



Unlawful Camping Options

City of Tacoma | Legal Department

Community Vitality and Safety Committee
November 18, 2021



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OVERVIEW



- This presentation provides options and considerations for a camping and storage of personal property ordinance.
- Objective is to provide informational briefing.
- Ordinance No. 28756, three other versions.

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BACKGROUND



- TMC 8.12.180, originally enacted via ordinance in July 2017, addressed unlawful camping throughout the City, but expired December 31, 2019.
- Council Members and staff have continued to explore options to address unlawful camping, including Ordinance No. 28756, Use of Public Property.
- There are a variety of options, on a spectrum of severity, that the City could consider to address unlawful camping.

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ISSUES



- The City previously declared a Public Health Emergency related to encampments.
- Multiple unauthorized encampments have grown all across the City.
- These sites pose health, sanitary, and public safety risks to those currently experiencing homelessness, the surrounding community, and the City as a whole.
- Federal case law, including the *Boise* decisions, and the U.S. and State Constitutions impact and limit enforcement actions.

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••• *Martin v. City of Boise*



- 9th Circuit case that applied the 8th Amendment to municipal enforcement of two ordinances.
- The City of Boise had a camping and sleeping ordinance in effect, violation of either was a misdemeanor.
- Both ordinances applied throughout the city and at all times, though both were amended to prohibit enforcement in public when no shelter space was available.
- Boise had limited shelter availability, some of which had a compulsory religious component.

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••• *Martin v. City of Boise*




- The 9th Circuit found it was unconstitutional to enforce such laws against persons experiencing homelessness, at all times and all places, when there was nowhere else for such persons to be.
- A City cannot criminalize sitting, lying, or sleeping on public property at all times and places when there is insufficient available shelter space.
- *Boise* controls enforcement considerations for Tacoma, including when and where any camping ordinance could apply.

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ISSUES




- The City’s prior unlawful camping ordinance, codified at TMC 8.12.180, expired December 31, 2019.
- A new unlawful camping ordinance could assist in addressing health, sanitary, and safety issues that are generated by unsanctioned and *ad hoc* encampments.
- The geographic area to which the ordinance applies will depend on what type of ordinance, and what scope, is ultimately adopted. A camping ordinance could be geographically limited, time frame limited, or even a combination of both.

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Considerations/Options




	PROS	CONS
Prohibit camping city wide	Simpler to enforce but requires that shelter space be available	Shelter space may not be available, may not address areas most impacted
Prohibit camping specific geographic area of the city	Address areas most impacted, help ensure equitable application of enforcement and targeting of services – next schools or parks	Would allow camping in certain parts of the city, creation of selection criteria would be complex
Prohibit camping 24/7	Simpler to enforce but requires that shelter space be available	Shelter space may not be available
Prohibit camping only during certain hours	Would allow for additional points of contact for outreach. Likely not require that shelter space be available during the time camping is not authorized.	Unclear where individuals will go during the time camping is not authorized. Required movement of personal property during this unauthorized time adds complexity
Make the violation a crime	Would allow law enforcement to arrest and transport violator away from the cite, also provides another point contact for outreach services	The individual enters the criminal justice system, must respond and defend. If indigent then Court will be required to waive the fine. Costs to the city to represent, prosecute and potentially jail offender.
Make the violation an civil infraction	Would allow for law enforcement to make contact for outreach services	Cannot arrest or remove individual from the site. If indigent then Court will be required to waive the fine/penalty.

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Comparison Of Proposals




	2019 Expired Ordinance	Original Ordinance No. 28756
Where is camping prohibited	All publically owned property (city, county state, and federal)	Same
Is storage of personal property prohibited	No	Yes
When/Time of day is camping (and storage of property) prohibited	24 hours a day	Same
Who enforces the law	Police	Same
What is the fine/jail	Up to \$1000 fine and/or 90 days in jail	Same
May the judges waive the fine if the individual is indigent	Yes, per current court decisions	Same
Must the City locate and offer shelter space before enforcement	Yes, according to the City of Boise decision	Same
Must the City enact formal enforcement rules prior to enforcing the law	No	No, but Chief of Police authorized to adopt appropriate rules

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Comparison Of Proposals



	Advocate Feedback	Staff Recommendation
Where is camping prohibited	All publically owned property (city, county state, and federal)	Same
Is storage of personal property prohibited	Yes	Same
When/Time of day is camping (and storage of property) prohibited	24 hours a day	Only between 7AM to 9PM
Who enforces the law	Non-police are used to perform initial contact – Police will still issue the civil infraction notice for the 1 st & 2 nd offenses and citation for 3 rd and subsequent offense	Police
What is the fine/jail	1st and 2nd viol. is a class 4 (lowest level) infraction \$25 penalty (not including state assessments) NO JAIL included, and 3 rd and subsequent offense is a crime up to \$250 fine and max. of three days in jail	Up to \$250 fine and/or 3 days in jail for a first offense, for second and subsequent offenses up to \$250 fine and 90 days in jail
May the judges waive the fine if the individual is indigent	Yes, ordinance specifically requires judges to consider ability to pay	Yes, per current court decisions
Must the City locate and offer shelter space before enforcement	Yes, ordinance specifically requires it	Yes, according to the City of Boise decision
Must the City enact formal enforcement rules prior to enforcing the law	Yes, TPD and OEHR in consultation with coalition must enact rules	No

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Encampment Removal Policy



- **Background:** In 2017, the City adopted the “Enforcement and Removal Policies and Procedures Relating to Unauthorized Encampments on City Properties.” The policy addresses how and when encampments are removed from City property, rights of way, and private property. It also addresses what kind of notice and outreach be provided and how personal belongings are stored and retrieved
- **Administrative Change:** The policy will be updated to address how and when to keep an area cleared once an encampment has been removed. The policy will address factors and considerations the City will use to determine the length of closure that will occur at a specific site, post-encampment removal. Additionally, the City will post signage that details the length of the closure and warns against trespassing.

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HEALTH, EQUITY & SUSTAINABILITY ANALYSIS



- A “public use of property” ordinance will generally impact those persons currently experiencing homelessness and using public property to camp and/or store personal property.
- Any ordinance, either explicitly or implicitly, will require continued staff efforts at outreach, service offerings, and enforcement alternatives.
- Such an ordinance along with a change to the Encampment Removal Policy would help foster safe, sustainable, and healthy uses of all public property in Tacoma.

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NEXT STEPS



This is an informational briefing, so next steps are pending at this time.

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