camping may occur for a maximum of 5 continuous days at the locations listed in 12.20.020(B).
- (b) For RV’s and vehicles upon the City Streets, up to 5 days at any location within the City of St. Helens in any 60 day period. .

*[editor’s note: this provision should be coordinated with Title 10, Vehicles and Traffic. Could be an amendment to the appropriate Chapter in Title 10 and a reference to that work?]*

#### **12.20.050 Removal.**

Property seized during removal of persons sleeping and camping in violation of this ordinance shall be disposed of per ORS 195.500 and ORS 195.505.

#### **12.20.060 Violation.**

- (a) Upon encountering a person who seeks to sleep, camp, or keep warm and dry upon public property in a place, manner, or time that is inconsistent with this Title, law enforcement personnel and/or public services personnel shall use their best judgment concerning the individual circumstances of such person and direct them to available City services, County Services, State Services, or non-profit service agencies, and locations within and/or outside the City where a person may find services to help them, and where they may lawfully sleep, camp, keep

warm and dry upon public property.

- (b) A First Violation of the this Title shall be an infraction punishable by a fine of a documented warning;
- (c) A Second Violation of this Title within one year of the first violation shall be an infraction punishable by a fine of up to \$25.00;
- (c) A Third Violation of this Section within one year of the first violation shall be considered a misdemeanor punishable by confinement in the County Jail for up to 30 days, civil forfeiture to the City of St. Helens of property facilitating the offence, and payment of a fine of up to \$500.

***[editor's note: perhaps include flexibility language for a judge's or similar person's consideration?]***

- (d) Violation by Persons under this Title does not limit additional prosecution of Persons under State Law, or other Titles of the St. Helens Municipal Code.

## **REPORT REGARDING UNSHELTERED PERSONS, ST. HELENS, OREGON, HB 3115**

By: Steven Toschi, Planning Commissioner

Date: April 3, 2023

Title: Study and Recommendations to Council, HB 3115

### **Conclusions from the Author:**

- 1) The current number of persons sleeping on public property in the City of St. Helens is one. St. Helens has traditionally used lawful and humane measures to achieve this result. St. Helens Police, and social services, and volunteers are encouraged to continue in their effective and humane care of the people they encounter;
- 2) St. Helens does not need to create large areas where unsheltered people can shelter and keep warm and dry;
- 3) It is critical that Law Enforcement be provided with clear and concise direction regarding their encounters with unsheltered persons seeking to sleep and keep warm and dry on public property;
- 4) Federal and State Law require the City to designate areas where persons can sleep and keep warm and dry on public property open to the public, subject to reasonable place, manner, and time restrictions when persons do not have other places to shelter within the City. Such Federal and State laws only require that unsheltered persons have a place where they can sleep and keep warm and dry for their survival;
- 5) St. Helens should designate an area behind the recreation center and an area down Kaster Road for a total maximum of 10 -15 persons to temporally shelter, sleep, and keep warm and dry for a maximum of 5 days in any 90 day period. Outhouses, a dumpster/trash receptacle, and clean drinking water should be provided for these persons;
- 6) It is abhorrent to the health, safety, and welfare of sheltered persons, homeowners, business owners, and the unsheltered to allow sleeping, camping, and keeping warm and dry within 400 feet of residences, parks, open spaces, schools, and 50 yards of most businesses and in areas not recommended in this Report. There can be some flexibility regarding the nature and type of business;
- 7) Humane treatment of the unsheltered means that people recognize the social nature of the houseless crisis and all persons are treated with an understanding that unsheltered persons will make decisions that are in their best interests and should have the freedom to do so within the place, time, and manner restrictions of the society in which they live or visit;
- 8) Unsheltered persons seeking to shelter, and keep warm and dry, will need to use the bathroom. Failure to provide a place for persons to relieve themselves will result in law violations by the unsheltered, litter, and unsanitary conditions;
- 9) Effectively treating mental illness and drug addiction requires skilled, trained individuals. St. Helens should support the Governor's Plan and the State of Oregon Plan to concentrate resources in areas where the houseless already exist and to require persons involuntarily experiencing homelessness to live in areas where these services are provided;

- 10) St. Helens is a City of approximately 14,000 people and cannot reasonably accommodate a large influx of unsheltered persons;
- 11) The City should comply with ORS 195.500 and 195.505, and bring its statutory scheme concerning persons sleeping, lying, and keeping warm and dry upon public property within its goals of recognizing the social nature of the issue of homeless persons sleeping, lying and keeping warm and dry upon public property, and humanely removing persons from sleeping, and keeping warm and dry on public property. Failure of the City to do so will substantially increase its risks of loss of civil suits seeking injunctions and attorney's fees under ORS 195.530, and undesirable consequences for the citizens of St. Helens;
- 12) Unmeritorious lawsuits brought under ORS 195.530 are likely. The City should be prepared to defend its place, time, and manner decisions, including decisions where sleeping, lying, and keeping warm and dry upon public property are prohibited;
- 13) Selecting a PLACE where sleeping can lawfully occur should be based on data;
- 14) Allowing sleeping in a PLACE will open the door to possibly requiring sleeping in all similar PLACES and it will be difficult to remove persons from the PLACE if change is required;
- 15) Allowing camping in places within 400 feet of residences may reduce property values of those residences and disclosure that camping is allowed within 400 feet of the residence may be required for all residential land sales. The place of a residential property may ameliorate this issue.
- 16) While identifying locations where people can sleep, camp, keep warm and dry may create a risk of liability to the City of St. Helens, this risk can be mitigated. The City can purchase insurance, patrol the areas, and take other steps to reduce its exposure. Residents who live and work near unsheltered campers suffer enormously. Generally, there is no data to support that allowing unsheltered persons to sleep, camp, lay down, and keep warm and dry within 400 feet of sheltered residents is a good idea and this should be avoided;
- 17) Persons who are couch surfing are sheltered, but homeless. This is an example of the distinction between the two terms. It's unlikely that people who are sheltered, even informally, will seek to sleep, and keep warm and dry on public property. St. Helens should have a legal option to sleep, lay down, and keep warm and dry for those that find themselves unsheltered with appropriate place, manner and time restrictions;
- 18) The police department supports a location for place for people to sleep near the recreation center. Also, having a place near the police station will provide a relatively safe place for the unsheltered;
- 19) The data suggests that camping near water usually results in pollution to water and the surrounding natural area. The City is encouraged to supply drinking water to locations where the unsheltered may sleep, camp, and keep warm and dry.
- 20) All residences and businesses within 400 feet of a proposed camp site should receive mailed written notice of a public hearing and a right to be heard.

## **History:**

**Jurisdiction:** The subject Proactive Planning Commission was submitted to Staff, Counselor Patrick Birkle, and Secretary Christina Sullivan, entitled “Proactive Item Update” on August 17, 2022. Staff commented that the submission appeared to satisfy jurisdictional requirements and made no other comments. The Planning Commission reviewed the item and approved it to move forward. The Planning Commission ruled that the item would be handled in sub-committee.

The study of this issue:

More than 70+ hours were spent researching and reading the Boise and Grants Pass cases, internet research concerning unsheltered camping in cities, the YouTube Series, “Is Portland Over?”, the causes of homelessness, interview with the District Attorney, interviews with police, interviews with Community Action Team, reading interviews performed by Jacob Graichen, study of ORS 195.500, 195.505, and 195.530, and personally viewing every identified unsheltered location on public lands in the City of St. Helens. Study of the 2019 Housing Needs Analysis. Interviews with real estate broker professionals in St. Helens and Washington. Travel to Portland to view camping areas in Portland. Attending public forum held by State Representative and Portland Commissioners concerning action and analysis of unsheltered persons in Portland. Advice of attorney Aaron Hisel. Recognition of the mental health damage that can occur to citizens living in St. Helens, and elsewhere, from deprivation of views, beauty, parks, open spaces, and ordered public places. Interviews with Citizens. Consideration of public comment made to Planning Commission. Review of sleeping, camping, lying ordinances of Bend, Astoria, and Newport. Review of past Legislation in St. Helens concerning issues with people sleeping in McCormack Park.

The Planning Commission sub-committee of three persons met regularly, reported regularly to the Planning Commission in public meetings. The proposed Legislation to the Council forwarded by the subcommittee is a by-product of these and other efforts.





Law Office of Thaddeus Betz, LLC

February 28, 2023

**SENT VIA EMAIL**

Bend City Council  
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**Re: Camping Code Implementation Liability**

Dear Bend City Council, Manager King, and Attorney Winters:

The Bend Equity Project, the ACLU of Oregon, and the Law Office of Thaddeus Betz write to urge the City of Bend and its agencies to pause enforcement of Title 4 of the Bend City Code (“the Anti-Camping Code”), rethink the impending March 16 sweep of Hunnell and Clausen Roads (“Hunnell Sweep”), and consider its constitutional and new statutory legal obligations.

For the past several years, BEP has provided meals, transportation, sanitation services, and life-saving essential products to our neighbors living outside on Hunnell Road. At times, BEP has had to commit additional resources to relocating their houseless neighbors from an encampment that has been cleared by government agencies and/or their contractor agents. In these circumstances, BEP has documented disruption to people’s stability, destruction of critical pieces of people’s property that are necessary for survival, and a complete disregard for the impact that sweeps have on the most vulnerable Bend residents.



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A new law in Oregon<sup>1</sup>—ORS 195.530—requires Bend to consider that disregarded impact in passing regulations of “sitting, lying, sleeping, or keeping warm and dry outdoors on public property.” The Anti-Camping Code is such a law, and ORS 195.530 permits lawsuits against Bend laws that are not “objectively reasonable,” a standard that explicitly requires consideration of “the impact of the law on persons experiencing homelessness.”

As we all know, there are more people without houses than there are shelter beds available in Bend. This is well documented and not disputed. And under the new code it remains unclear at best, and certain at worst, that there will now not be enough physical outdoor space in the City on which sleeping will be permitted for people experiencing homelessness. The Anti-Camping Code is all but an outright ban effectuated by a complex system of mapping, moving requirements, and a maze of intersecting restrictions. For example, someone experiencing homelessness must move every 24 hours, must refrain from accumulating property, can only camp out of sight of another group, any group must remain under a safe threshold of people, and any camp must be at least 600 feet away from another. This is anything but reasonable, especially for people who will be subject to punishment under it. **We urge Bend to halt the implementation of the Anti-Camping Code, repeal it, and take considerable time to understand and account for the impact any new regulation would have on people living outside with nowhere to go.**

In addition to inviting statutory liability, **the Anti-Camping Code also invites constitutional liability as cruel and unusual punishment and an excessive fine, both proscribed by the Eighth Amendment to the United States Constitution.**

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<sup>1</sup> While ORS 195.530 does not become operative until July of this year, the City should be on notice that its actions under the current code at any time may still provide strong evidence of unreasonableness come July.



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As described above, the new code may very well be a *de facto* ban given the unavailability of shelter beds, the extremely limited amount of physical space, and the numerous other restrictions on people sleeping outside. As the Ninth Circuit made quite clear in *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), people cannot be punished for sleeping outside when there is nowhere else for them to go. However, the Anti-Camping Code still contemplates the forcible removal of individuals and arrest for appurtenant criminal charges. *See, e.g.*, 4.20.040 D.5. The Ninth Circuit has applied its central *Martin* principle to similar schemes that couple civil sanctions with potential for arrest. *See Johnson v. Grants Pass*, 50 F.4th 787, 807 (2022) (explaining that *Martin* “cannot be so easily evaded” by relying first on civil citations for enforcement).

While the *Johnson* court did not reach the excessive fines issue, Bend should be wary not to offend it. The Eighth Amendment’s protection against excessive fines remains “a crucial bulwark against government abuse.” *Pimentel v. City of Los Angeles*, 974 F.3d 917, 925 (9th Cir. 2020). As a C violation, some of Bend’s most poverty-stricken residents face fines of up to \$200 every time they may try to survive in a public place not sanctioned in the Anti-Camping Code’s maze of regulations. As the District of Oregon correctly decided in *Blake v. Grants Pass*, 2020 WL 4209227 at \*11 (July 22, 2020), “any fine is excessive if it is imposed on the basis of status and not conduct.” Camping outside when there is insufficient shelter is inseparable from the experience of being homeless; **Bend cannot punish or fine its way out of this reality.**

Finally, we urge caution about Bend’s potential liability in managing the personal property of those subject to campsite removals. BEP has observed gross mismanagement of personal property typically resulting in destruction that can have severe impacts on the lives of unhoused people. Bend has a constitutional obligation to avoid unreasonable searches and seizures of property, as well to afford people with procedural due process when depriving them of their property. It is not clear to us that there are sufficient procedural protections for people who may have property taken from them. **Bend should ensure they and their partners are fully prepared to carefully manage people’s property and that there are ample opportunities for property recovery.**

Indeed, in both *Lavan v. City of Los Angeles*, 693 F.3d 1022 (2012), and *Garcia v. County of Los Angeles*, 11 F.4th 1113 (2021), the 9<sup>th</sup> Circuit protected the property interests of houseless individuals. In *Lavan*, the defendant-city was barred from



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destroying or seizing property after a general notice was provided that property could be seized at any time. In *Garcia*, the defendant-city was barred from enforcing its “bulky items” ban which permitted the city to seize items that were larger than sixty gallons. The city, in its newly enacted camping ordinance, commits many of the same violations in *Lavan* and *Garcia*. In particular, the generalized “notice” the city prescribes fails to advance a process where a camper can contest a property seizure. This, as *Garcia* recites, is no process at all.

We are grateful that Bend leaders continue to point to the personal safety of people experiencing homelessness as reason for its efforts. We understand that Deschutes County had a meeting yesterday at which Chris Doty indicated that those conducting construction nearby to Hunnell Road do not have a need for the camp to be cleared. As this safety threat has subsided, Bend has ample time to consider the law and the values espoused by Title 4: human dignity, respect, and wellness.

**People who are experiencing homelessness have not had meaningful opportunities to engage with Bend in its decision-making even though they will be the most severely impacted.** Council meetings, online channels of communication, and many means of accessing government are not accessible for people experiencing homelessness. Medical conditions, lack of transportation, inaccessibility of information, are just a few of the many barriers that typical public engagement processes do not accommodate.

We also urge you to listen to guidance from experts at the United States Interagency Council on Homelessness, the federal agency whose mission is to prevent and address homelessness. In a recent publication, they cautioned:

Criminalizing homelessness is becoming more common. While laws that criminalize homelessness have long been in existence, recent years have witnessed many states and communities across the United States enacting laws that fine and arrest people for doing activities in public that are otherwise legal in the setting of a home: sleeping, sitting, eating, drinking.

These policies are ineffective, expensive, and actually worsen the tragedy of homelessness. There is a better way to respond to this crisis.

Jeff Olivet, “Collaborate, Don’t Criminalize: How Communities Can Effectively and Humanely Address Homelessness,” USICH (Oct. 26, 2022), <https://www.usich.gov/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address-homelessness>.



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Given Bend's statutory obligation to understand and account for the impacts on these members of the community – and given that criminalization approaches tend to entrench rather than solve homelessness– **we urge the City to pause and rethink its approach and to listen to and work *along with* people experiencing homelessness.**

Sincerely,

*Eric Garrity*, Member  
Bend Equity Project

*Kelly Simon*, Legal Director  
ACLU of Oregon

*Thaddeus Betz*, Principal  
Law Offices of Thaddeus Betz