



Council Minutes

June 15th, 2023

ROLL CALL: Mayor Craven called the meeting to order at 7:00 p.m. with Council President Chambers, Councilor Hansen, Councilor LaCoste, Councilor Solberg, Councilor Humphreys, and Councilor Winklepleck present. Public Works Superintendent Karl Frink, Administrative Assistant Elizabeth Coleman, Administrative Assistant Tammi Morrow, and City Administrator Scott McDowell were also present.

ABSENT: Everyone was present.

PUBLIC: Barbara Andersen, Dan Murphy, Dennis Olsen, Merritt & Jan Schilling, Steve Schilling, Jim & Sue Smith, Joni Nelson, Diana Barron, Susan Beaudin, Connie Bull, Tricia Thompson, Wayne & Jeana Graham, Jeff Boggs, and Vance Parrish (*The Times*).

The pledge of allegiance was recited.

ADDITIONS AND DELETIONS: None.

PUBLIC HEARING | PRESENTATIONS:

A. HB 3115 | Overview – McDowell read this report into the record:

Summary: Every city and county in Oregon has been struggling with the 9th Circuit Courts decision in *Martin v. Boise* for a number of years. In 2021, the State Legislative Assembly decided to codify the basic premise of the case into State Law with the passage of HB 3115. Several bills were introduced and were all rolled into the referenced House Bill. The State of Oregon struck down the city's ability to have time, place, and manner restrictions on public property in advance of HB 3115. Cities and counties were no longer allowed to keep anyone from using public property for camping and living purposes. The outcome of this policy approach was an explosion of homeless people sleeping in public spaces in cities such as Salem, Eugene, and Portland during the Pandemic and continuing to this day. The 9th Circuit ruled on a case known as *Blake v. Grants Pass* in September 2022 holding that the city's "anti-camping" ordinance prohibited individuals from using bedding supplies violated the Cruel and Unusual Punishment Clause of the 8th Amendment.

Meanwhile, many cities throughout Oregon have endeavored to find solutions to the "homelessness crisis." Local governments have tried to open housing, use hotels & motels, build shelters along with a myriad of other solutions to address this issue.

House Bill 3115 comes into law July 1st, 2023.

Implications: City attorneys all over the mid-valley, and beyond, have concluded that cities and counties have until July to put time, place, and manner restrictions back in municipal codes provided that they allow a designated space for individuals experiencing homelessness. Cities have been advised that if time, place, and manner restrictions are not codified by July 1st, 2023, they will not be allowed to pass legislation after July 1st. Attorneys have agreed that cities can slightly modify the language after July 1st, as long as it complies with the State Law being imposed by HB 3115.

The League of Oregon Cities collaborated with legislators to get this carve out for cities. The carve out being allowing cities to close public spaces with certain conditions known as time, place, and manner restrictions.

The Oregon Mayor's Association in cooperation with the League of Oregon Cities took a funding proposal to the State legislature to assist cities and counties to gain funding for this unfunded mandate. Their proposal was denied by the State legislature.



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What does Ordinance 799 do for Brownsville?

The ordinance aims to set time, place, and manner restrictions that meet the intent of the State law. The ordinance as written does the following:

1. Does not allow any person to camp on sidewalks either in front of private residences or businesses. Sidewalks are the responsibility of the property owner and are covered through private insurance. Public sidewalks are also prohibited.
2. Does not allow “free camping” in Pioneer Park. Pioneer Park becomes a fee park.
3. Designates the South Wastewater Treatment Plant as a place for free camping between the hours of 10:00 p.m. and 7:00 a.m.
4. Creates a two hundred (200’) buffer around the riparian area of the Calapooia River.

Staff Recommendation: The City does not have specialized personnel trained to deal with the associated issues that accompany the impact of individuals being singled out by this legislation. Area communities have experienced large expenditures cleaning up camping sites and have had to contract clean-up services with special third-party contractors.

The State is also considering a law change to the requirements for disposing of abandoned recreational vehicles. The rate cities pay to dispose of an abandoned recreational vehicle is \$5,000 per vehicle. The State continues to create and implement unfunded mandates that cities simply cannot afford.

The City really has no other option than to pass Ordinance 799 and work toward developing a designated space as advised by the City Attorney.

Brownsville’s Pioneer Park is a special place used for many events during the summer and early fall. Without rules in place to protect public spaces from abuse, the City will have absolutely no defense to deal with the associated negative impacts of this State law.

McDowell clarified the statement above about there being no other options by saying that there are no other options if Council wants to be in compliance with the new law. McDowell shared that he had spoken with the Linn County Planning & Building Department about the proposed creation of a free camping area. Linn County advised that there may be some type of land use action required to use the land in this manner. Further research would need to be completed.

B. **Citizen Comments.** Mayor Craven opened the floor to Citizen Comments.

Joni Nelson expressed her appreciation for Council in dealing with a complex problem; the spot between compassion and necessity is tricky. She also stated that over the years Brownsville has had good help from some homeless folks, and they have contributed well to the community.

Steve Schilling stated that currently Brownsville does not have a large homeless population, and it is likely to increase with a designated space. He expressed concern over the City using EFU land that is next to the south water treatment ponds as it could expose the City to liability. Mr. Schilling read an excerpt from House Bill 4077, asking if the City is being objectively reasonable for the homeless with this site.

Rod Souza cited the constitution and stated that HB 3115 is a total violation of our constitutional rights as citizens. If the City already had a homeless problem in our community, that would be different. But we don’t, and he believes creating this space will bring the problem here, and it will tear our community apart.



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Dennis Olsen, Stella-Jones, stated that he was not present to make a recommendation, but trusts Council to make the best decision. However, Stella-Jones has a site close to the proposed location for free camping, and they are very concerned about safety and an increase in crime. He suggested appropriate signage and asked several logistical questions.

Susan Beaudin also inquired about restrooms, fencing, and what a buffer might look like.

Jim Smith expressed concern over the homeless not staying within the confines of the fencing (like Portland's problem) and asked about any other restrictions there may be.

Wayne Graham stated that he felt this law is ridiculous; it doesn't feel like we are in America, talking like this!

Barbara Andersen stated that Council is walking a fine line, not ruining our town but extending compassion to the people that need it. She does not think it is the City's responsibility to provide long-term multiple day housing. Andersen said that we need to care about our local homeless, but do not need to have a place for folks to come to.

Jack Alsman spoke about the site created in Sweet Home. He suggested shunting folks up there. He believes that the folks up there are just people down on their luck, not drug addicts.

Connie Bull stated that the City's liability cannot be quantified.

McDowell answered questions concerning restrooms, a stone pad base, portable toilets, trash dumpster, and fencing around the space. He stated that there are many restrictions placed in this ordinance. The City borrowed heavily from Linn County Code, Title 10, which is the County's response to the new law. McDowell stated that in Sweet Home there is a third-party non-profit that handles the site. McDowell reminded everyone that the City contracts for two hundred (200) hours of law enforcement coverage each month from the Linn County Sheriff's Office. Signs are relatively useless without enforcement. Brownsville faces unique challenges, such as an average 20 minute call response. If the City needed more LCSO coverage, it would at an additional cost. A few years ago, the City experienced a large influx of homeless folks camping in Pioneer Park. After nearly three weeks, Staff recommended closing camping in Pioneer Park for the rest of the season due to safety and hygiene concerns due to people abusing the park. City Staff is not equipped or trained to handle such an influx of people ignoring rules and doing as they please on public property.

McDowell commented that HB 3115 will impact the City in so many ways, especially all the community events that are hosted annually in Pioneer Park. The City is trying to strike an impossible balance.

LEGISLATIVE (Ordinance 799: HB 3115 | Martin v. Boise (First Reading)).

Councilor Hansen made a motion to read O 799 by title only. Councilor Humphreys seconded the motion. A vote was called for with Mayor Craven voting in opposition, and all others voting in favor. Mayor Craven read the motion by title only.

ACTION ITEMS | Park Camping Policy.

Mr. McDowell reviewed the park camping policy. He stated that it is important to remember that, as Karl Frink often says, Pioneer Park is a park that offers camping, not a campground; it is a very important distinction. In 2018 camping was modified, to designate Friday, Saturday and Sunday only as days allowed for camping. Council also made authorized Staff to allow camping for events associated with the use of the pavilion and community events. Council's other required extension is for cyclists.



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The State of Oregon created the cycling tours and Brownsville is a popular camping spot. All events are done by agreement, which defines camping use. McDowell suggested that it may be a good time for the City to re-evaluate the park camping rules and make changes as needed. McDowell would like prepare options for Council's consideration. Councilor Winklepleck asked McDowell about waiting until the issue arises. McDowell said that the Park Caretakers have recently quit, so the time is now. It is better to be proactive in an attempt to minimize the potential problem, instead of reactive that could generate additional Council meetings. Mayor Craven stated that exploration is good to protect Pioneer Park, as it is the single asset that serves the largest percentage of the population.

Councilor Hansen made a motion to task Staff with reevaluating park camping rules and bring information back to Council. Councilor Winklepleck seconded the motion and it passed unanimously.

COUNCIL COMMENTS.

Councilor Winklepleck stated that he does not want this in our City; it seems like the big cities have recognized the issues that they have created and want to push that out to the rural areas. LCSO is asking us not to provide a place as they have a place established. The City pays for 200 extra hours of coverage, but it is likely that it won't be enough coverage. The City is not prepared for any of this. First estimates for the space to be built out are more than \$60,000, let alone unforeseen issues and costs. Councilor Winklepleck would rather use the \$60,000 to fight a lawsuit or pursue legal action.

Councilor LaCoste had no comment at this time.

Councilor Hansen stated that he felt we are in a war for the 'soul' of our country. The bigger issue is not about homelessness, it is about our rights as citizens to choose our own lives and rights. It is our right to deal with issues as Council sees fit. He understands the reason behind the ordinance, but thinks that we as a community have the right to form our own processes (not dictated by the State government) and determine what we believe is the best response to any problem we have. Hansen stated that at some point people and communities have to say no, enough is enough. We will govern our community and deal with the problems that we have.

Councilor Chambers agrees, but asked the question if Council is willing to take the risk of dealing with what the State may force do to force compliance? She understands the constitution, but feels we have a boot heel on our throats, and questions whether Council is willing to risk our town due to non-compliance?

Councilor Winklepleck stated that Harrisburg has said no, but they do not have a park like Brownsville. The City of Sweet Home has opened their arms, but it has not been a good experience. He is concerned that folks will be shipped here from other communities that are being overrun, and feels that it could easily be a revolving door issue.

Councilor Solberg stated that as long as LCSO has the City's back and trespassed folks, the situation could be dealt with. However, history indicates that not being the case, and therein lies the problem.

Mayor Craven stated that LCSO is understaffed. A situation such as this will completely exhaust their limited resources. He believes the root cause of homelessness to be drug addiction. By the State of Oregon decriminalizing drugs, it has contributed in an increase of the homeless problem. The whole situation is maddening. Mayor Craven feels that creating a space for the homeless will encourage them to come, and it will overwhelm every agency in this town. The Mayor is not in favor of the ordinance.



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Mr. McDowell stated that as a city administrator nearly every hour is spent evaluating risk management and liability issues, always trying to ensure the City is not put at unacceptable risk that would unduly burden the City's resources. The City's insurance pool (CIS) has been increasingly onerous requiring that the City have rules and policies in place. One recent example is cyber security. The cost of cyber security is ever-increasing. The City simply does not have the funds to carry all the coverages that we would like. If the City has an exposure that is not covered, the City treasury will bear that burden.

If Council chooses not to pass this ordinance, there could be significant liability issues and there could be serious concerns with the implementation of this unfunded mandate due to the exposure to City Staff. The recently hired park caretakers have quit, effective by the end of June in part to concerns about an influx of people not respecting rules and guidelines. If Public Works Superintendent Frink and Mr. McDowell get into an altercation in the Park or in town anywhere, can they be held personally liable?

Staff is forced to sign secrecy agreements to collect certain monies in this State. The City of Brownsville followed the law, and ended up in litigation regardless. Council is between a rock and a hard place; there is either a horrible or terrible decision to be made. The issue of liability cannot be ignored, even though the City should have home rule and be able to make decisions that are best for our community – that really is not the case. City Attorney Ross Williamson is recommending to have something in place before July 1st; he has been the City Attorney for more than 12 years.

Other potential cost factors include hazardous materials clean-up and general associated clean-up costs. Another city was forced to hire an outside cleaning agency, to the tune of nearly \$100,000 for these kinds of services to clean-up a public areas. Hazardous exposure is a real concern, and the true costs are undeterminable at this time. Every one of these costs discussed tonight are not in the upcoming budget. All comments have been very valid tonight. As Council evaluates liability and risks, there will certainly be tough choices to be made.

Mayor Craven stated that compromising is not ideal. The State of Oregon has a drug problem that is causing so many other problems. He related the recent theft of a personal vehicle, the costs incurred, and suggested that we need to focus on the root causes of this destruction and criminal behavior. After folks hit rock bottom, they can have an opportunity to change and make a better life. Mayor Craven suggested that if the City is forced to implement a free homeless camping site, perhaps it should be in the center of town, that way everyone could see the effects of this state mandate.

McDowell stated that if Council follows the State mandate, the City would be covered by insurance. McDowell will contact City Attorney Ross Williamson for more information on personal liability and to review all options prior to the next meeting.

ADJOURNMENT: Council President Lynda Chambers moved for adjournment. Councilor Winklepleck seconded and the motion carried. The meeting adjourned at 8:15 p.m.

Handwritten signature of S. Scott McDowell in blue ink.

City Administrator S. Scott McDowell

Handwritten signature of Adam Craven in blue ink.

Mayor Adam Craven