



CITY OF SALEM

585 Liberty St SE
Salem, OR 97301

Staff Report

File #: 23-182

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Date: 5/8/2023

Item #: 7.1 a.

TO: Mayor and City Council
THROUGH: Keith Stahley, City Manager
FROM: Dan Atchison, City Attorney

SUBJECT:

First reading of Ordinance Bill No. 9-23. Revising City regulations concerning camping on public property in compliance with House Bills 3115 and 3124, codified as Oregon Revised Statutes 195.500.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance; Natural Environment Stewardship; Safe Community; Welcoming and Livable Community.

SUMMARY:

In 2021 the Oregon Legislature passed House Bills 3115 and 3124. The bills were intended to codify (put into written law) recent federal court decisions; Blake v. City of Grants Pass and Martin v. Boise. The bills impose restrictions on cities and counties that have regulations that restrict human habitation on public property. Ordinance Bill No. 9-23 complies with the bills by amending the City's camping restrictions (SRC 95.720), repealing the City's regulation of leaving personal property unattended on a sidewalk (SRC 95.730) and the City's regulation of sitting and laying on a sidewalk (Ordinance 6-20).

ISSUE:

Shall the City Council advance Ordinance Bill No. 9-23 to second reading for enactment?

RECOMMENDATION:

Advance Ordinance Bill No. 9-23 to second reading for enactment.

Alternatively, Council may direct that a public hearing be scheduled and for second reading to occur

at a date after the public hearing.

FACTS AND FINDINGS:

Overview:

Requirements of applicable law:

- No criminal penalties (including fines) imposed because a person is involuntarily homeless and has no access to shelter (status);
- 72 hour notice before removing an “established” camp (established is undefined but likely means a minimum of 24 hours);
- Jurisdictions must preserve and provide access to personal property collected when a camp is removed.
- Any restriction on unsheltered use of public areas must be “objectively reasonable.”
- HB 3115 is effective July 1, 2023.

Current City Code:

- SRC 95.720 - Prohibits camping on all public property.
- Current camping prohibition is not practically enforceable.
- Ordinance 6-20 - restricts sitting and laying on sidewalks during daytime hours. Effectiveness conditioned on a determination that adequate shelter and restrooms have been provided - Not currently enforced.
- SRC 95.730 - prohibits leaving personal property unattended on a sidewalk for two hours or more. Hasn’t been enforced and may violate ORS 195.500.

Proposal:

- Revise SRC 95.720 and repeal 95.730 and Ordinance 6-20, and replace with:
- Camping restrictions in many areas: parks, near vision clearance areas and building entrances, residential zones, near existing shelters, and areas designated by City Manager as no camping.
- Camps required to maintain 36-inch ADA pedestrian path.

Application:

- Practical realities of limited resources and ability to impose penalties will limit effectiveness of any law.

- City Manager designation of no camping areas may give City ability to address major problem areas on a temporary basis.

Legal Framework:

In 2021 Oregon adopted new laws (codified at ORS 195.500, et. seq.) addressing how jurisdictions regulate unsheltered individuals' use of public spaces. This legislation mirrors federal courts decisions, Martin v. Boise and Blake v. Grants Pass. All together Oregon law and these cases and others provide a framework that local jurisdictions must comply with when regulating the use of public spaces by the unsheltered.

The framework rests on the principles that; (1) all people must exist somewhere, (2) most unsheltered individuals are homeless involuntarily, and (3) that it violates the Cruel and Unusual Punishment clause of the U.S. Constitution to impose criminal penalties on people who are involuntarily homeless in public spaces when there is nowhere else for them to go.

From that framework, which is the binding law in Oregon, the laws and courts have established certain rules. These rules include; 1) jurisdictions must provide a minimum of 72-hours' notice before clearing an "established" camp; 2) jurisdictions must preserve and make available to claim an individual's valuable personal property when clearing a camp; 3) a jurisdiction cannot impose a criminal penalty or an excessive financial penalty on an involuntarily homeless individual for violating an otherwise neutral law if the person had no way to avoid the violation; 4) some shelters are considered unavailable for some unsheltered individuals because of religious reasons, family status, time limits, level of care needs, or behavioral reasons, and; 5) unsheltered individuals have a right to some protection against the elements - meaning an unsheltered individual living in a public space has a conditional right to use a tent, improvised structure, bedding, or tarps to protect against weather.

Practical Limitations:

In addition to the myriad of laws and court decisions affecting cities' ability to regulate public spaces, there are practical limitations in enforcing regulations even when they pass legal muster. The criminal justice system has long been overwhelmed in the administration of justice regarding "quality of life" crimes. Courts have been diligent in providing alternatives to prosecution for low-level crimes by connecting defendants with social services and drug and alcohol treatment in lieu of prosecution. However, resources are limited, and participation is uneven.

Pre-pandemic, the Marion County Jail was at capacity and many defendants, even with serious offenses, were released pre-trial due to capacity limits. Individuals arrested or convicted for low-level

misdemeanor offences, such as trespass, could not practically be lodged at the Jail for any significant amount of time or even at all. Through the pandemic the Jail was forced to further reduce capacity to mitigate the spread of COVID-19 within the facility. While those restrictions are gone, capacity is still very limited at the Jail. The reality is that even in instances where an individual could be arrested for a quality of life crime, there is extremely limited ability to lodge the defendant at the Jail and even less chance that the defendant, if convicted, would face jail time.

In addition to the limitations in the criminal justice system, the City has limited personnel and resources to address the impacts that result from use of public spaces as places to live or rest. The increase in homelessness over the past several years and lack of resources to address the impacts means that even with the ideal set of regulations, the impacts of the use of public spaces as places to live and rest will persist.

Given recent investments in emergency shelters, there are often shelter beds available for some eligible people. Not every person experiencing unsheltered homelessness is able to access available beds. For example, if a person cannot manage moving through the evening without a health care attendant, their needs exceed the scope of services available at emergency shelters. Others may have acute symptoms of a mental health condition that exceed the expertise of shelter staff. These service gaps contribute to the involuntary nature of unsheltered homelessness.

The Proposed Amendments:

The proposal would revise the City Code as it relates to public spaces, such as street right-of-way, public sidewalks, parks, and other publicly owned places. Under the current statutory and constitutional framework, the City cannot impose an outright prohibition on camping in public spaces and any limitation that is imposed must be objectively reasonable. The proposal identifies categories of public spaces where camping is prohibited and allows the City Manager to prohibit camping in specific locations in order to protect environmentally sensitive areas or address imminent public health and safety concerns, such as high traffic areas or issues caused by long-term camping or overuse of a specific area.

The proposed regulations do not affirmatively allow camping on any public spaces. The regulations affirmatively prohibit camping where unsheltered camping is deemed inappropriate, including, streets and bike lanes, areas within 10 feet of a street intersection or driveway and a sidewalk, parks, the interior of a public building, residential zones, and within 600 feet of a day center, shelter or safe-park location. Within other public places, the establishment of a campsite would not be expressly prohibited. Pursuant to the *Martin* and *Blake* decisions, a jurisdiction cannot enforce restrictions on someone's use of a public place if the person is involuntarily unsheltered and has nowhere else to go. Under the proposed regulations, camping would be prohibited in certain areas, leaving other areas available.

The proposed regulations on camping would allow the City to require illegal campsites to be moved to other public places where camping is not expressly prohibited. If an established campsite is not moved voluntarily, an established campsite would be posted with a minimum 72-hour notice and the City would have the authority to remove the camp. Individuals that refuse to move a camp and interfere with City workers who attempt to clear a camp would be subject to a violation for trespass.

The proposed code amendments do not address camping in a vehicle on public property or public right-of-way, which is already prohibited under the City Code. It is unclear whether the court decisions or the state legislation apply in such circumstances.

Finally, the proposal would repeal the current code restriction on leaving personal property unattended on a public sidewalk (SRC 95.730) and Ordinance No. 6-20, which restricts sitting and laying in certain public places during daytime hours. SRC 95.730 and Ordinance No. 6-20 have not been enforced due to the practical realities of the COVID-19 pandemic and legal uncertainties created by the *Martin* and *Blake* decisions. The proposed regulations will provide a legally sound basis to regulate conduct in public spaces and make these regulations unnecessary.

BACKGROUND:

House Bills 3115 and 3124 (2021) take effect on July 1, 2023. The City's current regulations possibly violate these new laws, leaving the City open to a legal challenge. Therefore, it is necessary to amend the Code in compliance with state law. In addition, the proposed regulations give a practical tool and clear guidance to City staff when addressing the impacts of public camping.

Dan Atchison
City Attorney

Attachments:

1. Ordinance Bill No. 9-23.
2. Exhibit A to Ordinance Bill No. 9-23.