



CITY OF ST. HELENS PLANNING DEPARTMENT

MEMORANDUM

TO: City Council
FROM: Jacob A. Graichen, AICP, City Planner
RE: HB3115, et. al. – Revised Planning Commission recommendations
DATE: May 10, 2023

The Planning Commission provided a recommended draft law for this matter at their April meeting. Staff and the Planning Commission Chair presented this to the Council at your April 19, work session.

Since then, our legal counsel, Planning Commission chair and myself (more-or-less in that order) have revised the draft. The Planning Commission also discussed the matter again and received input at their May 9th meeting. The revised draft resulting from these efforts is attached.

At your May 17th work session, both Planning Commission Chair Toschi and myself will present the latest draft with the hope of council consensus so we can proceed with the formal ordinance.

I intend to have some presentation slides to aid in that.

* * *

Planning Commission Chair Toschi wanted to share the following message:

Jacob, per your request, this is a very brief memo why the Rainier camping statute is not going to work. The Planning Commission specifically rejected the Rainier statute as a model for St. Helens. As Charlie Castner said, "it is going to be a disaster."

First, the public will be against people, camping and sleeping on their streets, and in the parks. If given the choice, I am sure the public would rather have 15 people maximum in places near 1810 Old Portland Rd., than strangers in camped within their neighborhoods.

The Planning Commission study found that there is no data that supports a positive outcome when homeless or unsheltered, or people who simply want to camp within the neighborhoods or parks. The neighborhoods end up becoming unsafe. The people end up feeling unsafe. Strangers within neighborhoods cause conflicts. The Planning Commission specifically found in the study that all temporary sheltering and camping should be done at least 400 feet away from any residence or business.

One more thing. The rule that a person experiencing homelessness needs to move every 24 hours was something that was specifically rejected by the Planning Commission, as being not reasonably objective from the perspective of the homeless. Therefore, to adopt such a statute would immediately go against the findings of the Planning Commission, and probably not be upheld by a judge. Furthermore, nobody in the Planning Commission meeting could state why forcing somebody to move every 24 hours would be reasonable.

I attached an example of the City of Rainier statutes referenced by Chair Toschi.

Attached: Revised Planning Commission recommended code amendments for St. Helens

City of Rainier example

[Editor's note: Chapter 12.20 SHMC will need to be updated to remove most or all of the current camping on public property content. Sleeping/Camping on public property is best as its own chapter.

The following is all proposed new text for a new Chapter under Title 12 of the St. Helens Municipal Code.]

Title 12 Chapter 12.22

SLEEPING AND CAMPING ON PUBLIC PROPERTY

12.22.010 Findings and Purpose.

(1) The City of St. Helens hereby adopts the provisions of this Chapter 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.

(2) 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.

[Council consideration: 400' is based on one of the "affected area" provisions of right-of-way vacations per ORS Chapter 271. Other distance basis possible. 400' does not directly relate to any proposed provision herein.]

(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 are homeless for wide a variety of reasons that include, but are not limited to:

- (i) Insufficient funds to afford stable housing;
- (ii) Mental illness;
- (iii) Addiction to drugs and/or alcohol;
- (iv) Personal preferences and lifestyle choices; and
- (v) Any and all of the above.

(e) The City of St. Helens cannot reasonably supply areas of public property for people to sleep and keep warm and dry who are experiencing homelessness other than on a temporary basis.

12.22.020 Definitions.

For the purpose of this chapter, the following mean:

(1) “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.

[Note: The last two sentences above separates camping in vehicles and waterborne boats from this chapter, so management of such would fall under vehicle, parking and waterway usage codes.]

(2) “To camp” means to set up, or to remain in or at, a campsite.

(3) “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 72 hours in any 30 days.

[Council consideration – the original Planning Commission recommendation version had 7 days in any 30 days instead of 72-hours. Legal counsel (a former police officer) was concerned that “7 days in a 30-day period” suggests that days would not need to be contiguous and creates potential enforcement complications. 72-hours is closer to the more typically used 12, 24 or 48-hours.

This is important because an “established campsite” is not defined by the statutes and ORS 195.505(3) requires posted 72-hour notice before removal of an “established campsite.”]

12.22.030 Where Sleeping and Camping on Public Property is Not Allowed.

(1) It is unlawful for any person to sleep in a time, place and manner or camp in or on public property or public rights-of-way within the City of St. Helens anywhere that is not a place described in (2) of this section:

(2) The places where sleeping, keeping warm and dry and camping may occur, and are an exception to (1) of this section, shall be:

(a) ~~To-be-determined pre-selected site...~~;

[Council consideration – based on feedback from legal counsel we must designate a site in the ordinance. The Commission is steadfast with their recommendation that it be a site on Kaster Road in proximity to 1810 Old Portland Road and/or the proposed police station. This is a key part of the discussion because this recommendation from the Planning Commission is moot without a pre-selected site or sites.

Note that at the May 9, 2022 Planning Commission meeting, there was public testimony against using the old “Boise park” area on the St. Helens Industrial Business Park. There was also testimony about avoiding camas meadows in the area. The Planning Commission also noted concerns about staying away from waterways and wetlands.

Note that though the ordinance may identify whole properties as sites for sleeping/camping, the sleeping/camping areas are not intended to encompass the entire property. This is one reason the Commission proposes a cap on the number of individuals who camp.

We will probably need to include a depicting exhibit in the ordinance of the pre-selected

site(s).]

(b) City Parks per Chapter 8.24 SHMC, which is intended for recreation purposes and based on permits and fees to allow;

[Note: SHMC 8.24.120 includes existing provisions for parks but is subject to the discretion of the Parks Director or equivalent position. Per SHMC 8.24.190(1)(i) and 8.24.200(1) no overnight camping is allowed without a permit. SHMC 8.24.200 also includes maximum stay provisions for McCormick Park and Sand Island and is limited to May through October. There is also a provision for a camping fee. The city can prohibit camping in parks simply by not issuing permits. This has been the case for McCormick Parks for years.]

(c) 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 and/or to allow more than the normal maximum persons allowed per SHMC 12.22.040(2).

[Council consideration – This is not only a mechanism to create additional camping for free sites if needed but could also be used to allow more than the maximum days at the preselected site(s).]

At the April 19, 2023 work session, the Council expressed concern about who can extend time and hoped law enforcement would have some power in this regard. This concern was conveyed to legal counsel, who only added "beyond 30 days". When it comes down to it, law enforcement is not the rule-maker, they are the rule enforcer. I think the Council will need to accept its power and authority on this.]

12.22.040 Manner.

(1) Any person camping or sleeping pursuant to this Chapter shall:

(a) Follow the rules and regulations of the particular camping site where they are located, other portions of the St. Helens Municipal Code, and State and Federal law in addition to these rules. If there are no such rules or regulations applicable to a particular area, these rules, the St. Helens Municipal Code, and State and Federal laws shall apply;

(b) Not use an open fire or flame;

(c) Not occupy more than a 12-foot by 12-foot area;

(d) Not place a campsite closer than 100' to a waterway, water body or wetland;

(e) Not remove or clear vegetation;

(f) Not exceed the time allowance per this Chapter;

(g) Maintain the site in a clean, sanitary and nonpolluting condition during use of and upon vacating the site;

(h) Register with the City Administrator or their designee; and

(i) Identify themselves to law enforcement or other authorized personnel if requested.

(2) There shall be no cost to register per (1)(h) of this Section and the maximum persons that can camp or sleep on public property for no fee in the City of St. Helens at any one time is limited to fifteen, except as allowed by a declaration of an emergency pursuant to SHMC 12.22.030(2)(c).

(3) Any dumping of wastewater, or grey water other than in an approved receptacle is punishable under applicable laws and regulations for unlawfully dumping such waste.

(4) Established campsites and campsites created by a declaration of emergency under SHMC 12.22.030(2)(c) shall be removed per ORS 195.500 and 195.505 and after a declaration that the emergency no longer exists. All other campsites or sleeping areas which violate this Chapter may be removed by law enforcement or other authorized personnel immediately.

12.22.050 Time.

Except per SHMC 12.22.030(2)(c), camping, where allowed per this Chapter, may occur for a maximum of 3 continuous days, or 3 total days within any 30 days. Afterwards, people, whether sheltered or not, may not camp within the City of St. Helens until 60 days have elapsed from the last date the person camped in the city.

[Council consideration – The original Planning Commission draft had 5 days instead of 3. In addition, having requirements for people to leave the city may be subject legal challenge, but the declaration of emergency provision per 12.22.030(2)(c) is a mechanism to allow a longer duration. Also, the posted notice requirements to vacate an established camp site per ORS 195.505 can add an additional 72 hours.]

12.22.060 Removal.

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

12.22.070 Violation.

(1) Upon encountering a person who seeks to sleep, camp, or keep warm and dry upon public property or right-of-way in a place, manner, or time that is inconsistent with this Chapter, 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 of St. Helens where a person may find services to help them.

(2) A first violation of this Chapter shall be an infraction punishable by a fine of a documented warning.

(3) A second violation of this Chapter within one year of the first violation shall be an infraction punishable by a fine of up to \$25.00.

(4) A third violation of this Chapter 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

[Council consideration – Per legal counsel, ramping up the violation amount is fine, but the current state of the law doesn't necessarily allow ramping up to a misdemeanor. Based on recent case law, this issue is criminalizing homelessness, which this third tier does. The Planning Commission's argument for keeping this is 1) it is unlikely that someone would get beyond the tier 2 violation, and this sends a message that St. Helens takes this matter seriously.]

Tiers 1 and 2 are gracious. Legal counsel suggests additional grace such as including language such as this example:

“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.”]

DRAFT

The following is an example from the City of Rainier as an example for comparison purposes.

Rainier is going with the lawful except where prohibited approach as opposed to the City of St. Helens Planning Commission recommendation which is the prohibited except where permitted approach.

ORDINANCE NO. 1089
AN ORDINANCE OF THE CITY OF RAINIER PROHIBITING CAMPING AT CERTAIN PUBLIC PROPERTIES

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.

SAMPLE