

DRAFT AGENDA REPORT

Agenda of 3/8/2016 (suggested date)

Department: City Council

Subject: Amendment to Camping Ordinance

Recommendation: To introduce for publication amendments to Section 6.36 of the Municipal Code (Camping) to remove reference to the act of sleeping and use of blankets as violations of the ordinance.

Background: I have devoted a significant amount of energy over the last three decades trying to address the challenge of homelessness in this community. I began this long journey by simply trying to help a group operating a small meal program find a healthy and stable location. From there, I worked with scores of others to help develop a more complete array of “emergency” services, including a shelter for individual adults, a shelter for homeless families with children, a day services program with hygiene facilities, and a transitional housing facility. Over the course of this journey I learned (more slowly than I wish) that emergency shelter and short-term fixes were not the best solutions to homelessness. Along with others, I came to understand that the only way to truly address homelessness is to get each individual or family into a stable housing situation.

This has become the central focus of my individual work on homelessness... supporting things such as a recuperative care center that cost-effectively transitions people from hospital to temporary housing with nursing care and then to permanent housing. Such as the 180/2020 campaign to move the most vulnerable and disabled long-time homeless individuals into permanent housing with ongoing support from social workers. Such as the campaign to end veteran homelessness based on well-funded rent subsidies. And helping get programs that had seen themselves as just temporary/emergency services to now see themselves as part of a system that has stable housing as its primary goal.

I remain firmly committed to this “smart solutions” approach. I believe this is the way we will save lives, improve health and safety for everyone in the community, and save precious community resources.

However, during all of this work, I have continued to be troubled by a provision in one of our City’s ordinances - Santa Cruz Municipal Code Section 6.36.010(a) - that penalizes people who have no place else to go for falling asleep or covering up with a blanket while being outside late at night or early in the morning. This is not a “smart solution” by any stretch of the imagination.

Let me pause here to say that I have no problem with our city—or any city—having an ordinance that prohibits camping in locations not suitable or appropriate for camping. I also think it’s important for us to have laws that regulate littering, dumping, trespassing and use of public sidewalks. I think it’s appropriate for a city to have time of use restrictions for public parks. These are rules that protect the community against voluntary behaviors that either cause harm or have the potential to cause harm. Still, I do wonder what the harm is from the act of sleeping or

wrapping oneself in a blanket on a cold night. And, more importantly, I wonder what the harm is when a government penalizes people for behavior they cannot and should not avoid.

I am not alone in my concern about this harm.

1) The US Department of Justice presented the following to a federal judge considering the constitutionality of a law in Idaho similar to Santa Cruz sleeping regulation:

“When adequate shelter space exists, individuals have a choice about whether or not to sleep in public. However, when adequate shelter space does not exist, there is no meaningful distinction between the status of being homeless and the conduct of sleeping in public. Sleeping is a life-sustaining activity — i.e., it must occur at some time in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless.”

Once the winter shelter program ends in March or April, the city of Santa Cruz will have something like 15 to 20 unrestricted emergency shelter beds available on any given night. At the same time, there will be literally hundreds of individuals in our community without shelter. In other words, adequate shelter space does not exist. Our existing ordinance, under current circumstances and based on the Department of Justice position, is criminalizing some people simply because they are homeless.

2) The US Department of Housing and Urban Development, the government’s primary source of funds for homeless programs, is now telling local communities that their applications for federal funding will be scored lower if criminalization of involuntary acts such as sleeping outside is part of local policy. If one reads the government’s definitions of “criminalization of homelessness” it is abundantly clear that Santa Cruz’s ordinance on sleeping falls within that definition. (The Santa Cruz area receives more than \$2 million annually from the HUD and some of this could be in jeopardy.)

Our county, with a contribution of City funds, engages the services of consultant Tony Gardner to complete our county’s application for HUD homelessness funding. (Gardner’s work with our Homeless Action Partnership made it possible for us to increase our HUD grant by several hundred thousand dollars over the last few years.) I asked Gardner to provide some input on this criminalization and funding issue and he sent me the following:

“Criminalization tends to undercut constructive community programs, including those funded by HUD, for example by saddling homeless people with financial obligations such as court fees or convictions that create barriers to employment, benefits, and housing. For this reason, HUD has urged communities to discuss these issues in the context of the local Continuum of Care (CoC) funding process and to work with elected officials, the police, all stakeholders to avoid criminalization and instead seek constructive alternatives to criminalization of the type highlighted in the U.S. Interagency Council on Homelessness’s publication ‘Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness.’ (https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.)

Perhaps most important, HUD has begun scrutinizing communities’ efforts to reduce criminalization as part of the nationally competitive CoC funding process. The 2015 CoC application required that communities implement ‘specific strategies that prevent criminalization of homelessness ... [and]

describe how they are reducing criminalization of homelessness.’ Thus, communities that continue counter-productive criminalization are at greater risk of losing critically needed HUD CoC funds.”

3) The United Nations Human Rights Committee made the following statement in reference to the criminalization of homelessness in the United States:

“While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment (Articles 2, 7, 9, 17, and 26 of the Human Rights Covenant the US ratified in 1992.).

The State party [in the parlance of the UN, this is the US Government] should engage with state and local authorities to: (a) abolish criminalization of homelessness laws and policies at state and local levels; (b) ensure close cooperation between all relevant stakeholders including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and (c) offer incentives for decriminalization and implementation of such solutions, including by providing continued financial support to local authorities implementing alternatives to criminalization and withdrawing funding for local authorities criminalizing the homeless.”

4) All of these high level critiques of this kind of ordinance are reinforced not only by local homeless individuals and their advocates but also by staff at homeless service providers, all of whom regularly and routinely note that citations simply create an additional impediment to assisting people make a transition out of homelessness.

The other side of this issue is equally important to consider: what are the benefits of having a law that penalizes people for sleeping outside at night?

A) One notion I have heard is that it may keep the city of Santa Cruz from being seen as a particularly tolerant place for homeless individuals to be—and therefore encourages them to go elsewhere. I don’t believe there is any evidence to support the efficacy of this idea, popular though it may be.

First, simple observation would suggest that our ban on sleeping outside has not been an effective tool in reducing the number of homeless individuals we see around Santa Cruz. Even with one of the most restrictive “sleeping” ordinances in California, our homeless count remains stubbornly high.

Second, a quick review of neighboring cities shows another flaw in this idea. Below are the “camping” ordinances of three nearby communities— places that are often held up locally as examples of cities with much lower levels of street homelessness than Santa Cruz. Each of these is less restrictive and each one does not say sleeping is an offense. And yet these more “tolerant” ordinances have not caused street homelessness to blossom in their cities.

Capitola:

9.48.010 Camping defined:

“As used in this chapter, “camping” means, within any tent, motor vehicle, trailer, camper, or temporary structure, any of the following activities:

A. Cooking upon a stove;

B. Bathing, when using a shower or tub-type device;

C. The elimination of human digestive wastes, or;

D. Any person’s using any tent, motor vehicle, trailer, camper, or temporary structure, as opposed to a house, hotel or motel, as the person’s primary place of sleep for one or more nights or days.”

9.48.020 Camping prohibited.

Camping is prohibited in the city except as follows:

A. In state parks; and

B. On the premises of businesses, such as mobile home parks, for which there is a use or other city issued permit which clearly authorizes the particular activity.

Scotts Valley:

“7.12.140 - Overnight camping is prohibited.

No person shall camp overnight in any city park or on any city owned property. No person shall arrange bedding or shelter in any city park or on any city owned property for the purpose of camping overnight.”

Los Gatos:

“Closing hours for parks; overnight activities prohibited.

No person shall do any of the following without a special use permit:

(1) Remain in, or enter any park, before official sunrise or after one-half-hour after official sunset. For any park with posted opening and/or closing times, no person shall enter or remain in any park before or after any posted opening or closing time.

(2) Overnight activities, including camping, are expressly prohibited.”

B) I believe the other key rationale behind our sleeping rule is that it gives police officers and park rangers an important tool to deal with the high level of homeless camping we experience in Santa Cruz.

I do not dispute the idea that the sleeping provision is one tool that enforcement officials can use to manage camping in public spaces and business and residence doorways. What I question is the importance of that tool. All the activities that trouble so many of us: dirty campsites, long-term occupation of locations within parks and greenbelts, human waste depositing, etc. are fully addressed in other provisions in our Camping Ordinance, along with our ordinances on littering, public urination/defecation, trespassing and “hours of use” in our parks.

We simply do not need a sleeping prohibition in our Camping ordinance to effectively manage our public and private spaces.

We have an opportunity to get our house in order in terms of federal constitutional concerns, in terms of federal funding issues, in terms of human rights standards and in terms of effective

practices for addressing homeless—and, at the same time, maintain our capacity to manage genuinely problematic behaviors that are sometimes associated with street homelessness.

I hope you will join me in correcting a flaw in our Camping ordinance by approving an amendment that removes references to the act of sleeping and covering up with blankets as violations and reinforces our focus on regulating other aspects of camping.

Submitted by:
Don Lane
City Councilmember

Proposed amendment

Section 1: Section 6.36.010 of the Santa Cruz Municipal Code is hereby amended to read as follows:

“6.36.010 Camping Prohibited. No person shall camp anywhere in the city of Santa Cruz, whether on public or private property, except as hereinafter expressly permitted. “To camp” means to do any of the following:

~~(a) Sleeping—11 p.m. to 8:30 a.m. To sleep at any time between the hours of 11 p.m. to 8:30 a.m. in any of the following places:~~

~~(1) Outdoors with or without bedding, tent, hammock or other similar protection or equipment;~~

~~(2) In, on or under any structure not intended for human occupancy, whether with or without bedding, tent, hammock or other similar protection or equipment;~~

~~(3) In, on or under any parked vehicle, including an automobile, bus, truck, camper, trailer or recreational vehicle.~~

~~(b) Setting-up Bedding – 11 p.m. to 8:30 a.m. To establish or maintain outdoors or in, on or under any structure not intended for human occupancy, at any time between the hours of 11 p.m. to 8:30 a.m., a temporary or permanent place for sleeping camping, by setting up any bedding, sleeping bag, ~~blanket~~, mattress, tent, hammock or other sleeping camping equipment in such a manner as to be immediately usable for sleeping purposes.~~

~~(c) Setting-up Campsite – Anytime. To establish or maintain outdoors or in, on, or under any structure not intended for human occupancy, at any time during the day or night, a temporary or permanent place for cooking or residing, by setting up any bedding, sleeping bag, ~~blanket~~, mattress, tent, hammock or other camping equipment or by setting up any cooking equipment with the intent to remain in that location overnight.~~

Attachments: News article on HUD and Dept of Justice stance on criminalization.
Full text of current camping ordinance

ECONOMY

Criminalizing Homelessness Can Now Cost Cities Federal Money

BY SCOTT KEYES SEP 22, 2015 2:22 PM

After arguing last month that local ordinances criminalizing people for being homeless are unconstitutional, the Obama administration will now tie federal funding to whether municipalities are cracking down on criminalization measures.

Every year, the Department of Housing and Urban Development (HUD) gives out \$1.9 billion in grants to local Continuums of Care, public-private partnerships that tackle homelessness in a specific area. These grants are doled out in a competitive process whereby applicants must fill out a lengthy questionnaire about how they plan to use the money, as well as their current policies.

Last week, though, HUD announced that it would begin asking applicants to describe the steps they are taking to reduce the criminalization of homelessness. Ordinances that criminalize homelessness, also known as “anti-vagrancy” or “quality of life” laws, include making it illegal to sit down on a sidewalk, ask passersby for spare change, or sleep in a public place. Applicants for the federal money will have to show they are engaging with local policymakers or law enforcement about criminalization policies, as well as implementing new community plans to ensure homelessness is not criminalized. Failing to combat such ordinances will hurt a Continuum of Care’s chances of winning new funds.

The change comes after the administration filed a brief in federal court arguing that criminalization violates the Eighth Amendment’s protections against cruel and unusual punishment.

Maria Foscarinis, Executive Director of the National Law Center on Homelessness & Poverty, hailed the latest move. “We welcome the federal government’s direction of tax limited dollars to the places that will most effectively use that money to address homelessness,” Foscarinis said in a statement. She also noted that HUD is giving sufficient weight to criminalization policies that the question “in many cases could be the difference between receiving funding and not.”

The Obama administration has made a pattern of connecting federal funding to desired outcomes in localities. Its signature education achievement, Race to the Top, encouraged schools across the country to raise their standards by making it a prerequisite to receive more federal funding. Obamacare ties some hospital funding to how effectively they avoid preventable infections and patient re-admissions. Homeless advocates hope that connecting HUD funding to the fight against homeless criminalization will have a similar impact.

It would come at a time that these policies have been popping up at an alarming rate. A study this year from the UC Berkeley law school identified over 500 anti-homeless laws on the books in just 58 California cities, while researchers at the Seattle University School of Law found criminalization ordinances in Washington had risen over 50 percent since 2000.

Criminalization policies are problematic not only from a human rights perspective, but also because they're costly and counterproductive. A new report from the California Homeless Youth Project argued that "saddling a young person with a criminal history impedes their efforts to obtain a job, housing, safety net resources, and education, including both secondary and post-secondary education." Criminalizing homelessness also hurts taxpayers. When accounting for law enforcement and emergency health care costs, numerous studies have found that leaving homeless people on the streets winds up costing taxpayers more than three times as much as simply giving them housing and supportive services.

Current full ordinance:

Chapter 6.36 CAMPING

Sections:

[6.36.010](#) Camping prohibited.

[6.36.020](#) Camping permitted.

[6.36.030](#) Permit for camping in city parks.

[6.36.040](#) Penalty – Single offense.

[6.36.050](#) Penalty – Subsequent offense within twenty-four hours.

[6.36.055](#) Citations issued when winter shelter armory is full.

[6.36.060](#) Public nuisance declared.

6.36.010 CAMPING PROHIBITED.

No person shall camp anywhere in the city of Santa Cruz, whether on public or private property, except as hereinafter expressly permitted. “To camp” means to do any of the following:

(a) Sleeping – 11 p.m. to 8:30 a.m. To sleep at any time between the hours of 11 p.m. to 8:30 a.m. in any of the following places:

- (1) Outdoors with or without bedding, tent, hammock or other similar protection or equipment;
- (2) In, on or under any structure not intended for human occupancy, whether with or without bedding, tent, hammock or other similar protection or equipment;
- (3) In, on or under any parked vehicle, including an automobile, bus, truck, camper, trailer or recreational vehicle.

(b) Setting-up Bedding – 11 p.m. to 8:30 a.m. To establish or maintain outdoors or in, on or under any structure not intended for human occupancy, at any time between the hours of 11 p.m. to 8:30 a.m., a temporary or permanent place for sleeping, by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock or other sleeping equipment in such a manner as to be immediately usable for sleeping purposes.

(c) Setting-up Campsite – Anytime. To establish or maintain outdoors or in, on, or under any structure not intended for human occupancy, at any time during the day or night, a temporary or permanent place for

cooking or sleeping, by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock or other sleeping equipment or by setting up any cooking equipment, with the intent to remain in that location overnight.

(Ord. 99-01 § 1, 1999: Ord. 78-29, § 2, 1978).

6.36.020 CAMPING PERMITTED.



Camping may be permitted in the city of Santa Cruz only under the following circumstances:

- (a) Camping in public areas specifically set aside and clearly marked for public camping purposes;
- (b) Camping events authorized and permitted by the Santa Cruz City parks and recreation department;
- (c) Camping events authorized by the city council pursuant to [Section 6.36.030](#);
- (d) Camping:
 - (i) In the yard of a residence with the consent of the owner or occupant of the residence, where the camping is in the rear yard, or in an area of a side yard or front yard that is separated from view from the street by a fence, hedge or other obstruction; or
 - (ii) Inside of a licensed and registered motor vehicle in the parking lot on the site of a religious institution with the written consent of such institution, where the driver/occupant of such vehicle is in possession of a valid driver's license, provided that no more than three vehicles shall be permitted at any one location; or
 - (iii) Inside of a licensed and registered motor vehicle in the parking lot on the site of a business institution in a non-residential district with the written consent of both the business institution and property owner, where the driver/occupant of such vehicle is in possession of a valid driver's license, provided that no more than two vehicles shall be permitted at any one location;
 - (iv) Inside a licensed and registered vehicle in a residential off-street driveway with the written consent of the owner and occupant of the residence, where the driver/occupant of such vehicle is in possession of a valid driver's license, provided that no more than one vehicle shall be permitted at any one location. No particular location shall be used for camping under this provision for more than three days during any one calendar month.

Camping shall not be permitted under this subsection where it is conducted in such a manner as to create noise, inadequate sanitation, or other matters offensive to persons of ordinary sensibility; nor where the camping is of such frequency, intensity or duration as to constitute a use of land prohibited by any provision of Title [24](#) of this code; nor where the camping activity would be prohibited under any other provision of this code concerning use of mobilehomes; nor where any fee, charge or other monetary consideration is collected for the privilege of camping or for any services or the use of any facilities related thereto; nor where the covenants, conditions and restrictions of a duly organized homeowners association would prohibit the activity in the residential area subject to the covenants, conditions and restrictions.

(Ord. 2002-12 § 1, 2002: Ord. 2002-05 § 1, 2002: Ord. 99-01 § 2, 1999: Ord. 95-22, § 1, 1995: Ord. 78-29, § 2, 1978).

6.36.030 PERMIT FOR CAMPING IN CITY PARKS.

(a) The director of parks and recreation may issue a permit authorizing persons or groups to camp in the improved areas of Harvey West Park, the improved area known as lower De Laveaga Park adjacent to Branciforte Drive and San Lorenzo Park bench lands upon finding that the applicant has met the city's requirements for:

- (1) Parking and traffic control;
- (2) Toilet and other sanitary facilities;
- (3) Security;
- (4) Liability insurance;
- (5) Garbage collection and cleanup;
- (6) Security and cleanup deposits;
- (7) Such other public health, safety and general welfare matters as may be raised by the camping application; and
- (8) Environmental compliance according to the California Environmental Quality Act (CEQA) and the city's CEQA Guidelines.

(b) Except as set forth in subsection (c) no person or group may camp in a city park under authority of this section for more than three nights in any twelve months. No permit shall be required for security guards who camp in city parks incident to a lawful event.

(c) Where the camping activity is taking place in conjunction with an authorized and permitted restoration or conservation project being performed by campers at or near the campsite, the director of parks and recreation may permit an individual or group to camp in one of the afore-referenced city parks for a period of time in excess of that prescribed in subsection (b).

(d) To ensure the fair and consistent application of this section, the director of parks and recreation shall promulgate regulations defining the criteria for permit issuance contained in this section.

(Ord. 2002-05 § 2, 2002: Ord. 89-33 § 1, 1989).

6.36.040 PENALTY – SINGLE OFFENSE.

Any person who violates any section in this chapter is guilty of an infraction and shall be subject to a fine of not more than twenty dollars. Alternatively any person who violates any section in this chapter, in lieu of a fine may, if that person so requests, be required to provide no more than eight hours of community service.

(Ord. 99-01 § 3, 1999: Ord. 79-41 § 1, 1979).