



**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 15, 2017

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**SUMMARY:**

Currently, the City of Tacoma does not have a general camping proscription 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 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."<sup>1</sup>

**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 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.

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

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



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. Specifically, this ordinance will prohibit camping on private property without the express consent of the property owner, and will also 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.

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.<sup>2</sup> 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 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**

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<sup>2</sup> See TMC 8.12.025 (detailing crimes of Trespass 1<sup>st</sup> and Trespass 2<sup>nd</sup>).



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 8<sup>th</sup> Amendment to the United States Constitution.<sup>3</sup> The 8<sup>th</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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 or private property in the City of Tacoma.

**ALTERNATIVES:**

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

**FISCAL IMPACT:**

There is no fiscal impact.

**RECOMMENDATION:**

Staff recommends that the City Council pass the proposed TMC amendments.

**RECITALS**

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

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

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



WHEREAS, on any given night, over 50 homeless encampments can be found in Tacoma, some of which may be occupied by 100 or more persons, and

WHEREAS the increases in homeless encampments and higher concentrations of occupants, together with the lack of available services or facilities nearby, have a significant role in the scope and severity of public health issues and the urgency to take action to mitigate the conditions giving rise to this threat to public health and safety, and

WHEREAS the multiple encampments that the City is experiencing, together with the higher concentrations of occupants, is causing harm to the occupants and has a significant potential to affect public health in the community, and

WHEREAS, when an encampment is removed by the City or private parties, the occupants will generally move to or create another uncontrolled homeless encampment which spreads to a wider area the potential for community exposure to the negative health impacts associated with homeless encampments, and

WHEREAS the adverse impacts on both those experiencing homelessness and the community at large, including the continuing and increasing presence of homeless encampments in the City of Tacoma together with the large concentrations of occupants in some of those homeless encampments, the lack of adequate and proper on-site health and sanitation services and practices that will prevent the spread of disease and the contamination of the environment, and the lack of available services to address the public health and safety needs of the occupants, pose a significant, direct and immediate threat to the health of the inhabitants and a real and emergent threat to the health of the surrounding community, and warrant a dramatically larger, extraordinary and urgent effort to provide services and resources that will reduce the number of



homeless encampments, the high concentration of occupants, and mitigate the conditions of the homeless encampments that harm public health and safety, and

WHEREAS in the best interest of the public health, safety, and welfare of the community and citizens of Tacoma the City Council has declared a state of public health emergency and has authorized such actions as are reasonable and necessary to mitigate the conditions giving rise to such emergency, and

WHEREAS enforcement authorities within the City currently lack an immediately identifiable and easily described enforcement tool that succinctly informs all persons that unauthorized camping is not permitted within the city limits of Tacoma, and

WHEREAS effective law enforcement operations in support of such declared state of public emergency require the development and implementation of such enforcement tool;

WHEREAS such tool can be effectively created to balance the needs and interests of all persons and should be implemented, enforced, and prosecuted with full consideration for the constitutional and human rights of all individuals; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That Chapter 8.12 of the Tacoma Municipal Code is hereby amended as set forth in the attached Exhibit "A."



## EXHIBIT “A”

### Chapter 8.12

### DISORDERLY CONDUCT

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#### **8.12.180 Statement of Purpose.**

It is the intent of the City of Tacoma to provide for the safety, health, and welfare of all the inhabitants, residents, visitors, and persons in the City of Tacoma. To that end, the City recognizes the negative social, physical, and psychological impacts that unregulated encampments have on both those persons experiencing homelessness and the surrounding community. To mitigate and ameliorate the grave social and public health risks attendant to unregulated encampments, the purpose of TMC 8.12.190 is to protect the public health, safety, and welfare of all persons and to continue to assist those currently experiencing homelessness transition to stable sheltering solutions while protecting the public and private property rights of owners, inhabitants, and visitors.

#### **8.12.190 Unlawful Camping.**

(1) It is unlawful for any person to camp upon any private property in the City of Tacoma without the express consent of the property owner or the owner’s agent, and only in such locations where camping may be conducted in accordance with applicable state, city, or local law. The consent of the owner or owner’s agent permitting such conduct on private property may be given in writing or otherwise.

(2) It is unlawful for any person to camp upon any public property in the City of Tacoma except in any location where camping has been expressly allowed by the officer or agency having the control, management, and supervision of the public property in question.

(3) For purposes of this section:

a. “Camp”, “to camp”, and “camping” means to reside or dwell temporarily in a place for the purpose of seeking shelter. “Shelter” includes, without limitation, any recreational vehicle, tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. “Reside or dwell” includes, without limitation, conducting such



activities as eating, sleeping, or the storage of personal possessions. This definition does not include temporary, common recreational activities such as picnicking or utilization of park facilities consistent with other state and local laws and regulations.

b. “Public property” means any street, alley, sidewalk, parking space, pedestrian or transit mall, bike path, greenway, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, or other recreation facility; or any other grounds, buildings, fixtures, or other facilities owned or leased by the City or by any other public owner, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

(4) A violation of this section is a misdemeanor punishable by a fine not exceeding \$1,000.00, or by imprisonment in the correctional facilities utilized by the City of Tacoma for a period of not more than 90 days, or by both such fine and imprisonment.

## EXHIBIT “A” ALTERNATE VERSIONS

### **Chapter 8.12**

#### **DISORDERLY CONDUCT**

##### **8.12.190 Unlawful Camping. (Alternate Version 1)**

(1) It is unlawful for any person to camp upon any private property in the City of Tacoma without the express consent of the property owner or the owner’s agent, and only in such locations where camping may be conducted in accordance with applicable state, city, or local law. The consent of the owner or owner’s agent permitting such conduct on private property may be given in writing or otherwise.

(2) It is unlawful for any person to camp upon any public property in the City of Tacoma except in any location where camping has been expressly allowed by the officer or agency having the control, management, and supervision of the public property in question.

(3) For purposes of this section:

a. “Camp”, “to camp”, and “camping” means to reside or dwell temporarily in a place for the purpose of seeking shelter. “Shelter” includes, without limitation, any recreational vehicle, tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. “Reside or dwell” includes, without limitation, conducting such activities as eating, sleeping, or the storage of personal possessions. This definition does not



include temporary, common recreational activities such as picnicking or utilization of park facilities consistent with other state and local laws and regulations.

b. “Public property” means any street, alley, sidewalk, parking space, pedestrian or transit mall, bike path, greenway, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, or other recreation facility; or any other grounds, buildings, fixtures, or other facilities owned or leased by the City or by any other public owner, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

(4) A violation of this section is a misdemeanor punishable by a fine not exceeding \$1,000.00, or by imprisonment in the correctional facilities utilized by the City of Tacoma for a period of not more than 90 days, or by both such fine and imprisonment.

(5) The prohibitions contained herein shall sunset and no longer be in force or effect at 11:59 p.m. on October 9, 2017.

## **Chapter 8.12**

### **DISORDERLY CONDUCT**

#### **8.12.190 Unlawful Camping. (Alternate Version 2)**

(1) It is unlawful for any person to camp upon any private property in the City of Tacoma without the express consent of the property owner or the owner’s agent, and only in such locations where camping may be conducted in accordance with applicable state, city, or local law. The consent of the owner or owner’s agent permitting such conduct on private property may be given in writing or otherwise.

(2) It is unlawful for any person to camp upon any public property in the City of Tacoma between the hours of 6:00 (six) a.m. and 10:00 (ten) p.m., except in any location where camping has been expressly allowed by the officer or agency having the control, management, and supervision of the public property in question. It is an affirmative defense to a violation of this subsection that there were no available sheltering services within the City of Tacoma available to the individual during the time the violation occurred.

(3) For purposes of this section:

a. “Camp”, “to camp”, and “camping” means to reside or dwell temporarily in a place for the purpose of seeking shelter. “Shelter” includes, without limitation, any recreational vehicle, tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. “Reside or dwell” includes, without limitation, conducting such activities as eating, sleeping, or the storage of personal possessions. This definition does not





include temporary, common recreational activities such as picnicking or utilization of park facilities consistent with other state and local laws and regulations.

b. “Public property” means any street, alley, sidewalk, parking space, pedestrian or transit mall, bike path, greenway, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, or other recreation facility; or any other grounds, buildings, fixtures, or other facilities owned or leased by the City or by any other public owner, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

(4) A violation of this section is a misdemeanor punishable by a fine not exceeding \$1,000.00, or by imprisonment in the correctional facilities utilized by the City of Tacoma for a period of not more than 90 days, or by both such fine and imprisonment.

## **Chapter 8.12**

### **DISORDERLY CONDUCT**

#### **8.12.190 Unlawful Camping. (Alternate Version 3)**

(1) It is unlawful for any person to camp upon any private property in the City of Tacoma without the express consent of the property owner or the owner’s agent, and only in such locations where camping may be conducted in accordance with applicable state, city, or local law. The consent of the owner or owner’s agent permitting such conduct on private property may be given in writing or otherwise.

(2) It is unlawful for any person to camp upon any public property in any area designated as a Downtown Tacoma district and/or zone, except in any location where camping has been expressly allowed by the officer or agency having the control, management, and supervision of the public property in question.

(3) For purposes of this section:

a. “Camp”, “to camp”, and “camping” means to reside or dwell temporarily in a place for the purpose of seeking shelter. “Shelter” includes, without limitation, any recreational vehicle, tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. “Reside or dwell” includes, without limitation, conducting such activities as eating, sleeping, or the storage of personal possessions. This definition does not include temporary, common recreational activities such as picnicking or utilization of park facilities consistent with other state and local laws and regulations.

b. “Public property” means any street, alley, sidewalk, parking space, pedestrian or transit mall, bike path, greenway, or any other structure or area encompassed within the public right-of-way;



any park, parkway, mountain park, or other recreation facility; or any other grounds, buildings, fixtures, or other facilities owned or leased by the City or by any other public owner, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

(4) A violation of this section is a misdemeanor punishable by a fine not exceeding \$1,000.00, or by imprisonment in the correctional facilities utilized by the City of Tacoma for a period of not more than 90 days, or by both such fine and imprisonment.