

EXHIBIT D

Proposed amendments to BCC 5-2-3

5-2-3: Disorderly Conduct

A. Violations: Any person who violates the provisions below is guilty of a misdemeanor:

1. Occupying, lodging or sleeping in any building, structure or place, whether public or private, or in any motor vehicle, without the permission of the owner or person entitled to possession or in control thereof; or
2. Loitering, prowling or wandering upon the private property of another, without lawful business, permission or invitation by the owner or the lawful occupants thereof; or
3. Loitering or remaining in or about school grounds or buildings, without having any reason or relationship involving custody of or responsibility for a pupil or student, school authorized functions, activities or use. (1952 Code § 6-01-05)

B. Availability Of Overnight Shelter: ~~1.~~ Law enforcement officers shall not enforce subsection A of this section (disorderly conduct) when the individual is on public property and there is no available overnight shelter.

1. The term "available overnight shelter" is a public or private shelter, with an available overnight space, open to for an individual or family unit experiencing homelessness, at no charge, as defined in Section B.2. If the individual cannot utilize the overnight shelter space due to voluntary actions, such as intoxication, drug use, unruly behavior or violation of shelter rules, the overnight shelter space shall still be considered available.

2. The term "available overnight shelter" shall not include the following:

i. Shelter space where an individual cannot stay because the individual has exceeded a shelter's maximum stay rule or because shelter is unavailable due to the individual's sex or sexual orientation.

ii. Shelter space that cannot reasonably accommodate the individual's mental or physical needs or disabilities.

iii. Shelter space that does not permit a minor child to be housed in the same facility with at least one parent or legal guardian.

iv. Shelter space for which an individual is required to attend or participate in religious activities or programs as a condition of utilizing the shelter space.

3. Police or their designee shall initiate contact with the shelters after 11 p.m. daily to determine whether the shelters have available space and, if so, the number of available sleeping spaces. Prior to issuing any citation, a police officer shall also confirm that a shelter has available space that can be utilized by that particular individual. No police officer shall issue a citation to a homeless person sleeping, lying, sitting, or camping

outdoors unless the officer first confirms the shelter has available space that can be utilized by the individual.

C. Exception: This section does not affect subsection [7-7A-5E](#) or [7-7A-11A](#) of this title, which do not prohibit sleeping in a public park during hours of operation. (Ord. 38-14, 9-23-2014)