STAFF REPORT NO. 134-15

TO: Mayor and City Council
FROM: Eric Holmes, City Manager
DATE: 9/14/2015

Subject: Amendment to Unlawful Camping Ordinance

Key Points:
- Homelessness presents a number of significant problems for our citizens, the city, and social service agencies.
- The City is in the process of collaborating with other government agencies and nonprofit organizations to address the problem of homelessness.
- In 1997, the City adopted chapter 8.22 VMC, Unlawful Camping, which makes camping or storing camping equipment in public places a misdemeanor.
- In 2006, the Ninth Circuit of the United States Court of Appeals, in Jones v. City of Los Angeles, held that an ordinance which made camping a crime in all places at all times when shelter space was unavailable violated the Eighth Amendment prohibition against cruel and unusual punishment. The court determined that the ordinance criminalized the condition or status of being homeless. It held that it was unconstitutional to criminalize status as opposed to voluntary conduct.
- On August 8, 2015, the Civil Rights Division of the United States Department of Justice filed a Statement of Interest in a case pending in federal court in Boise, Idaho. The Statement takes the position that the decision in Jones provides the proper legal framework for analyzing claims challenging unlawful camping ordinances.

Objective: As an interim measure pending further collaboration on the problem of homelessness, amend chapter 8.22 VMC to limit the hours during which camping in public places is a crime.

Present Situation: The City’s unlawful camping ordinance prohibits camping at all times and in all public places. The proposed amendment would limit the times during which camping in public places is illegal to 6:30 a.m. to 9:30 p.m. Thus, camping would be allowed from 9:30 p.m. to 6:30 a.m. This amendment would address the holding in Jones that it is unconstitutional to criminalize camping at all times in all places when shelters are full.

The amendment would not affect the ability to enforce other public health and safety ordinances such as the park code (closing parks from 10 p.m. to 5 a.m.); disorderly conduct; drinking in public; public disturbance; urinating in public; or obstructing streets or sidewalks.

This approach is intentionally a minimal change to the ordinance necessary to reduce the City’s exposure to claim, and is intended to preserve the broadest range of policy options for the Council’s future consideration relative to public camping. Further, this approach recognizes that issues of homelessness in Vancouver are complex and can have far reaching implications. In making this recommendation, staff suggests it only reduces the City’s potential liability in
enforcement of a more limited camping ordinance, but does not address any broader impacts of homelessness. Addressing those will require further deliberation and community partnerships.

**Advantage(s):** The amendment to the unlawful camping ordinance provides for a limited period of time during which it is legal to sleep in public places. It is an interim measure to adjust the scope of the prohibition of camping while the City explores how the problem of homelessness can be addressed in collaboration with other partners. All other public health and safety regulations would remain enforceable. Encampments which remain in place during the hours of 6:30 a.m. to 9:30 p.m. could be required to be removed.

**Disadvantage(s):** The presence of people camping in public places has an impact on adjoining property owners. This amendment would allow camping in public places during the hours of 9:30 p.m. to 6:30 a.m.

**Budget Impact:** None.

**Prior Council Review:** This issue has been discussed during Council communications at previous council meetings.

**Action Requested:**
2. On Monday, September 21, 2015, subject to second reading and public hearing, approve ordinance.

Attachment(s): Ordinance

To request other formats, please contact: City Manager's Office (360) 487-8600 | WA Relay: 711 Amanda.Delapena@cityofvancouver.us
ORDINANCE NO. M-[Ordinance Number]

AN ORDINANCE related to unlawful camping, amending section 1 of Ordinance No. M-3323, codified as chapter 8.22 VMC, to specify the times during which it is unlawful to camp or occupy camping facilities in publicly owned places.

WHEREAS, in 1997 the City adopted Ordinance No. M-3323 which, inter alia, prohibits camping or occupying a vehicle for the purpose of camping in any park, street or other publicly owned place at all times; and

WHEREAS, according to the 2015 Point In Time count of homeless people there were 602 homeless individuals in the City; 226 were in emergency shelters, 230 were in transitional shelters and 206 were unsheltered; and

WHEREAS, the City may regulate the use of its parks, rights-of-way and publicly owned property to provide for the health, safety and well being of the public; and

WHEREAS, the City’s regulatory authority must be exercised in a manner that is consistent with the state and federal constitutions; and

WHEREAS, the Ninth Circuit Court of Appeals and the United States Department of Justice are of the opinion that prohibiting camping in all public places at all times when there are insufficient shelter beds to house the homeless is unconstitutional; and

ORDINANCE - 1
WHEREAS, the City is in the process of assessing issues related to the housing of the homeless in conjunction with other community partners; and

WHEREAS, the City desires, as an interim measure, to amend the breadth and scope of the ordinance to allow camping during the hours of 9:30 p.m. to 6:30 a.m.;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Amendatory. Section 1 of Ordinance No. M-3323, codified as chapter 8.22 VMC, is hereby amended to read as follows:

CHAPTER 8.22
CAMPING

Sections:
8.22.010 Findings
8.22.020 Purpose
8.22.030 Definitions
8.22.040 Unlawful Camping
8.22.050 Unlawful Storage of Personal Property in Public Places
8.22.060 Penalty for Violations
8.22.070 Permit
8.22.080 Liability

8.22.010 Findings.

People camping on public property and on public right of ways create a public health and safety hazard because of the lack of proper electrical and/or sanitary facilities for these people. People without proper sanitary facilities have openly urinated, defecated, and littered on public property on the public right of ways. Use of public property for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended.

8.22.020 Purpose.

It is the purpose of this ordinance to prevent harm to the health or safety of the public and to promote the public health, safety and general welfare by making
public streets and other areas readily accessible to the public and to prevent use of public property for camping purposes or storage of personal property which interferes with the rights of others to use the areas for which they were intended.

8.22.030 Definitions.
The following definitions are applicable in this chapter unless the context otherwise requires:

"Camp" or "camping" means to pitch, create, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.

"Camp facilities" include, but are not limited to, tents, huts, temporary shelters, or vehicles.

"Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city designated cooking facilities and similar equipment.

"Park" means the same as defined in VMC 15.04.020.

"Store" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

"Street" means any highway, lane, road, street, right of way, boulevard, alley, and every way or place in the City of Vancouver that is publicly owned or maintained for public vehicular travel.

"Vehicle" means the same as defined in R.C.W. 46.04.670, as adopted by Ordinance M-3276.

8.22.040 Unlawful Camping.
A. During the hours of 6:30 a.m. to 9:30 p.m., it shall be unlawful for any person to camp, occupy camp facilities for purposes of habitation, or use camp paraphernalia in the following areas, except as otherwise provided by ordinance or as permitted pursuant to section 8.22.070 of this ordinance:
   1. any park;
   2. any street; or
   3. any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.
B. During the hours of 6:30 a.m. to 9:30 p.m., it shall be unlawful for any person to occupy a vehicle for the purpose of camping while that vehicle is
parked in the following areas, except as otherwise provided by ordinance or as permitted pursuant to section 8.22.070 of this ordinance:

1. any park;
2. any street; or
3. any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

8.22.050 Unlawful storage of personal property in public places.
During the hours of 6:30 a.m. to 9:30 p.m., it shall be unlawful for any person to store personal property, including camp facilities (other than vehicles) and camp paraphernalia, in the following areas, except as otherwise provided by ordinance or as permitted pursuant to section 8.22.070 of this ordinance:

1. any park;
2. any street; or
3. any publicly owned or maintained parking lot or publicly owned or maintained area, improved or unimproved.

8.22.060 Penalty for violations.
Violation of any of the provisions of this chapter is a misdemeanor. Any person violating any of the provisions of this chapter shall, upon conviction of such violation, be punished by a fine of not more than one thousand dollars or by imprisonment not to exceed ninety days, or by both such fine and imprisonment.

8.22.070 Permit.
A. The City Manager, or his/her designee, is authorized to permit persons to camp, occupy camp facilities, use camp paraphernalia, or store personal property in parks, streets, or any publicly owned parking lot or publicly owned area, improved or unimproved, in the City of Vancouver.

B. Upon receipt of an application for any permit under this chapter, the City Manager, or his/her designee, shall send a copy of the application to the city departments of police, parks, public works, community development, and fire. Each of these departments shall inspect the application and each such department shall report to the City Manager, or his/her designee, within ten working days after the filing of the application. Such reports shall mention any problems which the proposed activity is expected to pose for the public. It shall make any necessary
recommendations for protecting the public peace, health, safety, life, property, and welfare in the event a permit is, or was, issued.

C. The City Manager, or his/her designee, is authorized to promulgate other rules and regulations regarding the implementation and enforcement of this ordinance.

D. The City Manager, or his/her designee, may approve a permit as provided under this section when, from a consideration of the application, reports from other city departments, and from such other information as may otherwise be obtained, he or she finds that:

1. Adequate sanitary facilities are provided and accessible at or near the proposed camp site;

2. Adequate trash receptacles and trash collection are provided; and

3. The camping activity will not unreasonably disturb or interfere with the safety, peace, comfort and repose of private property owners.

E. No permit shall be issued for a period of time in excess of fourteen (14) calendar days in any one calendar year.

F. The City Manager, or his/her designee, is authorized to revoke a permit that has been issued if he or she finds lack of compliance with any requirement of subsection D, above, or of any rule or regulation promulgated under subsection C, above, or of any ordinance or statute.

G. Any person who is denied a permit, or had his/her permit revoked, may appeal the denial/revocation to a hearings examiner appointed by the City Manager, or his/her designee. Notice of appeal must be in writing, and filed with the City Clerk within seven (7) working days from the date of the denial.

8.22.080 Public duty created.

A. It is expressly the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons or individual who will or should be especially protected or benefited by the terms of this ordinance.

B. Nothing contained in this ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this ordinance by its officers, employees or agents.
Section 2. **Severability.** Should any section subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Vancouver hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 3. **Effective date.** This ordinance shall be effective thirty (30) days after final passage.

Read first time:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read second time:

PASSED by the following vote:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

SIGNED this ________ day of _________________________, 2015.

__________________________
Timothy D. Leavitt, Mayor
Attest:

R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

E. Bronson Potter, City Attorney
SUMMARY

ORDINANCE NO. __________

AN ORDINANCE related to unlawful camping, amending section 1 of Ordinance No. M-3323, codified as chapter 8.22 VMC, to specify the times during which it is unlawful to camp or occupy camping facilities in publicly owned places.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).