



LIBRARY BOARD AGENDA

February 22, 2023 at 6:30 PM

Wilsonville Public Library

PARTICIPANTS MAY ATTEND THE MEETING AT:

Zoom: <https://us02web.zoom.us/j/87143019462>

TO PARTICIPATE REMOTELY OR PROVIDE PUBLIC COMMENT:

Register with Molly Muldoon:

Muldoon@wilsonvillelibrary.org or 503-570-1593

Individuals may submit comments by 12:00 PM on the day before the meeting date via email to the address above, or may mail written comments to:

Molly Muldoon - Wilsonville Library

8200 SW Wilsonville Road, Wilsonville, OR 97070

CALL TO ORDER

1. Roll Call

APPROVAL OF MINUTES OF JANUARY 25, 2023

ONGOING BUSINESS / CALENDAR ITEMS

2. [City Attorney Discussing Prohibited Camping](#)
3. Youth Services Report
4. Librarian's Report
5. Annual Board Report Card
6. Friends of the Library Report
7. Library Foundation Report

NEW BUSINESS

ROUND ROBIN

ADJOURN

NEXT MEETING

Wednesday, March 22, 2023 6:30 PM

Time frames for agenda items are not time certain (i.e. agenda items may be considered earlier than indicated). The City will endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting by contacting Molly Muldoon, Administrative Assistant at 503-570-1593 or Muldoon@wilsonvillelibrary.org: assistive listening devices (ALD), sign language interpreter, and/or bilingual interpreter. Those who need accessibility assistance can contact the City by phone through the Federal Information Relay Service at 1-800-877-8339 for TTY/Voice communication.

Habr  interpretes disponibles para aqu llas personas que no hablan Ingl s, previo acuerdo. Comun quese al 503-570-1593.



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. 9th 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 9th 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 9th Circuit's decision in *Martin*. The Supreme Court declined to review the case, which means the opinion remains the law in the 9th 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 9th 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 9th Circuit Court of Appeals is presently reviewing the *Blake* decision. When the 9th 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 9th 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 9th 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 9th 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 9th 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.

Enrolled House Bill 3124

Sponsored by Representative LIVELY; Representatives POWER, WILDE, Senator GORSEK

CHAPTER

AN ACT

Relating to homelessness; amending ORS 203.079 and section 1, chapter 21, Oregon Laws 2018; and declaring an emergency.

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

SECTION 1. ORS 203.079 is amended to read:

203.079. (1) A policy developed pursuant to ORS 203.077 shall *[include, but is not limited to,]* **conform, but is not limited, to** the following^[.] **provisions.**

(2) **As used in this section, “personal property” means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.**

[(a)] (3) *[Prior to]* **Except as provided in subsection (9) of this section, at least 72 hours before** removing homeless individuals from an established camping site, law enforcement officials shall post a **written** notice, *[written]* in English and Spanish, *[24 hours in advance]* **at all entrances to the camping site to the extent that the entrances can reasonably be identified.**

[(b)] (4)(a) *[At the time that a 24-hour]* **When a 72-hour** notice is posted, law enforcement officials shall inform the local agency that delivers social services to homeless individuals **as to** where the notice has been posted.

[(c)] (b) The local agency may arrange for outreach workers to visit the camping site *[where a notice has been posted]* **that is subject to the notice** to assess the need for social service assistance in arranging shelter and other assistance.

[(d)] (5)(a) All *[unclaimed]* **personal property at the camping site that remains unclaimed after removal** shall be given to *[law enforcement officials whether 24-hour]* **a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (10) of this section, whether** notice is required **under subsection (3) of this section** or not.

(b) **The unclaimed personal property must be stored:**

(A) **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.**

(B) **For property removed from camping sites in Multnomah County, in a facility located within six blocks of a public transit station.**

(c) **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.**

(d) **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.**

(6) The written notice required under subsection (3) of this section must state, at a minimum:

(a) Where unclaimed personal property will be stored;

(b) A phone number that individuals may call to find out where the property will be stored; or

(c) 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.

(7)(a) The unclaimed personal property shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.

(b) The property shall be stored for a minimum of 30 days during which it [will] shall be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed [for] after 30 days may be disposed of or donated to a corporation described in section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2020. [For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site. Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials.]

[(e)] (8) Following the removal of homeless individuals from a camping site on public property, the law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a humane and just manner and to determine if any changes are needed in the policy.

[(2)] (9)(a) The [24-hour] 72-hour notice [required] requirement under subsection [(1)] (3) of this section [shall] does not apply:

[(a)] (A) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring at an established camping site.

[(b)] (B) In the event of an exceptional emergency [such as] at an established camping site, including, but not limited to, possible site contamination by hazardous materials [or when there is], a public health emergency or other immediate danger to human life or safety.

(b) 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, the written notice required under subsection (3) of this section may be posted at least 24 hours before removing homeless individuals from the camping site.

[(3)] (10) A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance may not issue the citation if the citation would be issued within 200 feet of [the] a notice [described in] required under subsection (3) of this section and within two hours before or after the notice was posted.

(11) 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 section.

SECTION 1a. If Senate Bill 410 becomes law, section 1 of this 2021 Act (amending ORS 203.079) is repealed and ORS 203.079, as amended by section 1, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 410), is amended to read:

203.079. (1) A policy developed pursuant to ORS 203.077 shall [include, but is not limited to,] conform, but is not limited, to the following[:] provisions.

(2) As used in this section, "personal property" means any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

[(a)] (3) [Prior to] Except as provided in subsection (9) of this section, at least 72 hours before removing homeless individuals from an established camping site, law enforcement officials

shall post a **written** notice, *[written]* in English and Spanish, *[24 hours in advance]* **at all entrances to the camping site to the extent that the entrances can reasonably be identified.**

[(b)] **(4)(a)** *[At the time that a 24-hour]* **When a 72-hour** notice is posted, law enforcement officials shall inform the local agency that delivers social services to homeless individuals **as to** where the notice has been posted.

[(c)] **(b)** The local agency may arrange for outreach workers to visit the camping site *[where a notice has been posted]* **that is subject to the notice** to assess the need for social service assistance in arranging shelter and other assistance.

[(d) Except as otherwise provided in paragraph (e) of this subsection:]

[(A)] **(5)(a)** All *[unclaimed]* personal property **at the camping site that remains unclaimed after removal** shall be given to *[law enforcement officials whether 24-hour]* **a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (10) of this section, whether** notice is required **under subsection (3) of this section** or not.

(b) The unclaimed personal property must be stored:

(A) 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.

(B) For property removed from camping sites in Multnomah County, in a facility located within six blocks of a public transit station.

(c) 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.

(d) 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.

(6) The written notice required under subsection (3) of this section must state, at a minimum:

(a) Where unclaimed personal property will be stored;

(b) A phone number that individuals may call to find out where the property will be stored; or

(c) 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.

(7)(a) The unclaimed personal property shall be stored in an orderly fashion, keeping items that belong to an individual together to the extent that ownership can reasonably be determined.

(b) The property shall be stored for a minimum of 30 days during which it *[will]* shall be reasonably available to any individual claiming ownership. Any personal property that remains unclaimed *[for]* after 30 days may be disposed of **or donated to a corporation described in section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2020.**

[(B) For purposes of this paragraph, "personal property" means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discarded upon removal of the homeless individuals from the camping site.]

[(C) Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime shall be given to or retained by law enforcement officials.]

[(e) For unclaimed personal property located in Multnomah County:]

[(A) All unclaimed personal property shall be given to a law enforcement official, a local agency that delivers social services to homeless individuals, an outreach worker, a local agency official or a person authorized to issue a citation described in subsection (3) of this section, whether 24-hour notice is required or not.]

[(B) Facilities for storage of personal property under paragraph (d) of this subsection must be located within six blocks of a public transit station.]

[(f)] **(8)** Following the removal of homeless individuals from a camping site on public property, the law enforcement officials, local agency officials and outreach workers may meet to assess the notice and removal policy, to discuss whether the removals are occurring in a humane and just manner and to determine if any changes are needed in the policy.

[(2)] **(9)(a)** The [24-hour] **72-hour** notice [required] **requirement** under subsection [(1)] **(3)** of this section [shall] **does not** apply:

[(a)] **(A)** When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring **at an established camping site**.

[(b)] **(B)** In the event of an exceptional emergency [such as] **at an established camping site, including, but not limited to,** possible site contamination by hazardous materials [or when there is], **a public health emergency or other** immediate danger to human life or safety.

(b) 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, the written notice required under subsection (3) of this section may be posted at least 24 hours before removing homeless individuals from the camping site.

[(3)] **(10)** A person authorized to issue a citation for unlawful camping under state law, administrative rule or city or county ordinance may not issue the citation if the citation would be issued within 200 feet of [the] a notice [described in] **required under subsection (3) of this section** and within two hours before or after the notice was posted.

(11) 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 pre-empts contrary provisions of this section.

SECTION 2. Section 1, chapter 21, Oregon Laws 2018, is amended to read:

Sec. 1. (1) The Department of Transportation may enter into an intergovernmental agreement with a city that has a population of 500,000 or more for the removal, storage and disposition of personal property deposited, left or displayed on property that is owned by the department.

(2) Notwithstanding ORS 377.650, 377.653 and 377.655, an intergovernmental agreement entered into under this section may provide alternative provisions related to the removal, storage and disposition of personal property if the alternative provisions conform with the requirements for local government policy for removal of homeless individuals and personal property [described] under ORS 203.079[*, except that under this section the notices described in ORS 203.079 must be posted 48 hours in advance*].

(3) In addition to the requirements described in subsection (2) of this section, an intergovernmental agreement entered into under this section must include the following:

(a) Requirements for posting notice before the removal of personal property, including but not limited to the following:

(A) That the notice is created using durable materials and securely posted within 30 feet of the personal property to be removed;

(B) That the notice must provide the date the notice begins and the date upon which the city may begin removing personal property; and

(C) That the notice must provide a description of:

(i) How an individual may access personal property that is removed and stored; and

(ii) The length of time the city will store personal property before the city disposes of it.

(b) A requirement that the notice expires 10 days after the city posts the notice.

(c) A severe weather protocol regarding the weather conditions under which the city will not remove personal property.

(d) Provisions related to inventorying and storing the personal property to be removed.

(e) Provisions related to the city relinquishing unclaimed personal property after the storage period to the city's designated agent.

(f) Provisions related to when the city will provide impact reduction services, including but not limited to trash collection.

(4) The [48-hour] **72-hour** notice **under ORS 203.079** required under subsection (2) of this section does not apply:

(a) When there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring;

(b) Where there is an exceptional emergency, such as possible site contamination by hazardous materials; or

(c) When there is immediate danger to human life or safety.

(5) Before the city adopts an intergovernmental agreement under this section or changes to the agreement, the city shall invite public comment on the proposed agreement or the proposed changes to the agreement.

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 19, 2021

Received by Governor:

Repassed by House June 9, 2021

.....M.,....., 2021

Approved:

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

.....M.,....., 2021

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 8, 2021

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State



**LIBRARY BOARD MEETING
STAFF REPORT**

Meeting Date: February 22, 2023		Subject: Code Revisions Related to Camping	
		Staff Members: Amanda Guile-Hinman, City Attorney; Nick McCormick, Law Clerk	
		Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: N/A	
Staff Recommendation: N/A			
Recommended Language for Motion: N/A			
Project / Issue Relates To:			
<input type="checkbox"/> Council Goals/Priorities:	<input type="checkbox"/> Adopted Master Plan(s):	<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE BOARD: An informational session to discuss the recent passage of Oregon laws and court rulings related to local laws regulating camping, as well as a discussion regarding community outreach for this project. In June 2020, the League of Oregon Cities published a guide for local jurisdictions regarding these Oregon laws and case law concerning camping regulations is attached hereto as **Attachment A**.

EXECUTIVE SUMMARY:

The City is undertaking a review and update to its local code provisions regarding camping on city property and city rights-of-way such as streets and sidewalks in response to new state laws and federal court cases. This is state-mandated work that every city in Oregon is in the process of doing. The goal of the City's camping code update project is to do so in a way that is humane, and complies with state and federal law, by establishing clear rules about where, when, and how camping is allowed or not allowed on City property and rights-of-way.

This Staff Report provides background information that requires the City to revise its prohibited camping code provisions, what the City can and cannot regulate, and some policy questions for the Board that staff will use to help inform the ultimate revisions to the City Code.

I. BACKGROUND

A. Federal Cases on Camping Ban Enforcement

In 2019, the 9th Circuit in *Martin v. Boise* examined the constitutionality of two Boise ordinances: one that made it a misdemeanor to use "any streets, sidewalks, parks, or public places as a camping place at any time," and one that banned occupying or otherwise using a public or private structure without permission. The 9th Circuit ruled that these two ordinances generally violated individuals' rights under the 8th Amendment, which prohibits government from imposing cruel and unusual punishment. What came out of *Martin* was the general understanding that a city cannot criminalize being homeless, but cities are not required to create facilities for persons experiencing houselessness and can still have reasonable time, place, and manner restrictions for camping.

After *Martin*, many jurisdictions began revising their state and local statutes to comply with the recent decision. In 2020, before these new revisions were completed, a class of unhoused individuals challenged various Grants Pass regulations that were similar to those in *Martin* before the U.S. Federal District Court of Oregon in *Blake v. Grants Pass*. Grants Pass had attempted a limited revision to its regulations in light of *Martin* to allow "sleeping" in certain circumstances, but retained all other prohibitions of camping on public property. Among the regulations were bans on camping in parks, camping on public property, and sleeping in public places when any bedding is used, as well as exclusions from parks for violating more than one regulation in one year's time. The court stated these regulations violated *Martin*, and provided further clarification regarding when cities can or cannot enforce camping prohibitions. The Court in *Blake* held that enforcement through imposition of a civil penalty as opposed to a criminal charge did not relieve Grants Pass from the 8th Amendment analysis in *Martin*. The Court also held that the 8th Amendment prohibits a jurisdiction from punishing people for taking necessary steps to keep themselves warm and dry while sleeping (such as using bedding or a barrier between themselves and the ground).

B. New Oregon Laws Regulating Local Camping Bans

With the guidance of both *Martin* and *Blake*, the Oregon legislature passed HB 3115 in 2021 (codified as ORS 195.530), which set up specific requirements and limitations for city and county camping ordinances. A copy of HB 3115 is attached hereto as **Attachment B**.

Among the requirements is a provision stating that any regulation of use of public property by unhoused persons must be “objectively reasonable.” Whether or not a regulation is objectively reasonable depends on an analysis of all the circumstances, including the impact of the law on the person, as well as other relevant considerations related to the specific conditions involved.

The law also provides for both an affirmative defense to any crime that is objectively unreasonable, as well as a private right of action for declaratory and injunctive relief (not money damages), which means that individuals can sue the City alleging the City Code is unreasonable on its face (no enforcement action by the City is required prior to suing the City for violating the new state law). The private right of action allows for the collection of attorney’s fees at the judge’s discretion also. The law goes into effect on July 1, 2023.

Additionally, passed as HB 3124 (2021) (attached hereto as **Attachment C**), and effective on June 23, 2021, ORS 195.505 added provisions requiring reasonable prior written notice to individuals of an intent to close an established campsite within 72 hours at each campsite entrance before closure. This policy does not apply if the site is housing illicit activities, in case of emergencies, or sites near a funeral service. Additionally, a citation cannot be given if within 200 feet of a notice posted less than two hours before or after such time.

The law also added provisions regarding the receipt and storage of persons’ belongings left after a valid site closure. Any unclaimed property is to be stored at a designated facility located in that community. The city must leave reasonable notice as to where and how the person may find and retrieve their belongings. A city is not required to store goods that are deemed to have no value or utility, or are unsanitary. A city will give all weapons, illicit substances, and stolen property to law enforcement. The city will store the items for 30 days after reasonable notice is given.

C. Other Considerations Regarding Camping Bans

Other concerns related to the regulation of camping on public property include the 1989 U.S. Supreme Court decision of *Deshaney v. Winnebago County Department of Social Services*, which viewed the 14th Amendment as imposing a duty on government actors when they have created dangerous conditions for others. This has been further refined by the 9th Circuit to apply a duty to government actors where an affirmative act puts a person in danger with a deliberate indifference to a known or obvious danger. *LA Alliance for Human Rights v. City of Los Angeles*, 2021 WL 1546235.

This is an important policy consideration for cities in deciding where to prohibit camping and where to allow it. The city must ensure that regulations for camping and related prohibitions do not expose individuals to a greater danger than under current circumstances. This will sometimes require a case-by-case analysis of current environmental conditions and potential harms that may occur after site removal. It is still unclear as to how far the duty stretches under the State Created Danger principle.

D. City Project

Staff formed an inter-departmental internal team to review Wilsonville Code provisions that regulate camping, and other related provisions. This internal team has three goals: (1) to ensure that the City is compliant with HB 3115 prior to its operative date of July 1, 2023; (2) to verify, through work sessions with Councilors and feedback from the community and stakeholders, that any regulations in the Wilsonville Code reflect City values; and (3) to communicate with and educate the Council and the community about these changes in Oregon law and any corresponding revisions to the Wilsonville Code. As staff undertake the community outreach component of this project, staff seeks feedback from the Library Board regarding policy questions concerning this prohibited camping project.

I. What Can and Can't We Do?

Below is a summary of the policy considerations that we can examine and that we cannot examine regarding prohibited camping:

1. We cannot ban camping outright – in the Ninth Circuit’s jurisdiction (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington), only cities with sufficient shelter beds for unhoused individuals can ban camping outright. Currently, staff is not aware of any city that is able to meet this threshold. Portland’s mayor recently stated a policy goal to reach this threshold, but otherwise, no city is able to ban camping outright.
2. The federal case law and state regulations only apply to camping on City-owned property – they do not require us to allow camping on private property and we do not have authority to regulate camping on other public entities’ property such as the School District or Metro property. However, we can consider a program that allows private property owners to apply to allow some camping on their property – several Oregon jurisdictions have implemented such programs.
3. We can regulate the timing when camping may occur, such as between certain hours (e.g., from 10 pm to 6 am)
4. We can regulate where camping occurs on City-owned property (e.g., parking lots, vacant City-owned lots, sidewalks, parks, etc).
5. We can regulate how camping occurs, such as to prohibit open flames/fire, certain structures, and size of structures.

6. We cannot not have regulations that are objectively unreasonable. Reasonableness is determined by examining the totality of the circumstances, including the impact of the regulations on persons experiencing homelessness.

II. Policy Questions

These policy questions are designed for the Board to consider not just how unhoused individuals may use the library, but also how other community members also use the library, to ensure that any restrictions and regulations do not specifically target unhoused individuals while allowing others to engage in the same conduct. For example, if a person may park in the Library parking lot all day, a person living in their vehicle must also be allowed to park in the parking lot.

Policy Question 1: Whether the hours an individual may camp should be limited to a specific time period. For example, the City could allow camping on certain city property between the hours of 10 pm and 6 am.

Policy Question 2: Should the City allow camping in City-owned parking lots, such as the Library parking lot, and certain vacant City-owned property(ies) within the allotted period of time?

Policy Question 3: Should there be any restrictions or limitations for camping near the Library?

Policy Question 4: Should there be any considerations regarding storage of personal items around the Library?

Policy Question 5: Are there any other regulations that should be considered as part of this prohibited camping project – particularly, regarding the time, place, or manner that camping is allowed?

EXPECTED RESULTS:

Contemporaneous with the community outreach, the project team has begun the process of reviewing current city code and locating code sections to be revised in light of the new state laws, with the city potentially approving a final revised code by May 2023.

TIMELINE:

Approximate timeline of expected upcoming events:

1. February 23, 2023 – Second Council Work Session to go over policy considerations and initial community feedback
2. March 20, 2023 – Third Council Work Session to review draft Code revisions
3. April 17, 2023 – Fourth Council Work Session for any last revisions
4. May 1, 2023 – First Reading of Ordinance
5. May 15, 2023 – Second Reading of Ordinance
6. July 1, 2023 – New regulations become effective

CURRENT YEAR BUDGET IMPACTS:

None immediately, but there could be potential costs depending on the chosen system for managing prohibitions on camping. Cities are not required to provide facilities for those who are experiencing houselessness, but may be required to create additional procedures for regulating camping.

COMMUNITY INVOLVEMENT PROCESS:

Public involvement is a focal point of the city camping code revision process to ensure a diverse group of community members and stakeholders can provide their priorities, interests, and concerns related to the potential code revisions. The City provided a community survey through Let's Talk, Wilsonville! and staff have met and are meeting with stakeholders, including City advisory boards, private service providers, business and community groups, Clackamas County, and other government agencies.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

There are several potential impacts on the residential, commercial, and related communities depending on the adopted code revisions. The project team will work with local residents and stakeholders to address concerns and provide equitable solutions that benefits both the community and other impacted individuals.

ATTACHMENTS:

1. Attachment A – League of Oregon Cities Camping Code Revision Guide
2. Attachment B – ORS 195.530 (HB 3115)
3. Attachment C – ORS 195.505 (HB 3124)

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

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 9, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2021

Approved:

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