



CITY OF ST. HELENS PLANNING DEPARTMENT
M E M O R A N D U M

TO: Planning Commission
FROM: Jacob A. Graichen, AICP, City Planner
RE: Planning Commission Proactive Item Submission Consideration
DATE: August 24, 2022

In June 2022 the Planning Commission adopted the **Planning Commission Proactive Procedures, PCPR** (attached).

Commissioner Toschi submitted a Proactive Item for Commission consideration on August 8, with a revision August 21. Staff has reviewed the materials to the extent to a least determine compliance with items 1 and 2 of the PCPR for inclusion on the September agenda per item 3 of the PCPR.

Subject: Oregon HB 3115

Staff comments: Due to workload, no comments at this time.

Attached: June 2022 PCPR
Proactive Item Submission

CITY OF ST. HELENS, OREGON

PLANNING COMMISSION PROACTIVE PROCEDURES

The Planning Commission and acting Historic Landmarks Commission hereby adopts the following proactive procedures. This is the original and there are no prior versions to be repealed.



- (1) Any Planning Commissioner can request that an agenda item include a proactive matter for Commission consideration (“Proactive Item”). In order to place a “Proactive Item” on the Planning Commission Agenda, the proposing Commissioner shall at least 20 business days before the week prior to the scheduled Planning Commission meeting, submit the “Proposed Item” for Staff review and, if desired, comment.
- (2) The proposed “Proactive Item” submitted to Staff must contain the following elements:
 - (a) The proposed Proactive Item shall identify in the presented materials how the item or matter for Commission study, planning, approval, action, proposed legislation, or other is within the Jurisdiction of the Planning Commission and shall identify specifically which provisions of the St. Helens Municipal Code (SHMC) Section 2.08.080 and/or Chapter 17.36 SHMC is/are applicable for the purposes of Jurisdiction;
 - (b) The proposed Proactive Item submission shall outline the reasons the Commissioner believes the Proactive Item is something the Planning Commission should undertake; and
 - (c) The proposed Proactive Item submission shall briefly outline the suggested process of study, investigation, public involvement, timeline and budget, as applicable, that the Commissioner suggests the Planning Commission undertake. This is for the purpose of Proactive Item consideration and not binding.
- (3) Having timely received a proposed Proactive Item submission from a Planning Commissioner, Staff shall review the proposed Proactive Item submission for compliance with paragraphs (1) and (2) above and place it on the Agenda for the next qualifying Planning Commission meeting. Staff may submit its comments at the usual time and manner preceding said meeting.
- (4) The Planning Commission may vote to take up the proposed Proactive Item submission. The discussion preceding a motion and vote shall include at least following:
 - (a) Determination of Jurisdiction per paragraph 2(a) above;
 - (b) Reasons per paragraph 2(b) above; and
 - (c) What level of Staff involvement and monetary expense will be necessary for the Proactive Item to advance and what actual staff resources and other resources are available based upon Staff workload and the City budget.

Research and reporting on that research is an example of activity that can be conducted by Commissioners, the public, volunteers, and hired help that can minimize staff inclusion and helps preserve Staff's ability to conduct daily tasks and other necessary Staff priorities.

- (5) The Planning Commission will track the Proactive Items on its Agenda calendar as it believes is appropriate. "Proactive Items" will be an agenda item for the Commission's regular scheduled meetings for this purpose.

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APPROVED AND ADOPTED this 14th day of June, 2022, by the following vote:

Ayes: Commissioner Webster, Semling, Low, Toschi, Hubbard, and Pugsley

Nays: (none)


Dan Cary, Planning Commission Chair

CITY OF ST. HELENS PLANNING COMMISSION
PROACTIVE ITEM SUBMISSION
UPDATE

Date Submitted: August 17, 2022

Submitted by: Steve Toschi, Planning Commissioner

Proposed Date for Meeting for Discussion: September 13, 2022 or October 11, 2022

Item Matter Number: 2022-1 (subject to Staff numbering)

Title: Study and Recommendations to Council, HB 3115

Jurisdiction: The Planning Commission has jurisdiction under 2.08.080(10), “review and act on land use control ordinance change proposals,...and discretionary permits.” (12) “Recommend and make suggestions to the city council...concerning...betterment of housing and sanitation conditions and establishment of zones or districts limiting the use...of buildings and structures. (13) Recommend to the city council...plans for regulations of the future growth of the city and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds, and vacant lots and plans consistent with the future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper services of all public utilities, harbor, shipping and transportation facilities.” (14) “Recommend to the city council...plans for promotion, development and regulation of industrial and economic needs of the community in respect to private and public enterprises engaged industrial pursuits.” And (18) Study and propose in general such measures as may be advisable for promotion of the public interest, health, morals, safety, comfort, convenience, and welfare of the city and the area six miles adjacent thereto within the urban growth boundary of the city.”

Reasons for Planning Commission Action: Upon further reading of HB 3115, we should separate out analysis of Subsections (2), (3), and (5), from Subsections (4) and (6). Subsections 2, 3 and 5 appear to be impediments to enforcement of sleeping and lying laws. In every case wherein a person is charged with a law violation they may raise the “unreasonableness” of the statute, “from perspective of those experiencing homelessness,” as a defense to the action. Subsections (4) and (6) create a class cause of action against a City for it to be sued for “injunctive relief” and “attorney’s fees” if its laws are not “objectively reasonable.” Subsections (2), (3), and (5) appear designed to thwart effective prosecution of lawlessness, thereby creating an anarchistic environment in the City. Essentially, it will be difficult for the City to enforce its laws. However, as long as the City has reviewed its laws and found them to be “humane,” then the statute does not apply and is not an option. By the Planning Commission studying homeless migration, the population of homeless, the harm caused by the homeless to the City and its population, and the humane methods of addressing the problem, the City, and its prosecuting attorneys, will have a strong body of evidence to counter legal attacks and to persuade the Judicial Branch of the government that the laws of St. Helens are reasonable, just, and humane.

Regarding the “class action” causes of action, the same study and ensuring that the laws are “humane” will insulate the City from lawsuits, and also in the unlikely event of a piecing of the findings and rulings of the PC and the City, the PC findings and the City acting on them will provide a solid foundation to defend attacks on the City.

Process of Study: The process will proceed in subcommittee with citizen involvement, mental crisis involvement, and hopefully law enforcement involvement. Staff will identify statutes and ordinances which could be interpreted as sleeping and lying laws, keeping warm laws, sitting laws, or laws concerning “camping” on public property, including vehicle camping and boat camping. These will be reviewed to ensure “humane” treatment of the homeless.

Recommendations to the Planning Commission will be made and a public hearing held for recommendations of legislation to council. Regulations possibly limiting the ability of government staff or management to disallow camping on public property by homeless. Regulations limiting the ability of private citizens to establish homeless camps or homeless services will be explored.

Timeline: The goal will be to progress the item to council for recommendation by May 1, 2023.

Budget: Staff four entire days of time for one experienced planner. It’s likely that the Planning Department will be asked by the council to undertake this work anyway. Additionally, there could be monetary costs for the study of the causes of homelessness, the different homeless populations, homeless migration, how other cities are dealing with the homeless and how homeless end up in a place like St. Helens.

Enrolled
House Bill 3115

Sponsored by Representative KOTEK; Representatives DEXTER, MARSH, MCLAIN, POWER, REYNOLDS, WILDE, Senators DEMBROW, MANNING JR, RILEY

CHAPTER

AN ACT

Relating to the regulation of public property with respect to persons experiencing homelessness; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) “City or county law” does not include policies developed pursuant to ORS 203.077 or 203.079.

(b)(A) “Keeping warm and dry” means using measures necessary for an individual to survive outdoors given the environmental conditions.

(B) “Keeping warm and dry” does not include using any measure that involves fire or flame.

(c) “Public property” has the meaning given that term in ORS 131.705.

(2) Any city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness.

(3) It is an affirmative defense to a charge of violating a city or county law described in subsection (2) of this section that the law is not objectively reasonable.

(4) A person experiencing homelessness may bring suit for injunctive or declaratory relief to challenge the objective reasonableness of a city or county law described in subsection (2) of this section. The action must be brought in the circuit court of the county that enacted the law or of the county in which the city that enacted the law is located.

(5) For purposes of subsections (2) and (3) of this section, reasonableness shall be determined based on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness.

(6) In any suit brought pursuant to subsection (4) of this section, the court, in its discretion, may award reasonable attorney fees to a prevailing plaintiff if the plaintiff:

(a) Was not seeking to vindicate an interest unique to the plaintiff; and

(b) At least 90 days before the action was filed, provided written notice to the governing body of the city or county that enacted the law being challenged of an intent to bring the action and the notice provided the governing body with actual notice of the basis upon which the plaintiff intends to challenge the law.

(7) Nothing in this section creates a private right of action for monetary damages for any person.

SECTION 2. Section 1 of this 2021 Act becomes operative on July 1, 2023.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 15, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 9, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State

Enrolled
House Bill 3124

Sponsored by Representative LIVELY; Representatives POWER, WILDE, Senator GORSEK

CHAPTER

AN ACT

Relating to homelessness; amending ORS 203.079 and section 1, chapter 21, Oregon Laws 2018; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 203.079 is amended to read:

203.079. (1) A policy developed pursuant to ORS 203.077 shall *[include, but is not limited to,]* **conform, but is not limited, to** the following~~[:]~~ **provisions.**

(2) As used in this section, “personal property” means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

[(a)] **(3) [Prior to] Except as provided in subsection (9) of this section, at least 72 hours before** removing homeless individuals from an established camping site, law enforcement officials shall post a **written** notice, *[written]* in English and Spanish, *[24 hours in advance]* **at all entrances to the camping site to the extent that the entrances can reasonably be identified.**

[(b)] **(4)(a) [At the time that a 24-hour] When a 72-hour** notice is posted, law enforcement officials shall inform the local agency that delivers social services to homeless individuals **as to** where the notice has been posted.

[(c)] **(b)** The local agency may arrange for outreach workers to visit the camping site *[where a notice has been posted]* **that is subject to the notice** to assess the need for social service assistance in arranging shelter and other assistance.

[(d)] **(5)(a)** All *[unclaimed]* personal property **at the camping site that remains unclaimed after removal** shall be given to *[law enforcement officials whether 24-hour]* **a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (10) of this section, whether** notice is required **under subsection (3) of this section** or not.

(b) The unclaimed personal property must be stored:

(A) For property removed from camping sites in counties other than Multnomah County, in a facility located in the same community as the camping site from which it was removed.

(B) For property removed from camping sites in Multnomah County, in a facility located within six blocks of a public transit station.

(c) Items that have no apparent value or utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.

(d) Weapons, controlled substances other than prescription medication and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.

(6) The written notice required under subsection (3) of this section must state, at a minimum:

(a) Where unclaimed personal property will be stored;

(b) A phone number that individuals may call to find out where the property will be stored; or

(c) If a permanent storage location has not yet been determined, the address and phone number of an agency that will have the information when available.

(7)(a) The unclaimed personal property shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.

(b) The property shall be stored for a minimum of 30 days during which it [will] shall be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed [for] after 30 days may be disposed of or donated to a corporation described in section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2020. [For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site. Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials.]

[(e)] (8) Following the removal of homeless individuals from a camping site on public property, the law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a humane and just manner and to determine if any changes are needed in the policy.

[(2)] (9)(a) The [24-hour] 72-hour notice [required] requirement under subsection [(1)] (3) of this section [shall] does not apply:

[(a)] (A) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring at an established camping site.

[(b)] (B) In the event of an exceptional emergency [such as] at an established camping site, including, but not limited to, possible site contamination by hazardous materials [or when there is], a public health emergency or other immediate danger to human life or safety.

(b) If a funeral service is scheduled with less than 72 hours' notice at a cemetery at which there is a camping site, or a camping site is established at the cemetery less than 72 hours before the scheduled service, the written notice required under subsection (3) of this section may be posted at least 24 hours before removing homeless individuals from the camping site.

[(3)] (10) A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance may not issue the citation if the citation would be issued within 200 feet of [the] a notice [described in] required under subsection (3) of this section and within two hours before or after the notice was posted.

(11) Any law or policy of a city or county that is more specific or offers greater protections to homeless individuals subject to removal from an established camping site preempts contrary provisions of this section.

SECTION 1a. If Senate Bill 410 becomes law, section 1 of this 2021 Act (amending ORS 203.079) is repealed and ORS 203.079, as amended by section 1, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 410), is amended to read:

203.079. (1) A policy developed pursuant to ORS 203.077 shall [include, but is not limited to,] conform, but is not limited, to the following[:] provisions.

(2) As used in this section, "personal property" means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

[(a)] (3) [Prior to] Except as provided in subsection (9) of this section, at least 72 hours before removing homeless individuals from an established camping site, law enforcement officials

shall post a **written** notice, *[written]* in English and Spanish, *[24 hours in advance]* **at all entrances to the camping site to the extent that the entrances can reasonably be identified.**

[(b)] **(4)(a)** *[At the time that a 24-hour]* **When a 72-hour** notice is posted, law enforcement officials shall inform the local agency that delivers social services to homeless individuals **as to** where the notice has been posted.

[(c)] **(b)** The local agency may arrange for outreach workers to visit the camping site *[where a notice has been posted]* **that is subject to the notice** to assess the need for social service assistance in arranging shelter and other assistance.

[(d) Except as otherwise provided in paragraph (e) of this subsection:]

[(A)] **(5)(a)** All *[unclaimed]* personal property **at the camping site that remains unclaimed after removal** shall be given to *[law enforcement officials whether 24-hour]* **a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (10) of this section, whether** notice is required **under subsection (3) of this section** or not.

(b) The unclaimed personal property must be stored:

(A) For property removed from camping sites in counties other than Multnomah County, in a facility located in the same community as the camping site from which it was removed.

(B) For property removed from camping sites in Multnomah County, in a facility located within six blocks of a public transit station.

(c) Items that have no apparent value or utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.

(d) Weapons, controlled substances other than prescription medication and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.

(6) The written notice required under subsection (3) of this section must state, at a minimum:

(a) Where unclaimed personal property will be stored;

(b) A phone number that individuals may call to find out where the property will be stored; or

(c) If a permanent storage location has not yet been determined, the address and phone number of an agency that will have the information when available.

(7)(a) The unclaimed personal property shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.

(b) The property shall be stored for a minimum of 30 days during which it *[will]* shall be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed *[for]* after 30 days may be disposed of **or donated to a corporation described in section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2020.**

[(B) For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.]

[(C) Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.]

[(e) For unclaimed personal property located in Multnomah County:]

[(A) All unclaimed personal property shall be given to a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (3) of this section, whether 24-hour notice is required or not.]

[(B) Facilities for storage of personal property under paragraph (d) of this subsection must be located within six blocks of a public transit station.]

[(f)] **(8)** Following the removal of homeless individuals from a camping site on public property, the law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a humane and just manner and to determine if any changes are needed in the policy.

[(2)] **(9)(a)** The [24-hour] **72-hour** notice [required] **requirement** under subsection [(1)] **(3)** of this section [shall] **does** not apply:

[(a)] **(A)** When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring **at an established camping site**.

[(b)] **(B)** In the event of an exceptional emergency [such as] **at an established camping site, including, but not limited to,** possible site contamination by hazardous materials [or when there is], **a public health emergency or other** immediate danger to human life or safety.

(b) If a funeral service is scheduled with less than 72 hours' notice at a cemetery at which there is a camping site, or a camping site is established at the cemetery less than 72 hours before the scheduled service, the written notice required under subsection (3) of this section may be posted at least 24 hours before removing homeless individuals from the camping site.

[(3)] **(10)** A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance may not issue the citation if the citation would be issued within 200 feet of [the] a notice [described in] **required under subsection (3) of this section** and within two hours before or after the notice was posted.

(11) Any law or policy of a city or county that is more specific or offers greater protections to homeless individuals subject to removal from an established camping site pre-empts contrary provisions of this section.

SECTION 2. Section 1, chapter 21, Oregon Laws 2018, is amended to read:

Sec. 1. (1) The Department of Transportation may enter into an intergovernmental agreement with a city that has a population of 500,000 or more for the removal, storage and disposition of personal property deposited, left or displayed on property that is owned by the department.

(2) Notwithstanding ORS 377.650, 377.653 and 377.655, an intergovernmental agreement entered into under this section may provide alternative provisions related to the removal, storage and disposition of personal property if the alternative provisions conform with the requirements for local government policy for removal of homeless individuals and personal property [described] under ORS 203.079, *except that under this section the notices described in ORS 203.079 must be posted 48 hours in advance*.

(3) In addition to the requirements described in subsection (2) of this section, an intergovernmental agreement entered into under this section must include the following:

(a) Requirements for posting notice before the removal of personal property, including but not limited to the following:

(A) That the notice is created using durable materials and securely posted within 30 feet of the personal property to be removed;

(B) That the notice must provide the date the notice begins and the date upon which the city may begin removing personal property; and

(C) That the notice must provide a description of:

(i) How an individual may access personal property that is removed and stored; and

(ii) The length of time the city will store personal property before the city disposes of it.

(b) A requirement that the notice expires 10 days after the city posts the notice.

(c) A severe weather protocol regarding the weather conditions under which the city will not remove personal property.

(d) Provisions related to inventorying and storing the personal property to be removed.

(e) Provisions related to the city relinquishing unclaimed personal property after the storage period to the city's designated agent.

(f) Provisions related to when the city will provide impact reduction services, including but not limited to trash collection.

(4) The [48-hour] **72-hour** notice **under ORS 203.079** required under subsection (2) of this section does not apply:

(a) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring;

(b) Where there is an exceptional emergency, such as possible site contamination by hazardous materials; or

(c) When there is immediate danger to human life or safety.

(5) Before the city adopts an intergovernmental agreement under this section or changes to the agreement, the city shall invite public comment on the proposed agreement or the proposed changes to the agreement.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 19, 2021

Received by Governor:

Repassed by House June 9, 2021

.....M.,....., 2021

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2021

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 8, 2021

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2021

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Shemia Fagan, Secretary of State