



CITY OF TOPEKA

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MEMORANDUM

To: Governing Body
From: Amanda Stanley
Re: 500 foot buffer proposal
Date: 8/21/2023

The purpose of this memorandum is to provide items for discussion as the Governing Body considers the proposed 500 foot buffer ordinance. It should be viewed as a supplement to the memorandum provided in the Governing Body Agenda Packet for 8/22/2023 titled Possible Camping Ordinance Amendments.

It is helpful when discussing a 500 foot buffer to have a visual. 500 feet is approximately 1.4 football fields in length or about 1 ½ city blocks. The proposed buffer would be 500 feet from the center line of any trail or sidewalk in city limits.

There are two main components to the proposed ordinance (1) the trail system (predominately the Shunga and Landon Trails) and (2) sidewalks inside city limits.

As drafted, the ordinance would apply to public and private land. As the buffer zone has been proposed as a response to public safety concerns, it is important to have the law applied equally to all similarly situated land to accomplish the legitimate governmental interest of safety for pedestrians.

Planning Staff has determined that for the proposed Shunga 500 foot buffer, there are 1,450 total properties within the buffer. Of those, 40 are “public” and 1,410 are private. The forty public parcels consist of city, county, state, and 501 property.

The sidewalk piece is harder to get a complete picture of the possible effects. To illustrate this, Planning Staff brought forth the following example.

For simplicity sake, let’s assume a typical home or commercial building is setback 30 feet from a public sidewalk and the property is typically about 150 feet deep.

- A 500 foot buffer around sidewalks would extend past the front yard, past the back yard and well into the next properties behind. This would prohibit camping in front yards and even in the back yards. Accessory recreational camping by the property owner has generally been an acceptable use.

- A rough mapping exercise with a 500 foot buffer around sidewalks covers approximately 85% of the city.

“It is well settled, however, that a law denies due process of law guaranteed by the Fourteenth Amendment of the United States Constitution if (1) it is so vague that a person of ordinary intelligence is not put on notice of the conduct which is prohibited, or (2) if the law is so overbroad that it makes common conduct criminal and provides the police with unfettered discretion to arrest.” § 24:591. Loitering, congregating, camping in streets and public places, 7A McQuillin Mun. Corp. § 24:591 (3d ed.)

A prohibition of camping within 500 feet of the centerline of any trail or sidewalk cannot be too broad, vague, or arbitrary. The Governing Body will need to articulate the rationale basis for the 500 foot buffer and demonstrate why this this particular distance is necessary.

This raises several issues. (1) Are there factors supporting a prohibition on camping that justifies a further distance from a sidewalk than the standard setback for a house or business? (2) Does this by default prohibit camping in the City of Topeka which could run afoul of the 8th Amendment caselaw if there are not sufficient beds available? (3) Is there a need for the Governing Body to carve out exemptions in the ordinance for RV Parks and other commercial properties that allow for camping but also have sidewalks? (4) Are there differences between the Shunga Trail compared to a sidewalk that would justify different distances? For instance, the prevalence of streetlights, overgrowth of vegetation, etc.? Could a shorter buffer zone for sidewalks and a longer buffer zone of 500 feet for the trails accomplish the same goal while being more narrowly tailored to the particular harm?

For example, the City of Los Angeles allows buffer zones of up to a maximum of 10 feet for operational driveways or loading docks, within 5 feet of an operational or utilizable building entrance or exit, within 2 feet of any fire hydrant, fire plug, or other fire department connection, or, if the City has posted notice and determined the conduct poses a particular and ongoing threat to public safety such as repeated serious crime or fires, of up to a maximum of 500 feet for sensitive use property (schools, day care centers, public parks, or public libraries), designated overpass, underpass, freeway ramp, tunnel, bridge, pedestrian bridge, subway wash, spreading ground, or active railway, and up to a maximum of 1000 feet from a designated homeless shelter.

As the Governing Body looks at options, some factors it could consider are calls for service related to sidewalks or on the trail system, news articles and public comment demonstrating public concern, and data from agencies that work with the homeless, factors that make it more dangerous in certain locations such as lack of lighting and vegetation. It will be important for the legislative record to be clear on the important governmental interests being protected.

Attachments:

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