

Agenda
Shady Cove Planning Commission Meeting
Thursday, November 14, 2024
6:00 PM

<https://zoom.us/j/98444799603?pwd=NvUaP4iGnvjBsHjFm1rfRZJGK0gzDx.1>

Meeting ID: 984 4479 9603

Passcode: 937464

One tap mobile

+16694449171,,98444799603#,,,,*937464# US

+16699006833,,98444799603#,,,,*937464# US (San Jose)

I. Call to Order

A. Roll call.

B. Announcements by Presiding Officer.

1. This meeting is being digitally recorded.
2. The next regularly scheduled meeting of the Planning Commission public hearings will be held on December 12, 2024, at 6:00 PM both in Council Chambers and via Zoom.
3. The meeting date is subject to change.

II. Old Business

A. Discussion – Fence Ordinance Review Draft

III. New Business

A. Discussion – Review of Camping Ordinance Draft / HB 3115 Requirements

IV. Department Reports

A. Planning Technician Report

V. Public Comment

VI. Commissioner Comments

VII. Adjournment

City of Shady Cove

Ordinance No. 307

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHADY COVE AMENDING THE SHADY COVE CODE OF ORDINANCES, INCLUDING ORDINANCES 225, 259, and 286, FENCING REGULATIONS IN RESIDENTIAL AND GENERAL COMMERCIAL DISTRICTS.

Whereas, The City Council of the City of Shady Cove desires to update the conditions set forth for fencing; and

Whereas, The City Council of the City of Shady Cove desires to remove obsolete, redundant, and generally update the Planning Code;

THE COUNCIL OF THE CITY OF SHADY COVE ORDAINS THE FOLLOWING AMENDMENTS:

Exhibit A details the changes to Ordinances 259, 286 and 225 to incorporate standardized fencing heights plus barbed wire and electric fencing regulations within the City of Shady Cove Flood Hazard Reduction and Zoning municipal code.

EXHIBIT A

The following modifications are to be made to Ordinances 259 and 286:

- I. PROVISIONS FOR FLOOD HAZARD REDUCTION; FENCES AND WALLS; . . .
evaluation criteria list: [Ref. 151.054,
Add as (A)-(4)]

ADD:

- (4) Electronically-charged fences are prohibited.

The following modifications are to be made to Ordinance 225:

- II. Ord 225, Exhibit A, Section 7.4-D (LOW DENSITY RESIDENTIAL DISTRICT, R-1;
PROPERTY DEVELOPMENT REQUIREMENTS; *Fences, Walls, and Hedges*):

[Ref. 154.038, (D)]

CHANGE:

- D. Fences, Walls, and Hedges: Any fence, wall, hedge, or other screen planting shall not exceed a height of neither three feet above grade within any front yard setback area, nor six feet above grade within any side or rear yard areas. Open mesh deer fencing may exceed the height restrictions noted above.

TO:

D. Fences, Walls, and Hedges:

1. Fences and walls are a type of development and require a permit.
2. Any fence, wall, hedge, or other screen planting shall not exceed a height of neither three feet above grade within any front yard setback area, nor six feet above grade within any other yard area. Open mesh deer fencing may not exceed 8 feet above grade.
3. *Barbed wire*. It is unlawful for any person to erect or maintain within the city any fence constructed in whole or in part of barbed wire, razor wire, concertina wire or other similar wire (hereafter referred to as barbed wire) except as indicated below.
 - a. Barbed wire is not allowed, except for security fence around construction building materials, and then only by approval of a conditional use permit by the Planning Commission.
4. *Electric fences*. Electronically-charged fences are prohibited.

III. Ord 225, Exhibit A, Section 8.4-C (MEDIUM DENSITY RESIDENTIAL DISTRICT, R-2; PROPERTY DEVELOPMENT REQUIREMENTS; *Fences, Walls, Hedges*):

NO CHANGES: This section references Zone R-1.

IV. Ord 225, Exhibit A, the second Section 9.3 (HIGH DENSITY RESIDENTIAL DISTRICT, R-3; PROPERTY DEVELOPMENT REQUIREMENTS):
[Ref. 154.068, Add as (E)]

ADD:

D. Fences, Walls, and Hedges:

1. Fences and walls are a type of development and require a permit.
2. Any fence, wall, hedge, or other screen planting shall not exceed a height of neither three feet above grade within any front yard setback area, nor six feet above grade within any other yard area. The Planning Commission may approve a variance to the height requirement for reasons of security or visual screening, to a maximum height of ten feet.
3. *Barbed wire*. It is unlawful for any person to erect or maintain within the city any fence constructed in whole or in part of barbed

wire, razor wire, concertina wire or other similar wire (hereafter referred to as barbed wire) except as indicated below.

b. Barbed wire is not allowed, except for security fence around construction building materials, and then only by approval of a conditional use permit by the Planning Commission.

4. *Electric fences.* Electronically-charged fences are prohibited.

V. Ord 225, Exhibit A, Section 12.6 (GENERAL COMMERCIAL DISTRICT, G-C; Fences, Walls, Hedges): [Ref. 154.085, Change (A)(B)(C), Add (D), (E) & (F)]

CHANGE:

A. All fences, walls, or hedges placed within ten feet of any property *line* shall be limited in height to six feet, with the exception of trees. The Planning Commission may approve a variance to the height requirement for reasons of security or visual screening, to a maximum height of ten feet.

TO:

A. All fences, walls, or hedges shall be limited in height to six feet, with the exception of trees. The Planning Commission may approve a variance to the height requirement for reasons of security or visual screening, to a maximum height of ten feet.

CHANGE:

B. Any new or expanding development within this district shall be physically and visually separated from any abutting residential properties by a solid fence or wall six feet in height. The Planning Commission may reduce or eliminate this requirement during site plan review for development that does not include outdoor storage and that is found to be compatible in design and landscaping with abutting and nearby residences.

TO:

B. Any new or expanding development within this district shall be physically and visually separated from any abutting residential properties by a solid fence or wall six feet in height. **The Planning Commission may require that a fence, wall or hedge be erected along and immediately adjacent to the abutting property line as well as the zone boundary and may include privacy slats in cyclone fencing.** The Planning Commission may reduce or eliminate this requirement during site plan review for development that does not include outdoor storage and that is found to be

compatible in design and landscaping with abutting and nearby residences.

CHANGE:

- C. All trash containers or areas provided for that purpose shall be screened from public view by landscaping or fencing, or a combination of both.

TO:

- C. All trash containers or areas provided for that purpose shall be screened from public view by landscaping or fencing, or a combination of both. **All fences, walls and hedges shall be properly constructed, maintained, trimmed and kept in good condition and repair.**

ADD:

- D. Fences and walls are a type of development and require a permit.
- E. *Barbed wire.* It is unlawful for any person to erect or maintain within the city any fence constructed in whole or in part of barbed wire, razor wire, concertina wire or other similar wire (hereafter referred to as barbed wire) except as indicated below.
1. Barbed wire is not allowed, except for security purposes, and then only by approval of a conditional use permit by the Planning Commission. Conditional use permits will not be issued for barbed wire in areas accessible to the public during normal business hours.
- F. *Electric fences.* Electronically-charged fences are prohibited, except as allowed by Oregon law noting that any required accompanying non-electric wall or fence is still subject to the provisions of this chapter.

VI. Ord 225, Exhibit A, Section 13.6 (PUBLIC USES DISTRICT, P; Fences, Walls, Hedges, Buffering): [Ref. 154.105, Change (A), Add (E), (F) & (G)]

CHANGE:

- A. All fences, walls, or hedges placed within ten feet of any property *line* shall be limited in height to six feet, with the exception of trees. The Planning Commission may require conditions or approve a variance to the height requirement for reasons of security or visual screening.

TO:

- A. All fences, walls, or hedges shall be limited in height to six feet, with the exception of trees. The Planning Commission may approve a variance to the height requirement for reasons of security or visual screening, to a maximum height of ten feet.

ADD:

- A. Fences and walls are a type of development and require a permit.
- B. *Barbed wire.* It is unlawful for any person to erect or maintain within the city any fence constructed in whole or in part of barbed wire, razor wire, concertina wire or other similar wire (hereafter referred to as barbed wire) except as indicated below.
 - o Barbed wire is allowed for the following facilities for perimeter fencing, materials, and facility security or protection. (Perimeter fencing is allowed with barbed wire only if the barbed wire is a minimum of six feet above the ground. If barb arms are used on the fence top, the fence must be completely on property, including the area below the barbed arms if they extend outside the fence line).
 - i. Federal, state or local government facilities; and
 - ii. School facilities
- C. *Electric fences.* Electronically-charged fences are prohibited except as allowed by Oregon law noting that any required accompanying non-electric wall or fence is still subject to the provisions of this chapter.

- VII. Ord 225, Exhibit A, Section 16.8 (GENERAL LIMITED INDUSTRIAL DISTRICT, L-1; Fences, Walls, Hedges): [Ref. 154.142, Change (B), Add (F) & (G)]

CHANGE:

In the L-1 District, solid fences and walls shall not exceed 3 feet in height above the sidewalk grade, within the front yard setback area or street side yard setback area, vision clearance shall be required on all corner lots. On an ulterior lot a wall, fence, or hedge not more than eight feet in height may be located anywhere on the lot to the rear of the required front yard or street side yard setback line. When an L-1 District adjoins a residential district, the Planning Commission may require that a fence, wall, or hedge be erected along and immediately adjacent to the abutting property line that is the zone boundary. The Planning Commission may make this requirement in the approval of the Site Plan as required by Section 24. All fences, walls, and hedges shall be properly constructed, maintained, trimmed and kept in good condition and repair

TO:

- A. Fences and walls are a type of development and require a permit.
- B. In the L-I District, a fence, wall, or hedge shall not exceed three feet in height above the sidewalk grade, within the front yard setback area or street side yard setback area. Vision clearance shall be required on all corner lots.
- C. A fence, wall, or hedge not more than six feet may be located anywhere on the lot to the rear of the required front yard setback or street side yard setback line. The Planning Commission may approve a variance to the height requirement for reasons of security or visual screening, to a maximum height of ten feet.
- D. When an L-I District adjoins a residential district, the Planning Commission may require that a fence, wall or hedge be erected along and immediately adjacent to the abutting property line that is the zone boundary.
- E. The Planning Commission may make this requirement in the approval of the site plan, as required by Section 24.
- F. All fences, walls and hedges shall be properly constructed, maintained, trimmed and kept in good condition and repair.
- G. *Barbed wire.* It is unlawful for any person to erect or maintain within the city any fence constructed in whole or in part of barbed wire, razor wire, concertina wire or other similar wire (hereafter referred to as barbed wire) except as indicated below.
 - 1. Barbed wire is allowed to the rear of the front yard and side street setback areas for perimeter fencing, materials, and facility security or protection. (Perimeter fencing is allowed with barbed wire only if the barbed wire is a minimum of six feet above the ground. If barb arms are used on the fence top, the fence must be completely on private property, including the area below the barbed arms if they extend outside the fence line).
- H. *Electric fences.* Electronically-charged fences are prohibited except as allowed by Oregon law noting that any required accompanying non-electric wall or fence is still subject to the provisions of this chapter.

A. The owner, or person in charge protesting any citation of any sections of this Ordinance, shall file with the City, a written statement which will specify the basis for the protest. The statement will be referred to the City Council or Municipal Court Judge, as appropriate, as part of the next scheduled meeting or court date. At the time set for consideration of the abatement, the owner or other person may appear and be heard and the Council or Municipal Court Judge, as appropriate will thereupon determine whether or not a nuisance or offense, in fact, exists. If it is determined that it does exist, the owner, or other person shall, within 10 days of that determination complete the abatement.

B. If the owner, or person in charge of the property, objects to the assessment for abatement, a written objection may be heard by the City Council in the manner described in "A" above.

Penalties and Damages

A. In addition to the cost and assessments provided in this Ordinance, a violation may be prosecuted in the Municipal Court of the City of Shady Cove, and be punished by a fine or not more than \$500.

B. Each day's violation constitutes a separate violation. The abatement shall not constitute a penalty for violating the Ordinance.

C. The remedies specified herein will not be deemed exclusive and the City may, at its option, seek to enforce the provisions of this Ordinance by exercising its legal or equitable remedies in any court of competent jurisdiction.

D. When an offense has been committed that results in ascertainable damages to any person, based upon conviction thereof, in addition to any other sentence, the Court may order that the defendant make restitution to the victim.

Infraction

A. Neither party shall have the right to a jury trial at the trial of any infraction.

Severability

A. Invalidity of a section or part of a section of this Ordinance will not affect the validity of remaining sections or parts of Sections.

Savings Clause

A. The amendment of any Ordinance noted in these sections will not preclude any action against any person violating this Ordinance prior to the effective date of this Ordinance.

Adopted by the City Council of the City of Shady Cove this ____ day of _____, 2024.

Approved:

Attest:

City of Shady Cove
Ordinance No. 307
Fencing Amendments

Jon Ball
Mayor

Thomas J. Corrigan
City Administrator

Council Vote:

Mayor Ball

Councilor Nuckles

Councilor Winfrey

Councilor Hubbard

Councilor Mitchell

City of Shady Cove

Ordinance No. _____

AN ORDINANCE OF THE CITY OF SHADY COVE, OREGON AMENDING CHAPTER 90 OF THE CITY OF SHADY COVE CODE OF ORDINANCES IN ORDER TO; AMEND THE CITY'S CAMPING STANDARDS, CREATE A PROCESS TO ALLOW RELIGIOUS INSTITUTIONS AND PLACES OF WORSHIP TO PROVIDE PERMITTED OVERNIGHT SLEEPING IN A VEHICLE, AND CLARIFY LAW ENFORCEMENT REQUIREMENTS FOR DEALING WITH ILLEGAL CAMPING IN CONFORMANCE WITH STATE LAW

Whereas, the City of Shady Cove is working to adopt more detailed camping standards; and,

Whereas, the City of Shady Cove intends to provide standards and permitting processes for overnight sleeping in vehicles on religious institution or place of worship parking lots; and,

Whereas, it has been identified that current state law has specific measures that law enforcement officers must take when enforcing camping standards; and,

Whereas, The Shady Cove Planning Commission, after providing proper public notice, met in Public Hearing on _____, 2020, to consider amendments to the Shady Cove Code of Ordinances to include revisions to the camping standards of the City of Shady Cove, after which a motion was made, duly seconded, and passed by a roll call vote of _ - _ to recommend that the City Council approve amendment of the City Camping Standards in the Shady Cove Code of Ordinances; and,

Whereas, On _____, 2020, following the close of the public hearing, the City Council deliberated on the record of the proceedings, after which a motion was made and duly seconded, to approve Planning File No. CPA 20-01. The motion passed by a roll call vote of ___ to ___.

Now, therefore, COUNCIL OF THE CITY OF SHADY COVE ORDAINS AS FOLLOWS:

The Shady Cove Code of Ordinances is amended as follows:

Section 1: Title

This Ordinance shall be known as an amendment to the Camping Standards of the City of Shady Cove Code of Ordinances.

Section 2: Description The amendment more accurately provides standards for camping, methods for abating illegal camping, and a limited permitting process for overnight sleeping in vehicles on property owned by religious institutions or places of worship.

Section 3: Amendment

The Shady Cove Comprehensive Plan is amended;

Section 90.02, Definitions... Lodging in Recreational Vehicles is amended to read;

(1) The following regulations pertain to recreational vehicles parked outside of recreational vehicle parks, mobile home or manufactured home parks or other areas that are specifically designated for the vehicles.

(2) No person shall occupy a recreational vehicle for sleeping or living purposes on a public street or right-of-way.

(3) No person having ownership, or other responsibility for property in the city, shall occupy or allow the occupancy of any recreational vehicle upon the premises as a permanent living quarters, unless approved for the use by the City Council.

(4) A recreational vehicle may be parked on residentially zoned private property and used for sleeping and cooking purposes by guests of the residents of the premises for a period not to exceed 30 days within any three-month period of the year; provided, the vehicle has self contained sewage facilities or the vehicle's occupants are utilizing the facilities in their host's residence, unless approved for a longer period in advance, by the City Council.

(5) Any unoccupied recreational vehicle shall not be stored on any roadway or within any public right-of-way.

(6) ~~A recreational vehicle shall not occupy a space within an approved mobile home park unless that space has been specifically approved by the city for short-term recreational vehicle use. A recreational vehicle may not be parked on private property and used for sleeping and cooking purposes on any vacant lot, unless approved for the use by the City Council. This standard does not apply to residential lots with approved building permits.~~

(7) Recreational vehicles may be parked on private property and used for sleeping and cooking purposes for up to six months during on-site construction on residentially zoned lots with approved building permits upon application and administrative approval.

(8) A recreational vehicle may not be parked and used for sleeping and cooking purposes on any General Commercial, Airpark Commercial, or Public zoned property, unless approved for the use by the City Council.

Section 90.20, Prohibited Camping is added to include;

(A) As used in this section:

(1) "To Camp" means to set up or to remain in or at a campsite.

(2) "Campsite" means any place where any bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed, established or maintained for the purpose of 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 part thereof.

(B) It is found and declared that:

(1) From time to time persons establish campsites on sidewalks, public right of ways, under bridges and so forth.

(2) Such persons by such actions create unsafe and unsanitary living conditions which pose a threat to the peace, health and safety of themselves and the community; and

(3) The enactment of this provision is necessary to protect the peace, health and safety of the city and its inhabitants.

(C) No person shall camp in or upon any sidewalk, street, alley lane, public right of way, park on any other publicly owned property or under any bridge or viaduct, unless otherwise specifically authorized by this code or by declaration of the mayor in emergency circumstances.

(D) This policy is developed pursuant to ORS 203.077.

(E) Prior to removing individuals from an established camping site, law enforcement officials shall post a notice, written in English and Spanish, 24 hours in advance.

(1) At the time that a 24 hours' notice is posted, law enforcement officials may inform the local agency that delivers social services to individuals where the notice has been posted.

(2) The local agency may arrange for outreach workers to visit the camping site where a notice has been posted to assess the need for social service assistance in arranging shelter and other assistance.

(3) All unclaimed personal property shall be given to law enforcement officials whether 24-hour notice is required or not. The property shall be stored a minimum of 30 days during which it will be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed for 30 days may be disposed of. For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discarded upon removal of the individual from the camping site.

Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials.

(4) Following the removal of individuals from a camping site on public property, the law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a humane and just manner and to determine if any changes are needed in this policy.

(F) The 24 hour notice required under subsection (E) of this policy shall not apply:

(1) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring.

(2) In the event of an exceptional emergency such as possible contamination by hazardous material or when there is immediate danger to human life or safety.

(G) A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance may not issue a citation if the citation would be issued within 200 feet of the notice described in this section and within two hours before or after the notice was posted.

Section 90.23, Overnight Sleeping in Vehicles is added to include;

(A) Notwithstanding any other provision of the Shady Cove Code of Ordinances, religious institutions or places of worship may provide up to and not exceed three (3) parking spaces for up to and not exceed three (3) vehicles for overnight sleeping in a vehicle on their parking lot if the religious institution or place of worship owns or leases real property on which a structure and an associated parking lot are located.

(B) A religious institution or place of worship that allows a person or persons to sleep overnight in a vehicle on the premises pursuant to subsection A of this section shall:

(1) Provide, or make available on the premises, sanitary facilities including, but not limited to, toilet, hand washing, and trash disposal facilities.

(2) Not allow tents or other personal property to be attached to the vehicle as a means to expand the capacity of the vehicle for additional camping or to establish long term campsites.

(3) Ensure vehicles maintain a minimum distance of 20 feet from other overnight camping vehicles.

(4) Ensure that all vehicles are operable and leave the property on a daily basis.

(5) Obtain a cost-free permit from the City of Shady Cove to allow overnight vehicle camping on property owned or leased by the organization.

(6) Not require payment of any fee, rent, or other monetary charge for overnight sleeping in a vehicle as authorized by this section.

(C) A religious institution or place of worship that permits overnight sleeping in a vehicle pursuant to subsection A of this section may revoke that permission at any time and for any reason. Any person who receives permission to sleep on a premises as provided in subsection A of this section shall leave the premises immediately after permission has been revoked.

(D) Notwithstanding any other provision of this section, the City Administrator or City Administrator's designee may prohibit overnight sleeping in a vehicle at a premises as provided in subsection A of this section if the City Administrator or the City Administrator's designee finds that such activity does not meet the requirements of this section or constitutes a nuisance or other threat to public health, safety, or welfare.

(E) In addition to any other penalties that may be imposed, any premises used for overnight sleeping in a manner not authorized by this section or other provisions of this Code shall constitute a nuisance and may be abated as such.

(F) Nothing in this chapter creates any duty on the part of the City, its employees, or its agents to ensure the protection of persons or property with regard to overnight sleeping in vehicles.

Section 4: The City Council adopts as its own, and incorporates by reference, the Planning Commission recommendation attached as Exhibit A.

PASSED AND APPROVED by the City Council of the City of Shady Cove this ____ day of _____, 20__.

Approved:

Lena Richardson
Mayor

Attest:

Thomas J. Corrigan
City Administrator

Council Vote:

Mayor Richardson _____
Councilor Mitchell _____
Councilor McGregor _____
Councilor Tarvin _____
Councilor Hohenstein _____

House Bill 3115

Sponsored by Representative KOTEK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that local law regulating sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness. Creates affirmative defense to charge of violating such local law that law is not objectively reasonable. Creates cause of action for person experiencing homelessness to challenge objective reasonableness of such local law. Authorizes court to award attorney fees to prevailing plaintiff in such suit in certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the regulation of public property with respect to persons experiencing homelessness; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** (1) **As used in this section:**

6 (a) **"City or county law"** does not include policies developed pursuant to ORS 203.077 or
7 **203.079.**

8 (b)(A) **"Keeping warm and dry"** means using measures necessary for an individual to
9 survive outdoors given the environmental conditions.

10 (B) **"Keeping warm and dry"** does not include using any measure that involves fire or
11 flame.

12 (c) **"Public property"** has the meaning given that term in ORS 131.705.

13 (2) **Any city or county law that regulates the acts of sitting, lying, sleeping or keeping**
14 **warm and dry outdoors on public property that is open to the public must be objectively**
15 **reasonable as to time, place and manner with regards to persons experiencing homelessness.**

16 (3) **It is an affirmative defense to a charge of violating a city or county law described in**
17 **subsection (2) of this section that the law is not objectively reasonable.**

18 (4) **A person experiencing homelessness may bring suit for injunctive or declaratory relief**
19 **to challenge the objective reasonableness of a city or county law described in subsection (2)**
20 **of this section. The action must be brought in the circuit court of the county that enacted**
21 **the law or of the county in which the city that enacted the law is located.**

22 (5) **For purposes of subsections (2) and (3) of this section, reasonableness shall be deter-**
23 **mined based on the totality of the circumstances, including, but not limited to, the impact**
24 **of the law on persons experiencing homelessness.**

25 (6) **In any suit brought pursuant to subsection (4) of this section, the court, in its dis-**
26 **cretion, may award reasonable attorney fees to a prevailing plaintiff if the plaintiff:**

27 (a) **Was not seeking to vindicate an interest unique to the plaintiff; and**

28 (b) **At least 90 days before the action was filed, provided written notice to the governing**

1 **body of the city or county that enacted the law being challenged of an intent to bring the**
2 **action and the notice provided the governing body with actual notice of the basis upon which**
3 **the plaintiff intends to challenge the law.**

4 **(7) Nothing in this section creates a private right of action for monetary damages for any**
5 **person.**

6 **SECTION 2. Section 1 of this 2021 Act becomes operative on July 1, 2023.**

7 **SECTION 3. This 2021 Act being necessary for the immediate preservation of the public**
8 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
9 **on its passage.**

10

Enrolled
House Bill 3115

Sponsored by Representative KOTEK; Representatives DEXTER, MARSH, MCLAIN, POWER, REYNOLDS, WILDE, Senators DEMBROW, MANNING JR, RILEY

CHAPTER

AN ACT

Relating to the regulation of public property with respect to persons experiencing homelessness; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "City or county law" does not include policies developed pursuant to ORS 203.077 or 203.079.

(b)(A) "Keeping warm and dry" means using measures necessary for an individual to survive outdoors given the environmental conditions.

(B) "Keeping warm and dry" does not include using any measure that involves fire or flame.

(c) "Public property" has the meaning given that term in ORS 131.705.

(2) Any city or county 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) It is an affirmative defense to a charge of violating a city or county law described in subsection (2) of this section that the law is not objectively reasonable.

(4) A person experiencing homelessness may bring suit for injunctive or declaratory relief to challenge the objective reasonableness of a city or county law described in subsection (2) of this section. The action must be brought in the circuit court of the county that enacted the law or of the county in which the city that enacted the law is located.

(5) For purposes of subsections (2) and (3) of this section, reasonableness shall be determined based on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness.

(6) In any suit brought pursuant to subsection (4) of this section, the court, in its discretion, may award reasonable attorney fees to a prevailing plaintiff if the plaintiff:

(a) Was not seeking to vindicate an interest unique to the plaintiff; and

(b) At least 90 days before the action was filed, provided written notice to the governing body of the city or county that enacted the law being challenged of an intent to bring the action and the notice provided the governing body with actual notice of the basis upon which the plaintiff intends to challenge the law.

(7) Nothing in this section creates a private right of action for monetary damages for any person.

SECTION 2. Section 1 of this 2021 Act becomes operative on July 1, 2023.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 15, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 9, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State