



City Administrator Memorandum

June 15th, 2023

From: S. Scott McDowell
To: Mayor & Council
Re: Special Meeting | June 15th, 2023

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.

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.



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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.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be "SM", is written over the typed name.

S. Scott McDowell
City Administrator