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# Real-Time Risk



## TIMELY NEWS AND TIPS TO HELP REDUCE RISK

October 2021

# HOW HB 3115 IMPACTS OREGON CITIES AND COUNTIES

**By CIS Deputy Property/Casualty Trust Director Dave Nelson**

It is time to review your city and county ordinances on sleeping, camping, or similarly related ordinances. On June 23, 2021, Governor Brown signed HB 3115 into law. HB 3115 requires cities and counties to review and update their ordinances primarily focusing on camping, sitting, sleeping, and staying warm and dry on public properties. Please pay close attention to the time, place, and manner language in the ordinance, which must be "objectively reasonable". Local governments will have until July 1, 2023, to comply with the new law.

So, what do you need to do to comply with HB 3115? You need to focus on "reasonableness". Review the policies of your organization as they relate to "sitting, lying, sleeping or keeping warm and dry while being outdoors which are objectively reasonable to time, place and manner with regards to someone facing homelessness". Furthermore, your policies cannot conflict with ORS 203.077 and 203.079. The actions of government agencies will be viewed on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness.

*House Bill 3115 is the regulation of public property with respect to persons experiencing homelessness; and declaring an emergency.*

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# Real-Time Risk

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There are four actions several cities and counties are taking to address homelessness in their communities, which also help address HB 3115. These four actions are summarized below with a summary of CIS' liability and property coverage for each category.

## 1. Purchasing or using government owned land to provide those experiencing homelessness a place to set up their camp.

- CIS requires a policy addressing each of the exposures (each camp/facility).
- Preferably, a non-profit or faith-based organization will operate the facility.
- CIS will require additional contributions for this unique risk. (Please contact your agent or CIS Underwriting.)

**Liability:** CIS' liability coverage would apply as usual for the members' exposures. There is limited coverage for third-party pollution which include viruses. Claims related to zoning and land use are excluded from the CIS coverage.

**Property:** CIS property coverage covers member-owned buildings or equipment as scheduled. Pollution is excluded unless caused by a covered loss, and then limited to \$25,000.

## 2. Purchasing or using existing land and installing small shelters to allow individuals or in some cases, couples to move from a tent to a small shelter.

- CIS requires a policy addressing each of the exposures (each location).
- Preferably a non-profit or faith-based organization will operate the facility.

When preparing space for those experiencing homelessness, we encourage having policies to address:

- Non-profit contract and insurance
- Leases for private land
- Abuse protection
- Physical distancing
- Shelter residency eligibility
- Sanitation
- Rodent control
- Cooking/food handling
- Food storage
- Electric, gas, propane heating
- Drugs and alcohol
- Crime/victimization
- Environmental clean-up plan
- Spill response plan
- Individual camp/room clean-up plan
- Damage/theft of personal property plan
- Security plan
- Safety plan
- Medical response plan
- Communication plan
- Natural disaster and adverse weather response plan
- Safety audits/inspections plan
- Incident reporting plan
- Accident investigations
- Zoning and neighborhood conflicts

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- CIS will require additional contributions for this unique risk. (Contact your agent or CIS Underwriting for your unique risk.)

**Liability:** CIS' liability coverage would apply as usual for the members' exposures. There is limited coverage for third-party pollution which include viruses. Claims related to zoning and land use are excluded from the CIS coverage.

**Property:** CIS will not offer property coverage for the shelters. Pollution is excluded unless caused by a covered loss, and then limited to \$25,000.

### 3. Using government owned facilities such as community centers or senior centers as temporary housing.

- Members may be asked by order or a civil authority to use member-owned facilities for temporary sheltering.

**Liability:** The CIS Liability Coverage Agreement provides coverage for claims under the Oregon Tort Claims Act and several federal statutes. Coverage is for the named member, employees, elected officials, and volunteers. Claims are covered in accordance with the terms and conditions of the CIS Liability Coverage Agreement.

It is important to note that communicable disease is excluded, but \$100,000 defense coverage is provided. Pollution is also excluded except for \$100,000 limited third-party pollution coverage which may apply.

**Property:** The CIS Property Coverage Agreement covers most perils associated with members owning and operating a building. CIS does not cover the personal property of facility users.

### 4. Purchasing buildings, such as old motels/hotels to turn into temporary housing.

- CIS recommends a community or faith-based non-profit lease and operate the facility.

## ADDITIONAL RESOURCES

- [Required Homelessness Policy Checklist](#)
- [Homeless Shelter/Operational Checklist](#)
- [House Bill 3115](#)

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# Real-Time Risk

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**Liability:** CIS will provide coverage for long-term shelters for the homeless in facilities owned by the member. If operated by the member, CIS charges an extra contribution for the additional and unique risks associated with providing a homeless shelter. If the member-owned facility is operated by a non-profit or faith-based organization that agrees to provide insurance and indemnification to the member, CIS may reduce the additional contribution.

**Property:** CIS covers the member-owned scheduled property and equipment. If operated by a non-profit, the contract shall include the clauses found in the insurance section of this document.

Each of these solutions help those that are facing homelessness but can create risk for our members. We strongly encourage these homelessness shelters are ran by a third-party, and not by our member. The third-party will need to have insurance up to at least two-million dollars per occurrence and name the government entity, who is providing the land or building, as an additional insured and agrees to hold the entity harmless and promises indemnification.

## **Risk Management Considerations**

There are several risk management concerns that need to be considered when developing one of the four options above. Many of these risk management tools will be conducted by the third-party operator, however, our member should review the process to ensure practice is meeting policy. Some of these risk management tools are listed below. Please see the CIS Risk Management Resource Library for checklists relating to homelessness.

- Screening of new residents:
  - Who is and is not allowed in the shelter?
  - Does screening include a criminal history check?

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- Is there a screening for mental health concerns?
- Are mental health services provided to residents of the shelter?
- Does the location allow women, men, families, or pets?
- What is the process for removal of non-compliment residents?
- Medical care:
  - Is there a medical screening process?
  - Is there a vaccine mandate?
  - Is onsite medical provided to residents?
  - Is transportation provided for residents to treatment providers?
- Essentials:
  - Water (three to five gallons per person per day)
  - Food and food preparation sites
  - Heating and cooling
- Onsite sanitation:
  - Toilet facilities. A minimum of one toilet for every 20 persons
  - Handwashing stations
  - Trash collection
  - Rodent control
- Other concerns:
  - Personal Protective Equipment (PPE) for staff serving these new residents
  - Weather concerns for campers
  - Evacuation plans for these new residents in the event of an emergency
  - Security of these locations

If you have questions, please contact your Risk Management Consultant or Underwriting for your unique risk.

## CIS Risk Management Consultants

Adrian Albrich  
503-763-3858

Tom Belusko  
503-763-3852

Katie Durfee  
503-763-3853

Lisa Masters  
503-763-3859

Laurie Olson  
503-763-3851

## Underwriting

Tena Purdy  
503-763-3864

CIS recognizes there is not a one-size-fits all recommendation for how best to handle homelessness in your communities. The topic is both a difficult and complex matter to navigate, often fueling strong opinions. We strive to continue providing up-to-date information on the topic, so that you can make the decisions which matter most to your communities. Our commitment is to stand as a partner providing the resources needed to support your efforts.





# Guide to Persons Experiencing Homelessness in Public Spaces

JUNE 2022

## Guide to Persons Experiencing Homelessness in Public Spaces

Cities possess a significant amount of property – from parks, greenways, sidewalks, and public buildings to both the developed and undeveloped rights of way – sizable portions of a city belong to the city itself, and are held in trust for particular public purposes or use by residents. Historically cities have regulated their various property holdings in a way that prohibits persons from camping, sleeping, sitting or lying on the property. The historic regulation and management of a city’s public spaces must be reimagined in light of recent federal court decisions and the Oregon Legislature’s enactment of HB 3115, both of which direct cities to consider their local regulations within the context of available local shelter services for those persons experiencing homelessness.

As the homelessness crisis intensifies, and the legal parameters around how a city manages its public property contract, cities need guidance on how they can regulate their property in a way that respects each of its community members, complies with all legal principles, and protects its public investments. A collective of municipal attorneys from across the state of Oregon convened a work group to create this guide, which is intended to do two things: (1) explain the legal principles involved in regulating public property in light of recent court decisions and statutory enactments; and (2) provide a checklist of issues/questions cities should review before enacting or amending any ordinances that may impact how their public property is managed.

### Legal Principles Involved in Regulating Public Property

Two key federal court opinions, *Martin v. Boise* and *Blake v. Grants Pass*, have significantly impacted the traditional manner in which cities regulate their public property. In addition to these two pivotal cases, the Oregon Legislature enacted HB 3115 during the 2021 legislative session as an attempt to clarify, expand, and codify some of the key holdings within the court decisions. An additional piece of legislation, HB 3124, also impacts the manner in which cities regulate public property in relation to its use by persons experiencing homelessness. And, as the homelessness crisis intensifies, more legal decisions that directly impact how a city regulates its public property when it is being used by persons experiencing homelessness are expected. Some of these pending cases will seek to expand, limit, or clarify the decisions reached in *Martin* and *Blake*; other pending cases seek to explain how the well-established legal principle known as State Created Danger applies to actions taken, or not taken, by cities as they relate to persons experiencing homelessness.

#### A. *The Eighth Amendment to the U.S. Constitution*

The Eighth Amendment to the U.S. Constitution states that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. In 1962, the U.S. Supreme Court, in *Robinson v. California*, established the principle that “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.” 370 U.S. 660 (1962).



### B. *Martin v. Boise*

In 2018, the U.S. 9<sup>th</sup> Circuit Court of Appeals, in *Martin v. Boise*, interpreted the Supreme Court’s decision in *Robinson* to mean that the Eighth Amendment to the U.S. Constitution “prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter ... because sitting, lying, and sleeping are ... universal and unavoidable consequences of being human.” The court declared that a governmental entity cannot “criminalize conduct that is an unavoidable consequence of being homeless – namely sitting, lying, or sleeping.” 902 F3d 1031, 1048 (2018).

The 9<sup>th</sup> Circuit clearly stated in its *Martin* opinion that its decision was intentionally narrow, and that some restrictions on sitting, lying, or sleeping outside at particular times or in particular locations, or prohibitions on obstructing the rights of way or erecting certain structures, might be permissible. But despite the narrowness of the decision, the opinion only truly answered some of the many questions cities are rightly asking. After *Martin*, municipal attorneys could advise their clients in limited ways: some things were clear, and others were pretty murky.

One of the most commonly misunderstood aspects of the *Martin* decision is the belief that a city can never prohibit a person experiencing homelessness from sitting, sleeping or lying in public places. The *Martin* decision, as noted, was deliberately limited. Cities are allowed to impose city-wide prohibitions against persons sitting, sleeping, or lying in public, provided the city has a shelter that is accessible to the person experiencing homelessness against whom the prohibition is being enforced. Even if a city lacks enough shelter space to accommodate the specific person experiencing homelessness against whom the prohibition is being enforced, it is still allowed to limit sitting, sleeping, and lying in public places through reasonable restrictions on the time, place and manner of these acts (“where, when, and how”) – although what constitutes a reasonable time, place and manner restriction is often difficult to define.

A key to understanding *Martin* is recognizing that an analysis of how a city’s ordinance, and its enforcement of that ordinance, can be individualized. Pretend a city has an ordinance which prohibits persons from sleeping in city parks if a person has nowhere else to sleep. A person who violates that ordinance can be cited and arrested. A law enforcement officer finds 11 persons sleeping in the park, and is able to locate and confirm that 10 of said persons have access to a shelter bed or a different location in which they can sleep. If any of those 10 persons refuses to avail themselves of the available shelter beds, the law enforcement officer is within their rights, under *Martin*, to cite and arrest the persons who refuse to leave the park. The practicality of such an individualized assessment is not to be ignored, and cities are encouraged to consider the ability to make such an assessment as they review their ordinances, policies, and procedures.

What is clear from the *Martin* decision is the following:

1. Cities cannot punish a person who is experiencing homelessness for sitting, sleeping, or lying on public property when that person has no place else to go;
2. Cities are not required to build or provide shelters for persons experiencing homelessness;

3. Cities can continue to impose the traditional sit, sleep, and lie prohibitions and regulations on persons who do have access to shelter; and
4. Cities are allowed to build or provide shelters for persons experiencing homelessness.

After *Martin*, what remains murky, and unknown is the following:

1. What other involuntary acts or human conditions, aside from sleeping, lying and sitting, are considered to be an unavoidable consequence of one's status or being?
2. Which specific time, place and manner restrictions can cities impose to regulate when, where, and how a person can sleep, lie or sit on a public property?
3. What specific prohibitions can cities impose that will bar a person who is experiencing homelessness from obstructing the right of way?
4. What specific prohibitions can cities impose that will prevent a person who is experiencing homelessness from erecting a structure, be it temporary or permanent, on public property?

The city of Boise asked the United States Supreme Court to review the 9<sup>th</sup> Circuit's decision in *Martin*. The Supreme Court declined to review the case, which means the opinion remains the law in the 9<sup>th</sup> Circuit. However, as other federal circuit courts begin considering a city's ability to enforce sitting, sleeping and camping ordinances against persons experiencing homelessness, there is a chance that the Supreme Court may review a separate but related opinion to clarify the *Martin* decision and provide clarity to the outstanding issues raised in this guide.

### C. *Blake v. Grants Pass*

Before many of the unanswered questions in *Martin* could be clarified by the 9<sup>th</sup> Circuit or the U.S. Supreme Court, an Oregon federal district court issued an opinion, *Blake v. Grants Pass*, which provided some clarity, but also provided an additional layer of murkiness.

From the *Blake* case we also know the following:

1. Whether a city's prohibition is a civil or criminal violation is irrelevant. If the prohibition punishes an unavoidable consequence of one's status as a person experiencing homelessness, then the prohibition, regardless of its form, is unconstitutional.
2. Persons experiencing homelessness who must sleep outside are entitled to take necessary minimal measures to keep themselves warm and dry while they are sleeping.
3. A person does not have access to shelter if:

- They cannot access the shelter because of their gender, age, disability or familial status;
- Accessing the shelter requires a person to submit themselves to religious teaching or doctrine for which they themselves do not believe;
- They cannot access the shelter because the shelter has a durational limitation that has been met or exceeded; or
- Accessing the shelter is prohibited because the person seeking access is under the influence of some substance (for example alcohol or drugs) or because of their past or criminal behavior.

But much like *Martin*, the *Blake* decision left some unanswered questions. The key unknown after *Blake*, is: What constitutes a minimal measure for a person to keep themselves warm and dry – is it access to a blanket, a tent, a fire, etc.?

And while defining the aforementioned unknown question after *Blake* is most certainly difficult for cities, what cities must also keep ever present in their mind is the fact that the 9<sup>th</sup> Circuit Court of Appeals is presently reviewing the *Blake* decision. When the 9<sup>th</sup> Circuit finishes its review and issues an opinion, cities should reasonably expect the rules and parameters established by the Oregon district court in *Blake* to change. What types of changes should be expected, the severity of the changes, and when those changes will occur are questions municipal attorneys cannot answer at this time for their clients. Given the very real fluidity surrounding the legal issues discussed in this guide, before adopting any new policy, or revising an existing policy, that touches on the subject matter described herein, cities are strongly encouraged to speak with their legal advisor to ensure the policy is constitutional.

#### *D. House Bill 3115*

HB 3115 was enacted by the Oregon Legislature during its 2021 session. It is the product of a workgroup involving the LOC and the Oregon Law Center as well as individual cities and counties.

The bill requires that any city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness. What is objectively reasonable may look different in different communities. The bill retains cities’ ability to enact reasonable time, place and manner regulations, aiming to preserve the ability of cities to manage public spaces effectively for the benefit of an entire community.

HB 3115 includes a delayed implementation date of July 1, 2023, to allow local governments time to review and update ordinances and support intentional community conversations.

From a strictly legal perspective, HB 3115 did nothing more than restate the judicial decisions found in *Martin* and *Blake*, albeit a hard deadline to comply with those judicial decisions was imposed. The bill provided no further clarity to the judicial decisions, but it also imposed no new requirements or restrictions.

#### *E. House Bill 3124*

Also enacted during the 2021 legislative session, HB 3124 does two things. First, it changes and adds to existing guidance and rules for how a city is to provide notice to homeless persons that an established campsite on public property is being closed, previously codified at ORS 203.077 *et seq.*, now found at ORS 195.500, *et seq.* Second, it gives instructions on how a city is to oversee and manage property it removes from an established campsite located on public property. It is important to remember that HB 3124 applies to public property; it is not applicable to private property. This means that the rules and restrictions imposed by HB 3124 are not applicable city-wide, rather they are only applicable to property classified as public.

HB 3124 does not specify, with any true certainty, what constitutes public property. There has been significant discussion within the municipal legal field as to whether rights of way constitute public property for the purpose of interpreting and implementing HB 3124. The general consensus of the attorneys involved in producing this guide is that rights of way should be considered public property for purposes of HB 3124. If an established homeless camp is located on rights of way, it should generally be treated in the same manner as an established camp located in a city park. However, as discussed below, depending on the dangers involved with a specific location, exceptions to this general rule exist.

When a city seeks to remove an established camp site located on public property, it must do so within certain parameters. Specifically, a city is required to provide 72-hour notice of its intent to remove the established camp site. Notices of the intention to remove the established camp site must be posted at each entrance to the site. In the event of an exceptional emergency, or the presence of illegal activity other than camping at the established campsite, a city may act to remove an established camp site from public property with less than 72-hour notice. Examples of an exceptional emergency include: possible site contamination by hazardous materials, a public health emergency, or immediate danger to human life or safety.

While HB 3124 specifies that the requirements contained therein apply to established camping sites, it fails to define what constitutes an established camping site. With no clear definition of what the word established means, guidance on when the 72-hour notice provisions of HB 3124 apply is difficult to provide. The working group which developed this guide believes a cautious approach to defining the word established at the local level is prudent. To that end, the LOC recommends that if, for example, a city were to enact an ordinance which permits a person to pitch a tent between the hours of 7 p.m. and 7 a.m., that the city also then consistently and equitably enforce the removal of that tent by 7 a.m. each day, or as close as possible to 7 a.m. Failing to require the tent's removal during restricted camping hours each day, *may*, given that the word established is undefined, provide an argument that the tent is now an established camp site that triggers the requirement of HB 3124.

In the process of removing an established camp site, oftentimes city officials will also remove property owned by persons who are experiencing homelessness. When removing items from established camp sites, city officials should be aware of the following statutory requirements:

- Items with no apparent value or utility may be discarded immediately;
- Items in an unsanitary condition may be discarded immediately;
- Law enforcement officials may retain weapons, drugs, and stolen property;
- Items reasonably identified as belonging to an individual and that have apparent value or utility must be preserved for at least 30 days so that the owner can reclaim them; and
- Items removed from established camping sites in counties other than Multnomah County must be stored in a facility located in the same community as the camping site from which it was removed. Items removed from established camping sites located in Multnomah County must be stored in a facility located within six blocks of a public transit station.

Cities are encouraged to discuss with legal counsel the extent to which these or similar requirements may apply to any camp site, “established” or not, because of due process protections.

#### *F. Motor Vehicles and Recreational Vehicles*

Cities need to be both thoughtful and intentional in how they define and regulate sitting, sleeping, lying, and camping on public property. Is sleeping in a motor vehicle or a recreational vehicle (RV) that is located on public property considered sitting, lying, sleeping, or camping on public property under the city’s ordinances and policies? This guide will not delve into the manner in which cities can or should regulate what is commonly referred to as car or RV camping; however, cities do need to be aware that they should consider how their ordinances and policies relate to car and RV camping, and any legal consequences that might arise if such regulations are combined with ordinances regulating sitting, lying, sleeping, or camping on public property. Motor and recreational vehicles, their location on public property, their maintenance on public property, and how they are used on or removed from public property are heavily regulated by various state and local laws, and how those laws interact with a city’s ordinance regulating sitting, lying, sleeping, or camping on public property is an important consideration of this process.

#### *G. State Created Danger*

In 1989, the U.S. Supreme Court, in *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, interpreted the Fourteenth Amendment to the U.S. Constitution to impose a duty upon the government to act when the government itself has created dangerous conditions – this interpretation created the legal principle known as State Created Danger. 489 U.S. 189 (1989). The 9<sup>th</sup> Circuit has interpreted the State Created Danger doctrine to mean that a governmental



entity has a duty to act when the government actor “affirmatively places the plaintiff in danger by acting with ‘deliberate indifference’ to a ‘known or obvious danger.’” *LA Alliance for Human Rights v. City of Los Angeles*, 2021 WL 1546235.

The State Created Danger principle has three elements. First, the government’s own actions must have created or exposed a person to an actual, particularized danger that the person would not have otherwise faced. Second, the danger must have been one that is known or obvious. Third, the government must act with deliberate indifference to the danger. *Id.* Deliberate indifference requires proof of three elements:

“(1) there was an objectively substantial risk of harm; (2) the [state] was subjectively aware of facts from which an inference could be drawn that a substantial risk of serious harm existed; and (3) the [state] either actually drew that inference or a reasonable official would have been compelled to draw that inference.” *Id.*

Municipal attorneys are closely reviewing the State Created Danger principle as it relates to the use of public spaces by persons experiencing homelessness for three reasons. First, many cities are choosing to respond to the homeless crisis, the legal decisions of *Martin and Blake*, and HB 3115, by creating managed homeless camps where unhoused persons can find shelter and services that may open the door to many State Created Danger based claims of wrongdoing (*e.g.* failure to protect from violence, overdoses, etc. within the government sanctioned camp). Second, in California, at least one federal district court has recently ruled that cities have a duty to act to protect homeless persons from the dangers they face by living on the streets, with the court’s opinion resting squarely on the State Created Danger principle. Third, when imposing reasonable time, place, and manner restrictions to regulate the sitting, sleeping or lying of persons on public rights of way, cities should consider whether their restrictions, and the enforcement of those restrictions, trigger issues under the State Created Danger principle. Fourth, when removing persons and their belongings from public rights of way, cities should be mindful of whether the removal will implicate the State Created Danger principle.

In creating managed camps for persons experiencing homelessness, cities should strive to create camps that would not reasonably expose a person living in the camp to a known or obvious danger they would not have otherwise faced. And if there is a danger to living in the camp, a city should not act with deliberate indifference to any known danger in allowing persons to live in the camp.

And while the California opinion referenced above has subsequently been overturned by the 9<sup>th</sup> Circuit Court of Appeals, at least one federal district court in California has held that a city “acted with deliberate indifference to individuals experiencing homelessness” when the city allowed homeless persons to “reside near overpasses, underpasses, and ramps despite the inherent dangers – such as pollutants and contaminant.” *LA Alliance for Human Rights v. City of Los Angeles*, 2022 WL 2615741. The court essentially found a State Create Danger situation when a city allowed persons experiencing homelessness to live near interstates – a living situation it “knew” to be dangerous.

Before a city official enforces a reasonable time, place, and manner restriction which regulates the sitting, sleeping and lying of persons on public property, the official should review the enforcement action they are about to take in light of the State Created Danger principle. For example, if a city has a restriction that allows persons to pitch a tent on public property between the hours of 7 p.m. and 7 a.m., a city official requiring the person who pitched the tent to remove it at 7:01 a.m. should be mindful of all environmental conditions present at the time their enforcement order is made. The same thoughtful analysis should be undertaken when a city removes a person and their belongings from the public rights of way.

### **How Cities Proceed**

The law surrounding the use of public spaces by persons experiencing homelessness is newly emerging, complex, and ripe for additional change. In an effort to simplify, as much as possible, the complexity of this legal conundrum, below is an explanation of what municipal attorneys know cities must do, must not do, and may potentially do.

#### *A. What Cities Must Do*

In light of the court decisions discussed herein, and the recent House bills enacted by the Oregon Legislature, cities must do the following:

1. Review all ordinances and policies with your legal advisor to determine which ordinances and policies, if any, are impacted by the court decisions or recently enacted statutes.
2. Review your city's response to the homelessness crisis with your legal advisor to ensure the chosen response is consistent with all court decisions and statutory enactments.

If your city chooses to exclude persons experiencing homelessness from certain areas of the city for violating a local or state law, the person must be provided the right to appeal that expulsion order, and the order must be stayed while the appeal is pending.

3. If your city chooses to remove a homeless person's established camp site, the city must provide at least 72-hour notice of its intent to remove the site, with notices being posted at entry point into the camp site.
4. If a city obtains possession of items reasonably identified as belonging to an individual and that item has apparent value or utility, the city must preserve that item for at least 30 days so that the owner can reclaim the property, and store that property in a location that complies with state law.

#### *B. What Cities Must Not Do*

When the decisions rendered by the federal district court of Oregon and the 9<sup>th</sup> Circuit Court of Appeals are read together, particularly in conjunction with Oregon statutes, cities must not do the following:

1. Cities cannot punish a person who is experiencing homelessness for sitting, sleeping, or lying on public property when that person has no place else to go.
2. Cities cannot prohibit persons experiencing homelessness from taking necessary minimal measures to keep themselves warm and dry when they must sleep outside.
3. Cities cannot presume that a person experiencing homelessness has access to shelter if the available shelter options are:
  - Not accessible because of their gender, age, or familial status;
  - Ones which requires a person to submit themselves to religious teaching or doctrine for which they themselves do not believe;
  - Not accessible because the shelter has a durational limitation that has been met or exceeded; or
  - Ones which prohibit the person from entering the shelter because the person is under the influence of some substance (for example alcohol or drugs) or because of their past or criminal behavior.

### *C. What Cities May Potentially Do*

As previously noted, the recent court decisions, and those which are presently pending before the various federal district courts and in the 9<sup>th</sup> Circuit Court of Appeals, lack clarity in many key respects. This lack of clarity, while frustrating, also provides cities some leeway to address the homelessness crisis, specifically with how the crisis impacts the management of public property.

1. Cities may impose reasonable time, place and manner restrictions on where persons, including those persons experiencing homelessness, may sit, sleep, or lie. Any such regulation imposed by a city should be carefully vetted with the city's legal advisor.
2. Cities may prohibit persons, including those persons experiencing homelessness, from blocking rights of way. Any such regulation should be carefully reviewed by the city's legal advisor to ensure the regulation is reasonable and narrowly tailored.
3. Cities may prohibit persons, including those persons experiencing homelessness, from erecting either temporary or permanent structures on public property. Given that cities are required, by *Blake*, to allow persons experiencing homelessness to take reasonable precautions to remain warm and dry when sleeping outside, any such provisions regulating the erection of structures, particularly temporary structures, should be carefully reviewed by a legal advisor to ensure the regulation complies with all relevant court decisions and Oregon statutes.
4. If a city chooses to remove a camp site, when the camp site is removed, cities may discard items with no apparent value or utility, may discard items that are in an

unsanitary condition, and may allow law enforcement officials to retain weapons, drugs, and stolen property.

5. Cities may create managed camps where person experiencing homelessness can find safe shelter and access to needed resources. In creating a managed camp, cities should work closely with their legal advisor to ensure that in creating the camp they are not inadvertently positioning themselves for a State Created Danger allegation.

#### *D. What Cities Should Practically Consider*

While this guide has focused exclusively on what the law permits and prohibits, cities are also encouraged to consider the practicality of some of the actions they may wish to take. Prior to imposing restrictions, cities should work with all impacted staff and community members to identify if the suggested restrictions are practical to implement. Before requiring any tent pitched in the public right of way to be removed by 8 a.m., cities should ask themselves if they have the ability to practically enforce such a restriction – does the city have resources to ensure all tents are removed from public property every morning 365 days a year? If a city intends to remove property from a camp site, cities should practically ask themselves if they can store said property in accordance with the requirements of HB 3124. Both questions are one of only dozens of practical questions cities need to be discussing when reviewing and adopting policies that touch on topics covered by this guide.

### **Conclusion**

Regulating public property, as it relates to persons experiencing homelessness, in light of recent court decisions, legislative actions, and forthcoming judicial opinions is nuanced and complicated. It is difficult for cities to know which regulations are permissible and which are problematic. This guide is an attempt to answer some of the most common legal issues raised by *Martin, Blake*, HB 3115, HB 3124, and the State Created Danger doctrine – it does not contain every answer to every question a city may have, nor does it provide guidance on what is in each community’s best interest. Ultimately, how a city chooses to regulate its public property, particularly in relation to persons experiencing homelessness, is a decision each city must make on its own. A city’s decision should be made not just on the legal principles at play, but on its own community’s needs, and be done in coordination with all relevant partners. As with any major decision, cities are advised to consult with experts on this topic, as well as best practice models, while considering the potential range of public and private resources available for local communities. Cities will have greater success in crafting ordinances which are not only legally acceptable, but are accepted by their communities, if the process for creating such ordinances is an inclusive process that involves advocates and people experiencing homelessness.

### **Additional Resources**

The League of Oregon Cities (LOC), in preparing this guide, has obtained copies of ordinances and policies that may be useful to cities as they consider their own next steps. Additionally, several municipal advisors who participated in the development of this guide have expressed a willingness to share their own experiences in regulating public rights of way, particularly as it

relates to persons experiencing homelessness, with Oregon local government officials. If you believe these additional resources may be of use to you or your city, please feel free to contact a member of the LOC's [Legal Research Department](#).

### **Recognition and Appreciation**

The LOC wishes to extend its sincerest thanks to the municipal attorneys who assisted in the development of this guide. Attorneys from across Oregon came together over several months to vet legal theories, share best practices, and create this guide. These attorneys donated their time, experience, and resources – seeking nothing in return. And while a core team of attorneys was gathered to build this guide, the LOC recognizes that the team's work stands on the shoulders of every city and county attorney in Oregon who has been working, and who will continue to work, to assist their community in addressing the homelessness crisis. For those attorneys not specifically named below, please know your contributions are equally recognized and respected:

- Aaron Hisel, Montoya, Hisel & Associates;
- Chad Jacobs, Beery Elsner & Hammond;
- Eric Mitton, City of Medford;
- Kirk Mylander, Citycounty Insurance Services;
- Elizabeth Oshel, City of Bend;
- Mary Winters, City of Bend; and
- Grace Wong, City of Beaverton.





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> LOC Bulletin (<https://www.orcities.org/resources/communications/bulletin>) > **Legislature Passes Two Bills Regulating Homeless Camping**

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## LOC NEWS

### Legislature Passes Two Bills Regulating Homeless Camping

Two bills related to homelessness and local governments received bipartisan votes and final passage in the Legislature this week and are headed to the governor's desk. On Wednesday, the Senate passed HB 3115, which requires cities and counties to review their ordinances and if necessary, make updates in light of the recent *Martin v. City of Boise* federal court decision. The bill is the product of a workgroup effort between the LOC, the Oregon Law Center (OLC), the Association of Oregon Counties (AOC), as well as individual cities and counties. The workgroup spent many hours last fall crafting a concept to recognize key principles from the *Martin* decision in state law.

HB 3115 requires that any city or county law regulating the acts of sitting, lying, sleeping, or keeping warm and dry outside on public property must be "objectively reasonable" based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness. The bill preserves the ability of cities to manage public spaces effectively for the benefit of an entire community, and recognizes that what is objectively reasonable will look different in different communities.

Importantly, HB 3115 includes a **delayed implementation date of July 1, 2023**, to allow local governments time to review and, if necessary, update ordinances and support intentional community conversations. **The LOC, AOC and OLC will partner to provide guidance to cities and counties over the coming year.**

Also on Wednesday, the House gave final approval to pass HB 3124, which increases the time that local governments must post notice before removing campsites from 24 to 48 hours. The bill also requires jurisdictions to store unclaimed personal property in a facility located in the same community as the campsite from which it was removed. HB 3124 preserves existing exceptions to the notice requirement when:

- There are grounds for law enforcement officials to believe that illegal activities other than camping are occurring at an established camping site; and
- In the event of an exceptional emergency at an established camping site, including, but not limited to, possible site contamination by hazardous materials, a public health emergency or other immediate danger to human life or safety.

**Contact:** Ariel Nelson, Lobbyist – [anelson@orcities.org](mailto:anelson@orcities.org) (<mailto:anelson@orcities.org>)

*Last Updated 6/11/21*

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**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

cluding flood plains or mapped environmental health hazards, unless the development complies with regulations directly related to the hazard;

(e) Has adequate transportation access to commercial and medical services; and

(f) Will not pose any unreasonable risk to public health or safety.

(2) An emergency shelter allowed under this section must be operated by:

(a) A local government as defined in ORS 174.116;

(b) An organization with at least two years' experience operating an emergency shelter using best practices that is:

(A) A local housing authority as defined in ORS 456.375;

(B) A religious corporation as defined in ORS 65.001; or

(C) A public benefit corporation, as defined in ORS 65.001, whose charitable purpose includes the support of homeless individuals, that has been recognized as exempt from income tax under section 501(a) of the Internal Revenue Code on or before January 1, 2018; or

(c) A nonprofit corporation partnering with any other entity described in this subsection.

(3) An emergency shelter approved under this section:

(a) May provide on-site for its clients and at no cost to the clients:

(A) Showering or bathing;

(B) Storage for personal property;

(C) Laundry facilities;

(D) Service of food prepared on-site or off-site;

(E) Recreation areas for children and pets;

(F) Case management services for housing, financial, vocational, educational or physical or behavioral health care services; or

(G) Any other services incidental to shelter.

(b) May include youth shelters, winter or warming shelters, day shelters and family violence shelter homes as defined in ORS 409.290.

(4) An emergency shelter approved under this section may also provide additional services not described in subsection (3) of this section to individuals who are transitioning from unsheltered homeless status. An organization providing services under this subsection may charge a fee of no more than \$300 per month per client and only to clients who are financially able to pay the fee and who request the services.

(5) The approval of an emergency shelter under this section is not a land use decision and is subject to review only under ORS 34.010 to 34.100.

**SECTION 4.** (1) Section 3 of this 2021 Act is repealed on July 1, 2022.

(2) The repeal of section 3 of this 2021 Act by subsection (1) of this section does not affect an application for the development of land for an emergency shelter that was completed and submitted before the date of the repeal.

**SECTION 5.** ORS 446.265 is amended to read:

446.265. (1) Inside an urban growth boundary, a local government may authorize the establishment of transitional housing accommodations used as individual living units by one or more individuals. Use of transitional housing accommodations is limited to *[persons]* individuals who lack permanent or safe shelter and who cannot be placed in other low income housing. A local government may limit the maximum amount of time that an individual or a family may use the accommodations.

(2) Transitional housing accommodations are intended to be used by individuals or families on a limited basis for seasonal, emergency or transitional housing purposes and may include yurts, huts, cabins, fabric structures, tents and similar accommodations, as well as areas in parking lots or facilities for individuals or families to reside overnight in a motor vehicle, without regard to whether the motor vehicle was designed for use as temporary living quarters. The transitional housing accommodations may provide parking facilities, walkways and access to water, toilet, shower, laundry, cooking, telephone or other services either through separate or shared facilities.



**Enrolled  
House Bill 2006**

Sponsored by Representative KOTEK; Representatives CAMPOS, DEXTER, EVANS, FAHEY, GRAYBER, HOLVEY, KROFF, LEIF, MARSH, MCLAIN, MEEK, MORGAN, NATHANSON, NERON, NOBLE, REARDON, SOLLMAN, WILDE, WILLIAMS, ZIKA, Senator PATTERSON

CHAPTER .....

**AN ACT**

Relating to housing; creating new provisions; amending ORS 203.082, 446.265 and 458.650; and declaring an emergency.

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

**SECTION 1.** Sections 2 and 3 of this 2021 Act are added to and made a part of ORS chapter 197.

**SECTION 2.** (1) As used in this section, “emergency shelter” means a building or cluster of buildings that provides shelter on a temporary basis for individuals and families who lack permanent housing.

(2) A building or cluster of buildings used as an emergency shelter under an approval granted under section 3 of this 2021 Act or section 11, chapter 12, Oregon Laws 2020 (first special session):

(a) May resume its use as an emergency shelter after an interruption or abandonment of that use for two years or less, notwithstanding ORS 215.130 (7).

(b) May not be used for any purpose other than as an emergency shelter except upon application for a permit demonstrating that the construction of the building and its use could be approved under current land use laws and local land use regulations.

(3) An approval of an emergency shelter under section 3 of this 2021 Act or section 11, chapter 12, Oregon Laws 2020 (first special session) is void unless the shelter is operating within two years following the approval.

**SECTION 3.** (1) A local government shall approve an application for the development or use of land for an emergency shelter, as defined in section 2 of this 2021 Act, on any property, notwithstanding ORS chapter 195, 197, 197A, 215 or 227 or any statewide plan, rule of the Land Conservation and Development Commission or local land use regulation, zoning ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency shelter:

(a) Includes sleeping and restroom facilities for clients;

(b) Will comply with applicable building codes;

(c) Is located inside an urban growth boundary or in an area zoned for rural residential use as defined in ORS 215.501;

(d) Will not result in the development of a new building that is sited within an area designated under a statewide planning goal relating to natural disasters and hazards, in-

(4) The department may expend funds from the account for:

(a) The administration of the account as provided for in the legislatively approved budget, as that term is defined in ORS 291.002, for the department.

(b) The development of technical assistance and training resources for organizations developing and operating emergency shelters as defined in section 2 of this 2021 Act and transitional housing accommodations as described in ORS 446.265.

**SECTION 8.** Section 9 of this 2021 Act is added to and made a part of ORS 458.600 to 458.665.

**SECTION 9.** (1) As used in this section, “low-barrier emergency shelter” means an emergency shelter, as defined in section 2 of this 2021 Act, that follows established best practices to deliver shelter services that minimize barriers and increase access to individuals and families experiencing homelessness.

(2) The Housing and Community Services Department shall award grants and provide technical assistance to organizations to fund:

(a) The construction, purchase or lease of facilities to be used as low-barrier emergency shelters;

(b) The operation, use or staffing of low-barrier emergency shelters, including the costs to provide clients with access to the shelters;

(c) The development or use of amenities or facilities that provide no-cost services to individuals and families who are homeless, including restroom and hygiene facilities, laundry facilities, dining facilities, storage for personal property, meeting or gathering spaces and facilities providing case management services; or

(d) Rapid rehousing services and supports for individuals and families.

(3) In awarding grants and providing technical assistance under this section, the department shall:

(a) Ensure that funds are distributed among different regions of the state; and

(b) Prioritize funding areas of highest need as identified in the August 2019 Oregon Statewide Shelter Study.

(4) Grants under this section must be awarded:

(a) Through a competitive process that emphasizes collaborative proposals; or

(b) To one or more community action agencies.

**SECTION 10.** (1) As used in this section, “navigation center” means a low-barrier emergency shelter, as defined in section 9 of this 2021 Act, that is open seven days per week and connects individuals and families with health services, permanent housing and public benefits.

(2) The Oregon Department of Administrative Services may award grants to local governments to:

(a) Plan the location, development or operations of a navigation center;

(b) Construct, purchase or lease a building for use as a navigation center;

(c) Operate a navigation center that has been constructed, purchased or leased under paragraph (b) of this subsection; or

(d) Contract for the performance of activities in this subsection.

(3) The department shall require that each local government receiving a grant under this section agree to return all moneys granted unless the local government has developed a navigation center that is operating on or before July 1, 2022.

**SECTION 11.** Notwithstanding ORS 458.650 (2) and (3), the Housing and Community Services Department may expend funds from the Emergency Housing Account to award grants and provide technical assistance under section 9 of this 2021 Act.

**SECTION 12.** Sections 9, 10 and 11 of this 2021 Act are repealed on January 2, 2024.

**SECTION 13.** 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.

The Oregon Health Authority may develop public health best practices for shared health and sanitation facilities for transitional housing accommodations.

(3) Transitional housing accommodations are not subject to ORS chapter 90.

(4) As used in this section, "yurt" means a round, domed tent of canvas or other weather resistant material, having a rigid framework, wooden floor, one or more windows or skylights and that may have plumbing, electrical service or heat.

**SECTION 6.** ORS 203.082 is amended to read:

203.082. [(1) Any political subdivision in this state may allow churches, synagogues and similar religious institutions to offer overnight camping space on institution property to homeless persons living in vehicles.]

[(2) In addition to any conditions or limitations imposed by a political subdivision, a religious institution located within the political subdivision and offering camping space described under subsection (1) of this section must:]

[(a) Limit camping space at the institution site to three or fewer vehicles at the same time; and]

[(b) Provide campers with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities.]

(1) Any political subdivision may allow any public or private entity to allow overnight camping by homeless individuals living in vehicles on the property of the entity.

(2) A political subdivision may impose reasonable conditions upon offering camping space under this section, including establishing a maximum number of vehicles allowed.

(3) Entities providing camping spaces under this section must also provide access to sanitary facilities, including toilet, handwashing and trash disposal facilities.

**SECTION 7.** ORS 458.650 is amended to read:

458.650. (1) The Emergency Housing Account *[shall be]* is administered by the Housing and Community Services Department to assist homeless *[persons]* individuals and those *[persons]* individuals who are at risk of becoming homeless. An amount equal to 25 percent of moneys deposited in the account pursuant to ORS 294.187 is dedicated for expenditure for assistance to veterans who are homeless or at risk of becoming homeless. For purposes of this section, "account" means the Emergency Housing Account.

(2) The Oregon Housing Stability Council, with the advice of the Community Action Partnership of Oregon, shall develop policy for awarding grants to organizations that shall use the funds:

(a) To provide to low and very low income *[persons]* individuals, including but not limited to, *[persons]* individuals more than 65 years of age, persons with disabilities, farmworkers and Native Americans:

(A) Emergency shelters and attendant services;

(B) Transitional housing services designed to assist *[persons]* individuals to make the transition from homelessness to permanent housing and economic independence;

(C) Supportive housing services to enable *[persons]* individuals to continue living in their own homes or to provide in-home services for such *[persons]* individuals for whom suitable programs do not exist in their geographic area;

(D) Programs that provide emergency payment of home payments, rents or utilities; or

(E) Some or all of the needs described in subparagraphs (A) to (D) of this paragraph.

(b) To align with federal strategies and resources that are available to prevent and end homelessness.

(3)(a) The council shall require as a condition of awarding a grant that the organization demonstrate to the satisfaction of the council that the organization has the capacity to deliver any service proposed by the organization.

(b) Any funds granted under this section *[shall]* may not be used to replace existing funds. Funds granted under this section may be used to supplement existing funds. An organization may use funds to support existing programs or to establish new programs.

(c) The council, by policy, shall give preference in granting funds to those organizations that receive grants from the Housing Development Grant Program established under ORS 458.625.

Passed by House April 5, 2021

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

.....  
Tina Kotek, Speaker of House

Passed by Senate May 3, 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



## HOMELESS LEGISLATION:

### 2021 LEGISLATIVE SESSION

Kevin Campbell, OACP/OSSA Lobbyist  
6-29-2021

The following identifies the legislation passed during the 2021 Legislative Session addressing homelessness and provides details regarding the key provisions for each measure:

### **HB 2006** – Emergency Shelters/Transitional Housing Accommodations/Low-barrier Emergency Shelters and Navigation Centers

#### **Emergency Shelters**

- Defines “emergency shelter” as a building or cluster of buildings that provides shelter on a temporary basis for individuals and families who lack permanent housing.
- Provides that a building or cluster of buildings used as an emergency shelter under an approval granted under section 3 of this 2021 Act or section 11, chapter 12, Oregon Laws 2020 (first special session):
  - May resume its use as an emergency shelter after an interruption or abandonment of that use for two years or less, notwithstanding ORS 215.130 (7).
  - May not be used for any purpose other than as an emergency shelter except upon application for a permit demonstrating that the construction of the building and its use could be approved under current land use laws and local land use regulations.
- Provides that an approval of an emergency shelter under this measure or section 11, chapter 12, Oregon Laws 2020 (first special session) is void unless the shelter is operating within two years following the approval.
- Requires a local government to approve an application for the development or use of land for an emergency shelter, if the emergency shelter:
  - Includes sleeping and restroom facilities for clients
  - Will comply with applicable building codes
  - Is located inside and urban growth boundary or in an area zoned for rural residential use
  - Will not result in the development of a new building that is sited within an area designated under a statewide planning goal relating to natural disasters and hazards (flood plains or mapped environmental health hazards) unless the development complies with regulations directly related to the hazard;
  - Has adequate transportation access to commercial and medical services; and
  - Will not pose any unreasonable risk to public health or safety.

- Requires an emergency shelter, as defined by the measure, to be operated by:
  - A local government (ORS 174.116)
  - An organization with at least two years of experience operating and emergency shelter using best practices that is:
    - A local housing authority (ORS 456.375)
    - A religious corporation (ORS 65.001); or
    - A public benefit corporation (ORS 65.001), whose charitable purpose includes the support of homeless individuals, that has been recognized as exempt from income tax under section 501(a) of the Internal Revenue Code on or before January 1, 2018; or
  - A nonprofit corporation partnering with any other entity identified as an approved operator by the measure.
- Provides that an emergency shelter approved under the provisions of the measure:
  - May provide the following on-site for its clients and at no cost to the clients:
    - Showering or bathing;
    - Storage for personal property;
    - Laundry facilities;
    - Service of food prepared on-site or off-site;
    - Recreation areas for children and pets;
    - Case management services for housing, financial, vocational, educational or physical or behavioral health care services; or
    - Any other services incidental to shelter.
  - May include youth shelters, winter or warming shelters, day shelters and family violence shelter homes (ORS 409.290).
- Provides that an emergency shelter approved based on the provisions of this measure are authorized to provide additional services to individuals who are transitioning from unsheltered homeless status and allows the organization providing services to charge a fee of no more than \$300 per month per client and only to clients who are financially able to pay the fee and who request the services.
- Clarifies that the approval of an emergency shelter as defined by the measure is not a land use decision and is subject to review only under ORS 34.010 to 34.100.
- Provides that the emergency shelter approval requirement/process is repealed on July 1, 2022 for applications not completed and submitted before the date of the repeal.

#### **Enhanced Transitional Housing Accommodations Definition**

- Amends the definition of “transitional housing accommodations” to include areas in parking lots or facilities for individuals or families to reside overnight in a motor vehicle, without regard to whether the motor vehicle was designed for use as temporary living quarters.
- Provides that any political subdivision may:

- Allow any public or private entity to allow overnight camping by homeless individuals living in vehicles on the property of the entity.
- may impose reasonable conditions upon offering camping space, including establishing a maximum number of vehicles allowed.
- Requires entities approved by a political subdivision to provide camping spaces must also provide access to sanitary facilities, including toilet, handwashing and trash disposal facilities.
- Authorizes the Oregon Housing and Community Services Department to use resources from the Emergency Housing Account for development of technical assistance and training resources for organizations developing and operating emergency shelters and transitional housing accommodations based on the measure.

#### **Low-barrier emergency shelters:**

- Defines “low-barrier emergency shelter” as an emergency shelter that follows established best practices to deliver shelter services that minimize barriers and increase access to individuals and families experiencing homelessness.
- Requires the Oregon Housing and Community Services Department to award grants and provide technical assistance to organizations to fund:
  - The construction, purchase or lease of facilities to be used as low-barrier emergency shelters;
  - The operation, use or staffing of low-barrier emergency shelters, including the costs to provide clients with access to the shelters;
  - The development or use of amenities or facilities that provide no-cost services to individuals and families who are homeless, including restroom and hygiene facilities, laundry facilities, dining facilities, storage for personal property, meeting or gathering spaces and facilities providing case management services; or
  - Rapid rehousing services and supports for individuals and families.
- Requires the Oregon Housing and Community Services Department to:
  - Ensure that funds are distributed among different region of the state; and
  - Prioritize funding areas of highest need as identified in the August 2019 Oregon Statewide Shelter Study.
  - Ensure that grants are awarded through a competitive process that emphasizes collaborative proposals; or to one or more community action agencies.

#### **Navigation Centers**

- Defines “navigation center” as a low-barrier emergency shelter that is open seven days per week and connects individuals and families with health services, permanent housing and public benefits.
- Authorizes the Oregon Department of Administrative Services to award grants to local governments to:
  - Plan the location, development or operations of a navigation center;
  - Construct, purchase or lease a building for use as a navigation center;

- Operate a navigation center that has been constructed, purchased or leased; or
- Contract for the performance of activities related to a navigation center.
- Requires local governments receiving a grant to return all moneys granted if the navigation center subject to the grant is not operating on or before July 1, 2022.
- The following grants were awarded to specified nonprofit organizations and local governments through HB 5042 to establish and/or operate navigation centers to assist individuals and families with access to health services, permanent housing, and public benefits. The grants were awarded as follows:
  - \$1,500,000 to the City of McMinnville for a navigation center;
  - \$1,500,000 to the City of Roseburg for a navigation center;
  - \$2,000,000 to Bybee Lakes Hope Center for a navigation center;
  - 2,500,000 to the City of Bend for a navigation center;
  - \$2,500,000 to the City of Medford for a navigation center;
  - \$5,000,000 to the City of Salem for a navigation center; and
  - \$5,000,000 to Lane County for a navigation center within the City of Eugene

### **HB 3115 – Homelessness: Codification of Martin v. Boise**

HB 3115 seeks to codify the 2019 9<sup>th</sup> Circuit Court of Appeals decision in *Martin v. Boise* relating to local laws regulating the acts of sitting, lying, sleeping, or keeping warm and dry in

outdoor public spaces with regards to persons experiencing homelessness. The measure includes the following key provisions:

- Defines “keeping warm and dry” to mean using measures necessary for an individual to survive outdoors given the environmental conditions but does not include using any measure that involves fire or flame.
- Defines “public property” to mean the term as it is defined in ORS 131.705.
- Provides that “city or county law” does not include policies developed pursuant to ORS 203.077 or 203.079.
- Provides that 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.
- Creates an affirmative defense to a charge of violating a city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public that the law is not objectively reasonable.
- Authorizes a person experiencing homelessness to bring suit for injunctive or declaratory relief to challenge the objective reasonableness of these city or county laws and requires that the action 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.



- Requires “reasonableness” to be determined based on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness.
- Allows the court, in its discretion, to award reasonable attorney fees to a prevailing plaintiff if the plaintiff:
  - Was not seeking to vindicate an interest unique to the plaintiff; and
  - 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 bases the plaintiff intends to challenge the law.
- Clarifies that the measure does not create a private right of action for monetary damages.
- Provides that the requirements of the measure become operative on July 1, 2023

### **HB 3124 – Removal of Homeless from Established Camping Sites – Notice and Personal Property Requirements**

- Defines “personal Property as any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.
- Requires law enforcement officials, at least 72 hours before removing homeless individuals from an established camping site to post a written notice in English and Spanish at all entrances to the camping site to the extent that the entrances can reasonably be identified.
- Requires law enforcement officials, when a 72-hour notice is posted, to inform the local agency that delivers social services to homeless individuals as to where the notice has been posted.
- Requires all personal property at the camping site that remains unclaimed after removal to be given to a:
  - law enforcement official,
  - local agency that delivers social services to homeless individuals,
  - outreach worker,
  - local agency official or a person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance, whether the 72-notice is required or not.
- Requires unclaimed personal property to be stored:
  - For property removed from camping sites in counties other than Multnomah County, in a facility located in the same community as the camping site from which it was removed.
  - For property removed from camping sites in Multnomah County, in a facility located within six blocks of a public transit station.
  - Items that have no apparent value or utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.

- Weapons, controlled substances other than prescription medication and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.
- Requires the written notice, at a minimum, to include:
  - Where unclaimed personal property will be stored;
  - A phone number that individuals may call to find out where the property will be stored; or
  - If a permanent storage location has not yet been determined, the address and phone number of an agency that will have the information when available.
- Requires unclaimed property to be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.
- Requires personal property to be stored for a minimum of 30 days during which time it shall be reasonably available to any individual claiming ownership.
- Personal property unclaimed after 30 day may be disposed of or donated to a 501(c)(3) corporation (Internal Revenue Code as amended and in effect on Dec. 31, 2020).
- Provides that the 72-hour notice requirement does not apply:
  - When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring at an established camping site.
  - In the event of an exceptional emergency at an established camping site, including, but not limited to, possible site contamination by hazardous materials, a public health emergency or other immediate danger to human life or safety.
- Allows a notice to be posted at least 24 hours before removing individuals from a camping site if a funeral service is scheduled with less than 72 hours' notice at a cemetery at which there is a camping site, or a camping site is established at the cemetery less than 72 hours before the scheduled service.
- Prohibits a person authorized to issue a citation for unlawful camping (under state law, administrative rule or city or county ordinance) from issuing a citation within 200 feet of a notice required by the measure and within two hours before or after the notice was posted.
- Provides that any law or policy of a city or county that is more specific or offers greater protections to homeless individuals subject to removal from an established camping site preempts contrary provisions of this measure.
- Effective Date: Took effect on the date the Governor signed the measure into law on June 23, 2021.

## **HB 3261 – Project Turnkey: Zoning for Hotel/Motel Conversion to Emergency Shelter/Affordable Housing**

- Requires a local government to unconditionally allow the conversion of the lawful use of a property, notwithstanding any statewide land use planning goals or land use regulations:
  - From use as a hotel or motel, to use as an emergency shelter.
  - From use as a hotel or motel, or a hotel or motel that was converted to an emergency shelter, to use as affordable housing.
- Provides that the conversion requirement only applies to areas:
  - Within an urban growth boundary;
  - Not designated by the local government as specifically for heavy industrial uses;
  - With adequate transportation access to commercial and medical services; and
  - Not within an area designated for a statewide land use planning goal relating to natural disasters or hazards, including flood plains or mapped environmental health hazards, unless the converted use complies with regulations directly related to the disasters or hazards.
- Authorizes a local government to require a converted use to comply with:
  - Applicable building codes;
  - Occupancy limits; or
  - For affordable housing uses, reasonable standards relating to siting or design, if the standards do not, individually or cumulatively, prohibit the conversion through unreasonable costs or delay.
- Provides that conversions identified by the measure does not constitute a land use decision as defined in ORS 197.015.
- Provides that a local government is not required to consider whether the conversion significantly affects an existing or planned transportation facility for the purposes of implementing a statewide land use planning goal relating to transportation.
- Defines the following terms for purposes of the measure:
  - “Affordable housing” means housing in which all units are affordable to households with incomes equal to or less than 60 percent of the area median income as defined in ORS 458.610 and whose affordability is enforceable by an affordable housing covenant, as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.
  - “Conversion” includes an alteration to a building that changes the number of units but does not expand the building footprint.
  - “Emergency shelter” means a building that provides shelter on a temporary basis for individuals and families who lack permanent housing.
  - “Lawful use” includes a nonconforming use as described in ORS 215.130 (6) or any other local land use regulation allowing for the continuation of a use that was lawful when first enacted.
- Applies to conversions or applications for conversions on or after January 1, 2021.

- **Effective Date:** Took effect on the date the Governor signed the measure into law on May 6, 2021.

**NOTE:** In 2020, the Oregon Legislature allocated a total of \$65 million of CARES Act funding through the Oregon Joint Legislative Emergency Board for Project Turnkey for the purpose of acquiring motels/hotels for use as non-congregate shelter for people experiencing homelessness or at-risk of homelessness. The two funds included:

- \$30 million designated for shelter opportunities in counties or tribal communities impacted by the 2020 wildfires has been fully allocated, resulting in the funding of seven projects for a total of 388 units in six counties (appropriated on 10/23/2020).
- \$35 million designated for shelter opportunities in the remaining areas of the state. Of this amount, \$31.2 million has been allocated to date (appropriated on 11/9/2020).

During the 2021 Legislative Session, an additional 9.7 million was appropriated in HB 2004 to the Oregon Community Foundation to complete Project Turnkey projects in Deschutes, Multnomah, Malheur and Yamhill counties. In addition, \$800,000 was appropriated for a Turnkey project in Salem and \$5,107,713 was appropriated for a Turnkey project in Corvallis in HB 5006.

**S. Scott McDowell**

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**From:** Ross Williamson <ross@localgovtlaw.com>  
**Sent:** Tuesday, May 31, 2022 11:50 AM  
**To:** S. Scott McDowell  
**Subject:** RE: Brownsville, OR | ORS Sections

Hi, Scott.

They have assembled many of these statutes and laws in ORS Chapter 195. The provision you reference is found at ORS 195.530.

**195.530 Noncamping use of public property by homeless individuals; attorney fees.** (1) As used in this section:

- (a) “City or county law” does not include policies developed pursuant to ORS 195.500 or 195.505.
- (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.