



TO: Elizabeth Pauli, City Manager
FROM: William C. Fosbre, City Attorney, City Attorney's Office
Keith A. Echterling, Assistant City Attorney, City Attorney's Office
COPY: City Council and City Clerk
SUBJECT: Proposed changes to the Tacoma Municipal Code relating to Camping
DATE: June 23, 2017

SUMMARY:

Currently, the City of Tacoma does not have a general camping proscription relating to public property in its code. While there are a variety of available legal tools that address the ancillary and surrounding issues relating to camping, the Tacoma Municipal code (TMC) lacks one succinct ordinance that clearly informs citizens that unauthorized public property camping is prohibited within the City. This proposal seeks to remedy that gap in the Code. Regulating camping and encampments in the City directly relates to the "City's interest in protecting human health and safety, not just that of the individuals seeking shelter, but that of the general public as well."¹ Staff is recommending that the City Council, pursuant to the authority outlined in City Charter provision 2.12, find that a public emergency exists with regards to unauthorized public property camping and that any such amendments will be effective immediately upon approval by the Council.

STRATEGIC POLICY PRIORITY:

- Strengthen and support a safe city with healthy residents.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

BACKGROUND:

Like many jurisdictions across the nation the City of Tacoma is experiencing a housing and homelessness crisis. In an effort to mitigate some of the negative health and safety impacts of this substantial crisis the City is currently in the process of implementing its strategic three-phase Temporary Aid and Shelter Program. One component of that program is the effective enforcement of violations of the law that contribute to the overall negative impact on individuals currently experiencing homelessness and on the surrounding business and residential communities. The continuing perpetuation of unauthorized and unregulated encampments in the City presents a significant threat to the general public health and safety and permits a continuous cycle of suffering for those currently experiencing homelessness. In order to better address these health and safety issues, a general public property prohibition against camping is necessary to aid enforcement efforts and encourage individuals to take full advantage of the sheltering services and programs currently being offered and implemented by the City.

¹ *Lehr v. City of Sacramento*, 624 F.Supp.2d 1218, 1236, FN4 (E.D. California, 2009).



The below ordinance was considered by the Community Vitality and Safety Committee on June 22, 2017. The Committee considered a variety of alternatives and ultimately provided a Do Pass vote on the version of the ordinance below. However, after the Do Pass vote at the Committee language was added to propose implementing an immediate effective date of the ordinance upon passage by an affirmative vote of at least six members of the City Council to correlate with the emergency declaration regarding the homelessness crisis, and to limit application to public property.

I. PROVIDING A COMPREHENSIVE CAMPING PROHIBITION WILL AID THE CITY IN MITIGATING PUBLIC HEALTH AND SAFETY ISSUES RELATED TO UNREGULATED ENCAMPMENTS.

This ordinance is designed to provide clear, concise, and readily accessible guidance to citizens and enforcement officers regarding what activities are prohibited within the City of Tacoma relating to camping and camping-related conduct on public property. Specifically, this ordinance will prohibit camping on public property except where expressly permitted. Violation of the ordinance is a misdemeanor punishable by a fine not exceeding \$1,000.00, and/or by imprisonment of not more than 90 days. Similar to Ordinance 28430 (which declared a state of public emergency relating to the conditions of homeless encampments) the below ordinance will sunset and no longer be in force or effect at 11:59 p.m. on October 9, 2017. Due to the emergency nature of this proposal in the context of the overall mitigation plan, this ordinance would be effective upon passage by an affirmative vote of at least six members of the City Council.

The absence of a general camping ordinance has created a challenge for enforcement officers responding to complaints relating to the erection of *ad hoc* encampments throughout the City. A clear prohibition will also aid in encouraging use of regulated sheltering options.

Existing code provisions.

- Encampments on private property can be currently addressed utilizing the trespass laws.² This option is only effective when the owner of the private property is identifiable and communicates his or her desire to have such conduct not occur on said property.
- In addition to trespass, the City can pursue remedies against the private property owner through the Nuisance Code. This involves taking enforcement action against the owner of the property for allowing the nuisance to occur on his or property (*i.e.*, allowing an encampment or campsite to be erected or maintained on the property). The utilization of this tool is problematic for two reasons. First, it requires the City to target the owner of the property who may or may not be aware that the nuisance is actually occurring on his or her property and thereby the perception may be that the enforcement action is inappropriately being taken against the party with little or no culpability. The second issue with this

² See TMC 8.12.025 (detailing crimes of Trespass 1st and Trespass 2nd).



approach is that it may not be immediately impactful. The Nuisance Code provisions require a process of notification with explanation and an opportunity for voluntary compliance by the property owner. The process can take many months and does not provide immediate relief.

- Other laws that can be utilized to address impacts of unregulated camping include code provisions regulating sidewalk use, littering, drug use, prostitution and solicitation. However these existing code provisions do not give the City the ability to timely address the existence of encampments.

II. LEGAL RISKS ASSOCIATED WITH ENACTING A NO-CAMPING ORDINANCE

An ordinance providing for criminal sanctions for unlawful camping may be subject to legal challenge. Anti-camping ordinances have recently been featured in high-profile legal battles between municipalities, social services organizations, and the United States government. The legal challenges have focused on the 8th Amendment to the United States Constitution.³ The 8th Amendment generally limits the kinds of punishment to be meted out for crimes; requires proportionality between the punishment and the crime; and limits what can be made criminal in the first place.⁴ The limits on what can constitutionally be criminalized in the homelessness arena is the subject of multiple litigations and a source of great debate. While a City certainly has great latitude in creating and enforcing public safety laws under its police power, criminalizing conduct like sitting, lying, or sleeping as those actions relate to being involuntarily homeless, may be subject to challenge, particularly if the prohibition extends to all times and places throughout a given city when the number of homeless individuals in that city outnumber the available sheltering resources.⁵ The City can arguably reduce the likelihood of success for any such challenge by ensuring it supplies and/or provides access to an adequate supply of housing/sheltering options and/or limiting the enforcement of such ordinance to certain times and places within the City.

ISSUE:

Amending the TMC to prohibit unauthorized and non-permissive camping on public property in the City of Tacoma.

ALTERNATIVES:

The City could retain current status and continue to rely upon existing code provisions.

³ US CONST., AMEND. VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

⁴ See *Lehr v. City of Sacramento*, 624 F.Supp.2d 1218 (E.D. California, 2009).

⁵ See generally, *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir., 2006); *vacated by settlement of the parties*, 505 F.3d 1006 (9th Cir., 2007).



FISCAL IMPACT:

There is no fiscal impact.

RECOMMENDATION:

Staff recommends that the City Council pass the proposed TMC amendments. Staff is recommending that the City Council, pursuant to the authority outlined in City Charter provision 2.12, find that a public emergency exists with regards to unauthorized public property camping and that any such amendments will be effective immediately upon approval by the Council.