



CITY OF ST. HELENS PLANNING DEPARTMENT

MEMORANDUM

TO: Planning Commission
FROM: Jacob A. Graichen, AICP, City Planner
RE: HB3115, et. al. – code amendment proposal and Planning Commission recommendation
DATE: May 1, 2023

After the City Council considered the Planning Commission recommended draft at their April 19, 2023 work session for consideration and input, staff sought legal counsel review of it.

Attached are the Planning Commission's recommendations following post April 19, 2023 efforts. Legal counsel suggested changes and comments are in **red** and staff changes/comments are in **blue**.

Attached: Planning Commission recommended code amendments with edits/comments

[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~~ wide variety of reasons that include, but are not limited to:
 - i. Insufficient funds to afford stable housing;
 - ii. Mental illness;
 - iii. Drug addiction, including alcohol addiction to drugs and/or alcohol;
 - iv. Persons purposefully homeless or without funds for housing due to lifestyle choice(s) Personal preferences and lifestyle choices;
 - v. 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;

Commented [AH1]: The beginning portion of this "whether it be in shelter or campgrounds" I would recommend deleting, but it more of a style choice than because of the substance. The second part, "persons from outside St. Helens" should be deleted, because it suggests a factor that would be illegal (a preference for locals over those not from St. Helens).

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. Resting or sleeping in a vehicle is not a campsite. Resting or sleeping in a vessel in a waterway pursuant to Chapter 8.28 SHMC is not a campsite.
- (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;~~

Commented [AH2]: This language is problematic for a few reasons: (1) the 7 days in any 30 days suggests that days would not need to be continuous and creates additional complications with ever being able to enforce this; (2) camping is allowed for up to 5 days in one of the draft code sections below (12.20.040) and this inconsistency creates additional confusion and enforcement issues; I am also concerned about the "documented request" and "documented discussion" language. Overall, I would suggest cleaning this up and it still seems much cleaner to me to simply designate a number of hours when a campsite becomes an "established campsite" such as 24 or 48 hours.

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 SHMC 12.20.020(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]

Commented [JG3]: At their April 19, 2023 work session, the council was uncomfortable with listing specific sites, but was ok keeping the power to do so in the Ordinance. Per legal, we need to list a specific site or sites if you go the "places where you can camp" route.

- 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 City Parks per Chapter 8.24 SHMC;
- iv. The City Docks per the St. Helens Municipal Code Title 9;
- v. Public streets with an RV or vehicle under Title 10;

Commented [JG4]: Sand Island and McCormick Park are already addressed per this Chapter. Better to just reference chapter.

Commented [JG5]: Note additional reference to water vessels under 12.20.010(A). Similar to vehicles.

Commented [AH6]: If you adopt the language under 12.20.010(A) that sleeping in a vehicle is not "camping" then I would remove this from this list.

- 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 beyond 30 days.

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)(d)~~ The person will maintain the area where they are sleeping in a clean condition, and upon vacating the site;
- ~~(f)(e)~~ 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 laws and regulations for unlawfully dumping such waste;~~
- ~~(g)(f)~~ "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~~ pursuant to 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

Commented [JG7]: At their April 19, 2023 work session, the council expressed a desire for law enforcement to have some time extension authority. I noted this to legal and this is the only resulting change. This issue assumes the 5-day limit to specifically designated sites, which legal counsel questions as well (see below). Challenge is city leadership normally has this kind of power, not law enforcement personnel. Law enforcement is not law creation.

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Commented [AH8]: What is the expectation of what the person does when the 5 days is up and they are still homeless? My understanding of what you are trying to do here is have camping take place only on the two locations above. If that is the case, and they can just move back and forth between those two locations (which are right by each other) than that would probably be fine, but if the expectation is that they leave town or something, this is subject to being challenged.

Commented [JG9]: "any location" was a matter of concern discussed with the council at the April 19, 2023 work session.

Commented [AH10]: If you adopt the language under 12.20.010(A) that sleeping in a vehicle is not "camping" then I would remove this from this list.

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 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;
- (d) 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.~~

The following is an example of something I have been working on with the City of Rainier for consideration of a couple of aspects. In particular, they are going with the lawful except where prohibited approach as opposed to where you are headed which is prohibited except where permitted. There are some benefits to each approach, and it appears you have made some decisions, but it is worth looking at. As to the editor's note and my note to 12.20.060(d), the last couple of paragraphs offer some ideas related to giving the judge discretion over the charges and some incentives that can be put in place.

Commented [AH11]: Ramping up the violation amounts is fine, but I don't think the current state of the law allows you to ramp this up to a misdemeanor. Even if that were technically allowed I would highly recommend against having that provision in this for St. Helens. Let someone else get sued. Where you do not have an acute problem, this language creates an unnecessary risk that I would strongly advise against. I suggest making a third violation a violation with a fine of \$500 or less. I also recommend some of the language from the last couple of paragraphs of the Rainier example below be considered to offer some incentives for those being cited to engage with service providers and to further document those that refuse to do so.

Commented [AH12]: See below

ORDINANCE NO. 1089

AN ORDINANCE OF THE CITY OF RAINIER PROHIBITING CAMPING AT CERTAIN PUBLIC PROPERTIES

CITY OF
RAINIER
EXAMPLE
BELOW

Section 1. Definitions.

For purposes of this section, the following words and phrases shall mean:

- a. To "Camp" means to occupy a Campsite for over 24 hours.
- b. "Campsite" means a location upon City Property where Camping Materials are placed.

- c. "Camping Materials" include, but are not limited to, tents, huts, awnings, lean-tos, chairs, tarps, collections of personal property and/or similar items that are, or reasonably appear to be, arranged and/or used as camping accommodations.
- d. "City Property" includes, but is not limited to, parks, rights of way, parking lots, easements, or other land owned, leased, controlled, or managed by the City.
- e. "Personal Property" means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.
- f. "Relocate" means to move off of City Property or to a different City Property. This definition does not include moving to another portion of the same City Property.

Section 2. Camping Prohibited Upon City Property

1. It is unlawful for any person to Camp upon City Property unless otherwise authorized by law or by declaration of the City Administrator.
2. Unless otherwise authorized by law or by declaration of the City Administrator, it is unlawful to establish a Campsite for any period of time at the following locations:
 - a. City Hall and adjacent sidewalks, 106 W B Street;
 - b. Senior Center and adjacent sidewalks, 48 W 7th Street;
 - c. City of Rainier Marina and adjacent parking lot, 107 W C. Street;
 - d. Riverfront Park and Trail;
 - e. Sewer Treatment Plant, 690 W A Street; and
 - f. Water Treatment Plant, 650 E Rainier Blvd.
3. At least once every 24 hours an individual that has placed a Campsite, Camping Materials or Personal Property on City Property must Relocate.
3. The City shall only remove individuals and unclaimed Personal Property from a Campsite as provided by ORS 195.505.
4. Violation of this section is punishable by a fine of not more than \$125. The amount imposed shall be at the discretion of the judge.
5. If the City refers a service provider to an individual who is cited for a violation of this Section and the individual demonstrates they meaningfully engaged with that or another similar service provider after receiving the citation and before the hearing, the fine is eligible to be reduced or eliminated at the discretion of the judge.