

ORDINANCE No.

Amend Portland City Code provisions regulating public property.

The City of Portland ordains:

Section 1. The Council finds:

1. During the 2021 Regular Session of the Oregon Legislative Assembly, the legislature adopted House Bill 3115 (HB 3115); and
2. HB 3115 requires that any city law that regulates the acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place, and manner with regards to persons experiencing homelessness;
3. HB 3115 provides a defendant charged for violating City Code an affirmative defense that the law was not objectively reasonable under the requirements of HB 3115;
4. HB 3115 further provides an affirmative right of action for persons experiencing homelessness to bring a suit for injunctive or declaratory relief challenging the objective reasonableness of a provision of City Code, including the potential for an attorney fee award;
5. The City desires to comply with HB 3115 by adopting reasonable time, place, and manner regulations which allow persons experiencing homelessness to temporarily camp in relatively safe and sanitary locations while they are actively seeking access to stable housing and to adopt reasonable policies related to removal of established camping sites;
6. Camping on public property can undermine the public's ability to use those spaces for their intended purpose and create unsafe and unsanitary living conditions, which can threaten the general health, welfare and safety of the community;
7. The City finds there is a need to update various City code provisions to comply with HB 3115;
8. The City will ensure its Hearings Officers are aware of the additional affirmative defense that some individuals may assert before the City Hearings Office;
9. The City further intends to comply with HB 3115 by clarifying that the existing prohibited conduct in City Code Chapter 20.12 aim to provide reasonable time, place, and manner regulations which allow all persons, including those experiencing homelessness, to enjoy City parks in a safe manner, that respects and balances the needs of the City as the steward of City parks, and the community's need to ensure safe and responsible behavior; and

10. The City encourages the active participation of all concerned persons, organizations, businesses and public agencies to work in partnership with the City and the community to address the short and long-term impacts of homelessness in the homeless community.

NOW, THEREFORE, the Council directs:

Portland City Code Sections 3.18.020, 14A.50.020, 14A.50.050, 17.43.120, 20.12.010, 20.12.030, 20.12.100, 20.12.230 are amended, Portland City Code Section 14A.50.025 is added, and Portland City Code Sections 20.12.070 and 20.12.150 are deleted, as set forth in Exhibit A.

Exhibit A

3.18.020 Rules of Conduct at City Property.

B.17. No person shall use City Property for housing or camping except a) where the City Property is explicitly designated by the City for use for housing, camping or alternative sheltering purposes, or b) as permitted by the property manager for the City Property, and provided ~~such~~ the use exception conforms with land use, zoning, building and other property regulations, or is allowed by other Code authority.

14A.50.020 Camping Prohibited on Public Property and Public Rights of Way.

A. As used in this Section:

1. "To camp" means to set up, or to remain in or at a campsite, ~~for the purpose of establishing or maintaining a temporary place to live.~~
2. "Campsite" means any place where any tent, lean-to, shack, or other structure, any vehicle or part thereof, or any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained for the purpose of establishing or maintaining a temporary place to live, whether or not such place incorporates the use of any tent, lean to, shack, or any other structure, or any vehicle or part thereof.
3. "Involuntarily homeless" means having no means to acquire one's own shelter and not otherwise having access to shelter or other alternative options for housing.

B. It is unlawful for any person to camp in or upon any public property or public right of way, unless otherwise specifically authorized by this Code or by declaration by the Mayor in emergency circumstances.

C. Subsection 14A.50.020.B does not apply to a person who is involuntarily homeless provided that such person complies with the following restrictions on the time, place, and manner with respect to their campsite.

1. Time regulations. An involuntarily homeless person may camp between the hours of 8 p.m. and 8 a.m. After 8 a.m., an involuntarily homeless person must dismantle the campsite and remove all personal property from the campsite until 8 p.m.
2. Place regulations. An involuntarily homeless person may not camp in the following places at any time:
 - i. On a Pedestrian Plaza regulated under Chapter 17.43 of Portland Code.
 - ii. Upon public docks regulated under Portland City Code 19.16.290.
 - iii. In the pedestrian use zone, which is the area of the sidewalk corridor on City sidewalks intended for pedestrian travel or access to public transit, as defined in Section 14A.50.030.A.3.
 - iv. In a Park regulated under Chapter 20.12 of Portland Code.
 - v. Within 250 feet from a preschool, kindergarten, elementary or secondary school, or a childcare center licensed, certified or authorized under ORS

329A.250 through 329A.460, ORS 418.205 to 418.970; OAR 419-410-0010 to OAR 419-490-0170.

- vi. Within 250 feet from a safe parking site, safe rest village, or sanctioned camping location designated by the Mayor.
- vii. Within 250 feet of lot or parcel containing a construction site governed by a building permit reviewed by the Major Projects Group of the Bureau of Development Services.
- viii. In the public right-of-way along “High Crash Network Streets and Intersections” identified by the Portland Bureau of Transportation.
- ix. Within 250 feet of an Environmental overlay zone, River Natural overlay zone, River Environmental overlay zone, Pleasant Valley Natural Resource overlay zone, or a special flood hazard area.
- x. Areas posted no-trespassing by City bureaus.

3. Manner regulations. An involuntarily homeless person camping in the public right-of-way or on public property may not:

- i. Obstruct access to private property or businesses adjacent to the public right of way.
- ii. Start or maintain any fire for the purposes of burning any combustible material in or around the campsite.
- iii. Use a gas heater in or around a campsite.
- iv. Erect, install, place, leave, or set up any type of permanent or temporary fixture or structure of any material(s) in or upon public property or public right-of -way. Items such as tents and similar items used for shelter that are readily portable are not structures for purposes of this section.
- v. Dig, excavate, terrace soil, alter the ground or infrastructure, cause environmental damage, or damage vegetations or trees in or around a campsite.
- vi. Place or store personal belongings, or other objects, in a total area encompassing more than ten square feet outside the tent or readily portable shelter.
- vii. Accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, sewage, drug paraphernalia, improperly disposed of syringes, or other evidence of conspicuous drug use in the public rights-of-way, on City property, or on any adjacent public or private property.
- viii. Assemble, disassemble, sell, offer to sell, distribute, offer to distribute, or store three or more bicycles or two or more automobiles, a bicycle frame with the gear cables or brake cables cut or an automobile with the battery or one or more tires removed, two or more bicycles or automobiles with missing parts, or five or more bicycle or automobile parts.

~~The violation of this Section is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment for a period not to exceed 30 days or both.~~

D. Any camp, camp materials, or personal property in violation of any of the standards in this chapter may be removed or cleaned up by the City or its designated contractors.

14A.50.025 Enforcement.

A. For a first or second violation of Section 14A.50.020, a violator will be given a written warning identifying the provisions of Section 14A.50.020 that were violated.

B. A third or subsequent violation of PCC 14A.50.020, after either two prior written warnings, or a prior conviction under this Subsection, within the previous year, is punishable by a fine of not more than \$100 or by imprisonment for a period not to exceed 30 days, or both.

C. The two written warnings and associated violation under this Section must each occur no less than 24 hours apart.

14A.50.050 Erecting Permanent or Temporary Structures on Public Property or Public Rights of Way.

A. It shall be unlawful to erect, install, place, leave, or set up any type of permanent or temporary fixture or structure of any material(s) in or upon non-park public property or public right-of-way without a permit or other authorization from the City.

B. In addition to other remedies provided by law, such an obstruction is hereby declared to be a public nuisance. The City Engineer, City Traffic Engineer, or Chief of Police may summarily abate any such obstruction, or the obstruction may be abated as prescribed in Chapter 29.60 of this Code.

C. The provisions of this Section do not apply to merchandise in the course of lawful receipt or delivery, unless that merchandise remains upon the public right of way for a period longer than 2 hours, whereupon the provisions of this Section apply.

D. The provisions of this Section do not apply to depositing material in public right-of-way for less than 2 hours, unless the material is deposited with the intent to interfere with free passage or to block or attempt to block or interfere with any persons(s) using the right-of-way.

E. The provisions of this Section do not apply to depositing material necessary to sleeping, or keeping warm, or dry as defined by ORS 195.530, by involuntarily homeless persons consistent with Section 14A.50.020.

17.43.120 Use of Certain Devices or Equipment.

A. No person shall ride or operate a skateboard on any ~~brickwork, cobblestone or ornamental surface~~, table, chair, bench, fountain area, planter, or sculpture located in a pedestrian plaza.

20.12.010 Purpose of Establishing Prohibited Conduct.

The purposes of this Chapter ~~is~~ include but are not limited to: ~~to~~ preserve the Parks for the enjoyment, safety, comfort and convenience of the public; ~~and to~~ enhance the orderly administration and management of the Parks in accordance with the Bureau's management, operation and stewardship plans and policies; preserve, protect and prevent damages to cultural and natural resources and constructed physical improvements; and maintain a healthy natural ecosystem and support native wildlife.; ~~by prohibiting~~ This Chapter prohibits conduct that unreasonably interferes with the administration and lawful uses of the Parks, by limiting or restricting uses on reasonable time, place and manner as identified within this Chapter. ~~The purpose of~~ This Chapter is not to punish any person for prior conduct, but, rather, to provide civil and non-punitive regulations the Council finds necessary to prevent nuisances and to protect the health, welfare and safety of the public using the City's Parks. Any violation of the provisions of this Chapter is punishable in accordance with Section 1.01.140 of this Code.

20.12.030 Unlawful Urination or Defecation.

~~No person shall urinate or defecate in any park except in a convenience station designed for that purpose; or blow, spread, or place any nasal or other bodily discharge; or spit, urinate, or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public convenience station or in any place in such station, excepting directly into the particular fixture provided for that purpose; or place any bottle, can, cloth, rag, or metal, wood, or stone substance in any of the plumbing fixtures in any such station. No person shall urinate or defecate in any Park except in a fixture within a public restroom or a facility specifically designed for toileting purpose. No person shall leave any bodily discharge in a Park, except in waste receptacles designed for that disposal purpose.~~

20.12.070 Unlawful Use of Trees, Monuments, Vases, Fountains, Railings, Fences or Tables.

~~It is unlawful for any person to climb any tree, or walk, stand, or sit upon the monuments, vases, railings, or fences, or lie on any picnic table in any Park. No person shall climb, walk, stand or sit upon, or enter, wade or dive into or swim in any fountain in any Park, except for fountains where such use is designated by the Director.~~

20.12.100 Vandalism; Protection of Park Property and Vegetation.

~~A. No person shall take, remove, destroy, break, cut, injure, mutilate, or deface in any way or attach any thing to, any structure, monument, statue, vase, fountain, wall, fence, railing, gate, vehicle, bench, or other property in any Park. No person shall remove, destroy, break, injure, mutilate, or deface in any way in any Park any shrub, fern, plant, flower, or other vegetation. No person shall plant, prune, remove, destroy, break, injure, mutilate, or deface in any way in any Park any tree without a permit from the City Forester under the provisions of Title 11. This provision shall not prohibit authorized work done for, by or on behalf of the City~~

~~B. No person shall, without prior authorization, take, use, or have in his or her possession any equipment belonging to the City and designated for park or recreation use, outside of the limits of the established Park or Parks facility.~~

Except as otherwise authorized by the Director or by a Park permit,

A. No person shall alter or cause damage to any facility, building, improvement, fixture, or amenities in a Park.

B. No person shall:

1. Climb, scale, walk, stand, swing, or sit upon any monument, fountain, railing, fence, tabletop, pole or any other feature or amenity that is not designed for such purposes;
2. Install, tether, tie or attach any objects to poles, fences or other fixtures in Parks.

C. No person shall:

1. Climb, scale, swing upon any tree or shrub;
2. Install, tether, tie or attach any objects to any tree or shrub, including but not limited to swings, ropes, climbing anchors or harnesses;
3. Remove, cut, carve, prune, injure, or destroy any tree, shrub, plant, flower, or other vegetation.

D. No person shall plant, seed, dump, or purposefully introduce any plants or plant matter in a Park.

E. No person shall fish, swim, dive, bathe or wade in any fountain, pool, beach or water feature, except at times and places specifically designated by the Director.

20.12.150 Fishing and Bathing.

~~No person shall fish, wade, swim, or bathe in any Park except in the places designated by the Director for such purposes.~~

20.12.230 Pioneer Courthouse Square.

A. In addition to the other provisions of this Chapter, the provisions of this Section apply in Pioneer Courthouse Square. “Pioneer Courthouse Square” means the city block bounded on the north by the south curb of Southwest Morrison Street, on the south by the north curb of Southwest Yamhill Street, on the east by the west curb of Southwest Sixth Avenue, and on the west by the east curb of SW Broadway. It specifically includes the entire area of that block and all improvements thereon, including all pedestrian walkways and transportation shelters and facilities.

~~B. No person shall climb, stand, sit or lie upon any of the water troughs, trellises, garbage containers, or planters, nor climb, stand or lie upon any bench within Pioneer Courthouse Square~~

~~C. No person shall operate any radio or other amplified sound producing device, so as to be audible to another, within Pioneer Courthouse Square, except by permit.~~

~~D. No person shall throw any ball, disc or other object, use roller skates or skateboards, ride any bicycle or other wheeled device other than a medical mobility device or a child stroller or baby carriage, or roll any shopping cart within Pioneer Courthouse Square.~~

B. E. No person shall violate any ordinance, rule or regulation duly promulgated by TriMet governing the use of its shelters or other facilities located within Pioneer Courthouse Square.

C. F. The following areas of Pioneer Courthouse Square are designated exclusively for transit use:

1. The walkway areas under the overhead canopies adjacent to SW Yamhill Street, between the southernmost drip line of any overhead canopy and the south side of the base of the decorative wall; and

2. The area within the drip lines of the structures commonly known as the mushroom sculptures adjacent to SW Morrison Street.

No person shall remain in those areas except for the purpose of entering into, exiting from or waiting for a light rail train or trolley.

~~G. No person shall smoke in any part of Pioneer Courthouse Square.~~

~~H. No person shall possess any type of fireworks, whether or not such fireworks are otherwise allowed by law, in Pioneer Courthouse Square, except by permit.~~

D. I. No person shall possess any place graffiti instrument in Pioneer Courthouse Square, with the intent that the instrument be used to tamper with, mar or deface property therein, or knowing that another person intends to so use it, or when a reasonable person would know that the instrument is likely to be so used. For purposes of this Subsection, “graffiti” means the unauthorized spraying or marking of paint, chalk, dye or any other substance to any building, structure or surface. For purposes of this Subsection, “graffiti instrument” means any can of paint or other marking substance under pressure, which can be used to spray surfaces with the paint or other marking substance, or any ink, chalk, dye or other instrument or article adapted or designed for spraying or marking surfaces.

